



MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 220 (EC)

Introduced by:

J. M.S. Brown 
E. J.B. Calvo 

AN ACT TO REPEAL AND REENACT ARTICLE 2
OF CHAPTER 14 OF TITLE 12 OF THE GUAM
CODE ANNOTATED, RELATIVE TO
AUTHORIZING GUAM WATERWORKS
AUTHORITY TO ISSUE REVENUE BONDS AND
OTHER INDEBTEDNESS FOR THE PURPOSE OF
FINANCING THE WATER AND WASTEWATER
SYSTEM OF GUAM; AND APPROVING THE
TERMS AND CONDITIONS OF THE ISSUANCE
OF ONE OR MORE SERIES OF SUCH BONDS
PURSUANT TO SUCH ARTICLE FOR SUCH
PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*, finds that the
3 condition of Guam's water and wastewater infrastructure has seriously deteriorated
4 over the past decades. The severe limitations of the infrastructure to reliably deliver
5 clean and safe drinking water has negatively impacted the quality of life of the People
6 of Guam. Additionally, it is reasonable to assert that Guam's economic development
7 is also being negatively impacted by the inability of a failed system to deliver the
8 most basic of all utility services.

1 This finding is further supported by the conclusions of a recent study
2 completed by Brown and Caldwell, an engineering firm hired to assess the condition
3 of Guam's water and wastewater infrastructure and to formulate a Master Plan for
4 the development of an infrastructure that will have the capacity to support current
5 and future demands for reliable and quality water and wastewater utility services.

6 This same conclusion was also reached by the U.S. Environmental Protection
7 Agency (U.S. EPA). After many years of warning from the U.S. EPA about the
8 inability of Guam Waterworks Authority's (GWA) infrastructure to provide clean
9 and safe drinking water and properly dispose of the wastewater, the U.S. EPA filed
10 a lawsuit in the Federal District Court against the GWA to place the agency in
11 receivership. A receivership status will essentially mean that the U.S. EPA will have
12 the authority to select a third party of its choice to take over the GWA operation in
13 order to get the long standing deficiencies corrected. All costs incurred will
14 ultimately have to be paid for by the rate payers of Guam.

15 **Section 2.** Recognizing that placing GWA into receivership is not a desirable
16 position to be in, the Consolidated Commission on Utilities (CCU), a newly created
17 governing entity, successfully persuaded the U.S. District Court of Guam to allow
18 the CCU to undertake the responsibility of rectifying the long standing problems.
19 Hence, the promulgation of the Stipulated Order which outlines the corrective
20 actions that GWA shall undertake. The GWA, under the auspices and direction of
21 the CCU has taken many steps to improve the system, including hiring a
22 professional management team, cutting costs, and enacting policies that ensure
23 improvements are made.

24 However, notwithstanding the CCU's efforts, the new construction and
25 upgrades that will be needed are estimated to cost approximately Two Hundred
26 Twenty Million Dollars (\$220,000,000.00). Indeed, despite the fact that the Stipulated
27 Order places a stringent time line for the corrective actions to be accomplished, an

1 even more compelling reason to ensure the timely upgrade and improvement of
2 Guam's water and wastewater infrastructure is simply because the People of Guam
3 deserve no less.

4 In addition to the estimated cost of Two Hundred Twenty Million Dollars
5 (\$220,000,000.00) to meet the terms of the Stipulated Order, there are the additional
6 costs of rebuilding, rehabilitating and modernizing the system which are expected to
7 cost an additional Two Hundred Thirty Million Dollars (\$230,000,000.00) thereby
8 bringing the total that GWA needs to Four Hundred Fifty Million Dollars
9 (450,000,000.00).

10 The CCU and GWA, in coordination with the Guam Economic Development
11 & Commerce Authority (GEDCA), have been diligently working on completing the
12 administrative prerequisites to borrow from the bond market the capital required to
13 accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of
14 the tasks that lie ahead and the need for timely action to be taken. It is in this spirit
15 that *I Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient
16 and timely achievement of goals and objectives aimed at improving the quality of
17 life of the People of Guam.

18 **Section 3.** Article 2 of Title 12, Chapter 14 of the Guam Code Annotated, is hereby
19 repealed and reenacted to read as follows:

20 **Article 2**

21 **Guam Waterworks Authority Revenue Bonds and Other**
22 **Indebtedness**

23 **§14201. Short Title.** This Article may be cited as the Guam
24 Waterworks Authority Revenue Bond Act.

