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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

19 MAR 2009

2009 MAR 20 PM 2:02 - Mm

The Honorable Judith Won Pat
Speaker
I Mina' Trenta na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

30-09-0347
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 3/20/09
Time 2:20 PM
Received by

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 51 (COR), "AN ACT TO *ADD* A NEW ARTICLE 8 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE (1) *OR* MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND OTHER SYSTEM COSTS; TO *ADD* A NEW ARTICLE 9 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF ORDOT DUMP AND OTHER SYSTEM COSTS; TO AUTHORIZE THE ISSUANCE OF PRIVATE ACTIVITY BONDS FOR THE CONSTRUCTION OF SOLID WASTE DISPOSAL FACILITIES; TO PROHIBIT PAYMENNTS WITHOUT APPROPRIATIONS; AND TO DIRECT THE GUAM ECOMOMIC DEVELOPMENT AUTHORITY TO SOLICIT ALTERNATIVE FINANCING."

The District Court recently ordered the government of Guam to deposit almost $1 million per week to the Receiver to pay costs associated with the closure of the Ordot dump and the opening of a new landfill. To avert the cash crisis this order would certainly have caused, the Administration resubmitted legislation to authorize financing for Consent Decree projects after previous efforts lapsed in *I Mina'Bente Nuebi na Liheslaturan Guåhan*. This new legislation included the solid waste management system bond as a limited bond obligation of the government of Guam or a revenue bond with Section 30 monies as a pledge. The original bill

provided the government flexibility to issue a bond that could meet Consent Decree timelines if market conditions permitted; as noted in the legislation's transmittal, the solid waste management system bond authorization mirrored the Receiver's recommended financing option.

The original form of Bill 51 also included lease and lease-back financing alternatives. The authorization provided would allow the government to pursue expressions of interest from private entities that have claimed they could finance and implement Consent Decree projects within court timelines. Should these offers prove to be reasonably priced and compliant alternatives to a government built facility, the legislation would allow the government to fully explore these options.

After the transmittal of the legislation, the Administration and the government's financial advisors attended legislative hearings throughout February to assist lawmakers as they debated, amended and eventually passed Bill 51 in its current form, providing three options: bond financing, lease-back financing and private activity bonds.

The bond financing authorization may be secured by system revenue or may be a General Obligation of the government of Guam, or both. Unfortunately, the system revenue pledge may not be viable at this point in time because of the system's revenue collection history. While a General Obligation bond may be the preferred option, market conditions may delay its issuance. Finally, notwithstanding the government's financial advisors' input, *I Liheslatura's* attempt in Bill 51 to prioritize the deficit financing bond, authorized in Public Law 29-113, may have impaired its issuance.

Although we cited market conditions as a delay to the issuance of the original bond authorization proposal, the Administration remains optimistic with the lease-back financing and the private activity bonds options in Bill 51. Now, with the authorization provided in Bill 51, the Executive Branch has diligently begun to pursue these options to comply with the Consent Decree and meet the court's timelines.

Although Bill 51 is different from the original legislative proposal, it is the product of *I Liheslatura* with input from the Administration in an effort to comply with the Consent Decree while minimizing severe impacts to other critical government operations. Unfortunately, Senator Benjamin Cruz introduced a provision which would prohibit executive officers from paying the cash deposit and/or fines to the court without legislative appropriation. This provision places the Administration in the difficult position of choosing either to violate a federal court order or a local law that includes criminal penalties. The government of Guam is now placed in a precarious position with the federal court and looming contempt sanctions.

While the Administration acknowledges the working relationship with *I Mina'Trenta na Liheslaturan Guåhan* as we confront these challenges, we must set aside political agendas to handle these critical issues. Even without a court order or sanctions, the public health and environmental threats as the Ordot dump must be addressed and a new, sanitary landfill must be opened to protect the public and our island.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga' Låhen Guåhan
Governor of Guam

Enclosures

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

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

This is to certify that **Bill No. 51 (COR), "AN ACT TO *ADD* A NEW ARTICLE 8 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE (1) *OR* MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND OTHER SYSTEM COSTS; TO *ADD* A NEW ARTICLE 9 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND OTHER SYSTEM COSTS; TO AUTHORIZE THE ISSUANCE OF PRIVATE ACTIVITY BONDS FOR THE CONSTRUCTION OF SOLID WASTE DISPOSAL FACILITIES; TO PROHIBIT PAYMENTS WITHOUT APPROPRIATIONS; AND TO DIRECT THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO SOLICIT ALTERNATIVE FINANCING,"** was on the 26th day of February, 2009, duly and regularly passed.

JUDITH T. WON PAT, Ed.D.
Speaker

Attested:

TINA ROSE MUÑA BARNES
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 24 day of FEB, 2009, at 7:00 o'clock PM.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

Date: 27 FEB '09

Public Law No. 30-1

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 51 (COR)
As amended in the
Committee of the Whole.

Introduced by:

Committee on Rules, Natural Resources, Federal, Foreign, and Micronesian Affairs
By request of *I Maga'lahen Guåhan* in accordance with the Organic Act of Guam.

AN ACT TO *ADD* A NEW ARTICLE 8 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE (1) *OR* MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND OTHER SYSTEM COSTS; TO *ADD* A NEW ARTICLE 9 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM, AND APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND OTHER SYSTEM COSTS; TO AUTHORIZE THE ISSUANCE OF PRIVATE ACTIVITY BONDS FOR THE CONSTRUCTION OF SOLID WASTE DISPOSAL FACILITIES; TO PROHIBIT PAYMENTS WITHOUT

APPROPRIATIONS; AND TO DIRECT THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO SOLICIT ALTERNATIVE FINANCING.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Enactment of the Guam Solid Waste Management System Bond Act. A new Article 8 of Chapter 51 of Title 10, Guam Code Annotated, is hereby *enacted* to read as follows:

"Article 8

Solid Waste Management System Bonds

§51801. Short Title. This Article may be cited as the Guam Solid Waste Management System Bond Act.

§51802. Definitions. The following terms wherever used *or* referred to in this Article *or* in any indenture entered into pursuant hereto (*except* to the extent modified therein in accordance with this Article) *shall* have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Bonds* means an instrument of indebtedness, whether in the form of bonds, notes *or* another such instrument, issued by the government and providing for repayment of the principal amount of the indebtedness, plus interest, over a specified timeframe.

(b) *Bondholder or holder of bonds*, *or* any similar term, means any person who *shall* be:

(1) the bearer of any outstanding bond *or* bonds registered to bearer *or not* registered; *or*

(2) the registered owner of any such outstanding bond *or* bonds which *shall* at the time be registered other than to bearer.

(c) *Department* means the Department of Public Works, acting on behalf of the government of Guam.

(d) *Director* means the Director of the Department of Public Works.

(e) *Guam Solid Waste Management and Litter Control Act* means Chapter 51 of Title 10 of the Guam Code Annotated.

(f) *Indenture* means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a certificate of the Governor of Guam (*I Maga'lahen Guåhan) or* by other instrument.

(g) *Organic Act* means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (Title 48, §1421 et seq. of the United States Code).

(h) *Person* includes any individual, firm, corporation, association, partnership, trust, business trust *or* receiver *or* trustee *or* conservator for any thereof, and also includes the United States, Guam *or* any public corporation, political subdivision, city, county *or* district *or* any agency *or* instrumentality of the United States *or* of Guam.

(i) *Pledged revenue* means any revenue of the system and any General Fund revenue pledged to the payment of bonds.

(j) *Rates, fees and charges* means all rates, fees and charges (including tipping fees, residential pick-up fees, collection fees, self-drop fees and all other solid waste management service charges), received *or* receivable by *or* on behalf of the *Department* for providing solid waste management services.

(k) *Revenue of the system* means all gross income and other amounts received by *or* on behalf of the Department 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 Department, 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 *Department* 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 §51833, Title 10, Guam Code Annotated.

(l) *Solid Waste Operations Fund* means the fund by that name established pursuant to §51118(f), Title 10, Guam Code Annotated.

(m) *System* means the solid waste management system, now *or* hereafter existing, owned and/*or* operated by the *Department or* its contractors, agents *or* subcontractors, including, but *not limited to,* landfills (whether closed *or* open and including Ordot Dump), 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. Notwithstanding this *or* any other provision of law, the authorization to enter into a privatization, partnership, *or* contract by the *Department* for the operation of the system *shall* require a cost benefit analysis and economic impact study, and legislative approval.

(n) *System operation and maintenance costs* means such reasonable and necessary current expenses of the *Department*, paid *or* accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(1) legal and overhead expenses of the *Department* directly related and reasonably allocable to the administration of the system;

(2) fidelity bond and insurance premiums appertaining to the system *or* a reasonably allocable share of a premium of any blanket bond *or* policy pertaining to the system;

(3) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the system; and

(4) the costs incurred in the collection of all *or* any part of the revenues.

(o) *United States* means the United States of America.

§51803. Power to Incur Indebtedness. *I Maga'lahen Guåhan*, through the agency of the Guam Economic Development Authority pursuant to §50103(k), Title 12, Guam Code Annotated, and with the approval of *I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in addition to all other powers conferred by the Guam Solid Waste Management and Litter Control Act *or* any other provision of this Chapter *or* by any law of Guam *or* of the United States, to incur indebtedness on behalf of the government of Guam, by the issuance of bonds pursuant to this Article to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing *or* insuring the

system, *or* any part thereof, *or* to reimburse the government for its payment, after the date of this legislation, of such system bond costs, *or* for the purpose of refunding any such system bonds *or* any other *prior* obligations of the government issued for any of such system purposes, *or* for any combination of such system purposes for which bonds may be issued and secured as provided in this Article; provided, however, that bonds may *not* be issued in an amount that will cost a violation of the debt limitation provisions of Section 11 of the Organic Act (§1423a, Title 48, U.S. Code).

It is hereby declared that the system and each facility of the system is and *shall* be a public improvement *or* undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the government pursuant to this Article that is payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will *not* be and *shall not* be deemed to be public indebtedness of Guam as that term is used in said Section 11. Indebtedness that is issued by the government pursuant to this Article and that is payable from both the General Fund and revenue of the system constitutes a general obligation of the government pursuant to Title 10, Guam Code Annotated, §51823, and may *not* be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation that is undertaken by the government pursuant to this Article and that is secured *solely* by a pledge of revenue of the system *shall* be *or* become a lien, charge *or* liability against the government of Guam *or* against the *Department or* against any property *or* funds of the government of Guam *or* the *Department*, *except* to the extent of the pledge of revenue of the system provided by the indenture.

§51804. Powers of *Department*. Notwithstanding any provision of law *or* regulation, the *Department* has power and is hereby authorized, in addition to all other powers conferred upon the *Department* by the Guam Solid Waste Management and Litter Control Act *or* any other provision of this Chapter *or* by any law of Guam, to exercise any *or* all of the powers granted to the *Department* by this Article. The *Department* has jurisdiction over and may collect and transport to permitted solid waste facilities, *or* contract for the collection and transportation to permitted solid waste facilities, of solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units *or* residences. The *Department does not* have jurisdiction over the collection and transportation of solid waste from any hotels, commercial *or* industrial establishments, and government agencies, *or* from any multiple dwelling units other than duplexes. The *Department* may operate the Ordot Dump, *or* it may contract for the operation of the Ordot Dump, in accordance with Guam law and its permit under this Chapter. The *Department* may contract for the operation of the landfill.

The *Department* may also operate, *or* contract for the operation of, all other permitted solid waste management facilities and operations *not* addressed above and within the policy guidelines of the Integrated Solid Waste Management Plan. Any such contract for the operation of the Ordot Dump *or* the landfill may be entered into pursuant hereto *or* pursuant to Article 9 of this Chapter and may be with any person *or* corporation duly qualified to provide such services, whether public *or* private, domestic *or* foreign. Notwithstanding this *or* any other provision of law, the authorization to enter into a privatization, partnership, *or* contract by the *Department* for the operation of the system *shall* require a cost benefit analysis, economic impact study, and legislative approval.

§51805. Rates, Fees and Charges; Refunds. Notwithstanding any provision of law *or* regulation to the contrary, the *Department* is authorized to establish and modify from time to time, with prior approval by the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of debt service for capital improvements of permitted solid waste facilities, and to collect money from all users *or* customers, and to refund charges collected in error. Rates, fees and charges may be collected before *or* after the provision of the service for which they are charged.

Except to the extent otherwise permitted *or* required by an indenture pursuant to which bonds are issued, rates, fees and charges *shall* at all times be fixed to yield annual revenue of the system at least equal to the sum of annual principal payments and interest charges on all bonds then outstanding, all coverage and reserve fund requirements relating to such bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and the annual system operation and maintenance costs and expenses incurred in connection with any such advance.

An indenture, lease *or* contract of indebtedness may provide for payment from revenue of the system of refunds of rates and charges that are collected in error and that are refundable by the Department.

§51806. Validity of Authorization and Issuance of Bonds. The validity of the authorization and issuance of any bonds by the government pursuant to this Article is *not* dependent on *nor* affected in any way by:

(a) proceedings taken by the *Department* for the acquisition, construction *or* improvement of the system *or* any part thereof;

(b) any contracts made by the *Department* in connection with the acquisition, construction *or* improvement of the system *or* any part thereof; *or*

(c) the failure to complete the system *or* any part thereof for which bonds are authorized to be issued.

§51807. *I Maga'lahi* to Determine Issuance of Bonds and Incurring of Other Indebtedness.

I Maga'lahen Guåhan shall determine the time, form and manner of issuance of bonds.

§51808. *I Maga'lahi* to Declare Purpose and Maximum Amount of Bonds to be Issued. Before issuing any bond *or* bonds, *I Maga'lahen Guåhan shall* declare the purpose for which the proceeds of the bonds proposed to be issued *shall* be expended and *shall* specify the maximum amount of bonds to be issued *or* sold for such purpose. Bonds *shall not* be issued *or* sold for such purpose in an amount exceeding such specified maximum.

§51809. Indenture Providing Terms and Conditions of Bonds. *I Maga'lahen Guåhan* may enter into one (1) *or* more indentures on behalf of the government providing for the aggregate principal amount, date *or* dates, maturities, interest rates *or* methods for determination thereof, denominations, form, registration, transfer and interchange of any bonds issued pursuant to this Article and the terms and conditions on which the same *shall* be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§51810. Issues of Bonds. An indenture may provide for one (1) *or* several series of bonds and that any series may be divided into one (1) *or* more

divisions with different maturities *or* dates of issue, different rates of interest *or* methods for determining such rates, *or* different terms and conditions for the bonds of the several series *or* divisions. It is *not* necessary that all bonds of the same authorized series be of the same kind *or* character, have the same security, *or* be of the same interest rate, but the terms thereof *shall* in each case be as authorized by *I Maga'lahen Guåhan*.

§51811. Covenants and Agreements That May be Contained in Indenture. An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the government as *I Maga'lahen Guåhan* deems necessary *or* advisable, including, without limiting the generality of the foregoing, any one (1) *or* more of the following:

(a) A provision specifying the security for payments of principal and interest of bonds.

(b) Provisions creating one (1) *or* more funds *or* accounts into which all *or* any part of pledged revenue *shall* be deposited:

(1) for payment of the principal of and interest on bonds at *or* prior to maturity; *or*

(2) for reserve *or* sinking funds for the further security of bonds.

(c) A provision requiring the government to operate the system continuously, to the extent reasonably practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(d) A provision requiring the government to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the government to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the government to pay and discharge *or* cause to be paid and discharged all lawful claims for labor, materials and supplies *or* other charges which, *if* unpaid, might become a lien *or* charge upon pledged revenue *or* any part thereof, *or* which might impair the security of the bonds.

(g) A provision which limits, restricts *or* prohibits any right, power *or* privilege of the government to mortgage *or* otherwise encumber, sell, lease *or* dispose of the system *or* any part thereof, in any manner that impairs *or* impedes the operation of the system *or* any part thereof necessary to secure adequate pledged revenue *or* that otherwise impairs *or* impedes the right of the holders of bonds *or* other obligations with respect to such pledged revenue.

(h) A provision requiring the government, with the prior approval of the Guam Public Utilities Commission, to fix, prescribe and collect annually rates *or* other charges in connection with the solid waste management services furnished from the system which, together with other available revenues, will be:

(1) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund *or* account *or* other fund *or* account created by the indenture for the security of such bonds;

(2) sufficient to pay any payments due under any lease *or* lease-back entered into pursuant to Article 9 of this Chapter;

(3) sufficient to pay the annual system operation and maintenance costs; and

(4) in such additional amount as *shall* be provided in the indenture for the further security *or* protection of such bonds.

(i) A provision that *no* solid waste management service *shall* be furnished free of charge to any person, *except* to the extent permitted by the indenture.

(j) A provision requiring the government to hold *or* cause to be held in trust the pledged revenue *or* any part thereof, *or* to any fund *or* account created by any indenture for the further security *or* protection of such bonds and to apply such pledged revenue *or* cause it to be applied only as provided in the indenture and to invest all *or* any part of such pledged revenue pending such application in such securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the government in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing *or* completing of the system *or* any part thereof.

(l) A provision permitting the government to issue additional bonds *or* to enter into one (1) *or* more lease-back obligations pursuant to Article 9 of this Chapter, in each case equally secured with bonds theretofor issued under the indenture and lease-back obligations previously entered into, for the purpose of acquiring, constructing *or* completing, improving *or* extending the system *or* any part thereof, *or* for the purpose of refunding any *prior* bonds *or* any other *prior* obligations

of the government relating to the system; and a provision limiting the power of the government to issue any additional bonds so secured *or* any other additional bonds for such purpose.

(m) A provision requiring, specifying *or* limiting the kind, amount and character of insurance (*or* any reserve fund *or* funds in lieu of insurance) to be maintained by the government on the system *or* any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected *or* of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any *or* all of the bonds then *or* thereafter issued may become *or* be declared due and payable *prior* to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the government of any of the covenants, conditions *or* obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended *or* modified with the consent of the government and the vote *or* written consent of the holders of a specified principal amount *or* specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment *or* modification upon the rights of the holders of all of the bonds.

(q) With respect to any provision relating to the modification *or* amendment of an indenture, the government may agree that bonds held

by the government, the United States *or* any instrumentality of either thereof (including every public corporation, political subdivision, agency *or* instrumentality of any kind *or* class) *shall not* be counted as outstanding bonds, *or* be entitled to vote *or* assent, but *shall*, nevertheless, be subject to any such modification *or* amendment.

(r) A provision limiting the right of action by individual bondholders in the event of a default by the government *or* proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the government to purchase outstanding bonds from any moneys *or* funds *or* accounts referred to in the indenture *or* otherwise legally available for such purpose.

(t) A provision for any working capital fund *or* account *or* contingency fund *or* account relating to the system.

(u) A provision for the replacement of lost, destroyed *or* mutilated bonds.

(v) A provision *or* provisions relating to such other acts and matters as may be necessary *or* convenient *or* desirable in order to better secure the bonds *or* to make the bonds more marketable.

§51812. Trustee for Government and Holders of Bonds.

(a) The government *or* any agent designated by the government *shall* act as trustee for the government and the holders of bonds issued hereunder and the government may authorize the trustee to act on behalf of the holders of the bonds *or* any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The government may provide in an indenture:

(1) for the deposit of all *or* any portion of the pledged revenue with the government and for the holding thereof by the government in one (1) *or* more separate funds *or* accounts in the Solid Waste Operations Fund; and

(2) for the transfer to the trustee of all *or* any portion of the pledged revenue as are provided as security for the bonds and for the holding thereof by the trustee in one (1) *or* more separate funds *or* accounts. All money in each such fund *or* account *shall* be disbursed only as provided herein and in the indenture.

§51813. Duties and Powers of Trustee. The government *shall* prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the registration and discharge from registration thereof and the administration of any and all funds provided as security therefore.

§51814. Issuance and Interchange of Bearer and Registered Bonds. An indenture may provide that bonds may be issued as bearer bonds *or* as registered bonds and for the interchange of bearer bonds for registered bonds and registered bonds for bearer bonds, and may provide that bonds *shall* be registered as to principal only *or* as to both principal and interest *or* otherwise as *I Maga'lahen Guåhan* may determine.

§51815. Redemption of Bonds *Prior* to Maturity. An indenture may provide that bonds may be redeemed prior to maturity upon such terms,

conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

§51816. Places of Payment. An indenture may provide for the payment of the principal and interest of bonds at any one (1) *or* more places in Guam *or* in the United States and in any specified coin *or* currency of the United States.

§51817. Execution and Authentication of Bonds. An indenture may provide for the execution and authentication of bonds by the manual *or* facsimile signature of any one (1) *or* more officers of the government and by additional authentication by endorsement by the manual signature *or* a signature stamp of any one (1) *or* more officers of the government *or* of any agent designated by the government as trustee. *If* any officer *or* agent whose signature, countersignature *or* endorsement appears upon the bonds ceases to be an officer *or* agent before the delivery of the bonds, his signature, countersignature *or* endorsement is nevertheless valid and of the same force and effect as *if* he had remained such officer *or* agent until the delivery of the bonds.

§51818. Dates and Maturities of Bonds. Bonds *shall* bear dates prescribed in the indenture providing for their issuance. Bonds may be serial bonds, term bonds *or* sinking fund bonds with such maturities as the indenture *shall* specify. *No* bond by its terms *shall* mature more than fifty (50) years after its date of issuance.

§51819. Sale of Bonds. Bonds authorized to be issued under this Article *shall* be sold for cash, in accordance with the provisions of a certificate *or* agreement executed by *I Maga'lahen Guåhan.* The bonds may be sold at either public *or* private sale, and upon such terms and conditions as *shall* be

authorized by *I Maga'lahen Guåhan*, which may provide that the bonds may be sold at *less than* their par *or* face value.

§51820. Payment of Bonds from Sources Other Than Pledged Revenue. The government may use and expend all *or* any part of any funds other than pledged revenue *or* proceeds of any property owned by it other than the system, whether received by gift *or* appropriation (*if not* restricted as to the use of such funds *or* proceeds of property by the terms of gift *or* trust *or* provision of law) for the payment of bonds issued pursuant to the provisions of this Article and secured by pledged revenue, and of interest due thereon.

§51821. Payments Which May be Made Out of Proceeds of Sale of Bonds. The proceeds of sale of any bonds may be expended for any one (1) *or* more of the following purposes, all as provided in the indenture relating to such bonds:

(a) for payment of any costs *or* expenses of the acquisition, construction *or* improvement of the system *or* any part thereof (including any closed landfill *or* dump) *or* any costs *or* expenses incidental thereto, including payment to the United States *or* any other public body for the portion to be borne by the government of the cost of any work done by the United States *or* such public body for *or* jointly *or* in conjunction with the *Department*;

(b) for payment *or* reimbursement of any engineering, inspection, legal, consultants' *or* paying agents' fees relating *or* incidental to:

(1) the acquisition, construction *or* improvement of the system *or* any part thereof;

(2) the authorization, issue *or* sale of bonds; *or*

(3) professional technical services to prepare the technical specifications for a bid invitation for a Finance, Build, Operate, and

Lease Back (FBOL) to meet the requirements for USEPA compliant municipal solid waste services on Guam, and for the evaluation of bids which have been submitted, and to provide its findings and recommendation to the Governor and the Legislature within one hundred eighty (180) days from enactment of the Act.

(c) for payment of any costs *or* expenses relating to the authorization, issuance *or* sale of bonds;

(d) for deposit in any one (1) *or* more reserve funds *or* accounts in lieu of insurance *or* in any working capital fund *or* account *or* contingency fund *or* account relating to the system;

(e) for payment of interest on bonds during the projected period of acquisition, construction *or* improvement of the system *or* any part thereof for the acquisition, construction *or* improvement of which such bonds have been issued and for a period *not to exceed* three (3) years thereafter;

(f) for deposit in any reserve *or* sinking fund; *or*

(g) for the payment of any prior bonds *or* other obligations of the government issued for solid waste management purposes.

§51822. Bonds May be Secured by Revenue of the System. An indenture may provide that payment of the bonds and the interest thereon *shall* be secured by a pledge of and lien upon all *or* any portion of the revenue of the system, subject to any parity lien created *or* to be created pursuant to Article 9 of this Chapter. Any such pledge and lien *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 of the Guam Code Annotated or any successor statute. The revenue of the system pledged and thereafter received by the government *or* by any trustee, depository *or* custodian *shall* be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund. The indenture by which such pledge is created need *not* be recorded. All such pledged revenue is hereby appropriated for the purposes of paying the principal and interest on the bonds issued pursuant to this Article. Pledged revenue released from the lien of the indenture *or* certificate pursuant to which the bonds are issued *shall* be available for any other lawful purpose. *If* the bonds are secured *solely* by such a pledge of and lien upon all *or* a portion of the revenue of the system, then *no* such bond and *no* other obligation undertaken by the government under any indenture, lease *or* other instrument relating to such bond *shall* be *or* become a lien, charge *or* liability against the government of Guam *or* against the *Department or* against any property *or* funds of the government of Guam *or* the *Department, except* to the extent of the pledge of revenue of the system provided by such indenture, lease *or* other instrument. Every such bond *shall* contain a recital on its face stating that it is a limited obligation of the government of Guam and *shall not* be deemed to be secured by the faith and credit of the government of Guam.

§51823. Valid and Binding. *If* and to the extent determined by *I Maga'lahen Guåhan,* the bonds authorized by this Article *shall* constitute the valid and binding general obligations of the government of Guam, in addition to any applicable pledge of the revenues described in Title 10, Guam Code Annotated, §51822. The government of Guam pledges full faith and credit for the punctual payment of both the principal of and interest on such 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 of such bonds. There are hereby appropriated from the General Fund such sums as may be necessary in each year in addition to any amounts appropriated under Title 10, Guam Code Annotated, §51822 to equal the amount of money necessary to pay 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 such 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 costs paid *or* to be paid with the proceeds of such bonds.

§51824. Temporary Bonds. An indenture may provide that pending the actual issuance *or* delivery of definitive bonds, the government may issue temporary *or* interim bonds, certificates *or* receipts *or* any denomination whatsoever, to be exchanged for definitive bonds when ready for delivery.

§51825. Replacement of Bonds. The government may provide for the replacement of lost, destroyed *or* mutilated bonds.

§51826. Tax Exemption. Bonds issued pursuant to the provisions of this Article and the interest *or* income therefrom are *exempt* from taxation to the extent permitted by the provisions of Section 11 of the Organic Act.

§51827. Bonds as Legal Investments and as Security For Performance of Any Act. Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings, and may be deposited as security for the performance of any act whenever any

evidence of indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

§51828. Refunding Bonds. *I Maga'lahen Guåhan* may, on behalf of the government, provide for the issuance, sale *or* exchange of refunding bonds for the purpose of retiring indebtedness *or* other obligations issued to finance all *or* any portion of the system. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale *or* exchange thereof.

§51829. Use of Other Funds for System. In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Department may use for the payment of the costs of acquisition, construction *or* improvement of the system *or* any part thereof any available money *or* funds of the *Department* and any money *or* funds made available to the *Department* by any person *or* provided from any source which may be expended for the accomplishing of the purposes set forth in this Article *or* in the Guam Solid Waste Management and Litter Control Act.

§51830. Insurance. The *Department* may insure against loss of revenue of the system from any cause whatsoever. The *Department* may insure against public liability *or* property damage from any cause. An indenture, lease *or* other instrument may provide for the carrying of such insurance *or* any other insurance in such amount and of such character as *shall* be specified in such indenture, lease, *or* other instrument for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Director, subject to the requirements of any indenture, lease, *or* other instrument, any insurance may be provided by funded reserves *or* any other means.

§51831. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the *Department* has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely payments of their bonds. In accordance with prior similar situations and precedents, the government hereby pledges, while any bonds issued under this Article remain outstanding and *not* fully performed *or* discharged, (a) to maintain the rights, powers and duties of the Director, the *Department* and the Guam Public Utilities Commission, *or* their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article; (b) to maintain the rights and remedies of bondholders provided in this Article and any indenture; and (c) *not* to transfer any additional non-system operating responsibilities *or* other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51832. Construction Account. The proceeds from the sale of all bonds authorized by this Article *shall* be deposited to the credit of a Construction Account, which account is hereby created within the Solid Waste Operations Fund. The money in the account *shall* be expended in the manner provided by law for any of the purposes authorized by this Article, including any *or* all of the purposes specified by Title 10, Guam Code Annotated, §51821, and for such other purposes, subject to the restrictions provided by law *or* by such indenture, as may be authorized by such indenture.

§51833. Revenue Account. All revenue of the system *shall* be deposited to the credit of the applicable subaccount of the Revenue Account,

which account is hereby created within the Solid Waste Operations Fund. The money in such subaccounts may be used for any of the following purposes in the order of priority set forth in any indenture as provided in Title 10, Guam Code Annotated, §51811(j) *or* any lease *or* lease-back as provided in Article 9 of this Chapter:

(a) to pay principal *or* interest on any bonds *or* any other obligations of the *Department*;

(b) to pay amounts due and owing under any lease *or* lease-back entered into pursuant to Article 9 of this Chapter;

(c) to pay any amounts due and owing under any credit provider reimbursement agreement;

(d) to pay the annual system operation and maintenance costs; and

(e) for any other purposes of the system, as provided in any indenture *or* indentures and subject to any restrictions provided by law *or* any indenture.

§51834. Investment of Money in Funds and Accounts. Moneys in the Revenue Account and Construction Account in the Solid Waste Operations Fund may be invested by the government *or* the trustee under any indenture, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest *or* other earnings received pursuant to such investments *shall* be deposited to the credit of the fund *or* account from which such interest *or* other earnings are derived, unless otherwise provided in an indenture.

§51835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts. Any balance remaining in any of the funds *or*

accounts created by this Article *or* any indenture, including the Construction Account established pursuant to Title 10, Guam Code Annotated, §51832, after payment of all costs, expenses and charges required *or* authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system, subject to the limitations and restrictions in any indenture. After all bonds *shall* have been fully paid and discharged *or* provision for their payment and discharge irrevocably made, any surplus moneys in any fund *or* account created by this Article *or* any indenture *shall*, subject to the limitations and restrictions in any indenture, be subject to legislative appropriation.

§51836. Appropriation of Money in Funds and Accounts. All money in the funds and accounts created by this Article *or* any indenture is hereby continuously appropriated for expenditure to carry out the purposes herein and therein provided.

§51837. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts *or* agreements, on behalf of the government, with such banks, insurance companies *or* other financial institutions as *I Maga'lahen Guåhan* determines are necessary *or* desirable to improve the security and marketability of the bonds. 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 secured by a pledge of the revenue of the system, but *only*

if and to the extent that revenue of the system has been pledged to the bonds. In the event that the bonds *shall* constitute the valid and binding general obligations of the government pursuant to Title 10, Guam Code Annotated, §51823, any such obligations *shall* be general obligations of the government of Guam and any such advance, *if* necessary, *shall* be treated for Organic Act purposes as creating an obligation issued to refund the bonds.

Any reimbursement agreement may include a provision that the obligations of the government under the agreement *shall* be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision *shall* be in compliance with and *shall not* violate *or* breach any provision of any indenture, lease *or* other instrument then in effect to which the government *or* the *Department* is a party.

§51838. No Personal Liability. Neither *I Maga'lahen Guåhan*, the Director, any employee of the *Department*, any employee of the government *nor* any elected official of the government *shall* be individually *or* personally liable for the payment of any amounts due on any bonds, *or* for any other liability arising in connection with the bonds; provided, however, that nothing in this Title 10, Guam Code Annotated, §51838, *shall* relieve any employee *or* elected official from the performance of any ministerial duty required by law.

§51839. Waiver of Immunity. Notwithstanding any substantive *or* procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government *shall not* be entitled to immunity from any suit *or* action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as to the award of attorney fees in connection with any suit brought to enforce any right *or* obligation given under this Act *or* in

connection with the enforcement of the terms of any agreement *or* indenture that arises directly from the issuance of bonds.

§51840. Construction of Article. This Article *shall* be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article *shall* be construed directly *or* by implication to be in any way in derogation *or* limitation of powers conferred upon *or* existing in the *Department*, the Director *or I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act *or* laws of Guam.

§51841. Approval by Guam Economic Development Authority. §50103(k), Title 12, Guam Code Annotated, 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 Article *shall* be sold until the Board of Directors of GEDA has adopted a resolution approving the sale of such issue.

§51842. Approval of Voters *Not* Required. Notwithstanding §§ 17311 and 17312 of Title 3, Guam Code Annotated, 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.

§51843. Bonds authorized pursuant to this Article 8 *shall* only be issued if the Income Tax Refund –Cola Deficit Financing Bonds authorized in 5 G.C.A. §1512.1 are also issued at the same time or earlier.

Section 2. Local Sales of Bonds. GEDA *shall* undertake its best efforts to cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated, and approved pursuant to Section 3 of this Act, 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 issuing and repaying such bonds. Notwithstanding any other provision of law to the contrary, these bonds may be sold to employees of the *Department* of Public Works.

GEDA *shall* announce such bond issue in the local media outlets and solicit interest from local financial institutions, investments companies, and investor representatives. GEDA *shall* accept pre-issuance subscription orders for such bonds *prior* to such bonds being offered to the non-local market. Upon the determination of market pricing of such bonds, GEDA *shall* notify the local purchaser who *shall* inform GEDA of a decision and commit to the purchase and execute all documents necessary to complete such purchase.

