

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Session

Bill No. 200-31(COR)

Introduced by:

T.C. Ada 
R.J. Respicio 

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AN ACT TO AMEND SECTION 4 OF PUBLIC LAW 28-71 AND §§14229 AND 14235 OF TITLE 12 OF THE GUAM CODE ANNOTATED RELATIVE TO THE AUTHORIZATION OF GUAM WATER-WORKS AUTHORITY TO ISSUE DEBT FOR THE PURPOSE OF REIMBURSING THE GENERAL FUND FOR DEBT SERVICE PAID OR TO BE PAID ON BONDS ISSUED BY THE GOVERNMENT TO PAY CAPITAL COSTS OF THE ISLAND WATER AND WASTEWATER SYSTEMS, AND RELATIVE TO A GUARANTEE OF SUCH DEBT BY THE GOVERNMENT

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Intent.** *I Liheslaturan Guåhan* finds that Section 4 of
2 Public Law 28-71, as amended by Section 2 of Public Law 30-145, was intended to
3 approve the issuance of Twenty Million Dollars (\$20,000,000) principal amount of Guam
4 Waterworks Authority (“Authority”) revenue bonds for the purpose of paying the balance
5 of the Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A. *I*
6 *Liheslaturan Guåhan* further finds that the Authority has not issued such bonds because
7 the issuance thereof on a parity with the Authority’s outstanding Guam Waterworks
8 Authority Water and Wastewater System Revenue Bonds would have been inconsistent
9 with the general bond indenture pursuant to which all such revenue bonds have been and
10 are to be issued. To provide an alternative to achieve the same purpose, *I Liheslaturan*
11 *Guåhan* intends by this Act to approve the issuance by the Authority of, and require the

1 Authority to use reasonable efforts to issue, subordinate debt in a principal amount not
2 exceeding Twenty Million Dollars (\$20,000,000) for the purpose of reimbursing the
3 General Fund for debt service paid or to be paid by the Government on the portion of the
4 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A allocable to
5 capital costs of the island water and wastewater systems.

6 The amendment made by Section 3 of this Act to § 14229 of Title 12
7 Guam Code Annotated is intended to clarify that such reimbursement is consistent with
8 the original intent of the pledge of the Government of Guam as provided in § 14229 and
9 therefore does not constitute the transfer to the Authority of a non-system operating
10 responsibility or an unfunded mandate within the meaning of the Authority’s revenue
11 bond indenture.

12 **Section 2.** Section 4 of Public Law 28-71 is hereby *amended* to read as follows:

13 **“Section 4. Approval of Guam Waterworks Authority Revenue**
14 **Bonds.** The Guam Legislature, *I Liheslaturan Guåhan*, pursuant to §50103 of
15 Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by
16 the Authority of revenue bonds pursuant to Article 2, Chapter 14, Title 12, Guam
17 Code Annotated (~~the ‘Act’~~) in one or more series or issues; provided that the
18 issuance, terms and conditions of the bonds *shall* have been approved by the
19 Guam Public Utilities Commission, and further provided that such bonds *shall*
20 have a principal amount not to exceed Two Hundred Twenty Million Dollars
21 (~~\$240,000,000~~ \$220,000,000), *shall* have a final maturity not later than 2055,
22 *shall* bear interest at such rate or rates and shall be sold for such price or prices as
23 shall result in a net yield to the bondholders *not exceeding* seven and one-half
24 percent (7.5%) per annum, *shall* be issued and sold in the manner, for the

1 purposes and subject to the requirements and limitations provided in Article 2,
2 Chapter 14, Title 12, Guam Code Annotated, and *shall* be issued pursuant to an
3 Indenture in substantially the form as attached to this Act as Exhibit A. ~~Twenty~~
4 ~~Million Dollars (\$20,000,000) principal amount shall be used to pay the balance~~
5 ~~of the government of Guam Limited Obligation (Section 30) Series 2001A bond~~
6 ~~and any other portions of Bonds or Loans paid for by General Fund revenues for~~
7 ~~which the Guam Waterworks Authority has received proceeds.~~ In order to be able
8 to take advantage of Build America Bonds, or other federally subsidized bond
9 program, net yield to the bondholders shall be calculated by subtracting any
10 interest subsidy amounts to be received from the United States in connection with
11 such bonds from the amount of interest to be paid to bondholders.”