25 **§14202. Definitions.** The following terms wherever used or
26 referred to in this Article or in any indenture entered into pursuant
27 hereto (except to the extent modified therein in accordance with this

1 Article), shall have the following meanings, respectively, unless a
2 different meaning appears from the context:

3 a. "Authority" has the meaning given in 12 G.C.A. §14102.

4 b. "Board" has the meaning given in 12 G.C.A. §14102.

5 c. "Bonds" means bonds, notes or other evidences of
6 indebtedness.

7 d. "Bondholder" or "holder of bonds" or any similar term
8 means any person who shall be:

9 i. the bearer of any outstanding bond or bond
10 registered to bearer or not registered; or

11 ii. the registered owner of any such outstanding bond
12 or bond which shall at the time be registered other than to
13 bearer.

14 e. "Credit provider" means any municipal bond insurance
15 company, bank or other financial institution or organization which is
16 performing in all material respects its obligations under any credit
17 support arrangements for some or all of the bonds.

18 f. "Credit provider reimbursement agreement" means any
19 agreement providing for the Authority to repay, from revenues,
20 amounts advanced by a credit provider as credit support for bonds.

21 g. "Credit support" means a policy of insurance, a letter of
22 credit, a stand-by purchase agreement, revolving credit agreement or
23 other credit arrangement pursuant to which a credit provider provides
24 credit or liquidity support with respect to the payment of interest,
25 principal or the purchase price of any bonds.

26 h. "Guam Waterworks Authority Act" means Chapter 14 of
27 Title 12 of the Guam Code Annotated.

1 i. “Indenture” means an agreement pursuant to which bonds
2 are issued, regardless of whether such agreement is expressed in the
3 form of a resolution of the Board or by other instrument.

4 j. “Organic Act” means the Organic Act of Guam as
5 amended and in effect on the effective date of this Article (Title 48,
6 §1421 et seq. of the United States Code-).

7 k. “Payment agreement” has the meaning given such term in
8 12 G.C.A. §14236.

9 l. “Person” includes any individual, firm, corporation,
10 association, partnership, trust, business trust or receiver or trustee or
11 conservator for any thereof, and also includes the United States, Guam
12 or any public corporation, political subdivision, city, county or district
13 or any agency or instrumentality of the United States or of Guam.

14 m. “Revenue” means all gross income and other amounts
15 received or receivable by the Authority as revenues of any kind from
16 the ownership or operation of any part of the system, including all
17 rates, fees and charges (including ground water, surface water and
18 treated water charges and all wastewater service charges), received by
19 the Authority for providing water and sewer services, all amounts
20 received by the Authority pursuant to any payment agreement, and all
21 proceeds of insurance or grants covering business interruption loss (and
22 related losses and expenses) relating to the system, and all other income
23 and revenue howsoever derived by the Authority from the ownership
24 or operation of, or arising from, the system, together with all interest,
25 profits or other income derived from the investment of amounts in the
26 Guam Waterworks Authority Revenue Fund.

1 n. "System" means the water and wastewater systems, now
2 or hereafter existing, owned and/or operated by the Authority or its
3 contractors, agents or subcontractors.

4 o. "System operation and maintenance costs" means such
5 reasonable and necessary current expenses of the Authority, paid or
6 accrued, for operation, maintenance and repair of the System as may be
7 determined by the Board, and the term may include at the Board's
8 option, except as limited by contract or otherwise limited by law,
9 without limiting the generality of the foregoing:

10 i. legal and overhead expenses of the Authority
11 directly related and reasonably allocable to the administration of
12 the system;

13 ii. fidelity bond and insurance premiums appertaining
14 to the system or a reasonably allocable share of a premium of any
15 blanket bond or policy pertaining to the system;

16 iii. contractual services, professional services, salaries,
17 administrative expenses, and costs of labor appertaining to
18 system;

19 iv. the costs incurred in the collection of all or any part
20 of the Revenues; and

21 v. any costs of utility services furnished to the system
22 by the Authority or otherwise.

23 p. "United States" means the United States of America.