Section 3. Approval of Government of Guam Solid Waste Management System Bonds. *I Liheslaturan Guåhan*, pursuant to §50103 of Title 12, Guam Code Annotated, and §51803 of Title 10, Guam Code Annotated, hereby approves the issuance and sale by the government of bonds pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated (the Act), in one (1) *or* more series *or* issues (together with any related reimbursement obligations); provided that the issuance, terms and conditions of the bonds and any reimbursement agreements *shall* have been approved by the Guam Public Utilities Commission, and further provided, that such bonds *shall* have, together with any lease-back obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount *not to exceed* Two Hundred Two Million Four Hundred Twenty-five Thousand Dollars ($202,425,000), for the payment of the costs of the closure of the Ordot Dump and the construction of the new landfill, *or* to reimburse the government for the payment, after the date of this legislation, of such system bond costs, *or* for the purpose of refunding any such

system bonds *or* any other *prior* obligations of the government issued for any of such system purposes, *or* for any combination of such system purposes for which bonds may be issued and secured as provided in this Article, *shall* have a final maturity *not later than* 2041, *shall* bear interest at such rate *or* rates and *shall* be sold for such price *or* prices as *shall* result in a yield to the bondholders *not* exceeding nine percent (9%) per annum, and *shall* be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 8, Chapter 51, Title 10, Guam Code Annotated.

Section 4. Enactment of the Guam Solid Waste Management System Lease Financing Act. A new Article 9 of Chapter 51 of Title 10, Guam Code Annotated, is hereby *enacted* to read as follows:

"Article 9

Solid Waste Management System Lease Financing

§51901. Short Title and Purpose. This Article may be cited as the Guam Solid Waste Management System Lease Financing Act. The purpose of this Article is to authorize the use of lease financing in addition to, in lieu of, *or* in conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in order to achieve the most efficient and lowest cost financing, construction, operation and maintenance of the solid waste management system.

§51902. Definitions. The following terms wherever used *or* referred to in this Article *or* in any indenture, lease *or* lease-back entered into pursuant hereto (*except* to the extent modified therein in accordance with this Article) *shall* have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Contractor* means the authorized entity which *shall* be the signatory on the lease and the lease-back and *shall* be fully responsible

for carrying out the construction, financing, operation and maintenance of the solid waste facility. The contractor may cooperate with another entity *or* entities in any manner the contractor deems appropriate to provide for the financing, construction, operation and maintenance of the solid waste facility.

(b) *Department* means the Department of Public Works, acting on behalf of the government of Guam.

(c) *Director* means the Director of the Department of Public Works.

(d) *Lease* means a ground *or* site lease of property from the *Department*, the *Chamorro* Land Trust Commission, *or* other government entity, as applicable, to the Contractor.

(e) *Lease-back* means the facilities lease *or* other lease of the property from the Contractor back to the *Department*, over the term of which the costs of the construction, financing, operation and maintenance of a solid waste facility are amortized, according to the terms agreed to between the *Department* and the Contractor.

(f) *Pledged revenue* means any revenue of the system pledged to secure lease-back payments.

(g) *Property* means any property on which a solid waste facility is located.

(h) *Revenue of the system* means all gross income and other amounts received by *or* on behalf of the *Department* 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 *Department*, 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 *Department* 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 §51833, Title 10, Guam Code Annotated.

(i) *Solid waste facility* means all *or* any portion of any landfills (whether closed *or* open and including Ordot Dump), transfer stations, recycling facilities, appurtenant equipment, and other capital facilities of the system.

(j) *Solid Waste Operations Fund* means the fund by that name established pursuant to §51118(f), Title 10, Guam Code Annotated.

(k) *System* means the solid waste management system, now *or* hereafter existing, owned and/or operated by the *Department 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.

(l) *System operation and maintenance costs* means such reasonable and necessary current expenses of the *Department*, paid *or* accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(1) legal and overhead expenses of the *Department* directly related and reasonably allocable to the administration of the system;

(2) fidelity bond and insurance premiums appertaining to the system *or* a reasonably allocable share of a premium of any blanket bond *or* policy pertaining to the system;

(3) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(4) the costs incurred in the collection of all *or* any part of the revenues.

Notwithstanding this *or* any other provision of law, the authorization to enter into a privatization, partnership, *or* contract by the *Department* for the operation of the system *shall* require a cost benefit analysis, economic impact study, and legislative approval.

§51903. Authorization to Enter Into Long-Term Leases. *I Maga'lahen Guåhan* may enter into a lease and lease-back on behalf of the *Department* for the financing of the acquisition, construction, improvement, equipping, repair, renewal, replacement, *or* reconstruction of any solid waste facility, together with operation and maintenance of all *or* any portion of such solid waste facility over the term of the lease-back, according to the needs of the *Department* and consistent with this Article.

The costs of the construction and financing of a solid waste facility financed pursuant to this Article *shall* be amortized in periodic installments over the term of the lease-back period, which *shall* be mutually determined by *I Maga'lahen Guåhan* and the contractor, but which will *not exceed* forty (40)

years. The lease and lease-back may provide that *if* sufficient funds are *not* appropriated *or* otherwise available for the payment of such installments, the *Department* will have the obligation to vacate the solid waste facility, and the contractor *shall* have the right of use and occupancy of the solid waste facility for the remainder of the term of the lease, unless new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term *shall* be extended for a period *not to exceed* the shorter of ten (10) years beyond the original term of the lease-back *or* such period of time as is necessary to repay in full any financing arranged pursuant to this Article. The *Department shall* pay the operation and maintenance costs of the solid waste facility on a periodic basis as incurred by the contractor on terms to be agreed to in the lease-back for each solid waste facility.

It is hereby declared that the system and each solid waste facility is and *shall* be a public improvement *or* undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Obligations incurred by the government pursuant to this Article that are payable *only* from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will *not* be and *shall not* be deemed to be public indebtedness of Guam as that term is used in said Section 11.

No obligation undertaken by the government pursuant to this Article *shall* be *or* become a lien, charge *or* liability against the government of Guam *or* against the *Department or* against any property *or* funds of the government of Guam *or* the *Department, except* to the extent of the pledge of revenue of the system provided by the lease-back.

§51904. Procurement. Subject to the approval of *I Liheslaturan Guåhan,* the government of Guam *or* the *Department* may solicit proposals, in

compliance with the Guam Procurement Law, for the financing and construction of the solid waste facility, together with the operation and maintenance of the solid waste facility over the term of the lease-back, according to the needs of the *Department* and consistent with this Article.

§51905. Powers of *Department*. Notwithstanding any provision of law *or* regulation, the *Department* has power and is hereby authorized, in addition to all other powers conferred upon the *Department* by the Guam Solid Waste Management and Litter Control Act *or* any other provision of this Chapter *or* by any law of Guam, to exercise any *or* all of the powers granted to the *Department* by this Article.

§51906. Assignments. To facilitate the purposes of this Article and to provide security for the bondholders, the contractor may assign, with the consent of the *Department*, the lease and the lease-back to any trustee, underwriter *or* other appropriate party as may be necessary to facilitate the issuance of certificates of participation in lease-back payments *or* other financial instruments to provide the financing for the solid waste facility.

§51907. Use of Tax-Exempt Financing. To minimize the financing cost to the *Department*, all financing utilized by the contractor to fund the construction, operation and maintenance of a solid waste facility *shall* be through tax-exempt obligations, *if* a mechanism to do so is available. The purpose for this requirement is to assure that the *Department* pays the lowest possible interest rate so that the cost of financing the construction, operation and maintenance of a solid waste facility to the *Department*, amortized through the lease-back payments from the *Department* to the contractor, will be lower than regular commercial rates.

§51908. Lease-Back *May* be Secured by Revenue of the System. A lease-back *shall* provide that payment of obligations thereunder *may* be secured by a pledge of and lien upon all *or* any portion of the revenue of the system, subject to any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and lien *shall* be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government *or* by any trustee, depository *or* custodian *shall* be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government *or* such trustee, depository *or* custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need *not* be recorded, *except* to the extent that such instrument conveys an interest in land *or* improvements thereon.

§51909. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the *Department* has the ability to implement the capital improvements authorized to be leased by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that the holders of certificates of participation *or* other financial instruments are protected to ensure full and timely payment of obligations due under the lease-back. In accordance with prior similar situations and precedents, the government hereby pledges, while any obligations are owing on any lease-back entered into pursuant to this Article, (a) to maintain the rights, powers and duties of the Director, the *Department* and the Guam Public Utilities Commission, *or* their

respective successors in accordance with law, to fulfill the terms of any agreements made with a contractor in accordance with this Article; (b) to maintain the rights and remedies of a contractor provided in this Article and any lease *or* lease-back; and (c) *not* to transfer any additional non-system operating responsibilities *or* other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51910. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility. The lease-back may require that the contractor be responsible for all costs, expenses and fees of any kind *or* nature, associated with the improvements, on-site infrastructure, construction, permits and financing associated with the completion of a solid waste facility, *except* as expressly provided by the lease-back for costs, expenses and fees previously incurred by the government. The lease-back may require that the contractor be responsible for the ongoing operation and maintenance of the solid waste facility during the term of the lease-back.

§51911. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts *or* agreements, on behalf of the *Department*, with such banks, insurance companies *or* other financial institutions as it determines are necessary *or* desirable to improve the security and marketability of the lease-back obligations; provided that said contracts *or* agreements to improve the security and marketability of the lease-back obligations *shall not* obligate, appropriate, *or* otherwise provide additional funding for the improvement to the security *or* marketability without legislative approval. 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 lease-back obligations and to indemnify

any such banks, insurance companies *or* other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the *Department* under any reimbursement agreement *shall* be payable *solely* from pledged revenue. Any reimbursement agreement may include a provision that the obligations of the *Department* under the agreement *shall* be secured by all *or* by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision *shall* be in compliance with and *shall not* violate *or* breach any provision of any indenture, lease *or* other instrument to which the government *or* the *Department* is a party.

§51912. No Personal Liability. Neither *I Maga'lahen Guåhan*, the Director, any employee of the *Department*, any employee of the government nor any elected official of the government *shall* be individually *or* personally liable for the payment of any amounts due under any lease *or* lease-back, *or* for any other liability arising in connection with a lease *or* lease-back; provided, however, that nothing in this §51912, Title 10, Guam Code Annotated, *shall* relieve any employee *or* elected official from the performance of any ministerial duty required by law.

§51913. Rules, Regulations and Restrictions. The *Department* may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Article.

§51914. Construction of Article. This Article *shall* be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article *shall* be construed directly *or* by implication to be in any way in derogation *or* limitation of powers conferred upon *or* existing in the

Department, the Director *or I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act *or* laws of Guam.

§51915. Severability. *If* any provision of this Article 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 Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable."

Section 5. Approval of Lease and Lease-Back. Official action and approval by the Legislature, *I Liheslaturan Guåhan,* is required for the execution and delivery of the lease and lease-back by the government pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated; provided, that the terms and conditions of the lease and lease-back *shall* have been approved by the Guam Public Utilities Commission, and further provided, that the certificates of participation *or* other financial instruments *shall* have, together with any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount *not to exceed* Two Hundred Two Million Four Hundred Twenty-five Thousand Dollars ($202,425,000), *shall* have a final maturity *not later than* 2041, *shall* result in a yield to the holders of the certificates of participation *or* other financial instruments *not* exceeding nine percent (9%) per annum, and *shall* be entered into for the purposes and subject to the requirements and limitations provided in Article 9, Chapter 51, Title 10, Guam Code Annotated.

Section 6. Prohibition on Payments Without Appropriations. Notwithstanding any other provision of law, and pursuant to the authority granted to the Legislature by §1423j of Subchapter 3 of the Organic Act of Guam, *I Liheslaturan Guåhan* hereby asserts its authority to appropriate funds and determine the conditions for expending such appropriations. *No* public official of the government of Guam,

including, *but not limited to, I Maga'lahen Guåhan,* the Treasurer of Guam, the Director of the Department of Administration, and the Director of the Bureau of Budget and Management Research, *shall* transfer *or* expend any public funds to comply with the February 13, 2009 Order of the Chief Judge of the District Court of Guam, relative to Civil Case No. 02-00022, to deposit the amount of Nine Hundred Ninety-three Thousand Seven Hundred Dollars ($993,700) *or* any other amount beginning March 1, 2009 weekly to Citibank *or* any other order that purports to legally direct any official of the government of Guam to expend funds without any legislative authorization *or* appropriation. Any transfer authority granted to the Governor in any previous law *shall* be deemed to be restricted to the purposes of said law and *shall not* be extended to authorize any transfer of funds to *or* for deposit to Citibank as directed in the February 13, 2009, Order of the District Court. Any payment of fines pursuant to the Consent Decree *shall not* be paid *except* by specific appropriation by the Legislature for that purpose, and the Governor's transfer authority *shall not* extend *or* apply to transfers for the payment of Court fines.

Section 7. Solid Waste Disposal Facility Private Activity Bonds. (a) **Legislative Intent.** It is the intent of *I Liheslaturan Guåhan* that the Guam Economic Development Authority (GEDA) administer the Private Activity Bond program authorized by 26 United States Code (USC) Section 141 et. seq., the U.S. Internal Revenue Code, for the purpose of financing Solid Waste Disposal Facilities as authorized by 26 USC Section 142(a)(6), U.S. Internal Revenue Code. The total sum of One Hundred Fifty-two Million One Hundred Ninety-eight Thousand Five Hundred Eighty-five Dollars ($152,198,585) has been allocated by the government of Guam for Solid Waste Disposal Facility Bonds pursuant to 26 USC Section 142(a)(6), U.S. Internal Revenue Code and *I Liheslaturan Guåhan* intends to authorize the use of Private Activity Bonds to achieve the most efficient and lowest cost financing

arrangement available in the financial market for the construction, operation and maintenance of a properly permitted solid waste management system in accordance with federal and local laws.

(b) *I Liheslaturan Guåhan* hereby authorizes GEDA to issue Private Activity Bonds in the amount *not to exceed* One Hundred Fifty-two Million One Hundred Ninety Eight Thousand Five Hundred Eighty-five Dollars ($152,198,585) to Applicant(s) seeking to construct Solid Waste Disposal Facilities subject to the following conditions:

(1) The Authority *shall* advertise the availability of the Private Activity Bond allocation for Solid Waste Disposal Facilities pursuant to the consent decree.

(2) Applications *shall* be for Solid Waste Disposal Facilities pursuant to 26 USC Section 142(a)(6), U.S. Internal Revenue Code.

(3) GEDA *shall* work with the applicant(s) of the Solid Waste Disposal Facility Private Activity Bond to schedule a public hearing required under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 26 USC Section 147(f) and 26 CFR Section 5f.103-2 of the Treasury Regulations.

(4) Upon approval by the GEDA Board of Directors of the application(s) for the Solid Waste Disposal Facility Private Activity Bond, GEDA *shall* transmit the application to *I Liheslaturan Guåhan* for approval. *I Liheslaturan Guåhan* may approve *or* disapprove the application within thirty (30) days from the date of submittal with the Legislative Secretary. The application *shall* be deemed approved *if* no action is made on the application by *I Liheslaturan Guåhan* within the thirty (30) day period.

(5) Upon approval by *I Liheslaturan Guåhan*, GEDA *shall* work diligently with GEDA Bond Counsel and the qualified applicant on bond financing documentation and certification of the bonds for sale in accordance with established procedures for bond issuance.

(c) Nothing in this Section *shall* prevent GEDA from administering the Private Activity Bond program for the purpose of financing Qualified Residential Rental Projects pursuant to 26 USC Section 142(a)(7) based on allocations made by the government of Guam for such purpose.

Section 8. Authorization to Solicit Viable Alternative Financing. The Guam Economic Development Authority, in consultation with Guam Environmental Protection Agency and Department of Public Works, *shall* prepare and issue a single *or* multiple Request for Proposals within thirty (30) days of enactment of this Act which would identify any viable alternative means of financing a remedy of the violation of the Clean Water Act at Lonfit River which led to the Consent Decree *or* any current violations of that Act at that location. After evaluation of the Proposals submitted and the approval of the U.S. Environmental Protection Agency, GEDA *shall* submit its findings and recommendation to the Governor and Legislature for approval.

Section 9. 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 which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

I MINA' TRENTA NA LIHESLATURAN GUÅHAN

2009 (FIRST) Regular Session

Date: 2/26/09 Thursday

VOTING SHEET

Amended
Bill No. 51(COR)
Resolution No. _____
Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BLAS, Frank F., Jr.		✓			
CALVO, Edward J.B.		✓			
CRUZ, Benjamin J. F. PP	✓				
ESPALDON, James V. PP	✓				
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RECTOR, Matthew	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo	✓				
TENORIO, Ray		✓			
WON PAT, Judith T.	✓				
TOTAL	12	3			

CERTIFIED TRUE AND CORRECT:

Patricia C. Santos
Clerk of the Legislature

*3 Passes = No vote
EA = Excused Absence

Office of the Governor of Guam
P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

2009 JAN 29 PM 2:51

29 JAN 2009

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

I would like to thank Speaker Won Pat and other members of the Legislature for providing their input into the development of this legislation. I believe we must continue to foster and encourage this cooperation if we are to once and for all solve the issue that confronts us – the closure of the Ordot dump and the opening of a new landfill. I cannot overemphasize the urgency of this matter – as elected leaders, we must act decisively so future generations will no longer have to concern themselves with an issue that is in our power to resolve.

Transmitted herewith is proposed legislation that would authorize alternative financing options for the government of Guam to finance the Consent Decree projects. In addition to the financing option proposed by the Receiver and previously accepted by the District Court, I ask the members of the Guam Legislature to consider this legislation in light of the urgency of the timelines imposed by the Court and the Consent Decree.

The proposed legislation provides the government the flexibility to utilize the best, most affordable financing option(s) to meet the timelines adopted by the federal court. The proposal provides three financing authorizations to the government of Guam.

As previously stated, the first option is to issue solid waste management system bonds to be repaid by fees collected in the operation of solid waste management programs and backed with Section 30 revenue. This bond authorization adopts the Receiver's recommended financing option. The Receiver has noted that if the authorization becomes law, he would withdraw his recommendation of a weekly cash deposit of $1 million. Clearly, this is a critical need and regardless of any changes or amendments to the legislation this authorization must be passed by the Legislature.

30-09-0142
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 1/29/09
Time 1:30
Received by

0136

Bank of America, Financial Advisor to the government of Guam, recently provided a Market Update to my Fiscal Policy Committee, stating that non-investment credits continue to await a return to normalcy in the municipal bond market, and there currently exists no appetite amongst investors for less than investment grade credits. "While a cautious optimism may bring institutional investors back into the market, this momentum is building slowly and will take time," the report states.

Bank of America advises the government of Guam to remain flexible until such time as the market for low to non-investment grade municipal bonds returns. Furthermore, the advisor cautions against the implementation of depositing $1 million per week as this could undermine Guam's recent upgrade by Standard and Poor's and could set back the work this Administration has done to upgrade our rating.

It is also my belief that the government of Guam should have the flexibility to use other financing mechanisms available. I stress that these options must adhere to the timelines imposed by the Consent Decree, the Court, and the remaining capacity of the Ordot dump itself. It is my belief that, with the state of technology today and the ability of the private sector to respond immediately without the restrictions of cumbersome government procurement regulations, these options may provide the government more affordable means of complying with the Consent Decree. It would also expand the government's access to financing through private capital markets and potentially from foreign investors.

There have been public claims of a more affordable way for the government to construct and operate a new landfill and close the Ordot dump. As such, the proposed legislation authorizes lease financing and performance management contract tools.

These options are not mutually exclusive but rather could be combined to maximize government savings. For example, the new landfill could be constructed and operated through lease financing and the Ordot dump closure could be financed by bonds. Under the flexible terms described in the proposed legislation, a contractor would be fully responsible for carrying out "the construction, financing, operation and maintenance of the solid waste facility," or new landfill. This approach would alleviate the burden of the government of Guam in securing funds in a very turbulent capital market that currently has no appetite for non-investment grade credit. The capital financing would be secured by the contractor who would then be paid in annual or semi-annual increments from fees paid by commercial and residential trash collection and potentially fees paid by the military for its use of the new landfill. Under this scenario the government of Guam would only need to secure capital financing for the closure of the Ordot dump which would be secured after the new landfill has opened. By that time, it is anticipated that the capital markets will have returned to normalcy and the government of Guam could then float bonds at reasonable rates.

Again, I ask the Legislature to act expeditiously on this measure to avert the $1 million in cash deposits beginning March 1 as required by the Receiver. I thank you all for the cooperative efforts put forth between my Administration, the Receiver and this Legislature and its leadership.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy of Bill

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 51 (COR

Introduced by:

By request of I Maga'lahen Guåhan in accordance with the Organic Act of Guam

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

(a) *I Liheslaturan Guåhan* finds that the condition of Guam's solid waste infrastructure has seriously deteriorated over the past decades. The Ordot Dump continues to be a threat to the health and safety of the residents of Guam, and specifically for the residents of Ordot-Chalan Pago, Yona and the villages downriver and downwind. The Ordot Dump reached its capacity in the 1990's, and the closure of the dump is necessary in order to eliminate this existing serious

environmental hazard. The severe limitations of the government of Guam to provide an environmentally sound solid waste disposal facility have negatively affected the quality of life of the people of Guam. Additionally, it is reasonable to assert that Guam's economic development is also being negatively affected by the inability of a failed system to deliver the most basic of all utility services.

(b) This finding is further supported by action of the U.S. Environmental Protection Agency (U.S. EPA). The dump is on the National Priorities List of highly contaminated sites. After many years of administrative orders and warnings from the U.S. EPA about the inability of the Department of Public Works ("DPW") to control discharges from the Dump and of the government of Guam to construct a landfill in compliance with federal and Guam law, the U.S. EPA filed a lawsuit in the U.S. District Court of Guam (the "District Court") against the government. A Consent Decree between the government of Guam and the U.S. EPA was approved by the District Court in February 2004. The Consent Decree provided timelines for the Government to plan, finance and execute the closure of the Ordot Dump and the construction of a new municipal landfill. The Government has made efforts to identify a source of financing for the closure of the Ordot Dump and the construction of a new landfill, but the District Court determined that the Government has not met the milestones required under the Consent Decree. On March 17, 2008, the Court placed the DPW in receivership, appointing Gershman, Brickner & Bratton, Inc. (the "Receiver") to take over the government's solid waste operations in order to correct the longstanding deficiencies. All the costs incurred in connection with the U.S. EPA lawsuit will ultimately have to be paid for by the ratepayers of Guam.

(c) The Receiver's quarterly report to the District Court, presented October 22, 2008, estimated that approximately $159.7 million of capital funding will be needed to meet the requirements of the Consent Decree, $40.1 million of which would be required for the closure of the Ordot Dump and $119.6 million of

which would be required for the construction of the new landfill, associated facilities, equipment and technology. Indeed, despite the fact that the Receiver's quarterly report places a stringent timeline for the financing and construction of the new landfill, an even more compelling reason to ensure the timely improvements of Guam's solid waste disposal infrastructure is simply because the people of Guam deserve no less.

(d) *I Maga'lahen Guåhan* and DPW, in coordination with the Guam Economic Development Authority (GEDA), have been diligently working on completing the administrative prerequisites to borrow from the capital markets the amounts required to accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of the tasks that lie ahead and the need for timely action to be taken. It is in this spirit that *I Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient and timely achievement of goals and objectives aimed at improving the quality of life of the people of Guam.

Section 2. Enactment of the Guam Solid Waste Management System Revenue Bond Act. Article 8 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 8

Solid Waste Management System Revenue Bonds

§51801. Short Title. This Article may be cited as the Guam Solid Waste Management System Revenue Bond Act.

§51802. Definitions. The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with this Article), shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Bonds" means bonds, notes or other evidences of indebtedness issued pursuant to this Chapter.

(b) "Bondholder" or "holder of bonds" or any similar term means any person who shall be:

(i) the bearer of any outstanding bond or bonds registered to bearer or not registered; or

(ii) the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer.

(c) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(d) "Director" means the Director of the Department of Public Works.

(e) "Guam Solid Waste Management and Litter Control Act" means Chapter 51 of Title 10 of the Guam Code Annotated.

(f) "Indenture" means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a certificate of the director and *I Maga'lahen Guåhan* or by other instrument.

(g) "Organic Act" means the Organic Act of Guam as amended and in effect on the effective date of this Article (Title 48, §1421 et seq. of the United States Code.).

(h) "Person" includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(i) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to the payment of bonds.

(j) "Rates, fees and charges" means all rates, fees and charges (including tipping fees, residential pick-up fees, collection fees, self-drop fees and all other solid waste management service charges), received or receivable by or on behalf of the department for providing solid waste management services.

(k) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(l) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(m) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(n) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department or its contractors, agents or subcontractors, including but not limited to landfills (whether closed or open and including Ordot dump), 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.

(o) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

(p) "United States" means the United States of America.

§51803. Power to Incur Indebtedness. *I Maga'lahen Guåhan*, through the agency of GEDA pursuant to 12 G.C.A. §50103(k), and with the approval of *I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in addition to and in amplification of all other powers conferred by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam or of the United States, to incur limited obligation indebtedness on behalf of the government of Guam, by the issuance of bonds pursuant to this Article to raise funds for the purpose of acquiring, constructing, improving, equipping,

maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the government issued for any of such purposes, or for any combination of such purposes for which bonds may be issued and secured as provided in this Article.

It is hereby declared that the system and each facility of the system is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the government pursuant to this Article that is payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Indebtedness that is issued by the government pursuant to this Article and that is payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the indenture.

§51804. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this

Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article. The department has jurisdiction over and may collect and transport to permitted solid waste facilities, or contract for the collection and transportation to permitted solid waste facilities of, solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units or residences. The department does not have jurisdiction over the collection and transportation of solid waste from any hotels, commercial or industrial establishments, government agencies or from any multiple dwelling units other than duplexes. The department may operate the Ordot Dump, or it may contract for the operation of the Ordot Dump, in accordance with Guam law and its permit under this Chapter. The department may contract for the operation of the landfill.

The department may also operate, or contract for the operation of, all other permitted solid waste management facilities and operations not addressed above and within the policy guidelines of the Integrated Solid Waste Management Plan. Any such contract for the operation of the Ordot Dump or the landfill may be entered into pursuant hereto or pursuant to Article 9 of this Chapter and may be with any person or corporation duly qualified to provide such services, whether public or private, domestic or foreign.

§51805. Rates, Fees and Charges; Refunds.

Notwithstanding any provision of law or regulation to the contrary, the department is authorized to establish and modify from time to time, with prior approval by the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of

debt service for capital improvements of permitted solid waste facilities, and to collect money from all users or customers, and to refund charges collected in error. Rates, fees and charges may be collected before or after the provision of the service for which they are charged.

Except to the extent otherwise permitted or required by an indenture pursuant to which bonds are issued, rates, fees and charges shall at all times be fixed to yield annual revenue of the system at least equal to the sum of annual principal payments and interest charges on all bonds then outstanding, all coverage and reserve fund requirements relating to such bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and the annual system operation and maintenance costs; provided, however, that Section 30 revenue may be used for the purposes and treated as satisfying the requirements of this paragraph with respect to the costs of the closure of the Ordot Dump and the bonds or other obligations related thereto.

An indenture, lease or contract of indebtedness may provide for payment from revenue of the system of refunds of rates and charges that are collected in error and that are refundable by the department.

§51806. Validity of Authorization and Issuance of Bonds. The validity of the authorization and issuance of any bonds by the government pursuant to this Article is not dependent on nor affected in any way by:

(a) Proceedings taken by the department for the acquisition, construction or improvement of the system or any part thereof;

(b) Any contracts made by the department in connection with the acquisition, construction or improvement of the system or any part thereof; or

(c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

§51807. Governor to Determine Issuance of Bonds and Incurring of Other Indebtedness; Government Only Liable as Provided by Indenture or Contract.

(a) *I Maga'lahen Guåhan* shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article and no other obligation undertaken by the government under any indenture, lease or other instrument shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by such indenture, lease or other instrument. Every such bond shall contain a recital on its face stating that it is a limited obligation of the government of Guam and shall not be deemed to be secured by the faith and credit of the government of Guam.

§51808. Governor to Declare Purpose and Maximum Amount of Bonds to be Issued. Before issuing any bond or bonds, *I Maga'lahen Guåhan* shall declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose. Bonds shall not be issued or sold for such purpose in an amount exceeding such specified maximum.

§51809. Indenture Providing Terms and Conditions of Bonds. *I Maga'lahen Guåhan* may enter into one or more indentures on behalf of the government providing for the aggregate principal

amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and interchange of any bonds issued pursuant to this Article and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§51810. Issues of Bonds. An indenture may provide for one or several series of bonds and that any series may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized series be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be as authorized by *I Maga'lahen Guåhan*.

§51811. Covenants and Agreements That May Be Contained in Indenture. An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the government as *I Maga'lahen Guåhan* deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by a pledge of all or by part of the revenue of the system or the Section 30 revenue, or both;

(b) Provisions creating one or more funds or accounts into which all or any part of pledged revenue shall be deposited:

(i) for payment of the principal of and interest on bonds at or prior to maturity; or

(ii) for reserve or sinking funds for the further security of bonds.

(c) A provision requiring the government to operate the system continuously, to the extent reasonably practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(d) A provision requiring the government to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the government to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the government to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon pledged revenue or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the government to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, in any manner that impairs or impedes the operation of the system or any part thereof necessary to secure adequate pledged revenue or that otherwise impairs or impedes the right of the holders of bonds or other obligations with respect to such pledged revenue.

(h) A provision requiring the government, with the prior approval of the Guam Public Utilities Commission, to fix, prescribe and collect annually rates or other charges in connection with the solid waste management services furnished from the system which, together with other available revenues, including, to the extent provided by 10 G.C.A. §51805, Section 30 revenue, will be:

(i) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(ii) sufficient to pay any payments due under any lease or lease-back entered into pursuant to Article 9 of this Chapter.

(iii) sufficient to pay the annual system operation and maintenance costs; and

(iv) in such additional amount as shall be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no solid waste management service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the government to hold or cause to be held in trust the pledged revenue or any part thereof, or to any fund or account created by any indenture for the further security or protection of such bonds and to apply such pledged revenue or cause it to be applied only as provided in the indenture and to invest all or any part of such pledged revenue pending such application in such

securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the government in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the government to issue additional bonds or to enter into one or more lease-back obligations pursuant to Article 9 of this Chapter, in each case equally secured with bonds theretofore issued under the indenture and lease-back obligations previously entered into, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof, or for the purpose of refunding any prior bonds or any other prior obligations of the government relating to the system; and a provision limiting the power of the government to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the government on the system or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the government of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the government and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds.

(q) With respect to any provision relating to the modification or amendment of an indenture, the government may agree that bonds held by the government, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, agency or instrumentality of any kind or class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment.

(r) A provision limiting the right of action by individual bondholders in the event of a default by the government or proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the government to purchase outstanding bonds from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(t) A provision for any working capital fund or account or contingency fund or account relating to the system.

(u) A provision for the replacement of lost, destroyed or mutilated bonds.

(v) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

§51812. Trustee for Government and Holders of Bonds.

(a) The government or any agent designated by the government shall act as trustee for the government and the holders of bonds issued hereunder and the government may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The government may provide in an indenture:

(i) for the deposit of all or any portion of the pledged revenue with the government and for the holding thereof by the government in one or more separate funds or accounts in the Solid Waste Operations Fund; and

(ii) for the transfer to the trustee of all or any portion of the pledged revenue as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

§51813. Duties and Powers of Trustee. The government shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the

registration and discharge from registration thereof and the administration of any and all funds provided as security therefore.

§51814. Issuance and Interchange of Bearer and Registered Bonds. An indenture may provide that bonds may be issued as bearer bonds or as registered bonds and for the interchange of bearer bonds for registered bonds and registered bonds for bearer bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as *I Maga'lahen Guåhan* may determine.

§51815. Redemption of Bonds Prior to Maturity. An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

§51816. Places of Payment. An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

§51817. Execution and Authentication of Bonds. An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the government and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the government or of any agent designated by the government as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds ceases to be an officer or agent before the delivery of the bonds, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as

if he had remained such officer or agent until the delivery of the bonds.

§51818. Dates and Maturities of Bonds. Bonds shall bear dates prescribed in the indenture providing for their issuance. Bonds may be serial bonds, term bonds or sinking fund bonds with such maturities as the indenture shall specify. No bond by its terms shall mature more than fifty (50) years after its date of issuance.

§51819. Sale of Bonds. Bonds authorized to be issued under this Article shall be sold for cash, in accordance with the provisions of a certificate or agreement executed by *I Maga'lahen Guåhan*. The bonds may be sold at either public or private sale, and upon such terms and conditions as shall be authorized by *I Maga'lahen Guåhan*, which may provide that the bonds may be sold at less than their par or face value.

§51820. Payment of Bonds from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

§51821. Payments Which May be Made Out of Proceeds of Sale of Bonds. The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof

(including any closed landfill or dump) or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the government of the cost of any work done by the United States or such public body for or jointly or in conjunction with the department;

(b) For payment of any engineering, inspection, legal, consultants' or paying agents' fees relating or incidental to:

(i) the acquisition, construction or improvement of the system or any part thereof; or

(ii) the authorization, issue or sale of bonds;

(c) For payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system;

(e) For payment of interest on bonds during the projected period of acquisition, construction or improvement of the system or any part thereof for the acquisition, construction or improvement of which such bonds have been issued and for a period of not to exceed three (3) years thereafter;

(f) For deposit in any reserve or sinking fund; or

(g) For the payment of any prior bonds or other obligations of the government issued for solid waste management purposes.

§51822. Bonds May be Secured by Revenue of the System. An indenture may provide that payment of the bonds and the interest thereon shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created or to be created pursuant to Article 9 of this Chapter. Any such

pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture by which such pledge is created need not be recorded.