12 **Section 3.** §14229 of Title 12 Guam Code Annotated is hereby *amended* to read
13 as follows:

14 **“§ 14229. Pledge by the Government of Guam.**

15 The government of Guam is fully committed to ensuring that the
16 Authority has the ability to implement the capital improvements authorized to be
17 paid by this legislation in order to meet the needs of Guam ratepayers for reliable
18 and affordable services. The government also is fully committed to ensuring that
19 bondholders are protected to ensure full and timely repayments of their loans. In
20 order to mirror the previous pledge that allowed Guam Power Authority to
21 successfully reenter the financial markets as found in 12 GCA § 8113.3, and to
22 model similar language found in laws authorizing debt for the A.B. Won Pat
23 International Airport Authority, Guam, the government of Guam hereby pledges
24 that while any bonds of the Authority issued under this Article remain outstanding

1 and not fully performed or discharged (a) to maintain the rights, powers and
2 duties of the Board and the Guam Public Utilities Commission, or their respective
3 successors in accordance with law, to fulfill the terms of any agreements made
4 with bondholders in accordance with this Article, (b) to maintain the rights and
5 remedies of bondholders provided in this Article and any indenture, (c) to protect
6 the exclusive right of the Authority to operate or maintain within Guam any water
7 or wastewater system operated by the government or its designees by preventing
8 the acquisition, operation, maintenance or permitting of any instrumentality of the
9 Government or any other public or private agency, entity or person to operate a
10 separate and competitive water and/or wastewater system, and (d) not to transfer
11 any additional non-system operating responsibilities or other unfunded mandates
12 to the Authority without providing for the payment of the costs of such additional
13 responsibilities, with the exception of annual supplemental annuity and COLA
14 contributions paid by the Authority on behalf of retired employees of the
15 Authority (or its lawful predecessors) as may be required by the laws of Guam.
16 The reimbursement of debt service paid or to be paid by the General Fund on debt
17 previously issued by the Government to pay capital costs of the island water and
18 wastewater systems shall not be considered to be a non-system operating
19 responsibility or an unfunded mandate within the meaning of this section.”

20 **Section 4.** §14235 of Title 12 Guam Code Annotated is hereby amended to read

21 as follows:

22 **“§ 14235. Short Term Borrowing.**

23 (1) Pursuant to the agency of GEDA, the Board may at any time or from
24 time to time, by resolution adopted by a majority of the members of the Board,

1 authorize the Authority to incur indebtedness, including lines-of-credit, with the
2 approval of *I Maga'lahi* (the Governor), for any lawful purpose for any period not
3 exceeding ten (10) years evidenced by contract with any person. Any such
4 indebtedness *shall* be incurred subject and subordinate to any contractual
5 obligation of the Authority to the holders of any bonds and the principal thereof
6 and interest thereon may be repaid:

7 (a) from revenues; *or*

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

10 The total cumulative amount borrowed pursuant to this Section *shall not* exceed
11 ~~Thirty~~ Fifty Million Dollars (~~\$30,000,000~~ \$50,000,000.00). Notwithstanding any
12 other provision of law, the indebtedness specified herein *shall not* be subject to
13 taxation by the government of Guam.

14 (2) **Approval of Guam Waterworks Authority Short Term**
15 **Indebtedness.**

16 (a) *I Liheslaturan Guåhan*, pursuant to § 50103 of Chapter 50,
17 Title 12, Guam Code Annotated, hereby approves the terms and conditions
18 of short term debt to be issued by the Guam Waterworks Authority
19 (GWA) pursuant to § 14235, Article 2, Chapter 14, Title 12, Guam Code
20 Annotated, in one (1) or more series or issues (together with any related
21 reimbursement obligations); provided that the issuance, terms and
22 conditions of the debt, the indenture *or* loan agreement pursuant to which
23 the bonds are to be issued, and any reimbursement agreement *shall* have
24 been approved by the Guam Public Utilities Commission, and *further*