24 **§14203. Powers of Board; Incurring Indebtedness.** Pursuant to
25 Paragraph Section 50103(k), Chapter 50, Title 12 G.C.A., the Board,
26 through the agency of GEDCA by statutory legislation, has power and
27 is hereby authorized, in addition to and in amplification of all other

1 powers conferred upon the Board by the Guam Waterworks Authority
2 Act or any other provision of this Chapter or by any law of Guam or of
3 the United States, to exercise any or all of the powers granted to the
4 Board by this Article. The Board, through the agency of GEDCA, may
5 at any time or from time to time, by statutory legislation, may incur
6 indebtedness:

7 (a) pursuant to 12 G.C.A. §14235; or

8 (b) by the issuance of bonds to raise funds for the purpose of
9 acquiring, constructing, improving, equipping, maintaining, repairing,
10 renewing, replacing, reconstructing or insuring the system, or any part
11 thereof, or for the purpose of refunding any such bonds or any other
12 prior obligations of the Authority, or for any combination of such
13 purposes for which bonds may be issued and secured as provided in
14 this Article.

15 It is hereby declared that the system is and shall be a public improvement or
16 undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48,
17 U.S. Code). All indebtedness issued by the Authority pursuant to this 12 G.C.A.
18 §14203 shall be repayable only from funds of the Authority available therefore or
19 solely from revenues of the system and, therefore, will not be and shall not be
20 deemed to be public indebtedness of Guam as that term is used in said Section 11.

21 **§14204. Amounts of Rates and Charges; Refunds.** Except to the
22 extent otherwise permitted or required by an indenture or any contract
23 relating to indebtedness issued by the Authority, all rates and charges
24 shall at all times be fixed to yield annual revenues at least equal to the
25 annual principal payments and interest charges and reserve fund
26 requirements on all bonds at any time issued and outstanding

1 hereunder, the annual system operation and maintenance costs and the
2 annual principal payments and interest charges on all other outstanding
3 indebtedness issued by the Authority. An indenture or contract of
4 indebtedness may provide for payment from revenues of refunds of
5 rates and charges that are collected in error and that are refundable by
6 the Authority.

7 **§14205. Validity of Authorization and Issuance of Bonds and**
8 **Incurring of Other Indebtedness.** The validity of the authorization and
9 issuance of any bonds by the Authority is not dependent on nor
10 affected in any way by:

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

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

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

18 **§14206. Board to Determine Issuance of Bonds and Incurring of**
19 **Other Indebtedness; Guam Not Liable for Indebtedness; Authority**
20 **Only Liable as Provided by Indenture or Contract.**

21 (a) The Board shall determine the time, form and manner of
22 issuance of bonds.

23 (b) No bond issued or sold pursuant to this Article shall be or
24 become a lien, charge or liability against the government of Guam or
25 against the Authority or against any property or funds of the
26 government of Guam or the Authority, except to the extent of the
27 pledge or revenues or part of revenues, as may be provided by the

1 indenture pursuant to which such bonds are issued and every such
2 bond shall contain a recital on its face stating that neither the payment
3 of the principal or any part thereof, nor of any interest thereon, is a
4 debt, liability or obligation of Guam.

5 **§14207. Board to Declare Purpose and Maximum Amount of**
6 **Bonds to be Issued.** Before issuing any bond or bonds, the Board shall
7 declare the purpose for which the proceeds of the bonds proposed to be
8 issued shall be expended and shall specify the maximum amount of
9 bonds to be issued or sold for such purpose. Bonds shall not be issued
10 or sold for such purpose in an amount exceeding such specified
11 maximum.

12 **§14208. Indenture Providing Terms and Conditions of Bonds.**
13 The Authority may enter into indentures providing for the aggregate
14 principal amount, date or dates, maturities, interest rates or methods for
15 determination thereof, denominations, form, registration, transfer and
16 interchange of any bonds and coupons issued pursuant to this Article
17 and the terms and conditions on which the same shall be executed,
18 issued, secured, sold, paid, redeemed, funded and refunded. Each
19 taker and subsequent holder of the bonds or coupons, whether the
20 coupons are attached to or detached from the bonds, has recourse to all
21 the provisions of the indenture and of this Article and is bound thereby.

22 **§14209. Issues of Bonds.** An indenture may provide for one or
23 several issues of bonds and that bonds may be issued in series or that
24 any issue may be divided into one or more divisions with different
25 maturities or dates of issue, different rates of interest or methods for
26 determining such rates, or different terms and conditions for the bonds
27 of the several series or divisions. It is not necessary that all bonds of the

1 same authorized issue be of the same kind or character, have the same
2 security, or be of the same interest rate, but the terms thereof shall in
3 each case be as authorized by the Board.