§51823. Bonds May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment of any bonds issued pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created pursuant to Article 9 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have

notice thereof. The indenture by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Indebtedness issued by the government pursuant to this Article that is repayable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51824. Temporary Bonds. An indenture may provide that pending the actual issuance or delivery of definitive bonds, the government may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever, to be exchanged for definitive bonds when ready for delivery.

§51825. Replacement of Bonds. The government may provide for the replacement of lost, destroyed or mutilated bonds.

§51826. Tax Exemption. Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act.

§51827. Bonds as Legal Investments and as Security For Performance of Any Act. Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

§51828. Refunding Bonds. *I Maga'lahen Guåhan* may, on behalf of the government, provide for the issuance, sale or exchange of refunding bonds for the purpose of retiring indebtedness or other obligations issued to finance all or any portion of the system. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

§51829. Use of Other Funds for System. In addition to the proceeds of any bonds issued and sold pursuant to this Article, the department may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the department and any money or funds made available to the department by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Guam Solid Waste Management and Litter Control Act.

§51830. Insurance. The department may insure against loss of revenue of the system from any cause whatsoever. The department may insure against public liability or property damage from any cause. An indenture, lease or other instrument may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, lease, or other instrument for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the director, subject to the requirements of any indenture, lease, or other instrument, any insurance may be provided by funded reserves or any other means.

§51831. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely payments of their bonds. In accordance with prior similar situations and precedents, the government hereby pledges, while any bonds issued under this Article remain outstanding and not fully performed or discharged, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article, (b) to maintain the rights and remedies of bondholders provided in this Article and any indenture, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51832. Construction Account. The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a construction account, which account is hereby created within the Solid Waste Operations Fund. The money in the account shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 10 G.C.A. §51821, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

§51833. Revenue Account. All revenue of the system and, to the extent provided by 10 G.C.A. §51805 or by Article 9 of this Chapter, the Section 30 revenue, shall be deposited to the credit of the applicable subaccount of the Revenue Account, which account is hereby created within the Solid Waste Operations Fund. The money in such subaccounts may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 10 G.C.A. §51811(j) or any lease or lease-back as provided in Article 9 of this Chapter:

(a) to pay principal or interest on any bonds or any other obligations of the department;

(b) to pay amounts due and owing under any lease or lease-back entered into pursuant to Article 9 of this Chapter;

(c) to pay any amounts due and owing under any credit provider reimbursement agreement;

(d) to pay the annual system operation and maintenance costs; and

(e) for any other purposes of the system;

all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

§51834. Investment of Money in Funds and Accounts. Moneys in the revenue account and construction account in the Solid Waste Operations Fund may be invested by the government or the trustee under any indenture, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be deposited to the credit of the fund or account from which such

interest or other earnings are derived, unless otherwise provided in an indenture.

§51835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts. Any balance remaining in any of the funds or accounts created by this Article or any indenture, including the Construction Account established pursuant to 10 G.C.A. §51832, after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system, subject to the limitations and restrictions in any indenture. After all bonds shall have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the department and shall be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the department herein or hereafter authorized by law.

§51836. Appropriation of Money in Funds and Accounts. All money in the funds and accounts created by this Article or any indenture is hereby continuously appropriated for expenditure to carry out the purposes herein and therein provided.

§51837. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the government with such banks, insurance companies or other financial institutions as *I Maga'lahen Guåhan* determines are necessary or desirable to improve the security and marketability of the

bonds. 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; provided, that any obligation of the government under any reimbursement agreement shall be payable solely from pledged revenue.

Any reimbursement agreement may include a provision that the obligations of the government under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument then in effect to which the government or the department is a party.

§51838. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this 10 G.C.A. §51838 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51839. Waiver of Immunity. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government shall not be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as

to the award of attorney fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds.

§51840. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam."

Section 3. Local Sales of Bonds. GEDA shall undertake its best efforts to cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated and approved pursuant to Section 4 of this Act, 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 issuing and repaying such bonds. Notwithstanding any other provision of law to the contrary, these bonds may be sold to employees of the Department of Public Works.

Section 4. Approval of Government of Guam Solid Waste Management System Revenue Bonds. The Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the government of revenue bonds pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated (the "Act") in one or more series or issues (together with any related reimbursement obligations); provided that the issuance, terms and conditions of the bonds and any reimbursement agreements shall have been approved by the Guam Public Utilities Commission,

and further provided that such bonds shall have, together with any lease-back obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall bear interest at such rate or rates and shall be sold for such price or prices as shall result in a yield to the bondholders not exceeding nine percent (9%) per annum, and shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 8, Chapter 51, Title 10, Guam Code Annotated.

Section 5. Enactment of the Guam Solid Waste Management System Lease Financing Act. Article 9 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 9

Solid Waste Management System Lease Financing

§51901. Short Title and Purpose. This Article may be cited as the Guam Solid Waste Management System Lease Financing Act. The purpose of this Article is to authorize the use of lease financing in addition to, in lieu of, or in conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in order to achieve the most efficient and lowest cost financing, construction, operation and maintenance of the solid waste management system.

§51902. Definitions. The following terms wherever used or referred to in this Article or in any indenture, lease or lease-back entered into pursuant hereto (except to the extent modified therein in accordance with this Article) shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Contractor" shall mean the authorized entity which shall be the signatory on the lease and the lease-back and shall be fully

responsible for carrying out the construction, financing, operation and maintenance of the solid waste facility. The contractor may cooperate with another entity or entities in any manner the contractor deems appropriate to provide for the financing, construction, operation and maintenance of the solid waste facility.

(b) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(c) "Director" means the Director of the Department of Public Works.

(d) "Lease" shall mean a ground or site lease of property from the department, the Chamorro Land Trust Commission, or other government entity, as applicable, to the Contractor.

(e) "Lease-back" shall mean the facilities lease or other lease of the property from the Contractor back to the department, over the term of which the costs of the construction, financing, operation and maintenance of a solid waste facility are amortized according to the terms agreed to between the department and the Contractor.

(f) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to secure lease-back payments.

(g) "Property" shall mean any property on which a solid waste facility is located.

(h) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(i) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(j) "Solid waste facility" shall mean all or any portion of any landfills (whether closed or open and including Ordot dump), transfer stations, recycling facilities, appurtenant equipment, and other capital facilities of the system.

(k) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(l) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department 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.

(m) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

§51903. Authorization to Enter Into Long-Term Leases. *I Maga'lahen Guåhan* may enter into a lease and lease-back on behalf of the department for the financing of the acquisition, construction, improvement, equipping, repair, renewal, replacement, or reconstruction of any solid waste facility, together with operation and maintenance of all or any portion of such solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

The costs of the construction and financing of a solid waste facility financed pursuant to this Article shall be amortized in periodic installments over the term of the lease-back period, which shall be mutually determined by *I Maga'lahen Guåhan* and the contractor, but which will not exceed forty (40) years. The lease and lease-back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the department will have the obligation to vacate the solid waste facility, and the contractor shall have the right of use and occupancy of the solid waste facility for the remainder of the term of the lease, unless new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term shall be extended for a period not to exceed the

shorter of ten (10) years beyond the original term of the lease-back or such period of time as is necessary to repay in full any financing arranged pursuant to this Article. The department shall pay the operation and maintenance costs of the solid waste facility on a periodic basis as incurred by the contractor on terms to be agreed to in the lease-back for each solid waste facility.

It is hereby declared that the system and each solid waste facility is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Obligations incurred by the government pursuant to this Article that are payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Obligations incurred by the government pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the lease-back.

§51904. Procurement. Subject to the approval of I Liheslaturan Guåhan, the government of Guam or the department may solicit proposals, in compliance with the Guam Procurement Law, for the financing and construction of the solid waste facility, together

with the operation and maintenance of the solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

§51905. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article.

§51906. Assignments. To facilitate the purposes of this Article and to provide security for the bondholders, the contractor may assign, with the consent of the department, the lease and the lease-back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of certificates of participation in lease-back payments or other financial instruments to provide the financing for the solid waste facility.

§51907. Use of Tax-Exempt Financing. To minimize the financing cost to the department, all financing utilized by the contractor to fund the construction, operation and maintenance of a solid waste facility shall be through tax-exempt obligations, if a mechanism to do so is available. The purpose for this requirement is to assure that the department pays the lowest possible interest rate so that the cost of financing the construction, operation and maintenance of a solid waste facility to the department, amortized through the lease-back payments from the department to the contractor, will be lower than regular commercial rates.

§51908. Lease-Back May be Secured by Revenue of the System. A lease-back may provide that payment of obligations thereunder shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded, except to the extent that such instrument conveys an interest in land or improvements thereon.

§51909. Lease-Back May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment by the department of obligations under any lease-back entered into pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created or to be created pursuant to Article 8 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee,

depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Lease-back obligations that are payable by the department pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51910. Payment of Lease-back Obligations from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of obligations due under a lease-back entered into pursuant to the provisions of this Article.

§51911. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be leased by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The

government also is fully committed to ensuring that the holders of certificates of participation or other financial instruments are protected to ensure full and timely payment of obligations due under the lease-back. In accordance with prior similar situations and precedents, the government hereby pledges, while any obligations are owing on any lease-back entered into pursuant to this Article, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with a contractor in accordance with this Article, (b) to maintain the rights and remedies of a contractor provided in this Article and any lease or lease-back, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51912. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility. The lease-back may require that the contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the improvements, on-site infrastructure, construction, permits and financing associated with the completion of a solid waste facility, except as expressly provided by the lease-back for costs, expenses and fees previously incurred by the government. The lease-back may require that the contractor be responsible for the ongoing operation and maintenance of the solid waste facility during the term of the lease-back.

§51913. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the department with such banks, insurance companies or other

financial institutions as it determines are necessary or desirable to improve the security and marketability of the lease-back obligations. 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 lease-back obligations and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the department under any reimbursement agreement shall be payable solely from pledged revenue. Any reimbursement agreement may include a provision that the obligations of the department under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument to which the government or the department is a party.

§51914. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due under any lease or lease-back, or for any other liability arising in connection with a lease or lease-back; provided, however, that nothing in this 10 G.C.A. §51914 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51915. Rules, Regulations and Restrictions. The department may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Article.

§51916. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

§51916. Severability. If any provision of this Article 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 Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable."

Section 6. Approval of Lease and Lease-Back. The Legislature, *I Liheslaturan Guåhan*, hereby approves the execution and delivery of the lease and lease-back by the government pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated; provided that the terms and conditions of the lease and lease-back shall have been approved by the Guam Public Utilities Commission, and further provided that the certificates of participation or other financial instruments shall have, together with any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall result in a yield to the holders of the certificates of participation or other financial instruments not exceeding nine percent (9%) per annum, and shall be entered into for the purposes and subject to the requirements and limitations provided in Article 9, Chapter 51, Title 10, Guam Code Annotated.

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH & HUMAN SERVICES, AND JUDICIARY

***I Mina' Trenta na Liheslaturan Guåhan* • 30th Guam Legislature**

238 Archbishop F.C. Flores St., DNA Bldg., Suite 701A, Hagatña, Guam 96910
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FRANK B. AGUON, JR.
SENATOR, CHAIRMAN

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SENATOR , VICE CHAIRMAN

BENJAMIN J.F. CRUZ
VICE SPEAKER

TINA ROSE MUÑA BARNES
LEGISLATIVE SECRETARY

THOMAS C. ADA
SENATOR

JUDITH P. GUTHERTZ
SENATOR

RORY J. RESPICIO
SENATOR

FRANK F. BLAS, JR.
SENATOR

TELO TAITAGUE
SENATOR

RAY TENORIO
SENATOR

February 13, 2009

Honorable Judith T. Won Pat
Speaker
I Mina' Trenta na Liheslaturan Guåhan
155 Hesler Place
Hagatña, Guam 96910

2009 FEB 13 PM 5:18

VIA: **The Honorable Rory J. Respicio**
Chairperson, Committee on Rules

RE: Committee Report – Bill No. 51 (COR)

Dear Speaker Won Pat:

The Comm. on Economic Development, Health & Human Services, and Judiciary, to which was referred **Bill No. 51 (COR)** – "AN ACT TO ENACT ARTILE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUED SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILTIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.", hereby reports out with the recommendation to present the proposal in its original format to the legislative body with some considerations.

COR
RECEIVED
02/13/09 2:45pm

Committee votes are as follows:

2	**TO PASS**
Ø	**NOT TO PASS**
3	**TO REPORT OUT ONLY**
Ø	**ABSTAIN**
Ø	**TO PLACE IN INACTIVE FILE**

Respectfully,

SENATOR FRANK B. AGUON, JR.
Chairman
Committee on Economic
Development, Health & Human
Services, and Judiciary

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY
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SENATOR

FRANK F. BLAS, JR.
SENATOR

TELO TAITAGUE
SENATOR

RAY TENORIO
SENATOR

February 13, 2009

MEMORANDUM

TO: Committee Members

FROM: Chairman

SUBJECT: **Committee Report**
Bill No. 51 (COR), as introduced by the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs, by request of *I Maga'lahen Guahan in accordance with the Organic Act of Guam*

Transmitted herewith for your information and action is the Committee Report on **BILL NO. 51 (COR),** as introduced by the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs, by request of *I Maga'lahen Guahan in accordance with the Organic Act of Guam.*

Please take the appropriate action on the voting sheet. Your attention and cooperation on this matter is greatly appreciated.

If you have any questions regarding the report or accompanying documents, please feel free to call my office.

Respectfully,

SENATOR FRANK B. AGUON, JR.

Attachments

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY
***I Mina' Trenta na Liheslaturan Guåhan* • 30th Guam Legislature**
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COMMITTEE VOTING SHEET

BILL NO. 51 (COR) – "AN ACT TO ENACT ARTILE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUED SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILTIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS."

	SIGNATURE	TO PASS	NOT TO PASS	REPORT OUT ONLY	ABSTAIN	PLACE IN INACTIVE FILE
FRANK B. AGUON, JR. Chairman	2/13/09	✓				
ADOLPHO B. PALACIOS, SR. Vice Chairman	2/13/09	✓				
BENJAMIN J.F. CRUZ Vice Speaker	2/13/09			✓		
TINA ROSE MUÑA BARNES Legislative Secretary				✓		
THOMAS C. ADA				✓		
JUDITH P. GUTHERTZ	2/13/09					
RORY J. RESPICIO				✓		
FRANK F. BLAS, JR.				✓		
TELO TAITAGUE				✓		
RAY TENORIO				✓		

I MINA TRENTA NA LIHESLATURAN GUÅHAN
(30TH GUAM LEGISLATURE)

COMMITTEE ON
ECONOMIC DEVELOPMENT,
HEALTH AND HUMAN SERVICES,
AND JUDICIARY

SENATOR FRANK B. AGUON, JR.
Chairman

COMMITTEE REPORT

BILL NO. 51 (COR)

as introduced by the
Committee on Rules, Natural Resources,
and Federal, Foreign & Micronesian Affairs,
by request of *I Maga'lahen Guahan*
in accordance with the Organic Act of Guam

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OR CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.

I. OVERVIEW

The Committee on Economic Development, Health and Human Services, and Judiciary held a public hearing on Monday, February 09, 2009, 9:00 am, at *I Liheslaturan Guåhan's* Public Hearing Room on **BILL NO. 51 (COR)**, introduced by Committee on Rules, Natural Resources, and Federal, Foreign, & Micronesian Affairs, by request of *I Maga'lahen Guahan in accordance with the Organic Act of Guam.*

Notices of the public hearings were disseminated to all local media via fax and publication, and are attached herein meeting the requirements of the Open Government Law.

Committee Members and Senators present:

Senator Frank B. Aguon, Jr., Chairman
Senator Adolpho B. Palacios, Sr., Vice Chairman
Speaker Judith T. Won Pat
Vice Speaker Benjamin J.F. Cruz
Senator Thomas C. Ada
Senator Judith P. Guthertz
Senator Vicente "Ben" Pangelinan
Senator Matt Rector
Senator Rory J. Respicio
Senator Frank F. Blas, Jr.
Senator Telo Taitague

II. SUMMARY OF TESTIMONY

- **Mr. George Bamba, Governor's Chief of Staff:** The administration is IN SUPPORT of Bill No. 51 (COR), and also providing a brief detail of the bill.

  Section 1 and subsequent sections will comply with the orders issued by the Judge and recommendations of the Receiver. Through various meetings with the Legislature and the Receiver, included are options that were available. As late as Friday afternoon, I also meet with the Speaker and advised her that the Legislature can put whatever options the body deems appropriate.

  The primary and fundamental purpose of this bill is to authorize the Governor to borrow the needed amount necessary for the closing of Ordot Landfill and

opening of the new landfill. This can be done through a series of issues depending on the projects that are going to be occurring. But we feel that it is necessary in order to comply with the court orders and to avoid the alternative, if authorization is not given, there will be the $1 Million a week cash set aside which will obviously be detrimental to continue the other services of the government of Guam and critical services. And clearly we want to avoid that, we don't want to jeopardize the services that this government provides to the people. With that Mr. Chairman, I'm open for any questions.

- **Mr. David Manning, Special Principal Associate, GBB:** I'd like to provide GBB's perspective on the legislation that is pending before you, and I'm happy to stay through the hearing to respond further as may be helpful to the Committee.

  We urge you to pass the bill as the Governor has submitted it to you. It is the commitment of our team, the court and the people of Guam, that we will produce a very high quality result and a solid waste system for the people of Guam, and that we will work with you to achieve that in the best way possible for the people of Guam within the constraints and the rules that is set out in the Consent Decree and by the orders of the court.

- **Mr. Bobing Francis Wolford:** Senators, the people of Guam look up to you to move us forward to better times, too much money has been wasted. $20M has been given and not thinking of the elders. Think about our children. Stop this project for the sake of our natives. Please help the people of Guam, listen to the people, and build the landfill at Guatali.

- **Mr. Vicente Garrido (Faet):** If this administration can claim that there was no money for the court order COLA then there should be no money for a landfill. I'm NOT IN FAVOR of this bill. In closing, prior to the issue of the construction in Dandan, nobody mentioned about contamination of the property. When the deal came up, the Layon in Dandan is contaminated. I ask you Senators to vote no on this bill.

- **Mr. Danny Jackson:** Good afternoon Senators. I'm here to testify AGAINST Bill 51. Think about what is underneath Dandan, let's save our livelihood, our water. Let's not build the landfill in Dandan, let's keep it in Ordot. Saving our children and their children is what I think of. Let's not poison our air, water and land. I ask all you Senators, let's stand up and defend our island of Guam.

- **Ms. Josephine Castro Jackson:** Buenas Senators. I was born and raised on Guam for 53 years, and I WILL NOT SUPPORT Bill 51. This is my youngest grand. His name is Magahet Jackson, and this little boy is my future generation. In closing, I'd like to ask you Senators to put a stop to this dump at Dandan.

- **Mr. Rufo Lujan:** Thank Mr. Chairman, Senators and members of the Committee. I'm here to testify on Bill 51.

  To understand the rationale of Bill 51, you would need to read the Consent Decree. Fortunately, I had the opportunity to read the Decree and so I understand what the rationale for Bill 51 is. Because I have read the Consent Decree, I WILL SUPPORT Bill 51.

  Section 30 money is given back to the people of Guam for lack of representation in Congress. And this is one of the things I support that's contained in Bill 51, because it is our local leadership that's saying let's consider pledging Section 30 funds for this purpose. But don't let an outsider tell us how to spend Section 30, it funding that should be rightfully appropriated by the Legislature. With that, I will close my testimony.

- **Ms. Rossana San Miguel:** Read her written testimony AGAINST Bill No. 51.

  So I ask you Senators to do the fair thing. Give it to the company, let them pay for the closure of Ordot Dump and open a new landfill, and take that burden off our taxpayers.

- **Mr. Jack Jacala:** Read his written testimony AGAINST Bill No. 51.

- **Mr. David Sablan:** Read his written testimony AGAINST Bill No. 51. I will be available to answer any questions you and the members may have concerning this project.

- **Mr. Joe Chargualaf:** I came here today not to rebut or debate the issue of the landfill, but I think we have come to terms with the stark reality that the debate as to whether Guam needs a landfill and where, is no longer an issue. For the record, I am submitting 2 pictures.

It's a shame that there was no $92M dollars to pay for the COLA, and now $160M is found for this? I don't the government is looking at the basic services for our people. Senators, there is an option and I ask that you take a look at it.

- **Mr. Jon McDonald (Triple J Ent.):** I became associated with Mr. Imre Szekelhidi. He's an expert in landfill operations, design, financing. And in my conversation with him, he's providing some eye-opening statements about our problem. Triple J Enterprises has invited him out here to make some comments, and I invite the panel here to question him extensively. His knowledge is pretty extensive in every aspect of waste management operations.

- **Mr. Imre Szekelhidi:** I've been in the waste energy since 1986, and over time I have permitted over 46 municipal solid waste non-hazardous oil field waste, non-hazardous industrial disposal facilities, and 3 hazardous waste disposal facilities. In period of time, particularly in the last 16 years, I've been a private developer, private financer in association with partners for green fields facilities, a contract operator, and I've been involved with a contractor to remediate industrial hazardous municipal facilities.

  The reason our proposition, we hope, will be considered is that at Layon, you have one income stream other than household cost for collection to pay for the level of indebtedness, the financial obligation, the closure, which is in the near $100M range. The approach that we would take would convert all the collected municipal waste at the adjoining Ordot Landfill such that we would not disrupt and add additional transportation cost burdens for the collection and movement of waste to Layon, either by direct or transfer, we would be able to cap the Ordot Landfill even if it were to close because Layon development occurs and the District Judge did not want to entertain and economic solution. We would put in an alternately designed landfill gas recovery system that would further benefit by the additional generation of some additional amount of electricity.

- **Mr. Jonathan B. Diaz** submitted written testimony NOT IN FAVOR of Bill No. 51 (COR).

All written testimonies are attached to this report.

III. COMMENTS AND DISCUSSION

- **Sen Aguon:** Mr. Bamba, should the legislation be entertained and enacted by the body without any adjustments, right now the proposal reads it would allow for the borrowing of bonds of up to $202M capped at 9% interest rate with security as secondary collateral resources. The repayment would initially be solid waste tipping fee, and then to be collateralized by Section 30 funds. You also have a separate provision in there that is inclusive of a lease-back option that is the only other alternative that is presently provided for the proposed legislation.

  How does the Governor want to approach this? Obviously, on one hand we have the Consent Decree that requires compliance, on the other hand we have and RFI that has been sent out by GEDA?

- **Mr. G. Bamba:** The first section of Bill 51 is the fundamental requirement to comply with the Consent Decree but also with the court orders, and that's the authorization for the Governor to borrow funds that the Receiver has identified for projects that are necessary to comply with the Consent Decree, opening a new landfill, closing Ordot. We envision that these would be done in a series, it was authorized, and also it would take care of one of the court requirements that the Judge has ordered. We are in violation of the Clean Air Act. How we move forward in discussion with GEDA, the Speaker, is that there are other options. We're not ruling out anything. But the fundamental requirement in the court order has to be met and satisfied, and what would happen if the authorization not be granted.

- **Sen. Aguon:** Considering market conditions in the mainland is looking at the possibility of a phased-in borrowing approach, if in fact Bill No. 51 is authorized as written. Secondly, looking at the economic stimulus package that was adopted by the House of Representatives as well as the U.S. Senate, and looking at the options and the opportunities that may be available through government financing and municipal bonds. Now incorporating that into any discussions, what would be your position in terms of working with the local government officials to see what can be done in this regard?

- **Mr. G. Manning:** We certainly believe, as we stated in the report submitted to the court last week, that it is appropriate for the government of Guam to consider in actually accomplish any financing they do in a series of financing opposed to a

single financing. We have no problem with this being structured in a way that makes the most sense given the economic condition of the bond market.

What we have said is in order to ensure that the funding is there when needed that it needs to be authorized, that the government recommended flexibility with respect to the manner in which the bonds were issued, and we concur with that as long as the ability to actually reissue the bonds is there when the market is right.

To your second part of your question, we also believe that such an approach will allow the government to maximize the use of any available federal dollars. And we have committed to the Governor's Office that we will assist in any way.

- **Sen. Aguon:** Do you have any response to any of the discussions, based on other options presented providing a more economical approach, addressing the water resources.
- **Mr. D. Manning:** There was at lease 3 approach that were described, and certainly we never contended there are not other approaches to handling waste properly. What we do believe, is that there are not other approaches that are less expensive. They are more expensive in virtually every instance. With respect to water resources, I know this has been an issue and great debate, we took a very careful look at the process that had been undertaken by GEPA to make a selection of the site. A letter from former GEPA director to Sen. Respicio from 4 years ago addressed every issue, and the process conducted by GEPA showed a very well done process that selected the site available, and water resources were not going to be detrimentally affected by this site. It was then reviewed and approved by the U. S. EPA, and accepted then by the court. There's no scientific evidence that supports that.

- **Sen. Aguon:** With regards to the market conditions, can I get some response as to where GEDA sees this, and the potential market ability on any such bonds?

- **Mr. G. Bamba:** My office has been working with the Senate's Energy Committee since January 9th to include the landfill funding in the stimulus package. The House clearly did not have any financing for the landfill containment, so we're trying to get it into the Senate version. They are considering it but so far we won't know until the bill passes.

❖ **Ms. A. Limtiaco (Vice Pres., Banc of America Securities):** I've served as the government's financial advisor for nearly 10 years, prior to that I worked at the GEDA Public Finance Division.

With respect to the municipal market, the government of Guam went to market and tried to issue a portion of the General Obligation Bonds that were authorized to fund, amongst other things, the COLA, judgment, as well as Tax Refunds and other various projects. The market turned away from us literally on a dime in early December, and we were unsuccessful at selling that bond issue but we continue to monitor the market with respect to that bond issue.

❖ **Sen. Ada:** Bill 51 recognizes the fact that we really need to take a look at public-private partnership alternatives, and I'd like to support that idea. However, I think it will work but will take time to put together that agreement and inevitably probably taken to court, get challenged, and before it gets into operation, it may be quite a period of time.

The second part of Bill 51 anticipates that while the project is well on its way that GovGuam will concurrently be looking for a private partner. Of course it would seem reasonable to assume if that private partner isn't secured and put into place, that private partner will then basically buy out what GovGuam has invested into it and will take over the debt service and the operation of the landfill.

Is there something in Bill 51 that would allow for that early buyout or pay –off of a bond? It was also suggested going out to the bond market not for the full $160M but in smaller trances, whatever it cost to build up to cell #1.

❖ **Ms. A. Limtiaco:** To answer your first question, I believe this legislation is structured so that the Governor and fiscal team can determine those parameters, whether or not the bonds involve a traditional 10-year call in which is a standard provision in which the bonds can be redeemed after 10-years.

❖ With respect to early redemption feature that is prior to the 10-year call, they do cost a premium on the market and I can't put a number on this market. But basically in terms of your fixed term interest rates, would be based on partially that fact, basically taking the risk that the bonds would be called prior to what the standard is.

❖ **Sen. Respicio:** Mr. Blaz what is the financing component of Bill 51, and how much will it cost if we went with the first component which is the Section 30? Tipping fees generate about $5M to $6M annually?

❖ **Mr. T. Blaz:** All we did was provide the first component, of course, we provided comments on what are the terms of Bill 51, and the Receiver provided the request for legislation. We asked our bond council to provide this legislation, and we've done our part. The Receiver can speak on the cause the Receiver said they wanted to get PUC to approve the tipping fees.

❖ **Sen. Respicio:** We've seen from historic perspective with PUC, they just want to recover their cost of doing services. So if the Receiver or someone out line this is what it costs, this is the cost of doing business for the municipal solid waste, I don't think the PUC would say no. And it always results in a rate hike.

❖ **Mr. G. Bamba:** The PUC hires a consultant, and not a rubber stamp for any utility including this. There's always a cost adjustment whether the rates go up because of power, whether its water. Certainly any fee adjustment has to be justified.

❖ **Sen. Respicio:** At the last roundtable discussion, Speaker Won Pat pointed out that this annual debt service at a 9% rate, it would be about $19.5M per year. And so even if we say we're only collecting $6M in tipping fees, you just acknowledged that the tipping fees would have to be raised by an additional $13M. Otherwise, you would have to tap into Section 30 money.

❖ **Mr. G. Bamba:** I would have to refer to the Receiver because the tipping fee was calculated based on their analysis.

❖ **Sen. Respicio:** So when the Receiver gives you the information, you're just going to accept it.

❖ **Mr. G. Bamba:** Senator, we're only responding to the court order which says we have to comply with the Consent Decree and we have to provide the authorization for the financing to comply with the court order so we don't go into contempt.

❖ **Sen. Respicio**: Everytime we have these discussions, public or private, it just confirms in my mind's eye that our cost is never variable. And you're talking about the need to borrow $159M, and the suggestions to borrow these monies

incrementally, is that how you set out to do a project? Does that make any sense given our conditions at no guarantee that we're going to be able to secure $159M worth of financing but yet you've already obligated about $30M?

The first phase of this was done absent of any legislative appropriations, and just kind of took everybody down this road to the Layon site. And the millions of dollars that gets pumped into this, we've reached the point of no return.

- **Mr. G. Bamba:** Well, we have reached that point, we've run out of time in terms of compliance, in term of building a new landfill, responding to the court order, and we have very little time left with respect to Ordot. So at some point, we're going to have to deal with this. It was the Governor who suggested to the Judge to explore other alternatives also. But time has run out and we need to make a determination on what to do about it.

- **Sen. Respicio:** Is the Layon site something the people of Guam can afford, and cost was never a factor.

- **Mr. G. Bamba:** I think in terms of determining that Layon was the most feasible site, it was a rigorous and technical review, taking into account all environmental and archeological issues, and at the end of the day Layon was selected and the most appropriate site. And that's where we're proceeding on.

- **Sen. Rector:** Bill 51 almost seems like a blank check in it, there doesn't seem to be any limits on how often the Governor can go to the market an apply for bonds, and that seems to be a concern of mine.

- **Ms. A. Limtiaco** – There are a few limitations towards the middle of the bill. There's limitation on the maximum par amount, it does not currently limit the Governor as to how many time he can go to market to get up to the amount to fund the project. There is a limitation on the maximum interest rate and I don't think there's a limitation as to the amount or percentage of cost associated with the bonds.

- **Sen. Taitague** – Mr. Manning if it takes a private company to come here and open a landfill and close a landfill, and get started and running by September of this year and cost $30M? Why is it costing $150M to you and not having to begin until a year from now?

❖ **Mr. Manning:** First of all, anyone who tells you they're going to have that landfill open in September isn't telling you the truth. Secondly, with respect to cost, cost is in fact relative to obviously what you're doing. What's being proposed there is not the same as being proposed at Layon. The other thing is $40M is the estimate within that $160M for the cost of closing Ordot.

❖ **Sen. Telo:** In your honest and truthful opinion, do you really think that Guam should undergo something of this economical trauma that we're going to incur going to Dandan versus Guatali?

❖ **Mr. D. Manning:** The most economical solution the following items for consideration to a vital need for Guam is the Layon landfill.

❖ **Speaker Won Pat:** Can Guam afford two landfills? Are you aware that EPA has just given an extension for Andersen Air Force Base to extend the life of their landfill?

❖ **Mr. D. Manning:** I don't think Guam has the economic necessity for two landfills. I'm aware of the fact that the military is working to continue to use some of their facilities in a limited way until they can make a long term decision.

❖ **Speaker Won Pat:** You told the court there's an MOU that you've drafted to try to bring the military in as a customer, and my understanding is that now that they've gotten another extension and looking into waste to energy, then there's a strong possibility that the military may not be a customer.

❖ **Mr. D. Manning:** All I can share with you is the information we have from the military that they have examined all their options, clearly looked at waste to energy but is too costly.

❖ **Speaker Won Pat:** GEDA, what would be the total cost the government would have to pay for $202M, and how many years?

❖ **Mr. T. Blaz:** The total cost would be about $472M from 2009 to 2041, 30 years. I will provide you that information.

❖ **Vice Speaker Cruz:** George, you submitted a bill at the Governor's request and GEDA has not done a study on it's own, doing it's own diligence of how much

it's going to cost us to fund $202M, $160M, $100M or $40M. It's not something I can tell you tomorrow. Before you sent it to us, it should have been done.

You're asking us to authorize you to go $202M up to 9% but you guys have no idea how much is going to be the total cost? The due diligence on this is unconscionable, and then you're using the Receiver's report. What has GEDA done?

We had a public discussion on the interest rates. Mr. Manning, we've had this discussion at my office and you were on the air talking about 4%, 5% bonds with Section 30 backing, and we asked that question with Ali. And I'm glad that she provided this to us.

❖ **Ms. A. Limtiaco:** Mr. Vice Speaker, we've gone back and forth with bond council. Part of the problem is that it was a very different market in October, likewise the Receiver's report. We've run a number of scenarios for GEDA, and what Tony is struggling with is the technicality of the additional bonds. We've clarified with bond council the capitalized interest is not allowed to be discounted against debt service when you're calculated the additional bonds tests. So the numbers that I run for GEDA in the last month or so have been constrained to the additional bonds test, and have not been up to that $202M.

❖ **Vice Speaker Cruz:** I'm glad that you brought up about the additional bonds test. But I was wondering whether or not if GEDA and you gone to the underwriters of 2001 bond to determine whether or not the 3 loans to Bank of Guam with $15M, $5M, and now $20M for a combined total of $40M , is using Section 30 is going to place us in technical default? The amount we've been getting from Section 30 has been going down rather than going up.