1 *provided* that such debt may be issued in the principal amount necessary to
2 fund GWA's required operating account and operating reserve account
3 balances, to pay past due operating expenses incurred by GWA, to provide
4 interim financing for a portion of the costs of the moratorium project as
5 defined in § 14241(g), Article 2, Chapter 14, Title 12, Guam Code
6 Annotated, and to pay expenses incurred in connection with the issuance
7 of such debt *not* already included in an existing appropriation for *or* in the
8 regular budget of any government agency *or* instrumentality *or* public
9 corporation providing any service in connection with the issuance of such
10 bonds, but *not to exceed* an aggregate principal amount of Thirty Million
11 Dollars (\$30,000,000). Such debt *shall* have a final maturity *not later than*
12 ten (10) years after its date of issuance, *shall* bear interest at such rate *or*
13 rates and be sold for such price *or* prices as may be approved by the Guam
14 Public Utilities Commission, and *shall* have such other terms and
15 conditions as are consistent with the requirements and limitations provided
16 in ~~said~~ this § 14235.

17 (b) In addition to the approval provided in subsection (2)(a) of this
18 Section 14235, I Liheslaturan Guåhan, pursuant to §50103 of Title 12,
19 Guam Code Annotated, hereby approves the issuance and sale by the
20 Authority of debt pursuant to subsection (1) of this Section in one *or more*
21 series or issues; provided that (i) the issuance, terms and conditions of the
22 debt *shall* have been approved by the Guam Public Utilities Commission,
23 (ii) such debt *shall* have a principal amount not to exceed Twenty Million
24 Dollars (\$20,000,000), *shall* have a final maturity not later than ten years

1 from its date of issuance, shall bear interest at a rate not exceeding eight
2 percent (8%) per annum, and shall be issued and sold in the manner, for
3 the purposes and subject to the requirements and limitations provided in
4 subsection (1) of this Section, and (iii) the proceeds of such debt shall be
5 used solely for the purposes of reimbursing the General Fund of the
6 Government for debt service paid or to be paid by the Government on the
7 portion of the Government of Guam Limited Obligation (Section 30)
8 Bonds, Series 2001A allocable to the payment of capital costs of the island
9 water and wastewater systems, paying expenses incurred in connection
10 with the issuance of such debt not already included in an existing
11 appropriation for or in the regular budget of any government agency or
12 instrumentality or public corporation providing any service in connection
13 with the issuance of such bonds, and funding any related debt service
14 reserves. The Authority shall, with the assistance of Guam Economic
15 Development Authority, use reasonable efforts to issue such debt and
16 make such reimbursement to the General Fund, subject in all respects to
17 the applicable provisions of this Section.

18 **(3) Guarantee and Waiver of Immunity With Respect to Short**
19 **Term Indebtedness for Reimbursement of General Fund.** The government of
20 Guam hereby guarantees all payments due for a maximum ten (10) year term
21 under the Twenty Million Dollar (\$20,000,000) subordinate debt issued by the
22 Authority pursuant to subsection (2)(b) of this Section. This guarantee is a general
23 obligation of the government of Guam, and constitutes a pledge of the full faith
24 and credit of the government of Guam. Subject to the requirements of this

1 subsection (3), the government of Guam consents to any and all extensions of
2 time and waivers or modifications of obligations guarantied hereunder.
3 Notwithstanding the provisions of Chapter 6 of Title 5 of the Guam Code
4 Annotated, the government of Guam hereby waives immunity from any suit or
5 action in contract upon the loan and guaranty but does *not* waive sovereign
6 immunity as to the personal liability of elected or appointed officials and
7 employees of the government of Guam.”

8 **Section 5. Legislative Appropriations.** Funds received by the Government
9 pursuant to Section 4, §14235(2)(b), of this Act shall be subject to legislative
10 appropriation.

11 **Section 6. Use of Proceeds of the 2005 and 2010 Guam Waterworks**
12 **Authority Revenue Bonds.** All of the proceeds from the Guam Waterworks Authority
13 Water and Wastewater System Revenue Bonds issued in 2005 and 2010 that have been
14 deposited in the Construction Accounts established under the Authority’s bond indenture
15 shall be used to pay capital costs of additions, enlargements, betterments, extensions and
16 other improvements to or related to, and the equipping of, the island water and
17 wastewater systems in accordance with the Authority’s bond indenture.

18 **Section 7. Severability.** *If* any provision of this Law or its application to any
19 person or circumstance is found to be invalid or contrary to law, such invalidity *shall* not
20 affect other provisions or applications of this Law which can be given effect without the
21 invalid provisions or application, and to this end the provisions of this Law are severable.