4 **§14210. Covenants and Agreements That May Be Contained in**
5 **Indenture.** An indenture pursuant to which bonds are issued may
6 include any and all covenants and agreements on the part of the
7 Authority as the Board deems necessary or advisable, including
8 without limiting the generality of the foregoing, any one or more of the
9 following:

10 (a) A provision that payments of principal and interest of
11 bonds shall be secured by all or by part of revenues and provisions
12 creating one or more funds or accounts to be held by the Authority into
13 which all or any part of revenues shall be deposited:

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

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

18 (iii) All moneys in any such fund or account shall be paid
19 out by the Authority or its agent to pay the principal of and
20 interest on the bonds when due or when redeemed or purchased
21 prior to maturity, as provided in any indenture.

22 (b) A provision requiring the Authority or its agent, as trustee
23 as hereinafter provided, to pay or cause to be paid punctually the
24 principal of all such bonds and the interest thereon on the date or dates,
25 or at the place or places and in the manner mentioned in such bonds
26 and in the coupons appertaining thereto in accordance with such
27 indenture.

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

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

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

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

17 (g) A provision which limits, restricts or prohibits any right,
18 power or privilege of the Authority to mortgage or otherwise
19 encumber, sell, lease or dispose of the system or any part thereof, in any
20 manner that impairs or impedes the operation of the system or any part
21 thereof necessary to secure adequate revenues or that otherwise impairs
22 or impedes the right of the holders of bonds with respect to such
23 revenues.

24 (h) A provision requiring the Authority to fix, prescribe and
25 collect annually rates or other charges in connection with the water and
26 sewer services furnished from the system which, together with other
27 available revenues, will be:

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

6 (ii) sufficient to pay the annual system operation and
7 maintenance costs; and

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

10 (i) A provision that no water or sewer service shall be
11 furnished free of charge to any person, except to the extent permitted
12 by the indenture.

13 (j) A provision requiring the Authority to hold or cause to be
14 held in trust the revenues or any part of revenues pledged to the
15 payment of such bonds and the interest thereon, or to any fund or
16 account created by any indenture relating to such bonds for the further
17 security or protection of such bonds and to apply such revenues or any
18 part of revenues or cause them to be applied only as provided in the
19 indenture and to invest all or any part of such revenues pending such
20 application in such securities and subject to such limitations as are
21 specified in the indenture.

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

25 (l) A provision permitting the Authority to issue additional
26 bonds or one or more additional series of bonds, equally secured with
27 bonds theretofore issued under the indenture, for the purpose of

1 acquiring, constructing or completing, improving or extending the
2 system or any part thereof or for the purpose of refunding any prior
3 bonds or any other prior obligations of the Authority; and a provision
4 limiting the power of the Authority to issue any additional bonds so
5 secured or any other additional bonds for such purpose.

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

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

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

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

1 bonds and interest coupons appertaining thereto, whether attached
2 thereto or detached therefrom.

3 (q) With respect to any provision relating to the modification
4 or amendment of an indenture, the Authority may agree that bonds
5 held by the Authority, Guam, the United States or any instrumentality
6 of either thereof (including every public corporation, political
7 subdivision, city, county, district, board, agency or instrumentality of
8 any kind of class) shall not be counted as outstanding bonds, or be
9 entitled to vote or assent, but shall, nevertheless, be subject to any such
10 modification or amendment.

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

15 (s) A provision permitting the Authority to purchase
16 outstanding bonds of the Authority from any moneys or funds or
17 accounts referred to in the indenture or otherwise legally available for
18 such purpose.

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

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

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

26 **§14211. Trustee for Authority and Holders of Bonds.**

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

7 (b) The Authority may provide in an indenture:

8 (i) for the deposit of all or any portion of the revenues
9 with the Authority and for the holding thereof by the Authority
10 in one or more separate funds or accounts in the Guam
11 Waterworks Authority Revenue Fund; and

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

17 **§14212. Duties and Powers of Trustee.** The Authority shall
18 prescribe in any indenture the duties and powers of the trustee with
19 respect to the issuance, authentication, sale and delivery of the bonds
20 provided for in such indenture and with respect to the payment of
21 principal of and interest on such bonds, the redemption thereof, the
22 registration and discharge from registration thereof and the
23 management of any and all funds provided as security therefore.

24 **§14213. Issuance and Interchange of Coupon and Registered**
25 **Bonds.** An indenture may provide that bonds may be issued as coupon
26 bonds or as registered bonds and for the interchange of coupon bonds
27 for registered bonds and registered bonds for coupon bonds, and may

1 provide that bonds shall be registered as to principal only or as to both
2 principal and interest or otherwise as the Authority may determine.