❖ **Ms. A. Limtiaco:** All of those loans are subordinate to the 2001 bond, and the way I'm contemplating this financing to work is their going to be on parody with the 2001 bond, and that's why the additional bonds test come into play. I don't believe we've put ourselves in a position for technical default, and I think the bond council would be on board with us.

❖ **Sen. Aguon:** Mr. Bamba, looking at this proposal, you're not only looking at utilizing tipping fee as a form of repayment commitment but also Section 30, and are you using Section 30 as collateral?

- **Mr. G. Bamba:** Under Bill 51, the authorization to the Governor would be to issue revenue bonds using Section 30 as a fallback.

- **Vice Speaker Cruz:** If GEDA's counsel and Ms. Taitano can provide us with language to tighten up what's on page 4 (i) pledged revenue? In reading that definition, it doesn't tell me using Section 30 as a backstop.

- **Sen, Aguon:** Based on your proposed fee schedule, what exactly is the threshold of revenues that you projected on an annual basis that is required to meet any obligation? Does this address operations as well as service or just primarily operations? $20.9M in annualized revenues?

- **Mr. D. Manning:** I don't have that report right now but I can meet with you and the other Senators on this.

There being no further discussion from the committee members, Chairman Aguon concluded the hearing on the Bill No. 51 (COR).

IV. FINDING AND RECOMMENDATION

The Committee hereby submits its findings and recommendations to *I Mina' Trenta na Lehislaturan Guåhan* the following items for consideration:

1. **Bond Indenture upon final preparation and prior to going to market would be subject to legislative approval.**

2. **Any lease or lease-back consideration by the Government of Guam require the final concurrence and approval of I Liheslaturan Guahan.**

3. **Consideration for reinforcement of Section 30 funds to be used as collateral.**

4. **Other options, per comments provided in the public hearing and other financially feasible alternatives, be considered in the overall scheme of the closure of the Ordot Landfill and opening of a new landfill that would be in compliance with the consent decree.**

Therefore, the Committee on Economic Development, Health & Human Services, and Judiciary of I Mina Trenta Na Liheslaturan Guahan hereby recommends that Bill No. 51 be presented in the format of its original submission by the Governor of Guam to the legislative floor for consideration by the entire membership of I Liheslaturan Guahan, and that the aforementioned recommendations be seriously considered and passed.

SENATOR FRANK B. AGUON, JR., Chairman
COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH & HUMAN SERVICES, AND JUDICIARY
***I Mina' Trenta na Liheslaturan Guåhan* • 30th Guam Legislature**

PUBLIC HEARING DATE / TIME: Monday, February 09, 2009 / 9:00 am

AGENDA ITEM: **BILL NO. 51 (COR)** – RELATIVE TO ISSUANCE OF REVENUE BONDS FOR SOLID WASTE MANAGEMENT SYSTEM…AND TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.

NAME (PRINT)	SIGNATURE	AGENCY OR ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	OPPOSE	CONTACT #
Bobing Francis Wolford		Self	✓			✓	789-3050
Joe U. Garrido	[signature]	Concern Citizen	✓			✓	632-7968
Faet Ben Garrido			✓			✓	646-1939
~~Danny~~ ~~Matao~~ "Matao Pagut" ~~Jackson~~		Taotaomona Native Group	✓			✓	637-5894
Josephine "ofing" Jackson		Taotaomona Native Group	✓			✓	637-5894
Rufo Lujan	[signature]	Self	✓				789-1848
Rossana San Miguel	[signature]	Self	✓	✓		✓	898-6434
Jack Jacara	[signature]	Juvenile Water	✓	✓		✓	477-7746
GRRP/David Salsbury			✓	✓			482-1099
Jose Chargualaf	[signature]	PARA	✓				828-1217
David Manning	[signature]	CBP	✓				615-830-1200
IMRE Szekelhidi	[signature]	LDCLLC	✓				687-4370
JON McDONALD	[signature]	TRIPLE JENT	✓				687-4370
George Bamba	[signature]	Gov's Office	✓		✓		475-9371

PAGE _____ OF _____

Public Hearing Testimony of Mr. Anthony Blaz, Administrator
Guam Economic Development Authority (GEDA)
February 9, 2009

Bill No. 51 (EC)

"AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS."

Good Morning Senator Aguon and members of the Committee on Economic Development, Health and Human Services and the Judiciary. My name is Anthony C. Blaz, Administrator of the Guam Economic Development Authority. I am here today to provide testimony in full support of Bill No. 51.

Bill 399 authorizes the government of Guam to sell Solid Waste Management System Revenue bonds to fund the opening of a new landfill and the long overdue closure of the Ordot dump. This Act also empowers and authorizes the Department of Public Works (DPW) to collect and transport or to contract for the collection and transportation of solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units or residences. Additionally, this Act authorizes DPW to establish and modify, from time to time, with the approval of the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services including the costs of debt service for capital improvements of permitted solid waste facilities. These rates, fees and charges will be the primary repayment source for the bonds with a Pledge of Section 30 revenues used as a "backstop" on this issue primarily for credit enhancement purposes. With the collection of sufficient Solid Waste Management System revenues, the use of Section 30 funds should never be actually required, and would in fact be merely a Pledge.

Passage of Bill 51 would also authorize the Enactment of the Guam Solid Waste Management System Lease Financing Act. This Public-Private Partnership (PPP) would allow a Lease Financing approach wherein a PPP would secure funding for the construction and operation of the new landfill, as well as the closure of the Ordot dump in return for annual compensation similar to the Compact Impact funded payments for Guam's new schools with the source of payment envisioned to come from Tipping Fees.

Public Hearing Testimony for Bill No. 51
Mr. Anthony C. Blaz GEDA Administrator
February 9, 2009

The PPP approach contains the following advantages for the People of Guam:

1. Under this arrangement GovGuam *WOULD NOT* have to seek capital from the bond market as the PPP would provide this funding.
2. Under this arrangement the capital secured by the PPP *MAY NOT* count against Guam's debt ceiling.
3. Under this arrangement GovGuam *WOULD NOT* have to borrow *$43,889,982* to fund a Debt Service Reserve Fund and Capitalized Interest as proposed by the Receiver.
4. The Receiver has recently awarded a contract for earthwork at Layon; the finalization of contract negotiations will then be followed by an estimated 248 days of actual earthwork. This window of opportunity should provide GovGuam the time necessary to secure funding options to a Revenue Bond with a Section 30 pledge.
5. The closure of the Ordot dump predicated upon the opening of a new landfill, should the PPP approach be approved GovGuam would then be able to allow for the market to settle and interest rates and market appetite for non-investment grade credit to resurface. The funding of the closure of Ordot is not a primary need and can be secured at a later date funded through the PPP or from tipping fees or with bond funds, as a last resort.
6. Under the PPP approach Section 30 *MAY NOT* need to be pledged which frees up this funding source for the rebuilding of John F. Kennedy High School and other non revenue generating uses.

Bill 51, when taken as a whole, would provide the Government of Guam with the ability to contract with a PPP to finance, build and operate a new landfill on Guam, as well as to provide the financing necessary for the closure of the Ordot dump. Bill 51 takes a holistic approach to the Consent Decree issues and seeks to provide cost effective options for the benefit of our environment and the People of Guam. The passage of this Act will directly contribute of the revocation of the demands of GBB that the Government of Guam remit $1 Million dollars a week to fund the Consent Decree mandates. The Guam Economic Development Authority stands united behind the commitment of the Camacho Administration to fully comply with the Orders of the U.S. District Court in this matter and we believe Bill 51 offers a sensible solution to a problem which has plagued Guam for many years.

I thank you for this opportunity to testify in support of Bill No.51.

Anthony C. Blaz
GEDA Administrator

Rossana San Miguel
Chalan Pago, Guam

February 9, 2009

The Honorable Frank B. Aguon, Chairman
Committee on Economic Development, Health & Human Services,
and the Judiciary
30th Guam Legislature
155 Hesler Street
Hagatna, Guam 96910

Subject: Testimony Against Bill 51

Dear Chairman Aguon and members of the Committee:

My name is Rossana San Miguel, a resident of the village of Chalan Pago, and former mayor of Ordot-Chalan Pago.

I submit testimony against Bill 51. This bill is a license to put us all into a dire financial situation because it creates another *unnecessary* obligation of this government—and I emphasize that word "unnecessary". Why? Because there is a private company already committed to build a new landfill at a much more reasonable cost to the people of Guam. They have gone on record with their commitment before this legislature and before this committee. This legislature can concentrate on other priorities now that are more serious.

Sure, there is a court order wanting the government of Guam to act expeditiously on building a new landfill. But do not be intimidated by that, because you can do the right thing and allow this private company the opportunity to build the new landfill at Guatali, the site this legislature has chosen since 1996, when the Juan Tenorio Environmental Impact Statement study was completed, and formed the basis of the first law your predecessors passed in May 1996, PL 23-95. That study was scientifically done. It followed the federal guidelines per the Resource Conservation and Recovery Act, Subtitle D.

This bill takes away from the priorities that you have already established to pay other obligations to the people of Guam like the COLA payments and the Earned Income Tax Credits to name a few. It takes away from the re-building of John F. Kennedy High School. It takes away the opportunity to address our healthcare system needs like the accreditation of Guam Memorial Hospital.

Senators, I and other concerned citizens have tried to stop that illegal work down at Dandan, when we filed for a temporary restraining order. Because the standard to get the TRO is set higher than if we had to prove it a court trial, we were denied that TRO, but

we still have a strong basis to go to trial and stop that illegal work down at Dandan, and we will do just that if this Bill 51 passes. Yes, that work at Dandan is illegal. They have violated environmental laws, with their temporary road which eroded and disturbed wetlands and the environment of the wildlife there. They contracted a design engineering firm to design the landfill cells at Dandan, for a little over $1.3 million. That contract was amended several times to the point where it has now ballooned to over $12 million. This is outrageous.

That landfill at Dandan started out with a crater designed to be 90 feet deep. Because of the water, it is only 10 feet deep. That is not a landfill, Senators. It will be a mound of trash. It will rival the Ordot Dump's mountain of trash in the next 20-30 years, mark my word. There is too much water under the surface there; the cost to protect that resource is what's driving the cost of construction, for sure. Trash over that watershed is PERMANENT. It will be there for the next 100+ years. And who knows what will happen if the double liner breaks and that water is contaminated. Don't put that on your conscience, Senators. Water is life. Don't jeopardize polluting it by putting that Dandan landfill over it.

I know the legislature in 2007 asked the Public Auditor to look over that contract for possible violations of law, because it included the access road construction via an engineering services contract which is illegal. Where did the extra $10.7 million come from? The governor's transfer authority? Probably. I have not heard if the audit is ongoing or not. This Bill 51 will be the ultimate "transfer authority" the governor is seeking, so he does not have to personally raid the other operating accounts of the government agencies and departments. He wants you to be complicit in this charade.

Senators, you have been consistent with your position in citing that the new landfill should be at Guatali. The reasons the site was eliminated from consideration in the recent Duenas and Associates study that selected Dandan as the site for the governor's landfill have been refuted by studies done by professional engineers and geologists. So, why are we continuing to channel our hard earned dollars literally into a hole in the ground at Dandan?

Remove this bill from consideration by this body, by leaving it on the shelf to die a natural death. It is not worth it. Pass a bill, instead, to allow the private company to move forward with this responsibility, and let the judge know, you have a greater responsibility to the people of Guam than just the landfill. Do what is right.

Thank you.

Sincerely,

Rossana San Miguel

February 9, 2009

Hon. Frank Aguon, Chairman
Committee on Economic Development,
Health & Environment and Judiciary Committee
30th Guam Legislature

Testimony on Bill 51

Good morning. My name is Jack Jacala. I am a semi-retired businessman and a resident of Guam for over 35 years. All my children were born and raised here.

I am here this morning to testify against Bill 51. At this time of global economic crisis and as a ratepayer, I don't agree with the issuance of revenue bonds and pledging our section 30 funds which is vital to effectively run our government. Rather than looking at the financial solution to meet the mandate of the federal court, I believe the government has not fully explored other options available in solving our solid waste disposal problem.

Last October, I was invited by a couple of college roommates to join a series of forum presentations on solid waste to alternative energy conversion processing in the Philippines. The presentations were organized by RDC World, Inc. (RDC) at the request of the Philippine Energy Commission. As a result of that visit, RDC has secured funding for 21 refineries and plants to convert biomass waste materials and municipal solid waste to renewable diesel and electricity at no cost to the Philippine government. Construction of these plants is expected to be complete by 2011.

I am here today to share with this legislative body a solid solution to our island's solid waste problem and landfill issue. Due to time constraint, RDC could only provide an executive summary. At our request, RDC is willing to make oral presentation at a set time and submit an official proposal.

At this juncture, let me present the project essentials.
RDC PROJECT ANALYSIS

What it brings

1. RDC World Inc. will provide 100% financing for the construction of the KDV Refinery and PAG Plant with NO initial cost to the government. This will temporarily ease the burden on the government in identifying and securing funds for the construction of the new landfill as mandated by the court.

2. The government can defer in pledging funds that are vital to the operations of the government such as the fund identified in Section 30.

3. The development of these facilities will eliminate or reduce the tipping fees because the source of revenue will be from renewable diesel fuel and synthetic ethanol gas that will be produced by the KDV refinery and PAG plant, respectively.

4. With these technologies, RDC will eliminate the old landfill and re-claim the old dump site. This process will save the government $40M in recapping Ordot and the $157M to build a new landfill and it will eventually bring value to the land in Ordot dump.

5. This could establish Guam as an exporter of renewable diesel fuel, ethanol, synthetic gas and metal slags for building roadways and roof tiles.

As new technology

1. The catalytic pressure-less de-polymerization process that will be used in the KDV refinery and the plasma arc gasification process that will be used in the PAG plant are proven technologies that are being used for more than two (2) decades by privately owned business entities. These technologies, however, were developed to be used on a commercial level only eight years ago.

2. Although relatively new on the commercial level, these technologies were proven to be effective and cost efficient that RDC was able to build several facilities on different countries in Southeast Asia, Europe and North America, including the United States. RDC's current projects that are being processed for funding is estimated at $1.4 billion.

KDV Refineries

- RDC have established KDV refineries in Monterey, Mexico which has been running for six (6) years and Madrid, Spain which has been in operation for three (3) years. There are two (2) refineries in Nuremberg, Germany which has been in operation for five (5) years and one in Dresden, Germany which has been in operation for a year. There is a refinery in Toronto, Canada which was inaugurated in June 2008.

- Construction of a KDV refinery is scheduled to begin early this year in Mare Island in San Francisco, California. This facility is a US Navy project.

- RDC submitted proposals for the construction of KDV refineries in Alameda, Contra Costa, Santa Clara, Sacramento and Stanislaus counties, all located in Northern California.

- Construction of seven (7) KDV refineries is currently in progress in different provinces in the Philippines.

- RDC recently launched the Boron Project, considered the heart of the whole Renewable Diesel Refinery program. RDC plans to build a core facility in the industrial zone located in the City of Boron in Kern County, Southern California. The facility would include a KDV refinery, a UMOR* refinery and a WEVCO*

refinery. The facility would be the staging and testing area for new projects and the training area as well for all employees of new and existing RDC refineries.

**UMOR : Used Motor Oil Renewable Diesel*
**WEVCO : Waste Vegetable Oil Renewable Diesel*

PAG Plants

- In Southeast Asia, the PAG plants that are currently in operation are located in Mihama-Mikata; Japan; Utashinai, Japan; Kinuura, Japan; Kakogawa, Japan; Shimoseki, Japan; Imizu, Japan; Maizuru, Japan and Taipei, Taiwan. The PAG plants in operation in Europe are located in Bourdeau and Morcenx in France; Bergen, Norway and Landskrona, Sweden. The PAG plants in operation in North America are located in Jonquierre, Canada; Ottawa, Canada; Anniston, Alabama; Honolulu, Hawaii; Hawthorne, Nevada and Alpoca, West Virginia.

- RDC built PAG plants for General Motor's power train assembly plant in Defiance, Ohio and at the Westinghouse facility in Pittsburgh, Pennsylvania.

- Installation of a PAG plant aboard the US Navy's CVN-21 Series Aircraft Carrier is also underway.

- Construction of fourteen (14) PAG plants is scheduled to begin in the middle part of this year in different provinces in the Philippines.

Opportunities

1. This will open the possibility for Guam to become an exporter of renewable diesel fuel and synthetic ethanol gas.

2. The huge savings and additional revenues that the development of these facilities would generate will enable the government to address and fund other vital issues such as health care, education, public welfare and safety and security.

3. To ease the unemployment situation, the establishment of these facilities will create about 600 new jobs as well as create business opportunities to small businesses.

4. The development of the KDV refinery and PAG plant would result in cleaner air and a healthier environment. Cleaner ocean water will definitely attract more visitors to our island which has been regarded as a paradise in years past.

5. Guam can take the lead in Micronesia to spearhead the US government's Go Green Movement and the Alternative Energy Campaign.

On existing proposals:

1. The GBB receivership offered no other option but the construction of a new landfill which will be considerably more costly to operate and maintain taking into consideration that new laws will be legislated in the future to maintain a clean environment. This option will not fully solve the issues that were raised by the Environmental Protection Agency (EPA) and the government will be burdened by the very same problems which will definitely re-occur in the future.

Both technologies are closed loop systems ~ 100% green

- No Incineration – no Burning so no emissions go into the air
- KDV is low heat at half a bar atmosphere so there is very low pressure in the plant which means it won't blow up
- Plasma gasifies and does not burn.
- Residue byproducts are used as road beds or manufactured into building materials like tiles for homes. There is no waste.

2. GRRP's proposal to build an incinerator will not solve the island's waste problem. Incineration is not a solution. Gasification is the solution.

Thank you for the opportunity of presenting my testimony.

R.S. Jack Jacala
SweetWater Creative Media

1722 Ringwood Avenue
San Jose, CA 95131
408.528.1055
fax: 408.213.9588

January 25, 2009

EXECUTIVE SUMMARY:

Technology Description: The **PLASMA ARC GASSIFICATION (PAG) OF MUNICIPAL SOLID WASTE (MSW)**, by U.S. SCIENCE & TECHNOLOGY CORPORATION (USST), converts MSW, medical waste, agricultural waste, and other waste streams into CELLULOSIC ETHANOL. The process uses plasma gas torches with temperatures reaching from 5,000 °**C** to 7,500 °**C**. USST, in cooperation with the Alter NRG company, which is the parent company of the Westinghouse Plasma Corporation, can develop a 1,500 TPD Capacity plant for Territory of Guam.

The PAG plants in operation - in Southeast Asia are: Mihama-Mikata, Japan; Utashinai, Japan; Kinuura, Japan; Kakogawa, Japan; Shimonoseki, Japan; Imizu, Japan; Maizuru, Japan; Iizuka, Japan; Osaka, Japan; and Taipei. Taiwan. The PAG plants in operation in Europe and North America are: Bordeau, France; Morcenx, France; Bergen, Norway; Landskrona, Sweden; Jonquiere, Canada; Ottawa, Canada; Anniston, AL; Honolulu, HI; Hawthorne, NV; Alpoca, WV; and the US Navy.

Project Site: Territory of Guam. With a Population at 175,000 and expected to increase by another 40,000 within 2009-2010 because of the US Navy expansion of operations; Guam generates more than 2,000 Tons MSW/day which are being literally dumped into open landfills. When the rains come, the effluent garbage leaches into the ground water and therefore polluting the deep wells for drinking water, the rivers, and the oceans. The concerns of MSW and landfills are presently subject of a Court-appointed Receivership, which will end only when Guam is able to show the Federal Judge that the Territorial government can manage the MSW concerns appropriately.

ECONOMIC BENEFITS TO THE COMMUNITY:

- **New direct and indirect job creation:** The Plasma Project will create more than 500 new jobs, directly employed by the project, and jobs from the ancillary industries that will be spurred on by the Plasma project.

- **Healthier environment:** The Plasma Project, by solving the mounting MSW problem, denies disease vectors the chance to multiply. Stopping the leaching of landfills into the groundwater is also a plus. All these tend to promote better healthful and sanitary conditions all throughout Guam.

- **Carbon credits:** This single USST PAG plant proposed to be established in the Philippines would prevent about 540,000 tons of GHG emissions annually, as each ton of waste converted into Cellulosic Ethanol prevents a ton of GHG from being emitted into the atmosphere.

- **Waste to Energy Technology:** The Plasma Project will produce about 50 million gallons of Cellulosic Ethanol, which could be mixed with regular gasoline at a mixture of 85% Ethanol and 15% regular gas. Since the raw materials, or feedstock, s actually the Municipal Solid Waste, this is a tremendous opportunity for Guam to be an exporter of renewable energy back to Mainland United States, or other nearer countries that would need the Cellulosic Ethanol.

- **Decrease in crude oil imports:** The 50 million gallons of Ethanol will displace the importation of about 1.5 million bbls of crude oil. At $50/bbl, the savings will be $75 million a year. At $99/bbl, the savings will be 148,500,000 a year. These will be tremendous savings for Guam as well as for the Mainland United States, and will lead towards the economic recovery of the United States.

- **The trend is for diminishing use of landfills in Mainland United States as well as in Europe:** these are for obvious reasons as stated above, and Guam will be in the forefront of using state of the art technologies to convert waste into fuel, decrease dependence on imported crude oil; decrease health care concerns arising from pollution of groundwater, and the rivers and the seas around Guam, just because the MSW is dumped into open landfills.

- **Decrease in maintenance costs for open landfills means more savings to the Guam Territory:** Unsatisfactory performance of open landfills will be eliminated, thus eliminating the need of sinking money into landfill development that will not bring practical benefits to the citizens of Guam.

Project Investment Requirements: $310,000,000.00, for the 1,500 Tons/day Capacity USST- PAG Plant, which can be constructed in about two years. This includes cost of real estate, PAG equipment, buildings, and storage tanks for the Cellulosic Ethanol.

Return on Investment: The ROI on the first year is 26%, increasing every year. Payback period is estimated at slightly less than 4 years. The initial selling price is based on a low $2.00/gal., which is programmed to increase by 1.5% annually. Beyond the summer of 2010, crude oil is expected to be around $99/bbl, and price of regular gasoline is expected to be $3.26/gallon, but the production cost of the Cellulosic Ethanol by USST-PAG is projected to increase by only 1.5% per year. Since the 2006 National Biofuels Act provides for tax exemptions – NO Income Tax for 7 years; sales tax at only 5% instead of the 12% Value Added Tax; Tax-free importation of equipment; and other incentives, the continuing ROI is expected to be well over 45% by that time.

Exit Strategy: The fund developer may exit in about 5 years by selling the shares of stocks in the OTC market, or may continue with the loan and their share of the amortizations, if so desired.

Thank you for your interest in this Executive Summary.

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CREATIVE MEDIA

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January 25, 2009

EXECUTIVE SUMMARY:

RDC World, Inc. (RDC) proposes to establish a Renewable Diesel Refineries in the Territory of Guam, that would produce Renewable Diesel (according to the US Internal Revenue Service Classification) from waste materials such as used motor oil, waste vegetable oil, waste plastic materials such as grocery bags or plastic drinking water bottles. Future expansion of production capabilities will include raw materials such as waste plastics from scrapped computers and electronics; sugar bagasse, waste cotton, paper, (medical waste: plastic, cotton, paper), wood chips, even bone meal from slaughterhouses.

The technology to be used by the diesel refinery is called the CATALYTIC PRESSURE-LESS DEPOLYMERIZATION PROCESS. The product is called Renewable Diesel, and complies with the specifications of (American Society of Testing Materials) ASTM D-975, which sets the specifications for regular diesel fuel for use by cars and trucks powered by diesel engines. This Renewable Diesel fuel is also classified as ULSD –Ultra Low Sulfur Diesel, because the sulfur content is 12ppm or lower. The refinery may also be configured to produce Jet-A Aviation diesel.

Definition of Terms:

What are Biodiesel, Renewable Diesel, and Co-Processed Renewable Diesel?

- **Biodiesel:** is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats that meets the fuel specification requirements of ASTM D6751. The process is also called the TRANS-ESTERIFICATION PROCESS. It uses ethanol alcohol and caustic soda during the process; Glycerin is a by-product. This fuel is produced in free-standing facilities.
- **Renewable Diesel:** Defined in the Internal Revenue Code (IRC) USA as fuel produced from biological material using a process called "CATALYTIC DEPOLYMERIZATION" that meets the fuel specification requirements of ASTM D-975 (petroleum diesel fuel) or ASTM D396 (home heating oil). This fuel is produced in free-standing facilities.
- **Co-Processed Renewable Diesel:** Renewable diesel that is produced when an oil company adds small amounts vegetable oils or animal fats to the traditional petroleum refining process when producing diesel fuel (co-processing). Scheduled to be produced in existing oil refineries.

The synthetic diesel produced by the Catalytic Pressure-Less Depolymerization process is classified by the Internal Revenue Code of the USA as "Renewable Diesel", and is eligible for a federal tax rebate of $1.00 per gallon. **This federal tax credit, however, could not be applied to projects outside of the United States of America.**

What is the Process called CATALYTIC PRESSURE-LESS DEPOLYMERIZATION?

The Catalytic Pressure-Less Depolymerization Process converts waste biomass materials such as waste vegetable cooking oil, brown and yellow grease from grease traps in restaurants, plastic bottles / waste / scrap, paper, sugar bagasse, and recycled motor oil and used transformer oil. The process uses high tech catalysts, a low heat range from 270 to 390 degrees Centigrade; does not release toxic fumes into the atmosphere; operates at a low pressure of less than one atmosphere, and therefore has no danger of explosions due to high temperatures and pressures. Upon heating, the distillate vapor that is produced is processed at the Fractionation Column, from which the light diesel oil is then routed to a De-Sulfurization Plant, to reduce the sulfur content to 15ppm or less. The final product is then piped into the storage tanks. During the process, the halogens are converted into salts which shall be properly disposed of. The fumes released by the process are captured by vacuum pumps and injected as fuel into the burners. The exhaust gasses of the burners are in turn processed by a water scrubber, which in turn is processed to remove the pollutants. In contrast, the regular oil refinery process operates at very high temperatures and pressures, releases fumes and gasses into the atmosphere, and is susceptible to explosions when in operation.

This Process has been successfully demonstrated by the pilot plant in Monterey, Mexico, which has been in operation going to six years now. Improvements in the technology derived from the Monterey, Mexico project were incorporated in the Plant in Madrid, Spain, which is in operation for three years now. In Toronto, Canada, a privately owned plant, using high density plastics from waste computers, started operations this June, 2008. The renewable diesel output will be used exclusively by the owner to fuel up their fleet of diesel trucks. In Nurnberg, Germany, two state of the art plants have recently been put into operation. These plants are privately owned and not open to the public. These two plants are used for continuing in depth-research and development into the use of various common waste materials for conversion into renewable diesel.

The technology that will be used by the Renewable Diesel Refineries is already a third generation, state of the art process that is now ready to go into commercial production. This is the technology that is being proposed to be brought to the Territory of Guam, as the solution to convert the Used Motor Oils and Waste Vegetable oils, as well waste plastics, cardboards, and other biomass waste into Renewable Diesel.

FINANCIAL RETURNS:

For a standard Renewable Diesel Refinery (RDR), 4.4 million gal/year capacity:

- **Cost of RDR at $19.1 million (cost of land is not included)**

The investments into the project may be recovered in 5 to 10 years, depending on the arrangements that would be acceptable to the funders.

ECONOMIC BENEFITS TO THE COMMUNITY

- A 3KDV500 Renewable Diesel Refinery consumes 6 million gallons of waste annually, equivalent to 21,000 tons of various wastes that would otherwise pollute the groundwater with leachates when these wastes are brought to the landfills which are not properly prepared.
- The diversion and conversion of these 21,000 tons of various wastes will actually save on landfill operations and maintenance over the long run – because these wastes are transformed from waste to fuels.
- The operation of the KDV refineries will generate new, direct employment; as well as indirect employment in other ancillary industries spurred by the development of the KDV refineries.
- Opportunity for small businessmen who will gather the UMO and WVO to earn some money in their free time by doing recycling gathering.
- The end product of the KDV refinery, which is 4.4 million gallons of diesel fuel, will decrease importation of crude oil at around 127,000 bbls of crude oil/yr.
- The dollar savings, at $50/bbl of crude oil, is $6,350,000 annually. When crude oil hits $99/bbl., the savings would be $12,573,000 annually.
- The KDV refineries generate about around 15,000 tons of carbon credits annually, which means about 15,000 of carbon dioxide gasses are prevented from being released into the atmosphere, thus contributing towards cleaner, breathable air for everybody in the community. This also means a lowering of the incidence of chest and lung diseases, which are aggravated or brought about by air pollution.
- The product of the KDV refineries is clean diesel – which means less exhaust fumes containing carbon dioxides.

Thank you for your interest in this Executive Summary.

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February 9, 2009

The Honorable Frank B. Aguon, Jr.
Chairman
Committee on Economic Development, Health and Human Services, and Judiciary
30th Guam Legislature
Ste. 701A, DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910

Dear Chairman Aguon:

I am David J. Sablan, Project Coordinator for Guam Resource Recovery Partners (GRRP), the private developer of the private landfill project in Guatali.

Thank you for providing me with the opportunity to testify AGAINST Bill No. 51, *AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO ALEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.*

I do not believe that passage of this legislation is necessary and I am pleased to report to you that significant progress has already been made with regard to the construction of a new sanitary landfill at Guatali.

I would like to start by outlining for you the reasons that the Guatali landfill project is the ONLY viable option to quickly and responsibly solve the solid waste crisis on Guam.

1. It is the ONLY project that complies with federal and local laws, including 10(b) of the Consent Decree.

2. It is the ONLY project that has realistic financing that will not bankrupt the Government of Guam.

3. It is the ONLY option that is safe for the environment and does not threaten a valuable water source.

4. It is the ONLY option that makes sense economically for the people of Guam, as it is a privately developed and privately funded project that can be built at a fraction of the cost of the proposed Layon/Dandan landfill.

After a decade of struggling against conflicts of interest and misconduct at several levels of government, GRRP finally experienced justice when it received its conditional operating permit as a result of the professionalism of the Guam EPA Board of Directors and technical staff with the guidance of an Administrative Hearing Officer provided by the Office of the Attorney General pursuant to the Administrative Adjudication Act.

We are ready to move on this project! Based on the approval of the conditional operating permit, we are renewing all previously-issued permits, i.e., the grubbing permit, etc., and we have access to funding to get started on building bridges and the access road. The road and bridges will allow access into the site, so that the GEPA hydro geologists can confirm the favorable opinion of other hydro geologists that the area is well-suited for a landfill and that there is no danger to valuable water resources. Scientific analysis conducted on the Guatali site indicates the likelihood of no groundwater table.

In any case, GRRP's design is the most conservative design possible. A conservative design means that the design addresses the worst case scenario with regard to the probability that there is a groundwater table. Although all evidence indicates a "best case scenario" – GRRP will keep this conservative design to guarantee the comfort and safety of all the people of Guam.

Again, the Guatali project 1) complies with all federal and Guam laws, 2) has realistic financing that will not burden the Government of Guam and the people, 3) is environmentally safe and will pose no danger to valuable water sources, and 4) is the most economical in terms of cost per ton.

The proponents of the Layon/Dandan site continue blindly to force the project with fear tactics, misrepresentations, and illegal implementation of the Consent Decree.

The four areas of concern with regard to the site at Layon/Dandan are as follows:

1. The implementation of the Consent Decree has violated Guam law and the Consent Decree itself.

The Consent Decree clearly spells out in Article XII Section 47 that **"this Consent Decree in no way affects the Government of Guam's responsibilities to comply with all applicable federal and territorial laws and regulations."**

Guam Laws Violated. The implementation of the Consent Decree violated Guam law as it is contrary to Public Laws 23-95 and 24-06, which already mandated the location of the new landfill and Public Law 23-64 codified in 10 G.C.A §51103(a)(6), requiring that the next landfill site be selected by the Guam Legislature. Furthermore, Section 98 of Public Law 29-19 was illegally and inappropriately nullified by the District Court of Guam. That law intended to place safeguards on

the public expenditure of funds for the landfill and to specifically require the full disclosure of all costs and consequences for the placement and construction of any publicly constructed sanitary landfill.

Guam law was further violated in that the Consent Decree at its inception was not approved or ratified by the Guam Legislature. The signatories of the Consent Decree knew that the implementation would directly require appropriations from the Guam Legislature and would require them to change existing Guam Law. U.S. case law supports our position that implementation of the Consent Decree in this case must not violate existing local laws. [1]

Consent Decree Violated. Guam EPA's "site selection" process performed pursuant to Paragraph 9 of the Consent Decree violated the Consent Decree because the exclusionary criteria used to reach the final 3 sites were not based in science or federal or local law. Of the final 3 sites, 2 sites were ineligible by application of federal regulations because they were both located within 5 miles of the airport runways.

Those two sites, Sabanan Batea in Yona, and Lonfit in Asan, should have never been included on the list in the first place and definitely should never have made it into the final 3 sites. EIS's were conducted on those two sites with expenditure of taxpayer money with full knowledge that a landfill could never be located at these sites.

The Layon/Dandan site was purposefully left as the only site that could be selected by default, rather than as prescribed under Section 9 of the Consent Decree. Therefore, its selection was faulty, contrary to, and inconsistent with the Consent Decree.

The initial ranking of potential landfill sites was unscientific and unrealistic because the Guatali site was rejected due to arbitrary and exclusionary criteria. In fact, Guatali should never have been eliminated from the list as it is, in fact, a suitable site for a landfill as evidenced by GEPA issuing the conditional permit.

