



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

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

19 MAR 2009

2009 MAR 20 PM 2:02 - JWW

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

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.

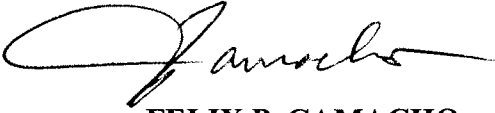
The bond financing authorization may be secured by system revenue or may be a General Obligation of the government of Guam, or both. Unfortunately, the system revenue pledge may not be viable at this point in time because of the system's revenue collection history. While a General Obligation bond may 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,

A handwritten signature in black ink, appearing to read 'F. Camacho', written in a cursive style.

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 26 day of FEB, 2009, at 7:00 o'clock P.M.



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'lahaen*
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.

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

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

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

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

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

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

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

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

1 (k) *Revenue of the system* means all gross income and other
2 amounts received by *or* on behalf of the Department as revenues of any
3 kind from the ownership *or* operation of any part of the system, including
4 all rates, fees and charges received by the Department, and all proceeds
5 of insurance *or* grants covering business interruption loss (and related
6 losses and expenses) relating to the system, and all other income and
7 revenue howsoever derived by the *Department* from the ownership *or*
8 operation of, *or* arising from, the system, together with all interest, profits
9 *or* other income derived from the investment of amounts in the Solid
10 Waste Operations Fund, to be deposited to the Solid Waste Operations
11 Fund in accordance with §51833, Title 10, Guam Code Annotated.

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

14 (m) *System* means the solid waste management system, now *or*
15 hereafter existing, owned and/*or* operated by the *Department* *or* its
16 contractors, agents *or* subcontractors, including, but *not limited to*,
17 landfills (whether closed *or* open and including Ordot Dump), transfer
18 stations, recycling facilities, collection trucks, appurtenant equipment
19 such as scales, ground water monitoring equipment and pollution control
20 equipment, and administrative facilities supporting the provision of solid
21 waste management services, including facilities for payroll, billing and
22 collections. Notwithstanding this *or* any other provision of law, the
23 authorization to enter into a privatization, partnership, *or* contract by the
24 *Department* for the operation of the system *shall* require a cost benefit
25 analysis and economic impact study, and legislative approval.

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

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

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

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

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

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

17 **§51803. Power to Incur Indebtedness.** *I Maga'lahaen Guåhan*,
18 through the agency of the Guam Economic Development Authority pursuant to
19 §50103(k), Title 12, Guam Code Annotated, and with the approval of *I*
20 *Lihe slaturan Guåhan* by statute, has the power and is hereby authorized, in
21 addition to all other powers conferred by the Guam Solid Waste Management
22 and Litter Control Act *or* any other provision of this Chapter *or* by any law of
23 Guam *or* of the United States, to incur indebtedness on behalf of the
24 government of Guam, by the issuance of bonds pursuant to this Article to raise
25 funds for the purpose of acquiring, constructing, improving, equipping,
26 maintaining, repairing, renewing, replacing, reconstructing *or* insuring the

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

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

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

1 **§51804. Powers of *Department*.** Notwithstanding any provision of
2 law *or* regulation, the *Department* has power and is hereby authorized, in
3 addition to all other powers conferred upon the *Department* by the Guam Solid
4 Waste Management and Litter Control Act *or* any other provision of this
5 Chapter *or* by any law of Guam, to exercise any *or* all of the powers granted to
6 the *Department* by this Article. The *Department* has jurisdiction over and may
7 collect and transport to permitted solid waste facilities, *or* contract for the
8 collection and transportation to permitted solid waste facilities, of solid waste
9 from all individual dwelling units, single-family residences, duplexes, and
10 government-managed housing units *or* residences. The *Department does not*
11 have jurisdiction over the collection and transportation of solid waste from any
12 hotels, commercial *or* industrial establishments, and government agencies, *or*
13 from any multiple dwelling units other than duplexes. The *Department* may
14 operate the Ordot Dump, *or* it may contract for the operation of the Ordot
15 Dump, in accordance with Guam law and its permit under this Chapter. The
16 *Department* may contract for the operation of the landfill.

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

1 **§51805. Rates, Fees and Charges; Refunds.** Notwithstanding any
2 provision of law *or* regulation to the contrary, the *Department* is authorized to
3 establish and modify from time to time, with prior approval by the Public
4 Utilities Commission, reasonable rates, fees and charges for solid waste
5 services at least adequate to cover the full cost of such services, including the
6 costs of debt service for capital improvements of permitted solid waste
7 facilities, and to collect money from all users *or* customers, and to refund
8 charges collected in error. Rates, fees and charges may be collected before *or*
9 after the provision of the service for which they are charged.