3 **§14214. Redemption of Bonds Prior to Maturity.** An indenture
4 may provide that bonds may be redeemed prior to maturity upon such
5 terms, conditions and upon such notice as are stated in the indenture
6 and upon the payment of such premium as may be fixed by the
7 indenture.

8 **§14215. Places of Payment.** An indenture may provide for the
9 payment of the principal and interest of bonds at any one or more
10 places in Guam or in the United States and in any specified coin or
11 currency of the United States.

12 **§14216. Execution and Authentication of Bonds.** An indenture
13 may provide for the execution and authentication of bonds by the
14 manual or facsimile signature of any one or more officers of the
15 Authority and by additional authentication by endorsement by the
16 manual signature or a signature stamp of any one or more officers of
17 the Authority or of any agent designated by the Authority as trustee. If
18 any officer or agent whose signature, countersignature or endorsement
19 appears upon the bonds or coupons ceases to be an officer or agent
20 before the delivery of the bonds or coupons, his signature,
21 countersignature or endorsement is nevertheless valid and of the same
22 force and effect as if he had remained such officer or agent until the
23 delivery of the bonds and coupons.

24 **§14217. Dates and Maturities of Bonds.** Bonds shall bear dates
25 prescribed by the Authority in the indenture providing for their
26 issuance. Bonds may be serial bonds, term bonds or sinking fund
27 bonds with such maturities as the indenture shall specify. No bond by

1 its terms shall mature more than fifty (50) years after its date of
2 issuance.

3 **§14218. Sale of Bonds.** Bonds authorized to be issued under this
4 Article shall be sold by the Authority for cash, in accordance with the
5 provisions of a resolution providing for such sale adopted by the Board.
6 The bonds may be sold at either public or private sale, and upon such
7 terms and conditions as shall be authorized by the Board, which may
8 provide that the bonds may be sold at less than their par or face value.

9 **§14219. Payment of Bonds from Sources Other Than Revenues.**
10 The Authority may use and expend all or any part of any funds other
11 than revenues or proceeds of any property owned by it other than the
12 system, whether received by gift, appropriation or otherwise (if not
13 restricted as to the use of such funds or proceeds of property by the
14 terms of gift or trust or provision of law) for the payment of bonds
15 issued pursuant to the provisions of this Article and of interest due
16 thereon.

17 **§14220. Payments Which May be Made Out of Proceeds of Sale**
18 **of Bonds.** The proceeds of sale of any bonds may be expended for any
19 one or more of the following purposes, all as provided in the indenture
20 relating to such bonds:

21 (a) For payment of any costs or expenses of the acquisition,
22 construction or improvement of the system or any part thereof or any
23 costs or expenses incidental thereto, including payment to the United
24 States or any other public body for the portion to be borne by the
25 Authority of the cost of any work done by the United States or such
26 public body for or jointly or in conjunction with the Board;

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

3 i. the acquisition, construction or improvement of the
4 system or any part thereof; or

5 ii. the authorization, issue or sale of bonds;

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

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

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

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

17 (g) For the payment of the principal of and interest on any
18 indebtedness incurred pursuant to 12 G.C.A. §14235 that is by its
19 terms repayable from the proceeds of sale of bonds; or

20 (h) For the payment of any prior bonds or other obligations of
21 the Authority.

22 **§14221. Bonds May be Secured by Revenues of System.** An
23 indenture may provide that payment of the bonds and the interest
24 thereon shall be secured by a pledge of and lien upon all or any portion
25 of the revenues of the system. Any such pledge and lien shall be valid
26 and binding from the time the pledge is made. The revenues pledged
27 and thereafter received by the Authority or by any trustee, depository

1 or custodian shall be deposited in the Guam Waterworks Authority
2 Revenue Account and shall be immediately subject to the lien of such
3 pledge without any physical delivery thereof or further act, and the lien
4 of such pledge shall be valid and binding against all parties having
5 claims of any kind in tort, contract or otherwise against the Authority or
6 such trustee, depository or custodian, irrespective of whether the
7 parties have notice thereof. The indenture by which such pledge is
8 created need not be recorded.

9 **§14222. Temporary Bonds.** An indenture may provide that
10 pending the actual issuance or delivery of definitive bonds, the
11 Authority may issue temporary or interim bonds, certificates or receipts
12 or any denomination whatsoever and with or without coupons, to be
13 exchanged for definitive bonds when ready for delivery.

14 **§14223. Replacement of Bonds or Coupons.** The Authority may
15 provide for the replacement of lost, destroyed or mutilated bonds or
16 coupons.