2. The financing for Layon/Dandan is unrealistic and will burden the people and Government of Guam.

There are only two ways to finance the Layon/Dandan landfill – first, general obligation bonds and the second, revenue bonds. Passing any bonds for the Layon/Dandan landfill is an unrealistic option because the Legislature passed no laws selecting Layon/Dandan as the site for the next landfill nor did it authorize expenditures made for Layon/Dandan. This immediately eliminates any bond option.

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[1] [1]See e.g., League of Residential Neighborhood Advocates v. City of Los Angeles, 498 F.3d 1052, 1058 (9th Cir. 2007) **(Superseding state law is authorized "only when the federal law in question mandates the remedy contained in the settlement.")** Guam Public Laws 23-95, 24-06, 23-64, 10 GCA §51103(a)(6) in no way conflict with or violate any federal, including the Clean Water Act, which does not mandate the particular remedy in the settlement, such as how or where the next municipal sold waste landfill site will be selected and located and what government entities must approve such a selection. Therefore, the federal judge must not implement a Consent Decree that violates those laws. See also Brooks v. State Bd. Of Elections, 848 F.Supp. 1548, 1554 (S.D.Ga. 1994) **(the district court could not allow its power to be used to coerce the implementation of the consent decree through its injunctive powers in opposition to the normal legislative and political process, thereby amending and nullifying state law)**.

To further complicate matters, the Rosanna San Miguel case is still pending in court on the merits. If successful, taxpayers will prevent further spending for taxpayer money on Layon/Dandan due to the violations of Guam laws and the Consent Decree itself.

GRRP has an exclusive license to receive Guam's solid waste either directly authorized by the license or through a contract with the government – not Layon/Dandan. This fact makes revenue bonds not feasible, especially considering the financial rating of GovGuam, the current credit crisis, and the more stringent laws for issuing loans. The District Court of Guam cannot force the Consent Decree on Wall Street.

3. A landfill at Layon/Dandan would be dangerous to the people of Guam and the environment.

It is unconscionable to build a landfill on a site located on a confirmed water source yet to be developed for potable and drinking water consumption. Guam Waterworks Authority and the national environmental engineering and consulting firm, Brown and Caldwell, have stated that the groundwater and surface water at Layon/Dandan is a serious issue. The decisions being made today concerning the Layon/Dandan landfill are permanent and will be forever irreversible.

In light of the widely accepted notion that all landfills can leak at any point, and considering that Guam is in seismic Zone 4, it is counterintuitive to build a landfill of any sort on a potential future water source, especially when an increase of fresh water will be critical to accommodate the Federal government's military buildup and future generations. The landfill will leak. It is not a matter of if, it is a matter of when.

4. The Layon/Dandan site is not economical in terms of cost per ton and per household compared to Guatali with a Waste-To-Energy (WTE) component.

In 2010:
Cost per household at Guatali = $14.01
Cost per household at Layon/Dandan = $40.85

Cost per ton at Guatali = $140.64
Cost per ton household at Layon/Dandan = $ 227.00

In 2030:
Cost per household at Guatali = $5.71
Cost per household at Layon/Dandan = $50.73

Cost per ton at Guatali = $48.45
Cost per ton at Layon/Dandan = $328.00

Even if Layon/Dandan were legal and environmentally sound – just based on pure economics, who among us would choose to incur $600 Million in debt, burdening the public for years to come while Guatali can be built for $30 Million through private funding and on top of it provide the government with an opportunity to create a renewable energy source with a WTE component? If such an option were pursued, any WTE component with the best and most advanced available technology available must be in strict compliance with the Clean Air Act.

We do not need Section 30 or any other agreements that will burden the people and government. All we need is your free flowing solid waste from all generators: military, commercial and residential, as well as, predetermined tipping fees, which will allow accountability, transparency, and fairness. We have the solution. We can end this exercise in futility and the waste of taxpayer resources.

All of us have been chasing our tails for 20 years to end the Ordot Dump nightmare and open a new, reliable and environmentally sound solid waste disposal facility. Let's put politics aside and do what you know in your heart is the best resolution to put an end to this crisis. I ask for your support in doing the right thing for everyone concerned.

I remain available to answer your questions and any other questions other members of the *I Liheslatura* may have concerning your project.

Respectfully submitted,

DAVID J. SABLAN

Committee Report 2/11/09

February 9, 2009

To: **The Honorable Senator Frank B. Aguon, Jr.**
Chairman, Committee on Economic Development,
Health and Human Resources & Judiciary

Fr: **Jonathan B. Diaz**
P.O. Box 21603 GMF
Barrigada, GU 96921

Re: **WRITTEN TESTIMONY for Bill No. 51(COR), NOT in FAVOR**
Relative to issuance of revenue bonds for Solid Waste Management Systems...and to pay the cost of a new landfill and the closure of the Ordot Landfill and other system costs.

Buenas yan Hafa Adai Honorable Senators of I Mina' Trenta Na Liheslaturan Guahan,

I am writing as a concerned citizen of the Territory of Guahan who is **NOT in FAVOR** of Bill 51 (COR) *An act to enact Article 8 of Chapter 51 of Title 10 of the Guam Code Annotated, relative to authorizing Government of Guam to issue solid waste management system revenue bonds for the purpose of financing facilities of the solid waste management system of Guam; approving the terms and conditions of the issuance of one or more series of such bonds pursuant to such article to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs: and to enact Article 9 of Chapter 51 of Title 10 of the Guam Code Annotated, relative to authorizing Government of Guam to enter into a lease and a lease-back for the purpose of financing facilities of the solid waste management system of Guam; approving the terms and conditions of such leases pursuant to such article to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs.* Today is the day of my birth and my one and only wish for today is to not see a dump/landfill placed in DanDan/Layon, Inarajan, GU. Although scientists and engineers have surveyed this property, I believe that it is unwise to locate a dumpsite on top of a watershed that can produce water for our southern residents in the near future. Although a dump is necessary, I am here to protect the natural resources of our island as pledged in the INOFRESI. Every child who has gone through the GPSS system pledges to protect and to defend what little we have left on our island homeland.

I understand full well that the Legislative branch is placed in a corner and the immediate threats given by the Federal Court to consent to the dump's financing. I believe that it is in Guam's best interest that we do not allow for a dump to be placed over our water resources, considering that this dump will affect 7 rivers, the Talafofo Falls Development, the Fena Reservoir and the other rural locations in and around the south. I have pledged my commitment to the people of the south because they raised me on values in being a proper steward of Mother Earth and because they desperately need our help today.

I respect that this is a difficult decision to make, but I am asking that all Senator's in the 30th Guam Legislature walk out on Bill 51 (COR) or vote NO on Bill 51. The conditions of the Bond market, although it may be feasible at this time, will have utter repercussions to our island's children who are the future tax payers on Guam and who will ultimately have to pay for this dump with a very SHORT lifespan. I believe that this decree is being shoved down our throats to pave the way for the new military expansion on the island. I would also like to suggest that a court injunction be made because times have changed and our government should not be placed into a terrible situation whereby Section 30 and the General Fund revenues are used as collateral.

Please honorable Senators of the 30th Guam Legislature do not be forced into this situation. I call on you to seek the assistance of the 9th District of Court and get an injunction placed or enact a counter lawsuit on behalf of the Government of Guam. There are various possibilities and please do not agree the proposal at hand.

I thank you for your time and for your commitment to our people.

Sinceru yan Magahet,

Si Jonathan B. Diaz

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 51 (COR

Introduced by:

The Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs

By request of I Maga'lahen Guåhan in accordance with the Organic Act of Guam

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

(a) *I Liheslaturan Guåhan* finds that the condition of Guam's solid waste infrastructure has seriously deteriorated over the past decades. The Ordot Dump continues to be a threat to the health and safety of the residents of Guam, and specifically for the residents of Ordot-Chalan Pago, Yona and the villages downriver and downwind. The Ordot Dump reached its capacity in the 1990's, and the closure of the dump is necessary in order to eliminate this existing serious

environmental hazard. The severe limitations of the government of Guam to provide an environmentally sound solid waste disposal facility have negatively affected the quality of life of the people of Guam. Additionally, it is reasonable to assert that Guam's economic development is also being negatively affected by the inability of a failed system to deliver the most basic of all utility services.

(b) This finding is further supported by action of the U.S. Environmental Protection Agency (U.S. EPA). The dump is on the National Priorities List of highly contaminated sites. After many years of administrative orders and warnings from the U.S. EPA about the inability of the Department of Public Works ("DPW") to control discharges from the Dump and of the government of Guam to construct a landfill in compliance with federal and Guam law, the U.S. EPA filed a lawsuit in the U.S. District Court of Guam (the "District Court") against the government. A Consent Decree between the government of Guam and the U.S. EPA was approved by the District Court in February 2004. The Consent Decree provided timelines for the Government to plan, finance and execute the closure of the Ordot Dump and the construction of a new municipal landfill. The Government has made efforts to identify a source of financing for the closure of the Ordot Dump and the construction of a new landfill, but the District Court determined that the Government has not met the milestones required under the Consent Decree. On March 17, 2008, the Court placed the DPW in receivership, appointing Gershman, Brickner & Bratton, Inc. (the "Receiver") to take over the government's solid waste operations in order to correct the longstanding deficiencies. All the costs incurred in connection with the U.S. EPA lawsuit will ultimately have to be paid for by the ratepayers of Guam.

(c) The Receiver's quarterly report to the District Court, presented October 22, 2008, estimated that approximately $159.7 million of capital funding will be needed to meet the requirements of the Consent Decree, $40.1 million of which would be required for the closure of the Ordot Dump and $119.6 million of

which would be required for the construction of the new landfill, associated facilities, equipment and technology. Indeed, despite the fact that the Receiver's quarterly report places a stringent timeline for the financing and construction of the new landfill, an even more compelling reason to ensure the timely improvements of Guam's solid waste disposal infrastructure is simply because the people of Guam deserve no less.

(d) *I Maga'lahen Guåhan* and DPW, in coordination with the Guam Economic Development Authority (GEDA), have been diligently working on completing the administrative prerequisites to borrow from the capital markets the amounts required to accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of the tasks that lie ahead and the need for timely action to be taken. It is in this spirit that *I Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient and timely achievement of goals and objectives aimed at improving the quality of life of the people of Guam.

Section 2. Enactment of the Guam Solid Waste Management System Revenue Bond Act. Article 8 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 8

Solid Waste Management System Revenue Bonds

§51801. Short Title. This Article may be cited as the Guam Solid Waste Management System Revenue Bond Act.

§51802. Definitions. The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with this Article), shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Bonds" means bonds, notes or other evidences of indebtedness issued pursuant to this Chapter.

(b) "Bondholder" or "holder of bonds" or any similar term means any person who shall be:

(i) the bearer of any outstanding bond or bonds registered to bearer or not registered; or

(ii) the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer.

(c) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(d) "Director" means the Director of the Department of Public Works.

(e) "Guam Solid Waste Management and Litter Control Act" means Chapter 51 of Title 10 of the Guam Code Annotated.

(f) "Indenture" means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a certificate of the director and *I Maga'lahen Guåhan* or by other instrument.

(g) "Organic Act" means the Organic Act of Guam as amended and in effect on the effective date of this Article (Title 48, §1421 et seq. of the United States Code.).

(h) "Person" includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(i) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to the payment of bonds.

(j) "Rates, fees and charges" means all rates, fees and charges (including tipping fees, residential pick-up fees, collection fees, self-drop fees and all other solid waste management service charges), received or receivable by or on behalf of the department for providing solid waste management services.

(k) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(l) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(m) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(n) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department or its contractors, agents or subcontractors, including but not limited to landfills (whether closed or open and including Ordot dump), 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.

(o) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

(p) "United States" means the United States of America.

§51803. Power to Incur Indebtedness. *I Maga'lahen Guåhan*, through the agency of GEDA pursuant to 12 G.C.A. §50103(k), and with the approval of *I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in addition to and in amplification of all other powers conferred by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam or of the United States, to incur limited obligation indebtedness on behalf of the government of Guam, by the issuance of bonds pursuant to this Article to raise funds for the purpose of acquiring, constructing, improving, equipping,

maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the government issued for any of such purposes, or for any combination of such purposes for which bonds may be issued and secured as provided in this Article.

It is hereby declared that the system and each facility of the system is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the government pursuant to this Article that is payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Indebtedness that is issued by the government pursuant to this Article and that is payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the indenture.

§51804. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this

Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article. The department has jurisdiction over and may collect and transport to permitted solid waste facilities, or contract for the collection and transportation to permitted solid waste facilities of, solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units or residences. The department does not have jurisdiction over the collection and transportation of solid waste from any hotels, commercial or industrial establishments, government agencies or from any multiple dwelling units other than duplexes. The department may operate the Ordot Dump, or it may contract for the operation of the Ordot Dump, in accordance with Guam law and its permit under this Chapter. The department may contract for the operation of the landfill.

The department may also operate, or contract for the operation of, all other permitted solid waste management facilities and operations not addressed above and within the policy guidelines of the Integrated Solid Waste Management Plan. Any such contract for the operation of the Ordot Dump or the landfill may be entered into pursuant hereto or pursuant to Article 9 of this Chapter and may be with any person or corporation duly qualified to provide such services, whether public or private, domestic or foreign.

§51805. Rates, Fees and Charges; Refunds.

Notwithstanding any provision of law or regulation to the contrary, the department is authorized to establish and modify from time to time, with prior approval by the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of

debt service for capital improvements of permitted solid waste facilities, and to collect money from all users or customers, and to refund charges collected in error. Rates, fees and charges may be collected before or after the provision of the service for which they are charged.

Except to the extent otherwise permitted or required by an indenture pursuant to which bonds are issued, rates, fees and charges shall at all times be fixed to yield annual revenue of the system at least equal to the sum of annual principal payments and interest charges on all bonds then outstanding, all coverage and reserve fund requirements relating to such bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and the annual system operation and maintenance costs; provided, however, that Section 30 revenue may be used for the purposes and treated as satisfying the requirements of this paragraph with respect to the costs of the closure of the Ordot Dump and the bonds or other obligations related thereto.

An indenture, lease or contract of indebtedness may provide for payment from revenue of the system of refunds of rates and charges that are collected in error and that are refundable by the department.

§51806. Validity of Authorization and Issuance of Bonds. The validity of the authorization and issuance of any bonds by the government pursuant to this Article is not dependent on nor affected in any way by:

(a) Proceedings taken by the department for the acquisition, construction or improvement of the system or any part thereof;

(b) Any contracts made by the department in connection with the acquisition, construction or improvement of the system or any part thereof; or

(c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

§51807. Governor to Determine Issuance of Bonds and Incurring of Other Indebtedness; Government Only Liable as Provided by Indenture or Contract.

(a) *I Maga'lahen Guåhan* shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article and no other obligation undertaken by the government under any indenture, lease or other instrument shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by such indenture, lease or other instrument. Every such bond shall contain a recital on its face stating that it is a limited obligation of the government of Guam and shall not be deemed to be secured by the faith and credit of the government of Guam.

§51808. Governor to Declare Purpose and Maximum Amount of Bonds to be Issued. Before issuing any bond or bonds, *I Maga'lahen Guåhan* shall declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose. Bonds shall not be issued or sold for such purpose in an amount exceeding such specified maximum.

§51809. Indenture Providing Terms and Conditions of Bonds. *I Maga'lahen Guåhan* may enter into one or more indentures on behalf of the government providing for the aggregate principal

amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and interchange of any bonds issued pursuant to this Article and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§51810. Issues of Bonds. An indenture may provide for one or several series of bonds and that any series may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized series be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be as authorized by *I Maga'lahen Guåhan*.

§51811. Covenants and Agreements That May Be Contained in Indenture. An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the government as *I Maga'lahen Guåhan* deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by a pledge of all or by part of the revenue of the system or the Section 30 revenue, or both;

(b) Provisions creating one or more funds or accounts into which all or any part of pledged revenue shall be deposited:

(i) for payment of the principal of and interest on bonds at or prior to maturity; or

(ii) for reserve or sinking funds for the further security of bonds.

(c) A provision requiring the government to operate the system continuously, to the extent reasonably practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(d) A provision requiring the government to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the government to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the government to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon pledged revenue or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the government to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, in any manner that impairs or impedes the operation of the system or any part thereof necessary to secure adequate pledged revenue or that otherwise impairs or impedes the right of the holders of bonds or other obligations with respect to such pledged revenue.

(h) A provision requiring the government, with the prior approval of the Guam Public Utilities Commission, to fix, prescribe and collect annually rates or other charges in connection with the solid waste management services furnished from the system which, together with other available revenues, including, to the extent provided by 10 G.C.A. §51805, Section 30 revenue, will be:

(i) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(ii) sufficient to pay any payments due under any lease or lease-back entered into pursuant to Article 9 of this Chapter.

(iii) sufficient to pay the annual system operation and maintenance costs; and

(iv) in such additional amount as shall be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no solid waste management service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the government to hold or cause to be held in trust the pledged revenue or any part thereof, or to any fund or account created by any indenture for the further security or protection of such bonds and to apply such pledged revenue or cause it to be applied only as provided in the indenture and to invest all or any part of such pledged revenue pending such application in such

securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the government in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the government to issue additional bonds or to enter into one or more lease-back obligations pursuant to Article 9 of this Chapter, in each case equally secured with bonds theretofore issued under the indenture and lease-back obligations previously entered into, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof, or for the purpose of refunding any prior bonds or any other prior obligations of the government relating to the system; and a provision limiting the power of the government to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the government on the system or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the government of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the government and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds.

(q) With respect to any provision relating to the modification or amendment of an indenture, the government may agree that bonds held by the government, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, agency or instrumentality of any kind or class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment.

(r) A provision limiting the right of action by individual bondholders in the event of a default by the government or proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the government to purchase outstanding bonds from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(t) A provision for any working capital fund or account or contingency fund or account relating to the system.

(u) A provision for the replacement of lost, destroyed or mutilated bonds.

(v) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

§51812. Trustee for Government and Holders of Bonds.

(a) The government or any agent designated by the government shall act as trustee for the government and the holders of bonds issued hereunder and the government may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The government may provide in an indenture:

(i) for the deposit of all or any portion of the pledged revenue with the government and for the holding thereof by the government in one or more separate funds or accounts in the Solid Waste Operations Fund; and

(ii) for the transfer to the trustee of all or any portion of the pledged revenue as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

§51813. Duties and Powers of Trustee. The government shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the

registration and discharge from registration thereof and the administration of any and all funds provided as security therefore.

§51814. Issuance and Interchange of Bearer and Registered Bonds. An indenture may provide that bonds may be issued as bearer bonds or as registered bonds and for the interchange of bearer bonds for registered bonds and registered bonds for bearer bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as *I Maga'lahen Guåhan* may determine.

§51815. Redemption of Bonds Prior to Maturity. An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

§51816. Places of Payment. An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

§51817. Execution and Authentication of Bonds. An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the government and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the government or of any agent designated by the government as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds ceases to be an officer or agent before the delivery of the bonds, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as

if he had remained such officer or agent until the delivery of the bonds.

§51818. Dates and Maturities of Bonds. Bonds shall bear dates prescribed in the indenture providing for their issuance. Bonds may be serial bonds, term bonds or sinking fund bonds with such maturities as the indenture shall specify. No bond by its terms shall mature more than fifty (50) years after its date of issuance.

§51819. Sale of Bonds. Bonds authorized to be issued under this Article shall be sold for cash, in accordance with the provisions of a certificate or agreement executed by *I Maga'lahen Guåhan*. The bonds may be sold at either public or private sale, and upon such terms and conditions as shall be authorized by *I Maga'lahen Guåhan*, which may provide that the bonds may be sold at less than their par or face value.

§51820. Payment of Bonds from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

§51821. Payments Which May be Made Out of Proceeds of Sale of Bonds. The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof

(including any closed landfill or dump) or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the government of the cost of any work done by the United States or such public body for or jointly or in conjunction with the department;

(b) For payment of any engineering, inspection, legal, consultants' or paying agents' fees relating or incidental to:

(i) the acquisition, construction or improvement of the system or any part thereof; or

(ii) the authorization, issue or sale of bonds;

(c) For payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system;

(e) For payment of interest on bonds during the projected period of acquisition, construction or improvement of the system or any part thereof for the acquisition, construction or improvement of which such bonds have been issued and for a period of not to exceed three (3) years thereafter;

(f) For deposit in any reserve or sinking fund; or

(g) For the payment of any prior bonds or other obligations of the government issued for solid waste management purposes.

§51822. Bonds May be Secured by Revenue of the System. An indenture may provide that payment of the bonds and the interest thereon shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created or to be created pursuant to Article 9 of this Chapter. Any such

pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture by which such pledge is created need not be recorded.

§51823. Bonds May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment of any bonds issued pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created pursuant to Article 9 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have

notice thereof. The indenture by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Indebtedness issued by the government pursuant to this Article that is repayable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51824. Temporary Bonds. An indenture may provide that pending the actual issuance or delivery of definitive bonds, the government may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever, to be exchanged for definitive bonds when ready for delivery.

§51825. Replacement of Bonds. The government may provide for the replacement of lost, destroyed or mutilated bonds.

§51826. Tax Exemption. Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act.

§51827. Bonds as Legal Investments and as Security For Performance of Any Act. Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

§51828. Refunding Bonds. *I Maga'lahen Guåhan* may, on behalf of the government, provide for the issuance, sale or exchange of refunding bonds for the purpose of retiring indebtedness or other obligations issued to finance all or any portion of the system. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

§51829. Use of Other Funds for System. In addition to the proceeds of any bonds issued and sold pursuant to this Article, the department may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the department and any money or funds made available to the department by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Guam Solid Waste Management and Litter Control Act.

§51830. Insurance. The department may insure against loss of revenue of the system from any cause whatsoever. The department may insure against public liability or property damage from any cause. An indenture, lease or other instrument may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, lease, or other instrument for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the director, subject to the requirements of any indenture, lease, or other instrument, any insurance may be provided by funded reserves or any other means.

§51831. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely payments of their bonds. In accordance with prior similar situations and precedents, the government hereby pledges, while any bonds issued under this Article remain outstanding and not fully performed or discharged, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article, (b) to maintain the rights and remedies of bondholders provided in this Article and any indenture, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51832. Construction Account. The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a construction account, which account is hereby created within the Solid Waste Operations Fund. The money in the account shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 10 G.C.A. §51821, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

§51833. Revenue Account. All revenue of the system and, to the extent provided by 10 G.C.A. §51805 or by Article 9 of this Chapter, the Section 30 revenue, shall be deposited to the credit of the applicable subaccount of the Revenue Account, which account is hereby created within the Solid Waste Operations Fund. The money in such subaccounts may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 10 G.C.A. §51811(j) or any lease or lease-back as provided in Article 9 of this Chapter:

(a) to pay principal or interest on any bonds or any other obligations of the department;

(b) to pay amounts due and owing under any lease or lease-back entered into pursuant to Article 9 of this Chapter;

(c) to pay any amounts due and owing under any credit provider reimbursement agreement;

(d) to pay the annual system operation and maintenance costs; and

(e) for any other purposes of the system;

all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

§51834. Investment of Money in Funds and Accounts. Moneys in the revenue account and construction account in the Solid Waste Operations Fund may be invested by the government or the trustee under any indenture, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be deposited to the credit of the fund or account from which such

interest or other earnings are derived, unless otherwise provided in an indenture.

§51835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts. Any balance remaining in any of the funds or accounts created by this Article or any indenture, including the Construction Account established pursuant to 10 G.C.A. §51832, after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system, subject to the limitations and restrictions in any indenture. After all bonds shall have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the department and shall be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the department herein or hereafter authorized by law.

§51836. Appropriation of Money in Funds and Accounts. All money in the funds and accounts created by this Article or any indenture is hereby continuously appropriated for expenditure to carry out the purposes herein and therein provided.

§51837. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the government with such banks, insurance companies or other financial institutions as *I Maga'lahen Guåhan* determines are necessary or desirable to improve the security and marketability of the

bonds. 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; provided, that any obligation of the government under any reimbursement agreement shall be payable solely from pledged revenue.

Any reimbursement agreement may include a provision that the obligations of the government under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument then in effect to which the government or the department is a party.

§51838. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this 10 G.C.A. §51838 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51839. Waiver of Immunity. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government shall not be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as

to the award of attorney fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds.

§51840. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam."

Section 3. Local Sales of Bonds. GEDA shall undertake its best efforts to cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated and approved pursuant to Section 4 of this Act, 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 issuing and repaying such bonds. Notwithstanding any other provision of law to the contrary, these bonds may be sold to employees of the Department of Public Works.

Section 4. Approval of Government of Guam Solid Waste Management System Revenue Bonds. The Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the government of revenue bonds pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated (the "Act") in one or more series or issues (together with any related reimbursement obligations); provided that the issuance, terms and conditions of the bonds and any reimbursement agreements shall have been approved by the Guam Public Utilities Commission,

and further provided that such bonds shall have, together with any lease-back obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall bear interest at such rate or rates and shall be sold for such price or prices as shall result in a yield to the bondholders not exceeding nine percent (9%) per annum, and shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 8, Chapter 51, Title 10, Guam Code Annotated.

Section 5. Enactment of the Guam Solid Waste Management System Lease Financing Act. Article 9 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 9

Solid Waste Management System Lease Financing

§51901. Short Title and Purpose. This Article may be cited as the Guam Solid Waste Management System Lease Financing Act. The purpose of this Article is to authorize the use of lease financing in addition to, in lieu of, or in conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in order to achieve the most efficient and lowest cost financing, construction, operation and maintenance of the solid waste management system.

§51902. Definitions. The following terms wherever used or referred to in this Article or in any indenture, lease or lease-back entered into pursuant hereto (except to the extent modified therein in accordance with this Article) shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Contractor" shall mean the authorized entity which shall be the signatory on the lease and the lease-back and shall be fully

responsible for carrying out the construction, financing, operation and maintenance of the solid waste facility. The contractor may cooperate with another entity or entities in any manner the contractor deems appropriate to provide for the financing, construction, operation and maintenance of the solid waste facility.

(b) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(c) "Director" means the Director of the Department of Public Works.

(d) "Lease" shall mean a ground or site lease of property from the department, the Chamorro Land Trust Commission, or other government entity, as applicable, to the Contractor.

(e) "Lease-back" shall mean the facilities lease or other lease of the property from the Contractor back to the department, over the term of which the costs of the construction, financing, operation and maintenance of a solid waste facility are amortized according to the terms agreed to between the department and the Contractor.

(f) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to secure lease-back payments.

(g) "Property" shall mean any property on which a solid waste facility is located.

(h) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(i) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(j) "Solid waste facility" shall mean all or any portion of any landfills (whether closed or open and including Ordot dump), transfer stations, recycling facilities, appurtenant equipment, and other capital facilities of the system.

(k) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(l) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department 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.

(m) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

§51903. Authorization to Enter Into Long-Term Leases. *I Maga'lahen Guåhan* may enter into a lease and lease-back on behalf of the department for the financing of the acquisition, construction, improvement, equipping, repair, renewal, replacement, or reconstruction of any solid waste facility, together with operation and maintenance of all or any portion of such solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

The costs of the construction and financing of a solid waste facility financed pursuant to this Article shall be amortized in periodic installments over the term of the lease-back period, which shall be mutually determined by *I Maga'lahen Guåhan* and the contractor, but which will not exceed forty (40) years. The lease and lease-back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the department will have the obligation to vacate the solid waste facility, and the contractor shall have the right of use and occupancy of the solid waste facility for the remainder of the term of the lease, unless new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term shall be extended for a period not to exceed the

shorter of ten (10) years beyond the original term of the lease-back or such period of time as is necessary to repay in full any financing arranged pursuant to this Article. The department shall pay the operation and maintenance costs of the solid waste facility on a periodic basis as incurred by the contractor on terms to be agreed to in the lease-back for each solid waste facility.

It is hereby declared that the system and each solid waste facility is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Obligations incurred by the government pursuant to this Article that are payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Obligations incurred by the government pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the lease-back.

§51904. Procurement. Subject to the approval of I Liheslaturan Guåhan, the government of Guam or the department may solicit proposals, in compliance with the Guam Procurement Law, for the financing and construction of the solid waste facility, together

with the operation and maintenance of the solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

§51905. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article.

§51906. Assignments. To facilitate the purposes of this Article and to provide security for the bondholders, the contractor may assign, with the consent of the department, the lease and the lease-back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of certificates of participation in lease-back payments or other financial instruments to provide the financing for the solid waste facility.

§51907. Use of Tax-Exempt Financing. To minimize the financing cost to the department, all financing utilized by the contractor to fund the construction, operation and maintenance of a solid waste facility shall be through tax-exempt obligations, if a mechanism to do so is available. The purpose for this requirement is to assure that the department pays the lowest possible interest rate so that the cost of financing the construction, operation and maintenance of a solid waste facility to the department, amortized through the lease-back payments from the department to the contractor, will be lower than regular commercial rates.

§51908. Lease-Back May be Secured by Revenue of the System. A lease-back may provide that payment of obligations thereunder shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded, except to the extent that such instrument conveys an interest in land or improvements thereon.

§51909. Lease-Back May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment by the department of obligations under any lease-back entered into pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created or to be created pursuant to Article 8 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee,

depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Lease-back obligations that are payable by the department pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51910. Payment of Lease-back Obligations from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of obligations due under a lease-back entered into pursuant to the provisions of this Article.

§51911. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be leased by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The

government also is fully committed to ensuring that the holders of certificates of participation or other financial instruments are protected to ensure full and timely payment of obligations due under the lease-back. In accordance with prior similar situations and precedents, the government hereby pledges, while any obligations are owing on any lease-back entered into pursuant to this Article, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with a contractor in accordance with this Article, (b) to maintain the rights and remedies of a contractor provided in this Article and any lease or lease-back, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51912. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility. The lease-back may require that the contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the improvements, on-site infrastructure, construction, permits and financing associated with the completion of a solid waste facility, except as expressly provided by the lease-back for costs, expenses and fees previously incurred by the government. The lease-back may require that the contractor be responsible for the ongoing operation and maintenance of the solid waste facility during the term of the lease-back.

§51913. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the department with such banks, insurance companies or other

financial institutions as it determines are necessary or desirable to improve the security and marketability of the lease-back obligations. 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 lease-back obligations and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the department under any reimbursement agreement shall be payable solely from pledged revenue. Any reimbursement agreement may include a provision that the obligations of the department under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument to which the government or the department is a party.

§51914. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due under any lease or lease-back, or for any other liability arising in connection with a lease or lease-back; provided, however, that nothing in this 10 G.C.A. §51914 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51915. Rules, Regulations and Restrictions. The department may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Article.

§51916. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

§51916. Severability. If any provision of this Article 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 Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable."

Section 6. Approval of Lease and Lease-Back. The Legislature, *I Liheslaturan Guåhan*, hereby approves the execution and delivery of the lease and lease-back by the government pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated; provided that the terms and conditions of the lease and lease-back shall have been approved by the Guam Public Utilities Commission, and further provided that the certificates of participation or other financial instruments shall have, together with any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall result in a yield to the holders of the certificates of participation or other financial instruments not exceeding nine percent (9%) per annum, and shall be entered into for the purposes and subject to the requirements and limitations provided in Article 9, Chapter 51, Title 10, Guam Code Annotated.

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY

***I Mina' Trenta na Liheslaturan Guåhan* • 30th Guam Legislature**

238 Archbishop F.C. Flores St., DNA Bldg., Suite 701A, Hagatña, Guam 96910
Tel: (671) 969-1495/6 • Fax: (671) 969-1497 • Email: aguon4guam@gmail.com

FRANK B. AGUON, JR.
SENATOR, CHAIRMAN

ADOLFO B. PALACIOS, SR.
SENATOR , VICE CHAIRMAN

BENJAMIN J.F. CRUZ
VICE SPEAKER

TINA ROSE MUÑA BARNES
LEGISLATIVE SECRETARY

THOMAS C. ADA
SENATOR

JUDITH P. GUTHERTZ
SENATOR

RORY J. RESPICIO
SENATOR

FRANK F. BLAS, JR.
SENATOR

TELO TAITAGUE
SENATOR

RAY TENORIO
SENATOR

February 2, 2009

The Honorable Felix P. Camacho
Governor of Guam
P.O. Box 2950
Hagatña, Guam 96910

Dear Governor Camacho,

Buenas yan Hafa Adai!

Please be advised that the Committee on Economic Development, Health & Human Services, and Judiciary will be conducting a Public Hearing on **Monday, February 09, 2009 beginning at 9:00 am** in the Public Hearing Room.

On the agenda will be the following:

- **Appointment of Dr. David LG Shimizu** as Director of Department of Mental Health and Substance Abuse
- **Appointments of Mr. Francis P. Camacho and Mr. Arnold C. Jose** to serve as Member of the Guam Economic Development Authority Board
- **Bill No. 51 (COR)** – Relative to issuance of revenue bonds for Solid Waste Management Systems…and to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs

I invite the participation of representatives of your administration at this Public Hearing. Please call my office if you have any questions.

Un Dangkulo' Na Si Yu'us Ma'ase'.

Respectfully,

SENATOR FRANK B. AGUON, JR.
I Mina' Trenta na Liheslaturan Guåhan
(30th Guam Legislature)

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY

***I Mina' Trenta na Liheslaturan Guåhan* • 30th Guam Legislature**

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SENATOR

TELO TAITAGUE
SENATOR

RAY TENORIO
SENATOR

February 2, 2009

MEMORANDUM

TO: Honorable Senators
Committee Members
I Mina' Trenta na Liheslaturan Guåhan

FROM: **SENATOR FRANK B. AGUON, JR.**
Chairman

SUBJECT: Notice of Public Hearing

Buenas yan Hafa Adai!