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

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

21 **§51806. Validity of Authorization and Issuance of Bonds.** The
22 validity of the authorization and issuance of any bonds by the government
23 pursuant to this Article is *not* dependent on *nor* affected in any way by:

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

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

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

6 **§51807. I Maga'lahi to Determine Issuance of Bonds and**
7 **Incurring of Other Indebtedness.**

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

10 **§51808. I Maga'lahi to Declare Purpose and Maximum Amount**
11 **of Bonds to be Issued.** Before issuing any bond *or* bonds, *I Maga'lahen*
12 *Guåhan shall* declare the purpose for which the proceeds of the bonds proposed
13 to be issued *shall* be expended and *shall* specify the maximum amount of bonds
14 to be issued *or* sold for such purpose. Bonds *shall not* be issued *or* sold for
15 such purpose in an amount exceeding such specified maximum.

16 **§51809. Indenture Providing Terms and Conditions of Bonds.** *I*
17 *Maga'lahen Guåhan* may enter into one (1) *or* more indentures on behalf of the
18 government providing for the aggregate principal amount, date *or* dates,
19 maturities, interest rates *or* methods for determination thereof, denominations,
20 form, registration, transfer and interchange of any bonds issued pursuant to this
21 Article and the terms and conditions on which the same *shall* be executed,
22 issued, secured, sold, paid, redeemed, funded and refunded. Each taker and
23 subsequent holder of the bonds has recourse to all the provisions of the
24 indenture and of this Article and is bound thereby.

25 **§51810. Issues of Bonds.** An indenture may provide for one (1) *or*
26 several series of bonds and that any series may be divided into one (1) *or* more

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

7 **§51811. Covenants and Agreements That May be Contained in**
8 **Indenture.** An indenture pursuant to which bonds are issued may include any
9 and all covenants and agreements on the part of the government as *I*
10 *Maga'lahen Guahan* deems necessary *or* advisable, including, without limiting
11 the generality of the foregoing, any one (1) *or* more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **§51812. Trustee for Government and Holders of Bonds.**

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

1 (b) The government may provide in an indenture:

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

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

11 **§51813. Duties and Powers of Trustee.** The government *shall*
12 prescribe in any indenture the duties and powers of the trustee with respect to
13 the issuance, authentication, sale and delivery of the bonds provided for in such
14 indenture and with respect to the payment of principal of and interest on such
15 bonds, the redemption thereof, the registration and discharge from registration
16 thereof and the administration of any and all funds provided as security
17 therefore.

18 **§51814. Issuance and Interchange of Bearer and Registered**
19 **Bonds.** An indenture may provide that bonds may be issued as bearer bonds *or*
20 as registered bonds and for the interchange of bearer bonds for registered bonds
21 and registered bonds for bearer bonds, and may provide that bonds *shall* be
22 registered as to principal only *or* as to both principal and interest *or* otherwise
23 as *I Maga'lahen Guåhan* may determine.

24 **§51815. Redemption of Bonds *Prior* to Maturity.** An indenture
25 may provide that bonds may be redeemed prior to maturity upon such terms,

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

3 **§51816. Places of Payment.** An indenture may provide for the
4 payment of the principal and interest of bonds at any one (1) *or* more places in
5 Guam *or* in the United States and in any specified coin *or* currency of the
6 United States.

7 **§51817. Execution and Authentication of Bonds.** An indenture
8 may provide for the execution and authentication of bonds by the manual *or*
9 facsimile signature of any one (1) *or* more officers of the government and by
10 additional authentication by endorsement by the manual signature *or* a signature
11 stamp of any one (1) *or* more officers of the government *or* of any agent
12 designated by the government as trustee. *If* any officer *or* agent whose
13 signature, countersignature *or* endorsement appears upon the bonds ceases to be
14 an officer *or* agent before the delivery of the bonds, his signature,
15 countersignature *or* endorsement is nevertheless valid and of the same force and
16 effect as *if* he had remained such officer *or* agent until the delivery of the bonds.

17 **§51818. Dates and Maturities of Bonds.** Bonds *shall* bear dates
18 prescribed in the indenture providing for their issuance. Bonds may be serial
19 bonds, term bonds *or* sinking fund bonds with such maturities as the indenture
20 *shall* specify. *No* bond by its terms *shall* mature more than fifty (50) years after
21 its date of issuance.