17 **§14224. Tax Exemptions.** Bonds issued pursuant to the
18 provisions of this Article and the interest or income therefrom are
19 exempt from taxation to the extent permitted by the provisions of
20 Section 11 of the Organic Act.

21 **§14225. Bonds as Legal Investments and as Security For**
22 **Performance of Any Act.** Notwithstanding any other provision of law,
23 all bonds issued pursuant to the provisions of this Article are legal
24 investments for all trust funds and for the funds of all banks, both
25 commercial and savings and may be deposited as security for the
26 performance of any act whenever any evidence of indebtedness of

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

3 **§14226. Refunding Bonds.** The Authority may provide for the
4 issuance, sale or exchange of refunding bonds for the purpose of
5 redeeming or retiring any bonds issued under the provisions of this
6 Article or any other prior obligations of the Authority. All provisions of
7 this Article applicable to the issuance of bonds are applicable to
8 refunding bonds and to the issuance, sale or exchange thereof.

9 **§14227. Use of Other Funds for System.** In addition to the
10 proceeds of any bonds issued and sold pursuant to this Article, the
11 Authority may use for the payment of the costs of acquisition,
12 construction or improvement of the system or any part thereof any
13 available money or funds of the Authority and any money or funds
14 made available to the Authority by any person or provided from any
15 source which may be expended for the accomplishing of the purposes
16 set forth in this Article or in the Guam Waterworks Authority Act.

17 **§14228. Insurance.** The Authority may insure against loss of
18 revenues from any cause whatsoever. The Authority may insure
19 against public liability or property damage from any cause. An
20 indenture may provide for the carrying of such insurance or any other
21 insurance in such amount and of such character as shall be specified in
22 such indenture, for the payment of the premiums thereon and for the
23 disposition of all proceeds received from any such insurance. At the
24 option of the Board, or as provided in any indenture, any insurance
25 may be provided by funded reserves or any other means.

26 **§14229. Pledge by the Government of Guam.** The government
27 of Guam is fully committed to ensuring that the Authority has the

1 ability to implement the capital improvements authorized to be paid by
2 this legislation in order to meet the needs of Guam ratepayers for
3 reliable and affordable services. The government also is fully committed
4 to ensuring that bondholders are protected to ensure full and timely
5 repayments of their loans. In order to mirror the previous pledge that
6 allowed Guam Power Authority to successfully re-enter the financial
7 markets as found in 12 G.C.A. § 8113.3, and to model similar language
8 found in laws authorizing debt for the Guam International Airport
9 Authority, the government of Guam hereby pledges that while any
10 bonds of the Authority issued under this Article remain outstanding
11 and not fully performed or discharged (a) to maintain the rights,
12 powers and duties of the Board and the Guam Public Utilities
13 Commission, or their respective successors in accordance with law, to
14 fulfill the terms of any agreements made with bondholders in
15 accordance with this Article, (b) to maintain the rights and remedies of
16 bondholders provided in this Article and any indenture, (c) to protect
17 the exclusive right of the Authority to operate or maintain within Guam
18 any water or wastewater system operated by the government or its
19 designees by preventing the acquisition, operation, maintenance or
20 permitting of any instrumentality of the Government or any other
21 public or private agency, entity or person to operate a separate and
22 competitive water and/or wastewater system , and (d) not to transfer
23 any additional non-system operating responsibilities or other unfunded
24 mandates to the Authority without providing for the payment of the
25 costs of such additional responsibilities, with the exception of annual
26 supplemental annuity and COLA contributions paid by the Authority

1 on behalf of retired employees of the Authority (or its lawful
2 predecessors) as may be required by the laws of Guam.

3 **§14230. Guam Waterworks Authority Construction Fund.** The
4 proceeds from the sale of all bonds authorized by this Article shall be
5 deposited to the credit of a fund to be designated as the Guam
6 Waterworks Authority Construction Fund, which fund is hereby
7 created. The money in said Construction Fund shall be expended in the
8 manner provided by law for any of the purposes authorized by this
9 Article, including any or all of the purposes specified by 12 G.C.A.
10 §14222, and for such other purposes, subject to the restrictions provided
11 by law or by such indenture, as may be authorized by such indenture.