Please be advised that the Committee on Economic Development, Health & Human Services, and Judiciary will be conducting a Public Hearing on **Monday, February 09, 2009 beginning at 2:00 pm** in the Public Hearing Room.

On the agenda with be the following:

- Appointment of Dr. David LG Shimizu as Director of Department of Mental Health and Substance Abuse

- Appointments of Mr. Francis P. Camacho and Mr. Arnold C. Jose to serve as Member of the Guam Economic Development Authority Board

- Bill No. 51 (COR) – Relative to issuance of revenue bonds for Solid Waste Management Systems...and to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs

Please call my office if you have any questions.

Un Dangkulo' Na Si Yu'us Ma'ase'.

Cc: Sergeant-at-Arms/Protocol/AV

IMPORTANT NOTICE Inbox x

hide details Feb 3 (2 days ago) Reply

from **Frances Lizama** <lizama.frances@gmail.com>
to "SEN. ADA, Thomas C." <tom@senatorada.org>,
"SEN. BLAS, Frank F., Jr." <frank.blasjr@gmail.com>,
"SEN. CALVO, Eddie J.B." <sencalvo@gmail.com>,
"SEN. CRUZ, Benjamin J.F." <cjbjcruz@aol.com>,
"SEN. ESPALDON, James V." <senator@espaldon.com>,
"SEN. GUTHERTZ, Judith P." <judiguthertz@pticom.com>,
"SEN. MUNA BARNES, Tina Rose" <tinamunabarnes@gmail.com>,
"SEN. PALACIOS, Adolpho B., Sr." <ABPalacios@gmail.com>,
"SEN. PANGELINAN, ben" <ctznben@ite.net>,
"SEN. RECTOR, Matt" <matt@mattrector.com>,
"SEN. RESPICIO, Rory J." <roryforguam@gmail.com>,
"SEN. TAITAGUE, Telo" <senatortelo@gmail.com>,
"SEN. TENORIO, Ray" <ray@raytenorio.com>,
"SEN. WON PAT, Judi" <speaker@judiwonpat.com>
cc James Castro <jamespcastro@gmail.com>,
"David L. Manning" <dmanninggbb@gmail.com>,
sgtarms@guamlegislature.com,
"MENDIOLA, Stephanie - Sen. Respicio's Ofc." <stephaniemendiola@gmail.com>
date Tue, Feb 3, 2009 at 12:02 PM
subject IMPORTANT NOTICE
mailed-by gmail.com

**** IMPORTANT NOTICE ****

There is a correction on the time of the Public Hearing scheduled for **Monday, February 9, 2009**. The correct time of the public hearing **IS 9:00 AM**. Please disregard the time stated on the memo that was sent out on Monday, Feb. 2, 2009 as it was an error. I apologize for the inconvenience.

–
FRANCES S. LIZAMA
Office of Senator Frank B. Aguon, Jr.
30th Guam Legislature
Committee on Economic Development,
Health and Human Services, and Judiciary
232 Archbishop F.C. Flores St.
DNA Bldg (old PDN), Suite 701A
Hagatna, Guam 96910
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Market Update

February 2009

Banc of America Securities LLC

Public Finance Group

Bank of America

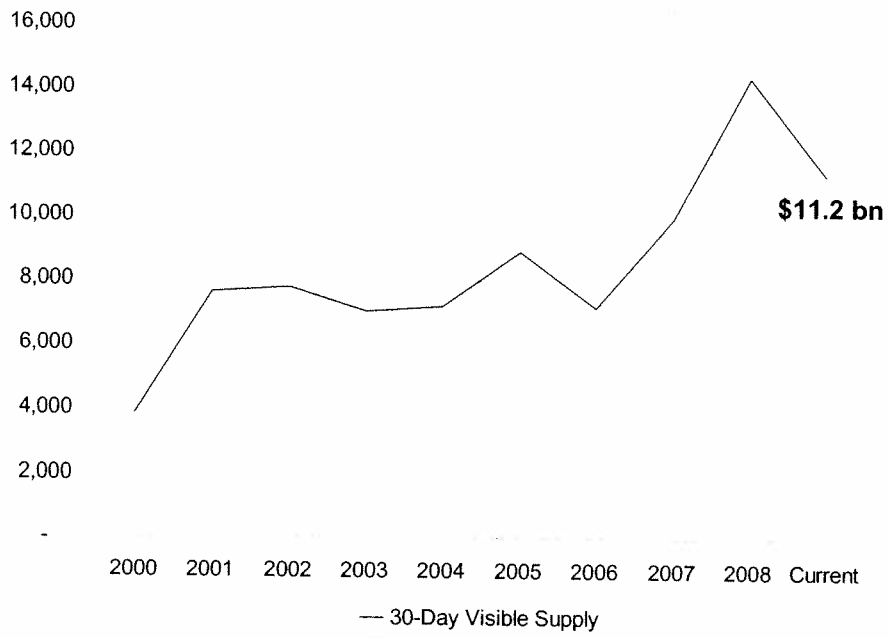
Municipal Market Access

Market access continues to be limited, particularly for non-investment grade issuers

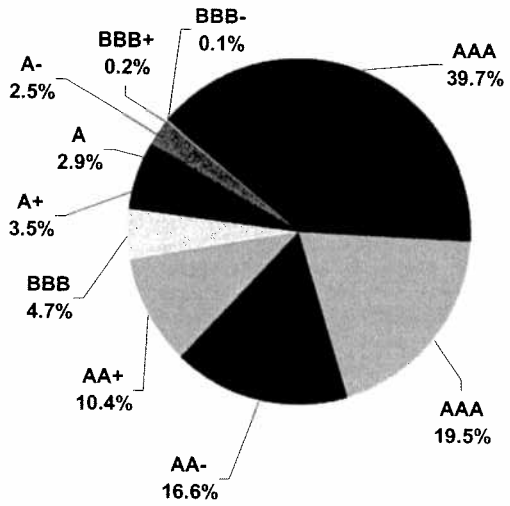
- Total **municipal volume in 2008 fell 9% to $391 billion of issuance versus 2007**
- Recent market disruption has forced many issuers to delay and/or downsize transactions
- Market issuance continues to be dominated by highly rated G.O. bonds and essential service revenue bonds
- **No non-investment grade issuers have entered the market since the year began** and nearly 95% of all issuers entering the market have been rated "A" or above[a]

(In $ Millions)

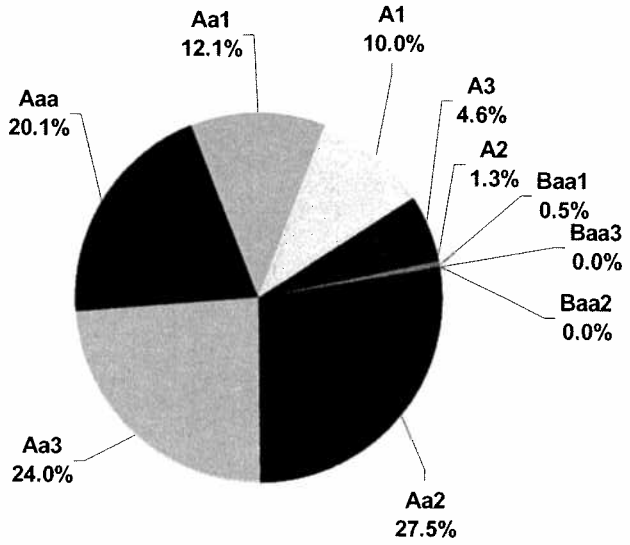
VISIBLE SUPPLY (2000 – TODAY)



ISSUANCE BY S&P CREDIT RATING (YTD) [a]



ISSUANCE BY MOODY'S CREDIT RATING (YTD)[a]



Source: Thomson Financial
(a): Excludes transactions that are not rated

Bank of America

Interest Rate Trends

Interest Rates and Credit Spreads Recently Reached Three-Year Highs

- Rates continue to rise, especially for non-investment grade issuers
  - Although AAA MMD has begun to fall, credit spreads have resulted in higher borrowing costs for lower-grade issuers
- BBB G.O. interest rates reached 7.09% as of Feb. 2, 2009
- Interest rates for bonds rated BBB and lower face even higher interest rates

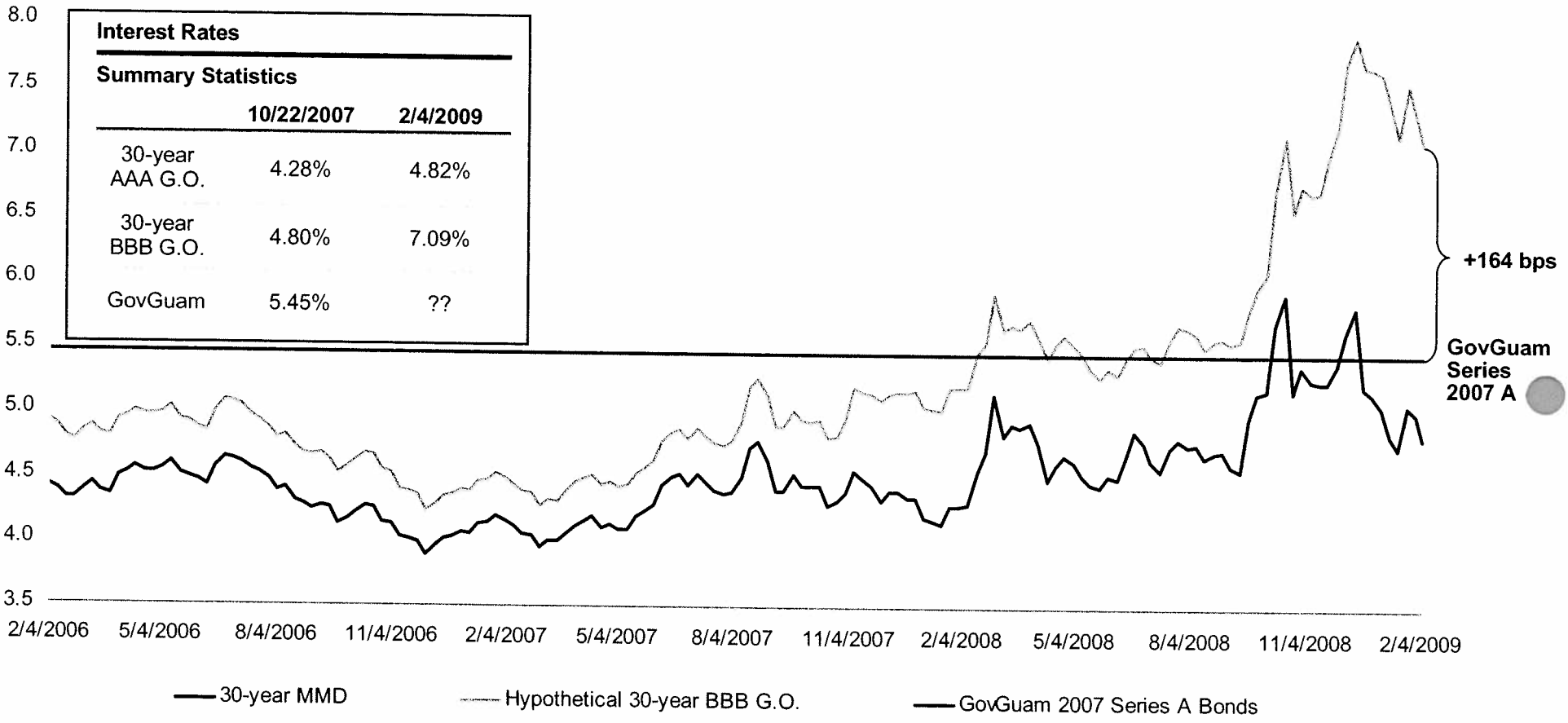
(%)

30-YEAR MMD & HYPOTHETICAL 30-YEAR BBB G.O.

Interest Rates

Summary Statistics

	10/22/2007	2/4/2009
30-year AAA G.O.	4.28%	4.82%
30-year BBB G.O.	4.80%	7.09%
GovGuam	5.45%	??



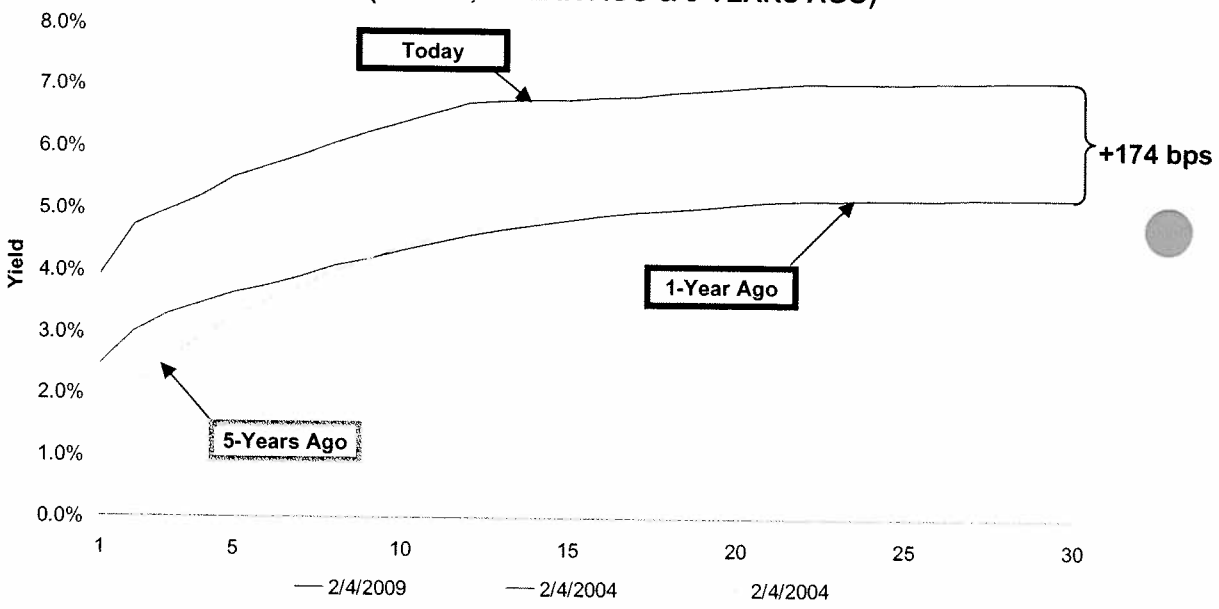
Source: Thomson Financial

Bank of America

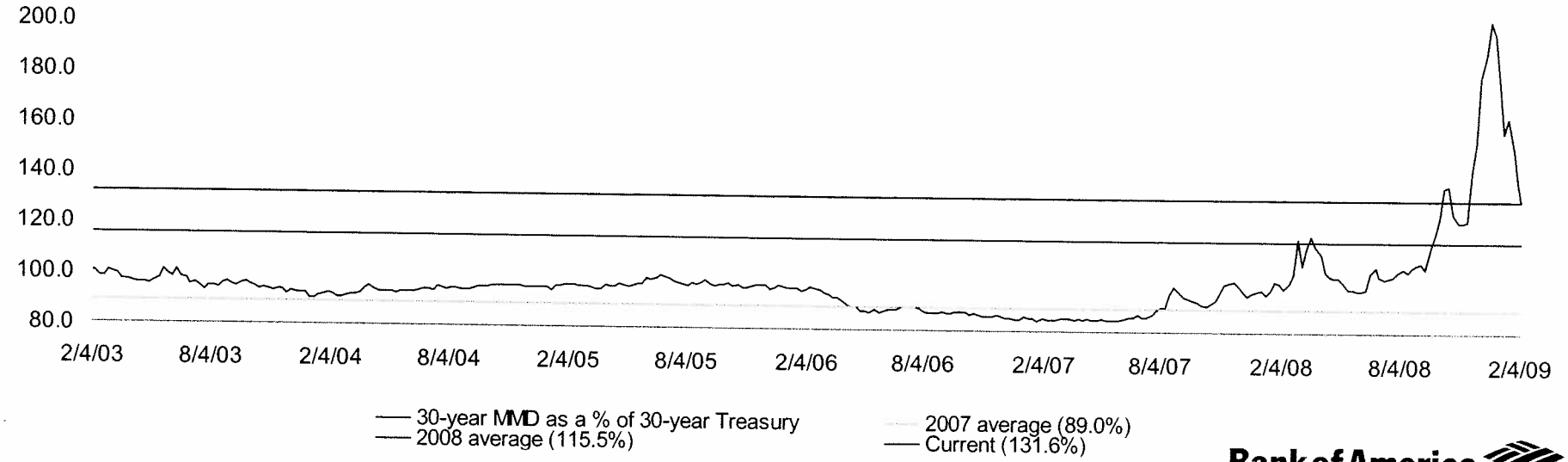
Interest Rate Trends (cont.)

- The yield curve for lower grade issuers has continued to steepen and shift upward, reflecting investors' continued focus on liquidity and credit
  - For a 30-year maturity, hypothetical BBB G.O. interest rates have **risen 174 basis points in one year**
- Munis have continued to underperform relative to Treasuries and were most recently at 131.6% of Treasuries
  - The decoupling between treasuries and municipals is at historical highs

BBB G.O. YIELD CURVES (TODAY, 1-YEAR AGO & 5-YEARS AGO)



30-YEAR AAA MMD AS % OF 30-YEAR TREASURY



Source: Thomson Financial as of 2/4/2009

Bank of America

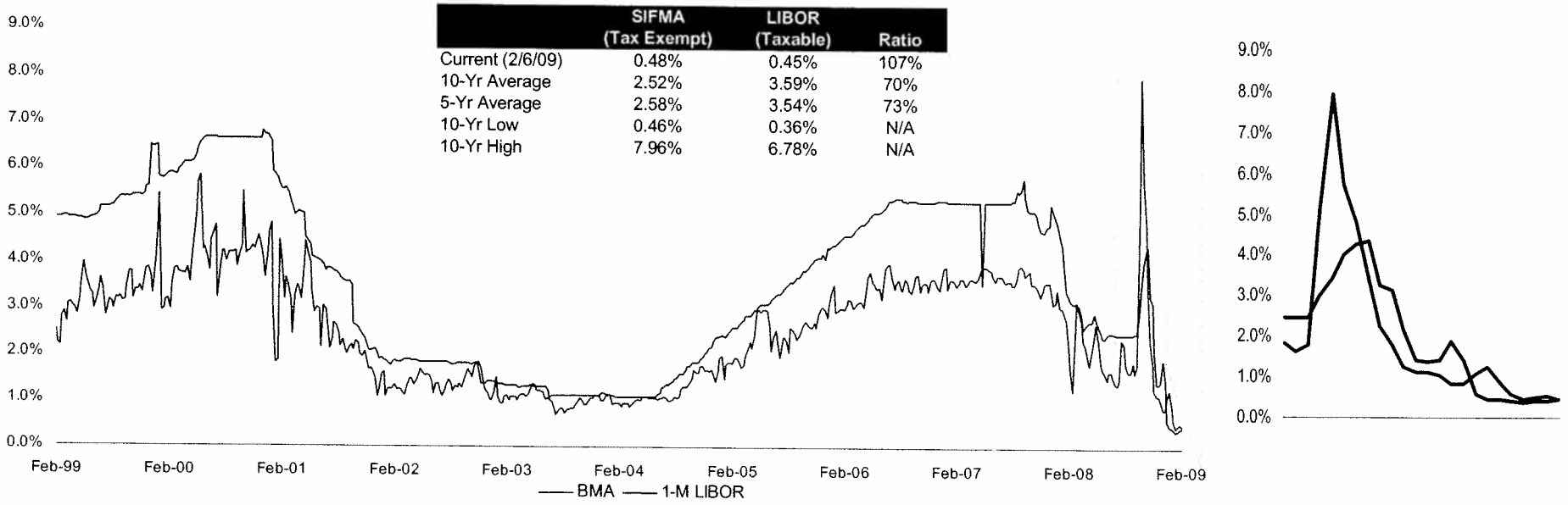
The Short-Term Market

The credit crisis caused short-term tax-exempt rates to trade at all time highs

(%)

SIFMA V. 1-MONTH LIBOR (10-YEAR HISTORY)

	SIFMA (Tax Exempt)	LIBOR (Taxable)	Ratio
Current (2/6/09)	0.48%	0.45%	107%
10-Yr Average	2.52%	3.59%	70%
5-Yr Average	2.58%	3.54%	73%
10-Yr Low	0.46%	0.36%	N/A
10-Yr High	7.96%	6.78%	N/A



UNPRECEDENTED SPIKE IN SIFMA WAS A RESULT OF:

- Lehman Bankruptcy: Approximately $30B VRDO remarketings needed to be reassigned
- Reserve Primary Money Market Fund "broke the buck" raising concern about safety of other financial institutions. This resulted in dramatic outflows from all money market funds
- 9/15 tax date and 9/30 quarter end seasonality
- Balance sheet pressures on remarketing agents

RESULTING GOVERNMENT INTERVENTION INCLUDED:

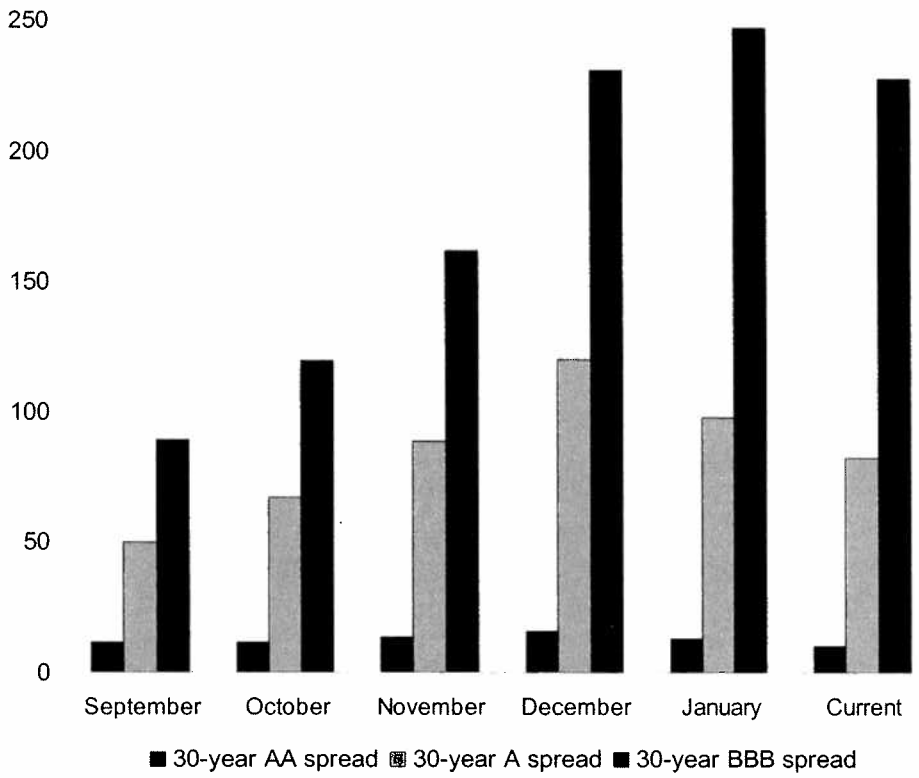
- Guarantee on existing Money Market Funds
- Feds actively engaging in CP market to ensure liquidity
- Action resulted in a quick normalization of this market, though still more focus on credit and structure than there was in the past

Source: Thomson Financial, Bloomberg as of 2/5/2009

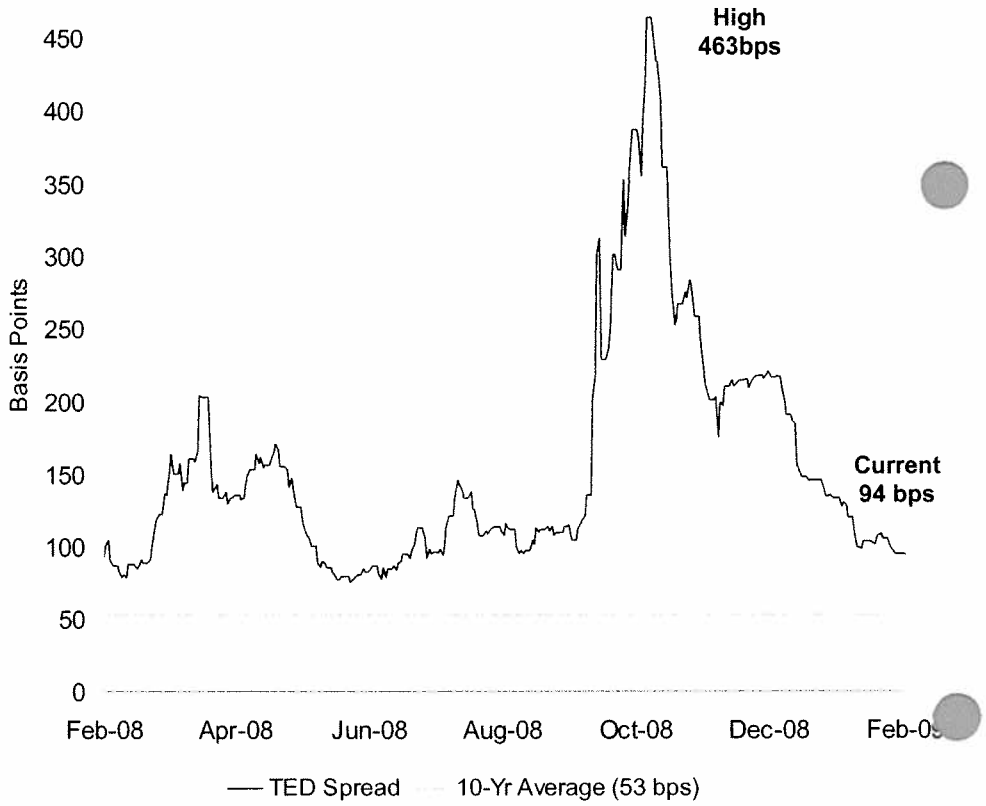
Credit Markets

Conditions have improved since fall 2008, but credit markets remain challenged

30-YEAR CREDIT SPREADS TO AAA MMD (MONTHLY AVERAGES)



TED SPREAD – 3-MONTH TREASURY V. 3-MONTH LIBOR



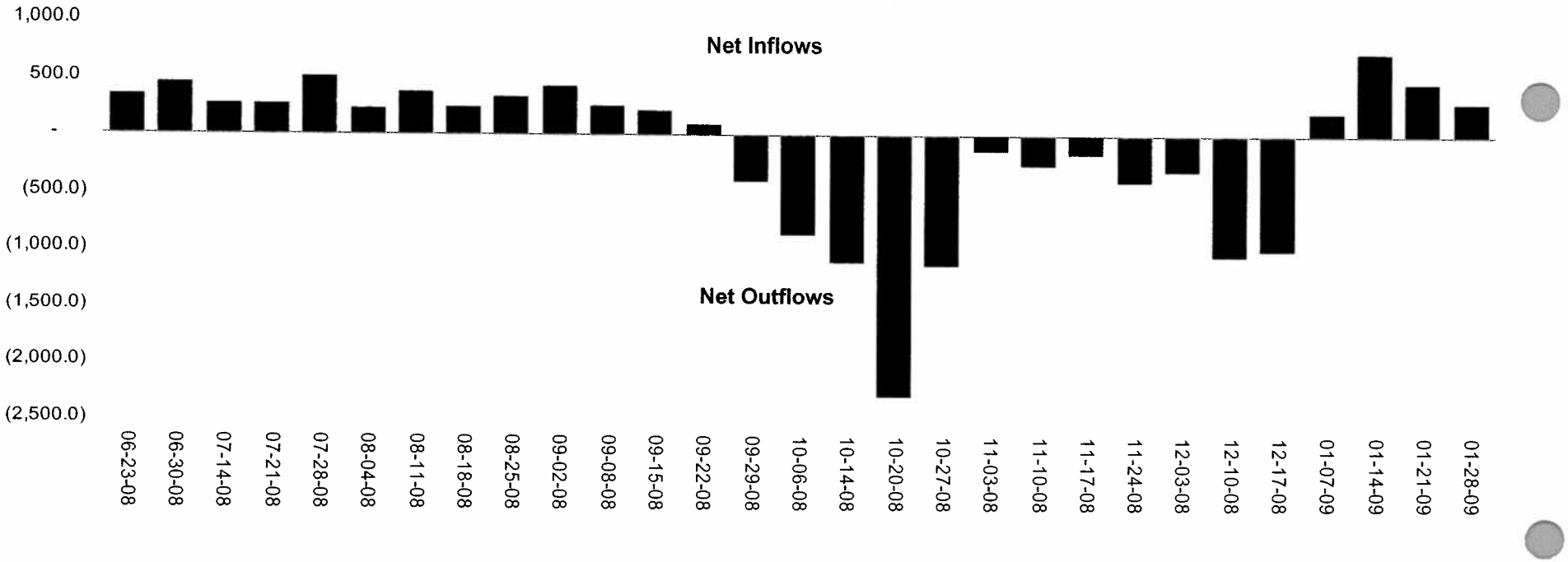
- The interest rate "penalty" lower-grade credits have faced has increased dramatically
  - **Credit spreads for "BBB" issuers are currently at 227 basis points and likely to differ greatly on an issue-by-issue basis**
  - Investors are increasingly focused on the underlying credit of potential issuers
- The TED spread has been extremely volatile, indicating the uncertainty and distortion the credit markets have experienced
- Recent Federal Government action has had some positive effect on credit markets

Source: Thomson Financial, Bloomberg as of 2/5/2009

Municipal Bond Fund Flows

(In $ Millions)

MUNICIPAL BOND FUNDS
Net Flows



- Municipal bond mutual funds reported more than $10 billion in outflows during a 15 week period beginning in September, including $2.72 billion in December
  - These outflows put heavy pressure on the secondary market
- High yield municipal funds (typical buyers of GovGuam bonds) have been forced to delever and reported **$3.3 billion in net outflows in 2008**
  - Selling amongst these funds has been rampant since July
  - **High-yield municipal fund total assets were down to $32.3 billion from $54.5 billion at the end of 2007, a nearly $20 billion decline**
- A cautious optimism has emerged following four consecutive weeks of FUND inflows totaling $1.7 billion
  - **High yield municipal funds have enjoyed $322 million in inflows over the last two weeks**

Source: Bond Buyer, Wall Street Journal

Relief Possible Under the American Recovery and Reinvestment Act

A Number of Programs Have Been Proposed to Help Municipal Market Issuers

- The Capital Purchase Program has helped infuse capital into U.S. financial institutions
- Thus far, TARP funds have not been used to directly benefit municipal participants
- However, municipal market issues have recently begun to receive national attention in both the Senate and House
- The House Ways and Means Committee approved a **$275 billion package of economic stimulus tax measures that would expand several bond provisions that could help municipal issuers**

FEDERAL MUNI BOND INSURER OPTION

- The proposed program would establish a federal insurance program that would back municipal debt sold by state and local issuers
- Some have proposed the idea of a "federal insurer-of-last-resort for the municipal market"
- The model that such an insurance program would follow is not yet clear
- **If enacted, the program would help replace the monoline bond insurers who have become increasingly irrelevant in today's marketplace**

TAX CREDIT BOND OPTION

- The proposed program would allow municipal issuers to sell taxable debt in 2009 and 2010 in exchange for a cash subsidy from the federal government
- Taxable bonds issued after that would provide investors with a 35% tax credit (from the government)
- **If enacted, the program would allow tax-exempt issuers to take their debt to the larger taxable market to find new investors**

OTHER POTENTIAL PROGRAMS

- **Commercial Purchase Paper Facility:** Potential for the government to develop a commercial paper purchase facility to buy municipal debt
- **Bank Deductibility Provision**: A small-issuer provision would permit banks to buy bonds from nonprofit organizations that borrow less than $30 million annually
- **AMT Penalty:** Potential to allow tax-exempt bonds issued through 2010 to be exempt from the alternative minimum tax

Source: Bond Buyer, Wall Street Journal, the New York Times

Outlook

The market for non-investment grade municipal bonds remains untested and uncertain

Factor	Discussion
Flexibility	• Guam must be ready to change as the market changes • The need to alter structures, security, interest rates, and other financing characteristics is essential • Interest rates remain volatile and **it is uncertain as to when they will return**
Borrowing Costs	• Borrowing costs for all issuers (and particularly non-investment grade issuers) have risen • Interest rates for a hypothetical BBB issuer have risen by 138 basis points to 7.09% from their 5-year average • **Borrowing costs threaten to remain above historical averages if municipal supply continues to outweigh demand** • **Issuers looking to raise money immediately will be subject to higher, market clearing costs**
Investor Appetite	• Retail investors (who typically prefer high-grade credits) continue to drive demand in the market • **High-yield municipal bond funds were down an average of 25.7% in 2008** • **Many high-yield funds have unloaded their supply of non-investment grade bonds and taken cash positions, further putting pressure on interest rates issuers must pay** • Institutional investors have slowly begun to re-enter the market, however, certain investors (property casualty companies, certain hedge funds, etc.) may never re-enter
Credit Spreads	• Focus on underlying credit quality has become increasingly important • The use of insurance has become a less viable option • **The importance of fiscal policy controls and overall financial health will be essential to ensure investors of Guam's credit quality now and in the future**
Volatility	• The municipal market has become increasingly volatile • Accessing the market requires a willingness to accept the unknown • **Future interest rates and market access remain uncertain** • Guam must remain flexible in order to maximize potential opportunities



These materials have been prepared by Banc of America Securities LLC ("BAS") for the BAS client or potential client to whom such materials are directly addressed and delivered (the "Company") in connection with an actual or potential mandate or engagement and may not be used or relied upon for any purpose other than as specifically contemplated by a written agreement with BAS. These materials are based on information provided by or on behalf of the Company and/or other potential transaction participants, from public sources or otherwise reviewed by BAS. BAS assumes no responsibility for independent investigation or verification of such information and has relied on such information being complete and accurate in all material respects. To the extent such information includes estimates and forecasts of future financial performance prepared by or reviewed with the managements of the Company and/or other potential transaction participants or obtained from public sources, BAS has assumed that such estimates and forecasts have been reasonably prepared on bases reflecting the best currently available estimates and judgments of such managements (or, with respect to estimates and forecasts obtained from public sources, represent reasonable estimates). No representation or warranty, express or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation, whether as to the past, the present or the future. These materials were designed for use by specific persons familiar with the business and affairs of the Company and are being furnished and should be considered only in connection with other information, oral or written, being provided by BAS in connection herewith. These materials are not intended to provide the sole basis for evaluating, and should not be considered a recommendation with respect to, any transaction or other matter. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by BAS (or any affiliate) to provide or arrange any financing for any transaction or to purchase any security in connection therewith. BAS assumes no obligation to update or otherwise revise these materials. These materials have not been prepared with a view toward public disclosure under state or federal securities laws or otherwise, are intended for the benefit and use the Company, and may not be reproduced, disseminated, quoted or referred to, in whole or in part, without the prior written consent of BAS. These materials may not reflect information known to other professionals in other business areas of BAS and its affiliates.