22 **§51819. Sale of Bonds.** Bonds authorized to be issued under this
23 Article *shall* be sold for cash, in accordance with the provisions of a certificate
24 *or* agreement executed by *I Maga'lahaen Guåhan*. The bonds may be sold at
25 either public *or* private sale, and upon such terms and conditions as *shall* be

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

3 **§51820. Payment of Bonds from Sources Other Than Pledged**
4 **Revenue.** The government may use and expend all *or* any part of any funds
5 other than pledged revenue *or* proceeds of any property owned by it other than
6 the system, whether received by gift *or* appropriation (*if not* restricted as to the
7 use of such funds *or* proceeds of property by the terms of gift *or* trust *or*
8 provision of law) for the payment of bonds issued pursuant to the provisions of
9 this Article and secured by pledged revenue, and of interest due thereon.

10 **§51821. Payments Which May be Made Out of Proceeds of Sale**
11 **of Bonds.** The proceeds of sale of any bonds may be expended for any one (1)
12 *or* more of the following purposes, all as provided in the indenture relating to
13 such bonds:

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

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

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

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

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

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

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

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

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

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

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

18 **§51822. Bonds May be Secured by Revenue of the System.** An
19 indenture may provide that payment of the bonds and the interest thereon *shall*
20 be secured by a pledge of and lien upon all *or* any portion of the revenue of the
21 system, subject to any parity lien created *or* to be created pursuant to Article 9
22 of this Chapter. Any such pledge and lien *shall* be valid and binding against all
23 parties in accordance with its terms and have priority against all parties in
24 accordance with its terms from the time the pledge is made, and property so
25 pledged *shall* immediately be subject to the lien of the pledge without the need
26 for physical delivery, recordation filing *or* other further act. The pledge *shall*

1 *not* be subject to Division 9 of Title 13 of the Guam Code Annotated or any
2 successor statute. The revenue of the system pledged and thereafter received by
3 the government *or* by any trustee, depository *or* custodian *shall* be deposited in
4 a separate subaccount of the revenue account in the Solid Waste Operations
5 Fund. The indenture by which such pledge is created need *not* be recorded. All
6 such pledged revenue is hereby appropriated for the purposes of paying the
7 principal and interest on the bonds issued pursuant to this Article. Pledged
8 revenue released from the lien of the indenture *or* certificate pursuant to which
9 the bonds are issued *shall* be available for any other lawful purpose. *If* the
10 bonds are secured *solely* by such a pledge of and lien upon all *or* a portion of
11 the revenue of the system, then *no* such bond and *no* other obligation
12 undertaken by the government under any indenture, lease *or* other instrument
13 relating to such bond *shall* be *or* become a lien, charge *or* liability against the
14 government of Guam *or* against the *Department* *or* against any property *or*
15 funds of the government of Guam *or* the *Department*, *except* to the extent of the
16 pledge of revenue of the system provided by such indenture, lease *or* other
17 instrument. Every such bond *shall* contain a recital on its face stating that it is a
18 limited obligation of the government of Guam and *shall not* be deemed to be
19 secured by the faith and credit of the government of Guam.

20 **§51823. Valid and Binding.** *If* and to the extent determined by *I*
21 *Maga'lahaen Guåhan*, the bonds authorized by this Article *shall* constitute the
22 valid and binding general obligations of the government of Guam, in addition to
23 any applicable pledge of the revenues described in Title 10, Guam Code
24 Annotated, §51822. The government of Guam pledges full faith and credit for
25 the punctual payment of both the principal of and interest on such bonds and
26 covenants that there *shall* be collected annually in the same manner and at the

1 same time as government revenue for other purposes is collected, such sum as
2 is required to pay the principal of and interest of such bonds. There are hereby
3 appropriated from the General Fund such sums as may be necessary in each
4 year in addition to any amounts appropriated under Title 10, Guam Code
5 Annotated, §51822 to equal the amount of money necessary to pay principal
6 and interest on such bonds. All officers charged by law with any duty in the
7 collection of the revenues of the government from which debt service on such
8 bonds will be payable *shall* do every lawful thing necessary to collect such sum.
9 The validity of any such bonds *shall not* be affected by the validity or regularity
10 of any proceedings for the payment of the costs paid *or* to be paid with the
11 proceeds of such bonds.

12 **§51824. Temporary Bonds.** An indenture may provide that pending
13 the actual issuance *or* delivery of definitive bonds, the government may issue
14 temporary *or* interim bonds, certificates *or* receipts *or* any denomination
15 whatsoever, to be exchanged for definitive bonds when ready for delivery.