12 **§14231. Guam Waterworks Authority Revenue Fund.** All
13 revenues received from the operation of the system shall be deposited
14 to the credit of the Guam Waterworks Authority Revenue Fund, which
15 fund is hereby created. Moneys in the Guam Waterworks Authority
16 Revenue Fund may be used for any of the following purposes in the
17 order of priority set forth in any indenture as provided in §14210(j):

- 18 (a) to pay principal or interest on any bonds;
19 (b) to pay any amounts due and owing under any payment
20 agreement or any credit provider reimbursement agreement;
21 (c) to pay the annual system operation and maintenance costs;
22 and
23 (d) for any other purposes of the Authority; all as provided in
24 any indenture or indentures and subject to any restrictions provided by
25 law or any indenture.

26 **§14232. Investment of Money in Funds.** Moneys in the Guam
27 Waterworks Authority Construction Fund and Revenue Fund may be

1 invested by the Authority and any revenues in any other fund or
2 account held by or on behalf of the Authority or its agent may be
3 invested by the Authority or its agent, as the case may be, in any
4 investment authorized by any indenture providing for the issuance of
5 bonds. All interest or other earnings received pursuant to such
6 investments shall be collected by the Authority or its agent, as the case
7 may be, and shall be deposited to the credit of the fund or account from
8 which such interest or other earnings are derived, unless otherwise
9 provided in an indenture.

10 **§14233. Use of Balances of Funds and of Surplus Money in**
11 **Funds.** Any balance remaining in any of the funds or accounts created
12 by this Article or any indenture after payment of all costs, expenses and
13 charges required or authorized to be expended therefrom, may be
14 allocated and used for such other purposes relating to the acquisition,
15 construction, improvement, operation and maintenance of the system
16 or to the Authority, as the Board may determine, subject to the
17 limitations and restrictions in any indenture. After all bonds shall have
18 been fully paid and discharged or provision for their payment and
19 discharge irrevocably made, any surplus moneys in any fund or
20 account created by this Article or any indenture shall, subject to the
21 limitations and restrictions in any indenture, be transferred to the
22 Authority and shall be and remain available for the acquisition,
23 construction, improvement, maintenance or operation of the system or
24 for any other purposes of the Authority herein or hereafter authorized
25 by law.

26 **§14234. Appropriation of Money in Funds.** All money in the
27 funds and accounts created by this Article or any indenture is hereby

1 appropriated for expenditure in carrying out the purposes herein and
2 therein provided.

3 **§14235. Short Term Borrowing.** Pursuant to the agency of
4 GEDCA, the Board may at any time or from time to time, by resolution
5 adopted by a majority of the members of the Board, authorize the
6 Authority to incur indebtedness, with the approval of the governor, for
7 any lawful purpose for any period not exceeding five (5) years
8 evidenced by contract with any person. Any such indebtedness shall be
9 incurred subject and subordinate to any contractual obligation of the
10 Authority to the holders of any bonds and the principal thereof and
11 interest thereon may be repaid:

12 (a) from revenues; or

13 (b) if incurred for a purpose for which bonds may be issued,
14 from revenues or from the proceeds of sale of bonds.

15 The total cumulative amount borrowed pursuant to this section
16 shall not exceed Five Million Dollars (\$5,000,000.00).

17 **§14236. Payment Agreements.** In addition to and in
18 amplification of the powers conferred upon the Board by the Guam
19 Waterworks Authority Act, this Article or any other law of Guam or of
20 the United States, the Board has power and is hereby authorized to
21 cause the Authority to enter into any contracts in connection with, or
22 incidental to, the issuance of bonds or other indebtedness, or the
23 carrying of any investment or program of investment or entering into or
24 maintaining any agreement which secures bonds or other indebtedness
25 (each, a "payment agreement"), which the Board determines to be
26 necessary or appropriate to place the obligation or investment of the
27 Authority, as represented by the bonds or such indebtedness,

1 investment, program of investment or agreement and the contract or
2 contracts, in whole or in part, on the interest rate, currency, cash-flow,
3 or other basis desired by the Board in furtherance of the purposes of
4 this Chapter, including, without limitation, contracts commonly known
5 as interest rate swap agreements or contracts providing for payments
6 based on levels of, or changes in, interest rates, or contracts to exchange
7 cash flows or a series of payments, or contracts, including, without
8 limitation, interest rate floors or caps, options, put or call to hedge
9 payment, rate, spread, or similar exposure with the parties, selected by
10 the means, and containing the payment, security, default, remedy, and
11 other terms and conditions, authorized by the Board, after giving due
12 consideration for the creditworthiness of the counterparties, where
13 applicable, including any rating by a nationally recognized rating
14 agency or any other criteria as may be appropriate; provided, that any
15 amounts received by the Authority pursuant to any payment agreement
16 shall constitute revenues and that any obligation of the Authority under
17 any payment agreement shall be payable solely from revenues.