BAS has adopted policies and guidelines designed to preserve the independence of its research analysts. BAS' policies prohibit employees from offering research coverage, a favorable research rating or a specific price target or offering to change a research rating or price target as consideration for or an inducement to obtain business or other compensation.

BAS and its affiliates comprise a full service securities firm and commercial bank engaged in securities trading and brokerage activities as well as providing investment banking, asset and investment management, financing and financial advisory services and other commercial and investment banking services and products to a wide range of corporations and individuals, domestically and offshore, from which conflicting interests or duties may arise. In the ordinary course of these activities, BAS or its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own account or the accounts of customers, in debt or equity securities or loans of the Company, potential counterparties, or any other company that may be involved in a transaction. Products and services that may be referenced in the accompanying materials may be provided through affiliates of BAS. BAS is a subsidiary of Bank of America Corporation, the parent company of Bank of America, N.A. and other banks. BAS is a broker-dealer registered with the Securities and Exchange Commission and is a member of the New York Stock Exchange, Inc., the National Association of Securities Dealers, Inc. and the Securities Investor Protection Corporation.

BAS is required to obtain, verify and record certain information that identifies the Company, which information includes the name and address of the Company and other information that will allow BAS to identify the Company in accordance with the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) and such other laws, rules and regulations.

BAS and its affiliates do not provide tax advice. Accordingly, any statements contained herein as to tax matters were neither written nor intended by BAS or its affiliates to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on such taxpayer. If any person uses or refers to any such tax statement in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the statement expressed herein is being delivered to support the promotion or marketing of the transaction or matter addressed and the recipient should seek advice based on its particular circumstances from an independent tax advisor. Notwithstanding anything that may appear herein or in other materials to the contrary, the Company shall be permitted to disclose the tax treatment and tax structure of a transaction (including any materials, opinions or analyses relating to such tax treatment or tax structure, but without disclosure of identifying information or, except to the extent relating to such tax structure or tax treatment, any nonpublic commercial or financial information) on and after the earliest to occur of the date of (i) public announcement of discussions relating to such transaction, (ii) public announcement of such transaction or (iii) execution of a definitive agreement (with or without conditions) to enter into such transaction; provided, however, that if such transaction is not consummated for any reason, the provisions of this sentence shall cease to apply.

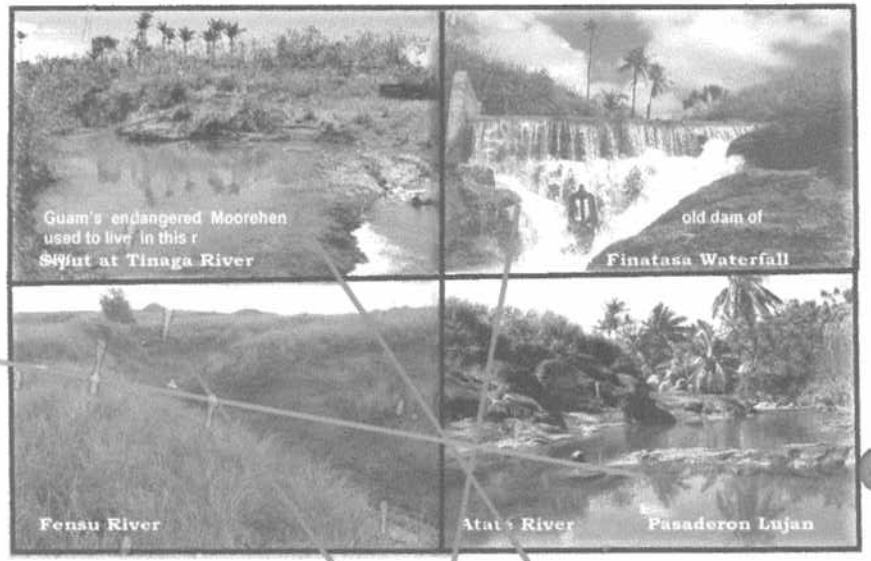
SOLID WASTE TRANSACTIONS (SEPTEMBER 2008 - JANUARY 2009)

Sale Date	Amount of Issue ($ in Is	State	Issuer	Issue Description	Corporate or Institutional Backer	Coupon Type	Final Maturity	Coupon of Final Maturity	Security Type	Tax Status	Moodys (LT)	Moody's (ST)	S&P (LT)	S&P (ST)	Fitch (LT)	Fitch (ST)
9/5/2008	15.905	NJ	Gloucester Co Improvement Auth	Solid Waste Revenue Bonds	NA	F	2030	4.50%	RV	Tax-Exempt	Aa3	NR	AA+	NR	NR	NR
10/15/2008	18.025	KY	Kentucky Economic Dev Fin Auth	Var/Fix Rate Solid Wst Disp Bonds	Republic Services Inc	VS	2028	N/A	RV	AMT	NR	NR	AAA	A-1+	NR	NR
10/22/2008	17.600	GA	Atkinson-Coffee Co Joint Dev Auth	Solid Waste Disposal Rev Bonds	NA	VS	2033	N/A	RV	Tax-Exempt	NR	NR	NR	NR	AA-	NR
11/4/2008	25.500	CA	California Poll Control Fin Auth	Solid Waste Diposal Revenue Bonds	Burrtec Waste Group Inc	VS	2038	N/A	RV	Tax-Exempt	NR	NR	NR	NR	AA-	F-1+
11/5/2008	4.235	CA	California Poll Control Fin Auth	Solid Wste Disposal Rev Bonds	Upper Valley Disposal Service	VS	2028	N/A	RV	Tax-Exempt	NR	NR	NR	NR	A+	F-1
11/10/2008	2.000	MD	Maryland Economic Dev Corp	Solid Waste Revenue Bonds	NA	VS	2028	N/A	RV	AMT	NR	NR	NR	NR	N	NR
11/12/2008	71.750	CA	California Municipal Fin Auth	Solid Waste Revenue Bonds	Allied Waste North America Inc	VS	2017	N/A	RV	Tax-Exempt	NR	NR	AA	A-1+	NR	NR
11/13/2008	131.565	FL	Palm Beach Co Solid Waste Auth	Improvement Revenue Bonds	NA	F	2028	5.50%	RV	Tax-Exempt	Aa3	NR	AA	NR	NR	NR
11/19/2008	6.900	NJ	Burlington Co Bridge Commission	Project Notes	NA	F	2009	3.00%	RV	Tax-Exempt	NR	NR	NR	NR	NR	NR
11/19/2008	3.600	AZ	Maricopa Co Industrial Dev Auth	Solid Waste Disposal Rev Bonds	NA	VS	2033	N/A	RV	Tax-Exempt	NR	NR	AA-	NR	NR	NR
11/20/2008	19.975	OH	Central Ohio Solid Waste Auth	Ltd Tax General Obligation Bonds	NA	F	2028	5.20%	GO	Tax-Exempt	Aa1	NR	AAA	NR	NR	NR
11/26/2008	0.017	OH	Brush Creek Twp-Ohio	Dump Truck Acquisition Bonds	NA	F	2009	5.00%	GO	Tax-Exempt	NR	NR	NR	NR	NR	NR
12/3/2008	34.350	MN	East Grand Forks-Minnesota	Solid Waste Disp Rev Ref Bonds	NA	VS	2021	N/A	RV	Tax-Exempt	NR	NR	NR	NR	AA-	F-1+
12/9/2008	34.000	AL	Wilsonville Industrial Dev Board	Solid Waste Disposal Rev Bonds	Alabama Power Co	VL	2030	N/A	RV	AMT	NR	NR	NR	NR	NR	NR
12/12/2008	27.535	NY	Rockland Co Solid Waste Mgmt Auth	General Obligation Bonds	NA	F	2033	6.50%	GO	Tax-Exempt	Aa2	NR	AAA	NR	NR	NR
12/17/2008	50.000	MA	Massachusetts Dev Finance Agcy	Solid Waste Development Rev Bonds	NA	VS	2042	0.00%	RV	Tax-Exempt	NR	NR	NR	NR	NR	NR
12/17/2008	79.450	OH	Ohio Air Quality Dev Authority	Air Quality Revenue Bonds	Ohio Power Company	F	2041	7.13%	RV	AMT	A3	NR	BBB	NR	BBB+	NR

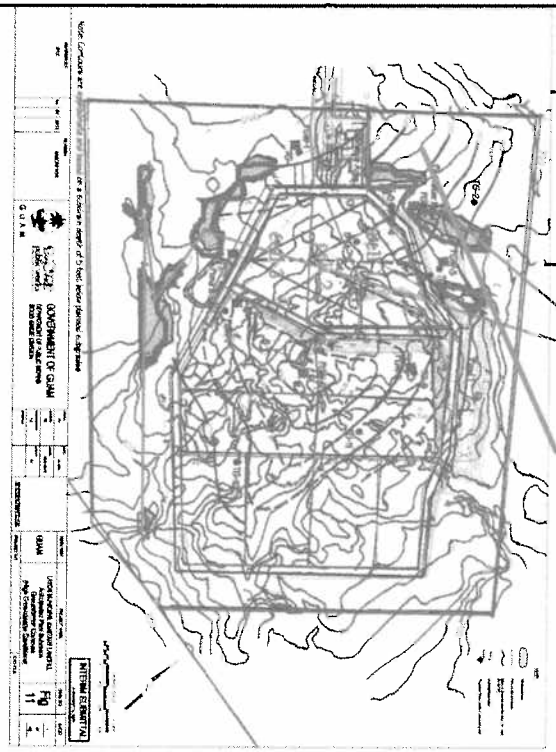
Source: Thomson Financial



This is the first f ootprint of the proposed landfill in Dandan and also sh ifting and revising the design due to the wetlands and rivers in the areas.



INALAHAN RIVERS TINAGA, FENSU, FINATASA ABD ATATE



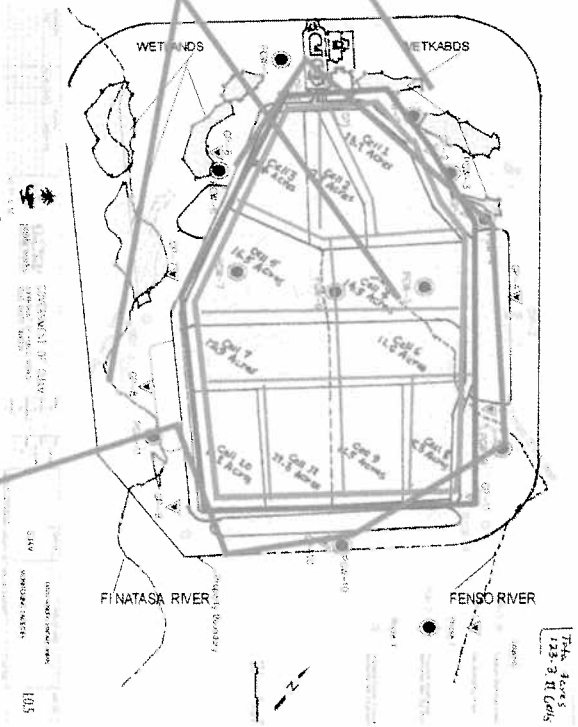
TG ENGINEERRING VERSION OF THE DUM P TO BE CONSTRUCTED ON TOP OF THE INALAHAN WATERSHED (IN THE WETLANDS AND RIVERS)

INALAHAN WATERSHED
TINAGA AND FINATASA
WETLANDS

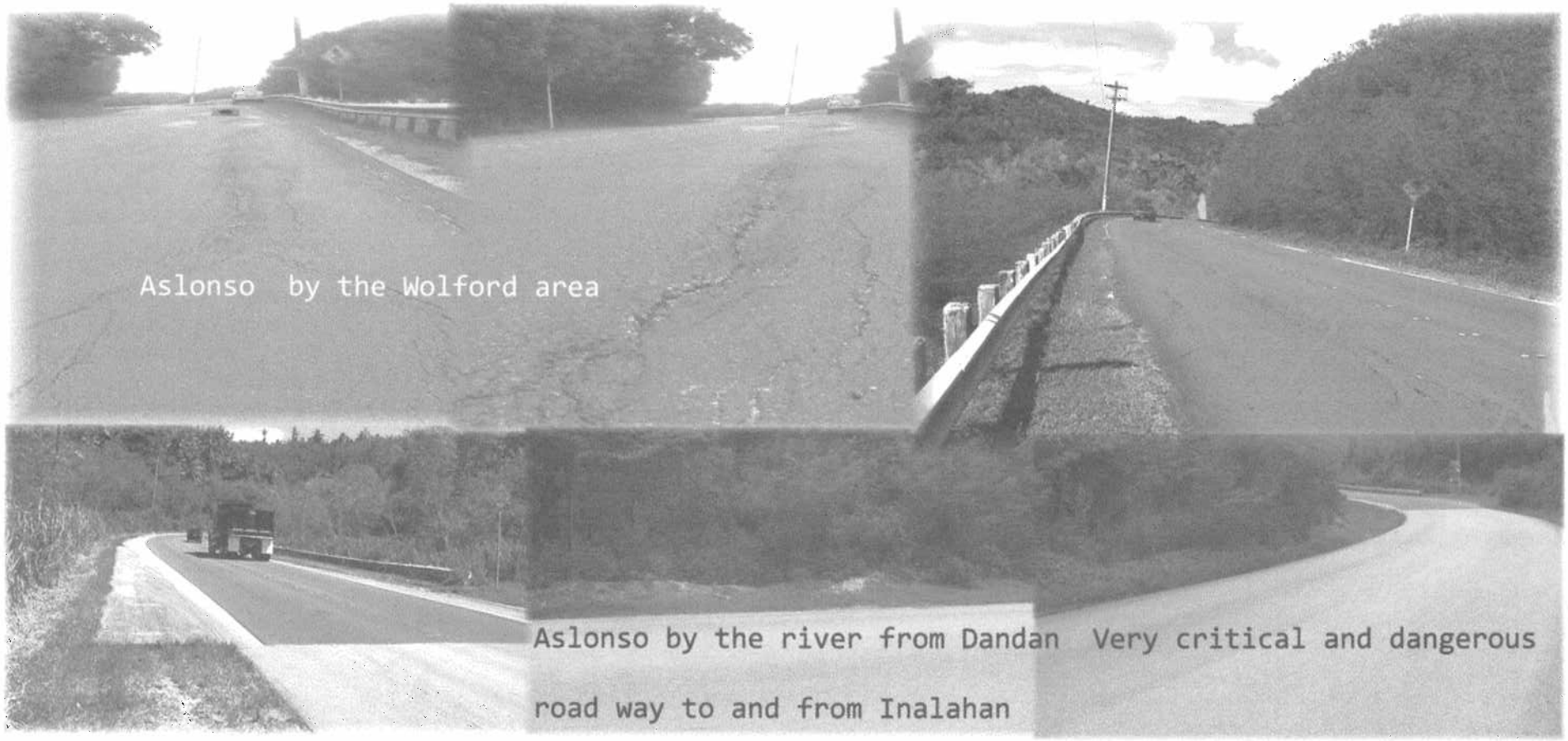
Groundwat er C ont our s Drainage

Groundwat er Monit oring Syst em

Prepared by Jose S,N. Chargualaf.. Feb 8, 2009



Layon Muncipal Santary Landfill/Anticipated Post Subdrain/Groundwater Contours (High Groundwater Conditions) Enchanced Version for Details by Jose Chargualaf Feb. 5, 2009 (Its A "Dump" Not A Landfill)



Aslonso by the Wolford area

Aslonso by the river from Dandan Very critical and dangerous road way to and from Inalahan

SENATOR FRANK B. AGUON, JR., Chairman
COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY
I Mina'Trenta na Liheslaturan Guahan (30th Guam Legislature)
238 Archbishop F.C. Flores St., DNA Bldg., Ste 701A, Hagatna, Guam 96910
Tel: (671) 969-1495/6 • Fax: (671) 969-1497 • Email: aguon4guam@gmail.com

NOTICE OF PUBLIC HEARING

MONDAY, FEBRUARY 09, 2009, 9:00 AM
GUAM LEGISLATURE
PUBLIC HEARING ROOM

Appointments of

Dr. David L.G. Shimizu as Director
Department of Mental Health and Substance Abuse

Mr. Francis P. Camacho and Mr. Arnold C. Jose to serve as a Members of Guam Economic Development Authority

Bill No. 51 (COR)
Relative to issuance of revenue bonds for Solid Waste Management Systems...and to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs.

Testimonies may be submitted in advance to the Office of Senator Frank B. Aguon, Jr., 238 Archbishop F.C. Flores St., DNA Bldg., Suite 701A, Hagatña, GU 96910, or emailed to aguon4guam@gmail.com.

Individuals requiring special accommodations or services, or for further information, please contact Natasha Aguon or Frances Lizama at 969-1495/6.

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SCOREBOARD

▲ Continued from Page 34

Northeast Division	W	L	OT	Pts	GF	GA
Boston	36	8	6	78	175	112
Montreal	28	15	6	62	153	140
Buffalo	26	19	5	57	149	140
Toronto	19	23	8	46	149	182
Ottawa	17	23	7	41	112	135
Southeast Division						
	W	L	OT	Pts	GF	GA
Washington	31	15	4	66	159	143
Carolina	25	21	5	55	128	147
Florida	23	18	8	54	138	138
Tampa Bay	17	23	10	44	129	157
Atlanta	17	29	5	39	148	181
WESTERN CONFERENCE						
Central Division						
	W	L	OT	Pts	GF	GA
Detroit	31	11	7	69	179	144
Chicago	27	13	8	62	161	123
Columbus	24	21	5	53	136	142
Nashville	21	24	3	45	117	140
St. Louis	20	24	4	44	138	152
Northwest Division						
	W	L	OT	Pts	GF	GA
Calgary	30	14	4	64	154	141
Edmonton	25	20	3	53	137	149
Minnesota	25	21	3	53	128	114
Vancouver	22	20	8	52	143	146
Colorado	23	26	1	47	138	154
Pacific Division						
	W	L	OT	Pts	GF	GA
San Jose	36	7	5	77	167	112
Anaheim	25	22	5	55	149	146
Phoenix	24	22	5	53	129	150
Dallas	23	18	7	53	143	157
Los Angeles	20	21	7	47	125	137

Two points for a win, one point for overtime loss or shootout loss.

Saturday's Games
Washington 4, Detroit 2
Boston 1, N.Y. Rangers 0
Montreal 4, Los Angeles 3
Anaheim 4, Colorado 3
Dallas 7, Columbus 3
N.Y. Islanders 3, Florida 1
Toronto 5, Pittsburgh 4
Carolina 2, Atlanta 0
St. Louis 4, Philadelphia 0
Buffalo 2, Phoenix 0
Minnesota 4, Vancouver 3, OT
Chicago 4, San Jose 2

Sunday's Games
Ottawa at Washington, 12:30 p.m.
Boston at Montreal, 2 p.m.
Nashville at Edmonton, 2 p.m.

Guam's Complete Home Site.
Guamhomefinder.com
GuamHomefinder

NOTICE OF TEMPORARY JOB OPPORTUNITIES

1 - HEAVY EQUIPMENT MECHANIC (2 yrs. exp.).....**$14.14/Hr.**
Duties: Analyzes malfunctions and repairs, rebuilds, and maintains construction equipment and machines, including the electrical wiring and components, for such construction equipment and machines as cranes, power shovels, scrapers, paving machines, motor graders, trench-digging machines, conveyors, bulldozers, dredges, pumps, and compressors. Operates and inspects machines or equipment to diagnose defects; dismantles and replaces worn or defective parts; reassembles machinery or equipment; and tests overhauled machinery or equipment to ensure operating efficiency.

Benefits: Round-trip airfare for off-island hire and worker's compensation.

Interested applicants should apply at Guam Employment Service at the One Stop Career Center located at the GCIC Building, 1st Floor at 414 W. Soledad Avenue, Hagatna. The job offer is open to all qualified U.S. workers without regard to race, color, national origin, age, sex, citizenship and to U.S. workers with disabilities who are qualified, willing, able and available to perform the job. (Ref. No. 2009-086)

JOSE D. LEON GUERRERO COMMERCIAL PORT

REQUEST FOR INFORMATION

PUBLIC-PRIVATE PARTNERSHIP THROUGH A PERFORMANCE MANAGEMENT CONTRACT

The purpose of this Request is for information ("RFI") is to obtain information from qualified firms, for the management of cargo terminal operations and maintenance of equipment and facilities. The Jose D. Leon Guerrero Commercial Port ("JDLGCP, PORT") will be confirming functional requirements that will help to develop a Request for Proposal ("RFP") (to be issued before the 2nd Quarter of 2009), and lead to the eventual award of a Performance Management Contract (PMC).

Failure to respond to this, RFI shall not preclude any entity from participating in any subsequently issued RFP. Information received in response to this RFI may be required to be released as public information.

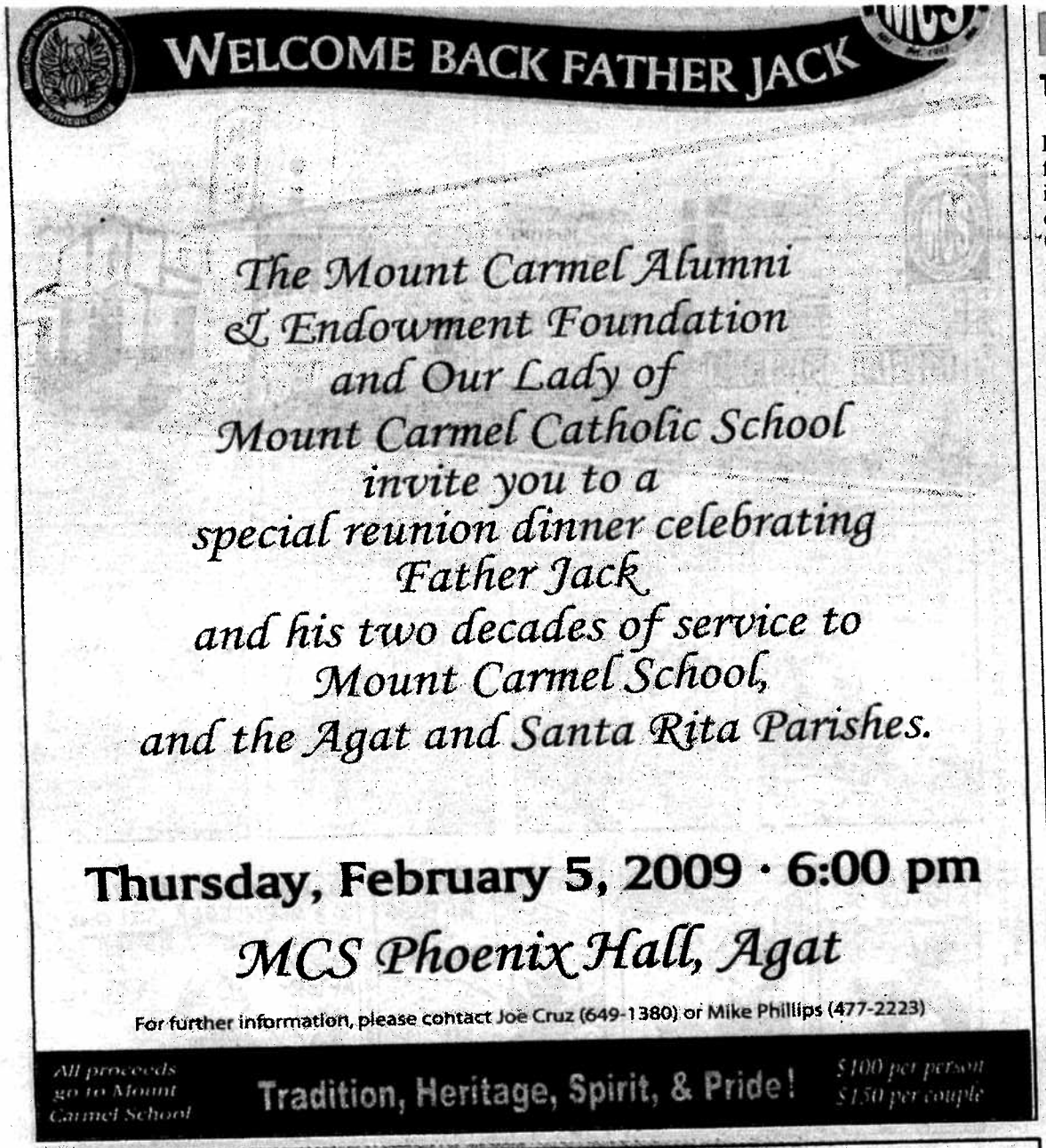
The objectives of the Jose D. Leon Guerrero Commercial Port are to achieve timely, institutional modernization which leverages productivity and operating efficiency improvements, overall customer and employee pride and satisfaction, and credibility throughout the international port and financial markets. Specific objectives include, but are not limited to:

- Identify and recommend the level of funding that will be necessary for a Performance Management Contract;
- Indentify and recommend an implementation plan for management of cargo terminal operations and maintenance of equipment and facilities;
- Assess & recommend operating inventory and back stock requirements;
- Assess and recommend employee certification and training programs;
- Identify and recommend a fully automated terminal operating and management information system;
- Identify and recommend quality assurance/quality control programs;
- Identify and recommend improvements to existing cargo handling productivity and performance while forging reduced, operating cost;
- Identify and partner with world class PMC with the capacity to invest $25 Million or more, in the Port's overall modernization plan.

The Honorable
FELIX P. CAMACHO
Governor

The Honorable
MICHAEL W. CRUZ, M.D.
Lt. Governor

REQUEST FOR PROPOSAL
PLANNING SERVICES
MASTERPLAN UPDATE 2009





GOVERNMENT MEETINGS

Today

▲ **Civil Service Commission:** Board meeting 5:30 p.m., seventh-floor conference room, ITC Building, Tamuning. Signing: judgment of dismissal: Phillip S.J. Taijeron Jr. vs. Customs; motion hearings: Raymond C. Benavente vs. Guam Police Department, Josephine Torres vs. Department of Public Works, Liberty Perez vs. DPW; bills and laws relating to CSC. For special accommodations, call Bianca at 647-1855/7 or TDD 647-1872.

▲ **Guam Community College Board of Trustees:** Monthly meeting 6 p.m., GCC president's conference room, second floor, Student Services and Administration building, Mangilao. For special accommodations, call 735-5597.

▲ **Public Utilities Commission of Guam:** Special meeting noon, Suite 206, GCIC Building, Hagåtña. Guam Power Authority contract review of settlement with Cathay Bank on debt obligation and proposed order. Call 472-1907.

Tomorrow

▲ **Guam Board of Allied Health Examiners:** Disciplinary hearing noon, Health Professional Licensing Office, Suite 9, Legacy Square Commercial Complex, Route 10, Mangilao. For special accommodations, call 735-7408.

▲ **Office of Sen. Ben Pangelinan:** Public hearing 9 a.m., Legislature's public hearing room, Hagåtña. Department of Administration and Revenue & Taxation: update on income tax payments, close-out financial/status report on Economic Stimulus Package provision toms and Quarantine Agency of Guam, Legislature's public hearing room, Hagåtña. For special accommodations, call 475-3841.

▲ **Guam Board of Allied Health Examiners:** Regular meeting noon, Health Professional Licensing Office, Suite 9, Legacy Square Commercial Complex, Route 10, Mangilao. For special accommodations, call 735-7406/11.

▲ **Guam Community College Board of Trustees:** Monthly meeting 6 p.m., GCC president's conference room, second floor, Student Services and Administration building, Mangilao. For special accommodations, call 735-5597.

Feb. 9

▲ **Committee on Economic Development, Health and Human Services and Judiciary:** Public hearing on appointments of David Shimizu as Director, Department of Mental Health and Substance Abuse, Francis P. Camacho and Arnold C. Jose to serve as members of Guam Economic Development Authority at 9 a.m. , Legislature's public hearing room. Bill 51, relative to issuance of revenue bonds for Solid Waste Management System, and to pay costs of new landfill and closure of Ordot Landfill and other system costs. Submit testimony to Sen. Frank Aguon Jr.'s office, Suite 701A, DNA Building, Hagåtña, or e-mail: aguon4guam@gmail.com. For special accommodations, call Natasha Aguon or Frances Lizama, 969-1495/6.



▲ Learn about the events going on in your village, your children's school or elsewhere in the community online with the Pacific Daily News' Your Calendar. You can also share your community event via our Web site. Log on to www.guampdn.com and click on the calendar located on the right side of the site.

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Candidates must be highly motivated, goal oriented, computer literate, and possess a minimum of 2 years sales experience.

Apply in person or email resume to sales@prestigeautoguam.com

BMW SUBARU LAND-ROVER

THE GUAM PRESERVATION TRUST



REGULAR BOARD OF DIRECTORS MEETING

Wednesday, February 11, 2009
3:30 P.M., GPT Conference Room
194 Hernan Cortes Ave., Suite 211
For Info Contact: 472-9439
Public is invited.

NOTICE OF TEMPORARY JOB OPPORTUNITIES
W/2 YRS. EXP.

05 - Carpenters (2 years exp.).....$13.56/hr.
Constructs, erects, installs and repairs structures and fixtures of wood, plywood and wallboard using carpenter tools and power tools, conforming to local building codes; studies blueprints, sketches or building plans for information pertaining to the type of materials required such as lumber or fiber board and dimensions of structures or fixtures to be fabricated. Selects specific types of lumber or materials. Prepares layout using ruler, framing square or calipers. Marks cutting and assemble line of materials using pencil, chalk or marking gauge. Shapes materials to prescribed measurements using saws, chisels, and planes. Assembles cut and shaped materials using nails, dowel pins, or glue. Verifies trueness of

The Honorable FELIX P. CAMACHO Governor
The Honorable MICHAEL W. CRUZ, M.D. Lt. Governor

REQUEST FOR PROPOSAL
PLANNING SERVICES
MASTERPLAN UPDATE 2009

RFP NO **GIAA-003-FY09**
SUBMISSION DEADLINE
4:00 PM - Feb. 13, 2009 GIAA Executive Office

Proposals are being accepted from professional individuals/firms to provide the above services for the A.B. Won Pat International Airport Authority, Guam (GIAA). RFP packages may be obtained at the GIAA Executive Offices anytime between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays on the 3rd floor of the terminal. All proposals must be submitted to the attention of the Executive Manager, by the deadline. A non-refundable fee of Twenty Five U.S. Dollars ($25.00) will be charged for each printed packet or Ten U.S. Dollars ($10.00) for an electronic file (pdf) on cd, payable in cash or certified/cashier's check payable to GIAA. The GIAA reserves the right to reject, in whole or in part, proposals or offers which have been submitted in response to this RFP, and/or cancel this RFP if it is determined to be in the best interest of the GIAA and/or for whatever reason allowed by law or regulation and pursuant to GSA Procurement Regulation 3115 (d)(2)(A). For additional information, contact the GIAA Procurement Office at (671) 646-0300~02 during the hours stated above.

CARLOS H. SALAS
Executive Manager

MARY C. TORRES
Deputy Executive Manager

A.B. WON PAT
INTERNATIONAL AIRPORT AUTHORITY, GUAM
ATURIDAT PUETTON BATKON AIREN ENTENASIONAT GUAHAN
P.O. Box 8770, Tamuning, GU 96931
Tel: (671) 646-0300 Fax: (671) 646-8823

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lt. Governor

GSA GENERAL SERVICES AGENCY
(Ahension Setbision Hinirat)
Department of Administration
Government of Guam
148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 475-1707-13 • Fax No.: 472-4217/ 475-1716/ 475-1727

THIS ADVERTISEMENT WAS PAID WITH GOVERNMENT FUNDS BY:
OFFICE OF THE GOVERNOR

A non-refundable fee of $10.00 per bid package will be assessed.
Certified Check, Cashier's Check, Cash will be accepted.
No personal or company check. Payment for bid package picked up after 3:00 pm will not be accepted.

INVITATION FOR BID

BID NO.: GSA-025-09

FOR: LEASE AND MAINTENANCE OF INTERIM

SENATOR FRANK B. AGUON, JR., Chairman
COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY
I Mina' Trentan na Liheslaturan Guahan (30th Guam Legislature)
238 Archbishop F.C. Flores St., DNA Bldg., Ste 701A, Hagatna, Guam 96910
Tel: (671) 969-1495/6 • Fax: (671) 969-1497 • Email: aguon4guam@gmail.com

NOTICE OF PUBLIC HEARING

MONDAY, FEBRUARY 09, 2009, 9:00 AM
GUAM LEGISLATURE PUBLIC HEARING ROOM

Appointments of

Dr. David L.G. Shimizu as Director
Department of Mental Health and Substance Abuse

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Bill No. 51 (COR)
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Paid for by Government of Guam Funds.