18 Any payment agreement may include a provision that any
19 obligation of the Authority under any such payment agreement shall be
20 secured by all or by part of revenues; provided that, at the time of
21 execution and delivery of each payment agreement, any such provision
22 shall be in compliance with and shall not violate or breach any
23 provision of any indenture then in effect with respect to bonds.

24 **§14237. Credit Enhancement.** The Board has the power and is
25 hereby authorized to cause the Authority to enter into such contracts or
26 agreements with such banks, insurance companies or other financial
27 institutions as it determines are necessary or desirable to improve the

1 security and marketability of the bonds or the security of the
2 government's obligations under any contract or agreement entered into
3 under 12 G.C.A. §14236. Such contracts or agreements may contain an
4 obligation to reimburse, with interest, any such banks, insurance
5 companies or other financial institutions for advances used to pay
6 principal of or interest on the bonds and to indemnify any such banks,
7 insurance companies or other financial institutions for costs and
8 expenses incurred in connection with any such advance; provided, that
9 any obligation of the Authority under any reimbursement agreement
10 shall be payable solely from revenues.

11 Any reimbursement agreement may include a provision that the
12 obligations of the Authority under the agreement shall be secured by all
13 or by part of revenues; provided that, at the time of execution and
14 delivery of each such agreement, any such provision shall be in
15 compliance with and shall not violate or breach any provision of any
16 indenture then in effect with respect to bonds.

17 **§14238. No Personal Liability.** No member of the Board,
18 employee of the Authority or elected official of the government of
19 Guam shall be individually or personally liable for the payment of any
20 amounts due on any bonds, or for any other liability arising in
21 connection with the bonds; provided, however, that nothing in this 12
22 G.C.A. §14238 shall relieve any employee or elected official from the
23 performance of any ministerial duty required by law.

24 **§14239. Waiver of Immunity.** Notwithstanding any substantive
25 or procedural provision of Chapter 6 of Title 5, Guam Code Annotated,
26 the Authority shall not be entitled to immunity from any suit or action
27 in contract on the indebtedness authorized by this Article. For the

1 purposes of this Act only, immunity is waived as to the award of
2 attorney fees in connection with any suit brought to enforce any right or
3 obligation given under this Act or in connection with the enforcement
4 of the terms of any agreement or indenture that arises directly from the
5 issuance of bonds.

6 **§14240. Construction of Article.** This Article shall be liberally
7 construed to carry out the objects and purposes and the declared policy
8 of Guam as in this Article set forth. Nothing contained in this Article
9 shall be construed directly or by implication to be in any way in
10 derogation or limitation of powers conferred upon or existing in the
11 Authority or the Board by virtue of any provisions of the Organic Act or
12 laws of Guam.”

13 **Section 4. Local Sales of Bonds.** The Authority shall undertake its best efforts to
14 cause a portion of any bonds issued pursuant to Article 2, Chapter 14, Title 12,
15 Guam Code Annotated and approved pursuant to Section 4 of this Act, to be offered
16 for sale to residents of Guam, as well as to residents of other jurisdictions, if and to
17 the extent that such offer and any sales resulting from such offer do not increase the
18 costs to the Authority of issuing and repaying such bonds. Notwithstanding any
19 other provision of law to the contrary, these bonds may be sold to employees of the
20 Guam Waterworks Authority.

21 **Section 5. Approval of Guam Waterworks Authority Revenue Bonds.** The
22 Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12 of the Guam
23 Code Annotated, hereby approves the issuance and sale by the Authority of revenue
24 bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated (the "Act")
25 in one or more series or issues; provided that the issuance, terms and conditions of
26 the bonds shall have been approved by the Guam Public Utilities Commission, and
27 further provided that such bonds shall have a principal amount not to exceed Two

1 Hundred Million (\$220,000,000) shall have a final maturity not later than 2050, shall
2 bear interest at such rate or rates and shall be sold for such price or prices as shall
3 result in a yield to the bondholders not exceeding 6 percent per annum (treating
4 payments and receipts under any interest rate hedging contracts as if they were
5 payments to and receipts from the bondholders), and shall be issued and sold in the
6 manner, for the purposes and subject to the requirements and limitations provided
7 in Article 2, Chapter 14, Title 12, Guam Code Annotated.