I'm ambitious. I need to be inspired. I need a career that lets me be me. Be yourself.

csb ANZ Careers

As a member company of ANZ, one of the top 20 banks in the world, CSB recognizes that our greatest asset is our people. That is why we are creating a unique climate of inspiration, leadership values and opportunities. By delivering continuous challenges, recognition, and personal and professional growth opportunities, we are committed to helping our people be where they want to be.

Branch Manager

CSB is offering an opportunity to join our business as Branch Manager. This position reports directly to the Senior Vice President, Head of Retail Banking and is responsible for leading a Branch team and delivering on challenging sales goals. The position requires a passion for retail banking sales and service and at least 3 years experience in retail banking operations.

Major Accountabilities
- Analyze district market and build sales strategy for the Branch
- Manage Branch frontline (teller and deposit accounts) operations
- Manage and lead an active Branch sales and service program
- Lead and inspire the Branch Team to expand Branch business

Preferred Qualifications/Talent
- 3+ years banking experience, preferably frontline
- Demonstrated ability to develop and execute a sales plan that successfully grows customer base and meets financial targets
- Talent for inspiring and motivating a team to achieve sales and service targets
- High level of communication and interpersonal skills
- General PC ability and keyboard skills

This position offers a very competitive salary and benefit package, including: incentive-based pay and bonus; medical, dental, life, and long-term disability insurance programs; company-matched 401-k retirement savings plan; generous paid holiday, vacation, and sick leave program; and numerous training and

COMMITTEE ON ECONOMIC DEVELOPMENT, HEALTH AND HUMAN SERVICES, AND JUDICIARY
I Mina' Trenta na Liheslaturan Guåhan • **30th Guam Legislature**
238 Archbishop F.C. Flores St., DNA Bldg., Suite 701A, Hagatña, Guam 96910
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MEDIA RELEASE

REMINDER NOTICE OF PUBLIC HEARING
MONDAY, FEBRUARY 09, 2009 – 9:00 AM

February 06, 2009 – for immediate release
Please be advised that the Committee on Economic Development, Health & Human Service, and Judiciary will conduct a Public Hearing **MONDAY, FEBRUARY 09, 2009 at 9:00 AM** in the Guam Legislature's **PUBLIC HEARING ROOM.**

This hearing will take place to receive testimonies on the following of:

- **DR. DAVID L.G. SHIMIZU** – APPOINTED AS DIRECTOR OF DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE
- **MR. FRANCIS P. CAMACHO** – APPOINTED TO SERVE AS A MEMBER OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY BOARD
- **MR. ARNOLD C. JOSE** – APPOINTED TO SERVE AS A MEMBER OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY BOARD
- **BILL NO. 51 (COR)** – RELATIVE TO ISSUANCE OF REVENUE BONDS FOR SOLID WASTE MANAGEMENT SYSTEM...AND TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS

HP Officejet 6310
Personal Printer/Fax/Copier/Scanner

Log for
Sen. Frank B. Aguon, Jr.
(671) 969-1497
Feb 06 2009 5:42PM

NOTE: Blocked calls are not displayed on this report.
For more information, see Junk Fax Report and the Caller ID History report.

Last 30 Transactions

Date	Time	Type	Station ID Caller ID	Duration	Pages	Result
Feb 3	4:04PM	Received	6716329822	0:25	1	OK
Feb 4	8:28AM	Fax Sent	7357413	0:39	1	OK
Feb 4	10:35AM	Received	671 6322536 6716322536	0:37	2	OK
Feb 4	2:27PM	Received	6714723547	0:22	1	OK
Feb 5	10:59AM	Fax Sent	6321500	0:34	1	OK
Feb 5	11:02AM	Received	6719694628	0:00	0	Power failure
Feb 5	11:07AM	Fax Sent	6321500	0:29	1	OK
Feb 5	11:09AM	Received	6716539446	0:45	0	No fax
Feb 5	11:19AM	Received	671 646 5339 6716465339	0:27	1	OK
Feb 5	12:22PM	Received	6716469306 6716469306	0:42	1	OK
Feb 5	1:19PM	Fax Sent	4723459	0:32	1	OK
Feb 5	1:19PM	Received	16717340317 6717340317	2:44	2	Error 232
Feb 5	2:06PM	Received	16717340317 6717340317	1:12	2	OK
Feb 5	2:49PM	Received	4723510 6714723589	0:30	1	OK
Feb 5	2:53PM	Fax Sent	4723459	0:50	2	OK
Feb 5	3:27PM	Received	6716329822	0:31	1	Error 244
Feb 5	3:32PM	Received	16716467757 6716467757	0:21	1	OK
Feb 5	3:53PM	Received	6716465108	0:30	1	OK
Feb 6	5:18PM	Received	4726202 6714726202	0:22	1	OK
Feb 6	5:28PM	Fax Sent	6379870 – KUAM	0:28	1	OK
Feb 6	5:29PM	Fax Sent	4773079 – PDN	0:57	1	OK
Feb 6	5:31PM	Fax Sent	6378819 - PNC	0:34	1	OK
Feb 6	5:33PM	Fax Sent	6482007 - Marianas Variety	0:34	1	OK
Feb 6	5:34PM	Fax Sent	4773982 - K57/P98	0:28	1	OK
Feb 6	5:35PM	Fax Sent	4776411 - kstereo/KISH	0:55	1	OK
Feb 6	5:37PM	Fax Sent	4727663 – Hit Radio 100	0:28	1	OK

Feb	6	5:37PM	Fax	Sent	[redacted]7345483	0:[redacted]	0	Cancel
Feb	6	5:39PM	Fax	Sent	7342958 - KPRG	1:19	1	OK
Feb	6	5:41PM	Fax	Sent	6498883 - Glimpses	0:29	1	OK
Feb	6	5:42PM	Fax	Sent	4774678 - Joy 92 FM	0:28	1	OK

Feb	6	5:37PM	Fax	Sent	7345483	0:48	0	Cancel
Feb	6	5:39PM	Fax	Sent	7342958 - KPRG	[redacted]	1	OK
Feb	6	5:41PM	Fax	Sent	6498883 - Glimpses	0:29	1	OK
Feb	6	5:42PM	Fax	Sent	4774678 - Joy 92 FM	0:28	1	OK

Bill Introduction/Referral 1/29/09

Bill	Sponsor	Description	Date Introduced	Date Referred	Committee Referred
51 (COR)	Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs	An act to enact Article 8 of Chapter 51 of Title 10 of the Guam Code Annotated relative to authorizing government of Guam to issue Solid Waste Management System Revenue Bonds for the purpose of financing facilities of the Solid Waste Management System of Guam; approving the terms and conditions of the issuance of one or more series of such bonds pursuant to such Article to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs; and to enact Article 9 of Chapter 51 of Title 10 of the Guam Code Annotated, relative to authorizing government of Guam to enter into a lease and a lease-back for the purpose of financing facilities of the Solid Waste Management System of Guam; approving the terms and conditions of such leases pursuant to such Article to pay the costs of a new landfill and the closure of the Ordot Landfill and other system costs.	1/29/09	1/30/09	Committee on Economic Development, Health and Human Services, and Judiciary

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 51 (COR

Introduced by:

The Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs

By request of I Maga'lahen Guåhan in accordance with the Organic Act of Guam

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND TO ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ENTER INTO A LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF SUCH LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND THE CLOSURE OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS.

2009 JAN 29 PM 4:05

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

(a) *I Liheslaturan Guåhan* finds that the condition of Guam's solid waste infrastructure has seriously deteriorated over the past decades. The Ordot Dump continues to be a threat to the health and safety of the residents of Guam, and specifically for the residents of Ordot-Chalan Pago, Yona and the villages downriver and downwind. The Ordot Dump reached its capacity in the 1990's, and the closure of the dump is necessary in order to eliminate this existing serious

environmental hazard. The severe limitations of the government of Guam to provide an environmentally sound solid waste disposal facility have negatively affected the quality of life of the people of Guam. Additionally, it is reasonable to assert that Guam's economic development is also being negatively affected by the inability of a failed system to deliver the most basic of all utility services.

(b) This finding is further supported by action of the U.S. Environmental Protection Agency (U.S. EPA). The dump is on the National Priorities List of highly contaminated sites. After many years of administrative orders and warnings from the U.S. EPA about the inability of the Department of Public Works ("DPW") to control discharges from the Dump and of the government of Guam to construct a landfill in compliance with federal and Guam law, the U.S. EPA filed a lawsuit in the U.S. District Court of Guam (the "District Court") against the government. A Consent Decree between the government of Guam and the U.S. EPA was approved by the District Court in February 2004. The Consent Decree provided timelines for the Government to plan, finance and execute the closure of the Ordot Dump and the construction of a new municipal landfill. The Government has made efforts to identify a source of financing for the closure of the Ordot Dump and the construction of a new landfill, but the District Court determined that the Government has not met the milestones required under the Consent Decree. On March 17, 2008, the Court placed the DPW in receivership, appointing Gershman, Brickner & Bratton, Inc. (the "Receiver") to take over the government's solid waste operations in order to correct the longstanding deficiencies. All the costs incurred in connection with the U.S. EPA lawsuit will ultimately have to be paid for by the ratepayers of Guam.

(c) The Receiver's quarterly report to the District Court, presented October 22, 2008, estimated that approximately $159.7 million of capital funding will be needed to meet the requirements of the Consent Decree, $40.1 million of which would be required for the closure of the Ordot Dump and $119.6 million of

which would be required for the construction of the new landfill, associated facilities, equipment and technology. Indeed, despite the fact that the Receiver's quarterly report places a stringent timeline for the financing and construction of the new landfill, an even more compelling reason to ensure the timely improvements of Guam's solid waste disposal infrastructure is simply because the people of Guam deserve no less.

(d) *I Maga'lahen Guåhan* and DPW, in coordination with the Guam Economic Development Authority (GEDA), have been diligently working on completing the administrative prerequisites to borrow from the capital markets the amounts required to accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of the tasks that lie ahead and the need for timely action to be taken. It is in this spirit that *I Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient and timely achievement of goals and objectives aimed at improving the quality of life of the people of Guam.

Section 2. Enactment of the Guam Solid Waste Management System Revenue Bond Act. Article 8 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 8

Solid Waste Management System Revenue Bonds

§51801. Short Title. This Article may be cited as the Guam Solid Waste Management System Revenue Bond Act.

§51802. Definitions. The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with this Article), shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Bonds" means bonds, notes or other evidences of indebtedness issued pursuant to this Chapter.

(b) "Bondholder" or "holder of bonds" or any similar term means any person who shall be:

(i) the bearer of any outstanding bond or bonds registered to bearer or not registered; or

(ii) the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer.

(c) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(d) "Director" means the Director of the Department of Public Works.

(e) "Guam Solid Waste Management and Litter Control Act" means Chapter 51 of Title 10 of the Guam Code Annotated.

(f) "Indenture" means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a certificate of the director and *I Maga'lahen Guåhan* or by other instrument.

(g) "Organic Act" means the Organic Act of Guam as amended and in effect on the effective date of this Article (Title 48, §1421 et seq. of the United States Code.).

(h) "Person" includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(i) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to the payment of bonds.

(j) "Rates, fees and charges" means all rates, fees and charges (including tipping fees, residential pick-up fees, collection fees, self-drop fees and all other solid waste management service charges), received or receivable by or on behalf of the department for providing solid waste management services.

(k) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(l) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(m) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(n) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department or its contractors, agents or subcontractors, including but not limited to landfills (whether closed or open and including Ordot dump), 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.

(o) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

(p) "United States" means the United States of America.

§51803. Power to Incur Indebtedness. *I Maga'lahen Guåhan*, through the agency of GEDA pursuant to 12 G.C.A. §50103(k), and with the approval of *I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in addition to and in amplification of all other powers conferred by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam or of the United States, to incur limited obligation indebtedness on behalf of the government of Guam, by the issuance of bonds pursuant to this Article to raise funds for the purpose of acquiring, constructing, improving, equipping,

maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the government issued for any of such purposes, or for any combination of such purposes for which bonds may be issued and secured as provided in this Article.

It is hereby declared that the system and each facility of the system is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the government pursuant to this Article that is payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Indebtedness that is issued by the government pursuant to this Article and that is payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the indenture.

§51804. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this

Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article. The department has jurisdiction over and may collect and transport to permitted solid waste facilities, or contract for the collection and transportation to permitted solid waste facilities of, solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units or residences. The department does not have jurisdiction over the collection and transportation of solid waste from any hotels, commercial or industrial establishments, government agencies or from any multiple dwelling units other than duplexes. The department may operate the Ordot Dump, or it may contract for the operation of the Ordot Dump, in accordance with Guam law and its permit under this Chapter. The department may contract for the operation of the landfill.

The department may also operate, or contract for the operation of, all other permitted solid waste management facilities and operations not addressed above and within the policy guidelines of the Integrated Solid Waste Management Plan. Any such contract for the operation of the Ordot Dump or the landfill may be entered into pursuant hereto or pursuant to Article 9 of this Chapter and may be with any person or corporation duly qualified to provide such services, whether public or private, domestic or foreign.

§51805. Rates, Fees and Charges; Refunds.

Notwithstanding any provision of law or regulation to the contrary, the department is authorized to establish and modify from time to time, with prior approval by the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of

debt service for capital improvements of permitted solid waste facilities, and to collect money from all users or customers, and to refund charges collected in error. Rates, fees and charges may be collected before or after the provision of the service for which they are charged.

Except to the extent otherwise permitted or required by an indenture pursuant to which bonds are issued, rates, fees and charges shall at all times be fixed to yield annual revenue of the system at least equal to the sum of annual principal payments and interest charges on all bonds then outstanding, all coverage and reserve fund requirements relating to such bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and the annual system operation and maintenance costs; provided, however, that Section 30 revenue may be used for the purposes and treated as satisfying the requirements of this paragraph with respect to the costs of the closure of the Ordot Dump and the bonds or other obligations related thereto.

An indenture, lease or contract of indebtedness may provide for payment from revenue of the system of refunds of rates and charges that are collected in error and that are refundable by the department.

§51806. Validity of Authorization and Issuance of Bonds. The validity of the authorization and issuance of any bonds by the government pursuant to this Article is not dependent on nor affected in any way by:

(a) Proceedings taken by the department for the acquisition, construction or improvement of the system or any part thereof;

(b) Any contracts made by the department in connection with the acquisition, construction or improvement of the system or any part thereof; or

(c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

§51807. Governor to Determine Issuance of Bonds and Incurring of Other Indebtedness; Government Only Liable as Provided by Indenture or Contract.

(a) *I Maga'lahen Guåhan* shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article and no other obligation undertaken by the government under any indenture, lease or other instrument shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by such indenture, lease or other instrument. Every such bond shall contain a recital on its face stating that it is a limited obligation of the government of Guam and shall not be deemed to be secured by the faith and credit of the government of Guam.

§51808. Governor to Declare Purpose and Maximum Amount of Bonds to be Issued. Before issuing any bond or bonds, *I Maga'lahen Guåhan* shall declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose. Bonds shall not be issued or sold for such purpose in an amount exceeding such specified maximum.

§51809. Indenture Providing Terms and Conditions of Bonds. *I Maga'lahen Guåhan* may enter into one or more indentures on behalf of the government providing for the aggregate principal

amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and interchange of any bonds issued pursuant to this Article and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§51810. Issues of Bonds. An indenture may provide for one or several series of bonds and that any series may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized series be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be as authorized by *I Maga'lahen Guåhan*.

§51811. Covenants and Agreements That May Be Contained in Indenture. An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the government as *I Maga'lahen Guåhan* deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by a pledge of all or by part of the revenue of the system or the Section 30 revenue, or both;

(b) Provisions creating one or more funds or accounts into which all or any part of pledged revenue shall be deposited:

(i) for payment of the principal of and interest on bonds at or prior to maturity; or

(ii) for reserve or sinking funds for the further security of bonds.

(c) A provision requiring the government to operate the system continuously, to the extent reasonably practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(d) A provision requiring the government to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the government to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the government to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon pledged revenue or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the government to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, in any manner that impairs or impedes the operation of the system or any part thereof necessary to secure adequate pledged revenue or that otherwise impairs or impedes the right of the holders of bonds or other obligations with respect to such pledged revenue.

(h) A provision requiring the government, with the prior approval of the Guam Public Utilities Commission, to fix, prescribe and collect annually rates or other charges in connection with the solid waste management services furnished from the system which, together with other available revenues, including, to the extent provided by 10 G.C.A. §51805, Section 30 revenue, will be:

(i) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(ii) sufficient to pay any payments due under any lease or lease-back entered into pursuant to Article 9 of this Chapter.

(iii) sufficient to pay the annual system operation and maintenance costs; and

(iv) in such additional amount as shall be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no solid waste management service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the government to hold or cause to be held in trust the pledged revenue or any part thereof, or to any fund or account created by any indenture for the further security or protection of such bonds and to apply such pledged revenue or cause it to be applied only as provided in the indenture and to invest all or any part of such pledged revenue pending such application in such

securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the government in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the government to issue additional bonds or to enter into one or more lease-back obligations pursuant to Article 9 of this Chapter, in each case equally secured with bonds theretofore issued under the indenture and lease-back obligations previously entered into, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof, or for the purpose of refunding any prior bonds or any other prior obligations of the government relating to the system; and a provision limiting the power of the government to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the government on the system or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the government of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the government and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds.

(q) With respect to any provision relating to the modification or amendment of an indenture, the government may agree that bonds held by the government, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, agency or instrumentality of any kind or class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment.

(r) A provision limiting the right of action by individual bondholders in the event of a default by the government or proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the government to purchase outstanding bonds from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(t) A provision for any working capital fund or account or contingency fund or account relating to the system.

(u) A provision for the replacement of lost, destroyed or mutilated bonds.

(v) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

§51812. Trustee for Government and Holders of Bonds.

(a) The government or any agent designated by the government shall act as trustee for the government and the holders of bonds issued hereunder and the government may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The government may provide in an indenture:

(i) for the deposit of all or any portion of the pledged revenue with the government and for the holding thereof by the government in one or more separate funds or accounts in the Solid Waste Operations Fund; and

(ii) for the transfer to the trustee of all or any portion of the pledged revenue as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

§51813. Duties and Powers of Trustee. The government shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the

registration and discharge from registration thereof and the administration of any and all funds provided as security therefore.

§51814. Issuance and Interchange of Bearer and Registered Bonds. An indenture may provide that bonds may be issued as bearer bonds or as registered bonds and for the interchange of bearer bonds for registered bonds and registered bonds for bearer bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as *I Maga'lahen Guåhan* may determine.

§51815. Redemption of Bonds Prior to Maturity. An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

§51816. Places of Payment. An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

§51817. Execution and Authentication of Bonds. An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the government and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the government or of any agent designated by the government as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds ceases to be an officer or agent before the delivery of the bonds, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as

if he had remained such officer or agent until the delivery of the bonds.

§51818. Dates and Maturities of Bonds. Bonds shall bear dates prescribed in the indenture providing for their issuance. Bonds may be serial bonds, term bonds or sinking fund bonds with such maturities as the indenture shall specify. No bond by its terms shall mature more than fifty (50) years after its date of issuance.

§51819. Sale of Bonds. Bonds authorized to be issued under this Article shall be sold for cash, in accordance with the provisions of a certificate or agreement executed by *I Maga'lahen Guåhan*. The bonds may be sold at either public or private sale, and upon such terms and conditions as shall be authorized by *I Maga'lahen Guåhan*, which may provide that the bonds may be sold at less than their par or face value.

§51820. Payment of Bonds from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

§51821. Payments Which May be Made Out of Proceeds of Sale of Bonds. The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof

(including any closed landfill or dump) or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the government of the cost of any work done by the United States or such public body for or jointly or in conjunction with the department;

(b) For payment of any engineering, inspection, legal, consultants' or paying agents' fees relating or incidental to:

(i) the acquisition, construction or improvement of the system or any part thereof; or

(ii) the authorization, issue or sale of bonds;

(c) For payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system;

(e) For payment of interest on bonds during the projected period of acquisition, construction or improvement of the system or any part thereof for the acquisition, construction or improvement of which such bonds have been issued and for a period of not to exceed three (3) years thereafter;

(f) For deposit in any reserve or sinking fund; or

(g) For the payment of any prior bonds or other obligations of the government issued for solid waste management purposes.

§51822. Bonds May be Secured by Revenue of the System. An indenture may provide that payment of the bonds and the interest thereon shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created or to be created pursuant to Article 9 of this Chapter. Any such

pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture by which such pledge is created need not be recorded.

§51823. Bonds May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment of any bonds issued pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created pursuant to Article 9 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have

notice thereof. The indenture by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Indebtedness issued by the government pursuant to this Article that is repayable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51824. Temporary Bonds. An indenture may provide that pending the actual issuance or delivery of definitive bonds, the government may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever, to be exchanged for definitive bonds when ready for delivery.

§51825. Replacement of Bonds. The government may provide for the replacement of lost, destroyed or mutilated bonds.

§51826. Tax Exemption. Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act.

§51827. Bonds as Legal Investments and as Security For Performance of Any Act. Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

§51828. Refunding Bonds. *I Maga'lahen Guåhan* may, on behalf of the government, provide for the issuance, sale or exchange of refunding bonds for the purpose of retiring indebtedness or other obligations issued to finance all or any portion of the system. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

§51829. Use of Other Funds for System. In addition to the proceeds of any bonds issued and sold pursuant to this Article, the department may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the department and any money or funds made available to the department by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Guam Solid Waste Management and Litter Control Act.

§51830. Insurance. The department may insure against loss of revenue of the system from any cause whatsoever. The department may insure against public liability or property damage from any cause. An indenture, lease or other instrument may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, lease, or other instrument for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the director, subject to the requirements of any indenture, lease, or other instrument, any insurance may be provided by funded reserves or any other means.

§51831. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely payments of their bonds. In accordance with prior similar situations and precedents, the government hereby pledges, while any bonds issued under this Article remain outstanding and not fully performed or discharged, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article, (b) to maintain the rights and remedies of bondholders provided in this Article and any indenture, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51832. Construction Account. The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a construction account, which account is hereby created within the Solid Waste Operations Fund. The money in the account shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 10 G.C.A. §51821, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

§51833. Revenue Account. All revenue of the system and, to the extent provided by 10 G.C.A. §51805 or by Article 9 of this Chapter, the Section 30 revenue, shall be deposited to the credit of the applicable subaccount of the Revenue Account, which account is hereby created within the Solid Waste Operations Fund. The money in such subaccounts may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 10 G.C.A. §51811(j) or any lease or lease-back as provided in Article 9 of this Chapter:

(a) to pay principal or interest on any bonds or any other obligations of the department;

(b) to pay amounts due and owing under any lease or lease-back entered into pursuant to Article 9 of this Chapter;

(c) to pay any amounts due and owing under any credit provider reimbursement agreement;

(d) to pay the annual system operation and maintenance costs; and

(e) for any other purposes of the system;

all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

§51834. Investment of Money in Funds and Accounts. Moneys in the revenue account and construction account in the Solid Waste Operations Fund may be invested by the government or the trustee under any indenture, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be deposited to the credit of the fund or account from which such

interest or other earnings are derived, unless otherwise provided in an indenture.

§51835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts. Any balance remaining in any of the funds or accounts created by this Article or any indenture, including the Construction Account established pursuant to 10 G.C.A. §51832, after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system, subject to the limitations and restrictions in any indenture. After all bonds shall have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the department and shall be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the department herein or hereafter authorized by law.

§51836. Appropriation of Money in Funds and Accounts. All money in the funds and accounts created by this Article or any indenture is hereby continuously appropriated for expenditure to carry out the purposes herein and therein provided.

§51837. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the government with such banks, insurance companies or other financial institutions as *I Maga'lahen Guåhan* determines are necessary or desirable to improve the security and marketability of the

bonds. 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; provided, that any obligation of the government under any reimbursement agreement shall be payable solely from pledged revenue.

Any reimbursement agreement may include a provision that the obligations of the government under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument then in effect to which the government or the department is a party.

§51838. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this 10 G.C.A. §51838 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51839. Waiver of Immunity. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government shall not be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as

to the award of attorney fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds.

§51840. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam."

Section 3. Local Sales of Bonds. GEDA shall undertake its best efforts to cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated and approved pursuant to Section 4 of this Act, 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 issuing and repaying such bonds. Notwithstanding any other provision of law to the contrary, these bonds may be sold to employees of the Department of Public Works.

Section 4. Approval of Government of Guam Solid Waste Management System Revenue Bonds. The Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the government of revenue bonds pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated (the "Act") in one or more series or issues (together with any related reimbursement obligations); provided that the issuance, terms and conditions of the bonds and any reimbursement agreements shall have been approved by the Guam Public Utilities Commission,

and further provided that such bonds shall have, together with any lease-back obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall bear interest at such rate or rates and shall be sold for such price or prices as shall result in a yield to the bondholders not exceeding nine percent (9%) per annum, and shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 8, Chapter 51, Title 10, Guam Code Annotated.

Section 5. Enactment of the Guam Solid Waste Management System Lease Financing Act. Article 9 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby enacted to read as follows:

Article 9

Solid Waste Management System Lease Financing

§51901. Short Title and Purpose. This Article may be cited as the Guam Solid Waste Management System Lease Financing Act. The purpose of this Article is to authorize the use of lease financing in addition to, in lieu of, or in conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in order to achieve the most efficient and lowest cost financing, construction, operation and maintenance of the solid waste management system.

§51902. Definitions. The following terms wherever used or referred to in this Article or in any indenture, lease or lease-back entered into pursuant hereto (except to the extent modified therein in accordance with this Article) shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Contractor" shall mean the authorized entity which shall be the signatory on the lease and the lease-back and shall be fully

responsible for carrying out the construction, financing, operation and maintenance of the solid waste facility. The contractor may cooperate with another entity or entities in any manner the contractor deems appropriate to provide for the financing, construction, operation and maintenance of the solid waste facility.

(b) "Department" means the Department of Public Works, acting on behalf of the government of Guam.

(c) "Director" means the Director of the Department of Public Works.

(d) "Lease" shall mean a ground or site lease of property from the department, the Chamorro Land Trust Commission, or other government entity, as applicable, to the Contractor.

(e) "Lease-back" shall mean the facilities lease or other lease of the property from the Contractor back to the department, over the term of which the costs of the construction, financing, operation and maintenance of a solid waste facility are amortized according to the terms agreed to between the department and the Contractor.

(f) "Pledged revenue" means any revenue of the system and any Section 30 revenue pledged to secure lease-back payments.

(g) "Property" shall mean any property on which a solid waste facility is located.

(h) "Revenue of the system" means all gross income and other amounts received by or on behalf of the department 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 department, 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 department 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 G.C.A. §51833.

(i) "Section 30 revenue" means revenues derived by the government of Guam under Section 30 of the Organic Act.

(j) "Solid waste facility" shall mean all or any portion of any landfills (whether closed or open and including Ordot dump), transfer stations, recycling facilities, appurtenant equipment, and other capital facilities of the system.

(k) "Solid Waste Operations Fund" means the fund by that name established pursuant to 10 G.C.A. §51118(f).

(l) "System" means the solid waste management system, now or hereafter existing, owned and/or operated by the department 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.

(m) "System operation and maintenance costs" means such reasonable and necessary current expenses of the department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the department directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system; and

(iv) the costs incurred in the collection of all or any part of the revenues.

§51903. Authorization to Enter Into Long-Term Leases. *I Maga'lahen Guåhan* may enter into a lease and lease-back on behalf of the department for the financing of the acquisition, construction, improvement, equipping, repair, renewal, replacement, or reconstruction of any solid waste facility, together with operation and maintenance of all or any portion of such solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

The costs of the construction and financing of a solid waste facility financed pursuant to this Article shall be amortized in periodic installments over the term of the lease-back period, which shall be mutually determined by *I Maga'lahen Guåhan* and the contractor, but which will not exceed forty (40) years. The lease and lease-back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the department will have the obligation to vacate the solid waste facility, and the contractor shall have the right of use and occupancy of the solid waste facility for the remainder of the term of the lease, unless new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term shall be extended for a period not to exceed the

shorter of ten (10) years beyond the original term of the lease-back or such period of time as is necessary to repay in full any financing arranged pursuant to this Article. The department shall pay the operation and maintenance costs of the solid waste facility on a periodic basis as incurred by the contractor on terms to be agreed to in the lease-back for each solid waste facility.

It is hereby declared that the system and each solid waste facility is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code). Obligations incurred by the government pursuant to this Article that are payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11. Obligations incurred by the government pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the department or against any property or funds of the government of Guam or the department, except to the extent of the pledge of revenue of the system and, if applicable, Section 30 revenues provided by the lease-back.

§51904. Procurement. Subject to the approval of I Liheslaturan Guåhan, the government of Guam or the department may solicit proposals, in compliance with the Guam Procurement Law, for the financing and construction of the solid waste facility, together

with the operation and maintenance of the solid waste facility over the term of the lease-back, according to the needs of the department and consistent with this Article.

§51905. Powers of Department. Notwithstanding any provision of law or regulation, the department has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the department by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam, to exercise any or all of the powers granted to the department by this Article.

§51906. Assignments. To facilitate the purposes of this Article and to provide security for the bondholders, the contractor may assign, with the consent of the department, the lease and the lease-back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of certificates of participation in lease-back payments or other financial instruments to provide the financing for the solid waste facility.

§51907. Use of Tax-Exempt Financing. To minimize the financing cost to the department, all financing utilized by the contractor to fund the construction, operation and maintenance of a solid waste facility shall be through tax-exempt obligations, if a mechanism to do so is available. The purpose for this requirement is to assure that the department pays the lowest possible interest rate so that the cost of financing the construction, operation and maintenance of a solid waste facility to the department, amortized through the lease-back payments from the department to the contractor, will be lower than regular commercial rates.

§51908. Lease-Back May be Secured by Revenue of the System. A lease-back may provide that payment of obligations thereunder shall be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded, except to the extent that such instrument conveys an interest in land or improvements thereon.

§51909. Lease-Back May be Secured by Section 30 Revenue. If and to the extent determined by *I Maga'lahen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may also be pledged to secure the payment by the department of obligations under any lease-back entered into pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created or to be created pursuant to Article 8 of this Chapter. Any pledge of Section 30 revenue shall be valid and binding from the time the pledge is made. The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee,

depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations Fund and shall be immediately subject to the lien of such pledge without 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded. All Section 30 revenue so pledged is hereby continuously appropriated for the purpose for which they have been pledged. Lease-back obligations that are payable by the department pursuant to this Article and that are payable from both Section 30 revenue and revenue of the system may not be in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

§51910. Payment of Lease-back Obligations from Sources Other Than Revenue. The government may use and expend all or any part of any funds other than revenue or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of obligations due under a lease-back entered into pursuant to the provisions of this Article.

§51911. Pledge by the Government of Guam. The government of Guam is fully committed to ensuring that the department has the ability to implement the capital improvements authorized to be leased by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The

government also is fully committed to ensuring that the holders of certificates of participation or other financial instruments are protected to ensure full and timely payment of obligations due under the lease-back. In accordance with prior similar situations and precedents, the government hereby pledges, while any obligations are owing on any lease-back entered into pursuant to this Article, (a) to maintain the rights, powers and duties of the director, the department and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with a contractor in accordance with this Article, (b) to maintain the rights and remedies of a contractor provided in this Article and any lease or lease-back, and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§51912. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility. The lease-back may require that the contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the improvements, on-site infrastructure, construction, permits and financing associated with the completion of a solid waste facility, except as expressly provided by the lease-back for costs, expenses and fees previously incurred by the government. The lease-back may require that the contractor be responsible for the ongoing operation and maintenance of the solid waste facility during the term of the lease-back.

§51913. Credit Enhancement. *I Maga'lahen Guåhan* is hereby authorized to enter into such contracts or agreements on behalf of the department with such banks, insurance companies or other

financial institutions as it determines are necessary or desirable to improve the security and marketability of the lease-back obligations. 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 lease-back obligations and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the department under any reimbursement agreement shall be payable solely from pledged revenue. Any reimbursement agreement may include a provision that the obligations of the department under the agreement shall be secured by all or by part of pledged revenue; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture, lease or other instrument to which the government or the department is a party.

§51914. No Personal Liability. Neither *I Maga'lahen Guåhan*, the director, any employee of the department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due under any lease or lease-back, or for any other liability arising in connection with a lease or lease-back; provided, however, that nothing in this 10 G.C.A. §51914 shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§51915. Rules, Regulations and Restrictions. The department may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Article.

§51916. Construction of Article. This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the department, the director or *I Maga'lahen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

§51916. Severability. If any provision of this Article 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 Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable."

Section 6. Approval of Lease and Lease-Back. The Legislature, *I Liheslaturan Guåhan*, hereby approves the execution and delivery of the lease and lease-back by the government pursuant to Article 9, Chapter 51, Title 10, Guam Code Annotated; provided that the terms and conditions of the lease and lease-back shall have been approved by the Guam Public Utilities Commission, and further provided that the certificates of participation or other financial instruments shall have, together with any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars ($202,425,000), shall have a final maturity not later than 2041, shall result in a yield to the holders of the certificates of participation or other financial instruments not exceeding nine percent (9%) per annum, and shall be entered into for the purposes and subject to the requirements and limitations provided in Article 9, Chapter 51, Title 10, Guam Code Annotated.