16 **§51825. Replacement of Bonds.** The government may provide for
17 the replacement of lost, destroyed *or* mutilated bonds.

18 **§51826. Tax Exemption.** Bonds issued pursuant to the provisions of
19 this Article and the interest *or* income therefrom are *exempt* from taxation to the
20 extent permitted by the provisions of Section 11 of the Organic Act.

21 **§51827. Bonds as Legal Investments and as Security For**
22 **Performance of Any Act.** Notwithstanding any other provision of law, all
23 bonds issued pursuant to the provisions of this Article are legal investments for
24 all trust funds and for the funds of all banks, both commercial and savings, and
25 may be deposited as security for the performance of any act whenever any

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

3 **§51828. Refunding Bonds.** *I Maga'lahaen Guåhan* may, on behalf of
4 the government, provide for the issuance, sale *or* exchange of refunding bonds
5 for the purpose of retiring indebtedness *or* other obligations issued to finance all
6 *or* any portion of the system. All provisions of this Article applicable to the
7 issuance of bonds are applicable to refunding bonds and to the issuance, sale *or*
8 exchange thereof.

9 **§51829. Use of Other Funds for System.** In addition to the
10 proceeds of any bonds issued and sold pursuant to this Article, the Department
11 may use for the payment of the costs of acquisition, construction *or*
12 improvement of the system *or* any part thereof any available money *or* funds of
13 the *Department* and any money *or* funds made available to the *Department* by
14 any person *or* provided from any source which may be expended for the
15 accomplishing of the purposes set forth in this Article *or* in the Guam Solid
16 Waste Management and Litter Control Act.

17 **§51830. Insurance.** The *Department* may insure against loss of
18 revenue of the system from any cause whatsoever. The *Department* may insure
19 against public liability *or* property damage from any cause. An indenture, lease
20 *or* other instrument 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 such
22 indenture, lease, *or* other instrument for the payment of the premiums thereon
23 and for the disposition of all proceeds received from any such insurance. At the
24 option of the Director, subject to the requirements of any indenture, lease, *or*
25 other instrument, any insurance may be provided by funded reserves *or* any
26 other means.

1 **§51831. Pledge by the Government of Guam.** The government of
2 Guam is fully committed to ensuring that the *Department* has the ability to
3 implement the capital improvements authorized to be paid by this legislation in
4 order to meet the needs of Guam ratepayers for reliable and affordable services.
5 The government also is fully committed to ensuring that bondholders are
6 protected to ensure full and timely payments of their bonds. In accordance with
7 prior similar situations and precedents, the government hereby pledges, while
8 any bonds issued under this Article remain outstanding and *not* fully performed
9 *or* discharged, (a) to maintain the rights, powers and duties of the Director, the
10 *Department* and the Guam Public Utilities Commission, *or* their respective
11 successors in accordance with law, to fulfill the terms of any agreements made
12 with bondholders in accordance with this Article; (b) to maintain the rights and
13 remedies of bondholders provided in this Article and any indenture; and (c) *not*
14 to transfer any additional non-system operating responsibilities *or* other
15 unfunded mandates to the system without providing for the payment of the
16 costs of such additional responsibilities.

17 **§51832. Construction Account.** The proceeds from the sale of all
18 bonds authorized by this Article *shall* be deposited to the credit of a
19 Construction Account, which account is hereby created within the Solid Waste
20 Operations Fund. The money in the account *shall* be expended in the manner
21 provided by law for any of the purposes authorized by this Article, including
22 any *or* all of the purposes specified by Title 10, Guam Code Annotated,
23 §51821, and for such other purposes, subject to the restrictions provided by law
24 *or* by such indenture, as may be authorized by such indenture.

25 **§51833. Revenue Account.** All revenue of the system *shall* be
26 deposited to the credit of the applicable subaccount of the Revenue Account,

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

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

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

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

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

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

17 **§51834. Investment of Money in Funds and Accounts.** Moneys in
18 the Revenue Account and Construction Account in the Solid Waste Operations
19 Fund may be invested by the government *or* the trustee under any indenture, as
20 the case may be, in any investment authorized by any indenture providing for
21 the issuance of bonds. All interest *or* other earnings received pursuant to such
22 investments *shall* be deposited to the credit of the fund *or* account from which
23 such interest *or* other earnings are derived, unless otherwise provided in an
24 indenture.

25 **§51835. Use of Balances of Funds and Accounts and Surplus**
26 **Money in Funds and Accounts.** Any balance remaining in any of the funds *or*

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

11 **§51836. Appropriation of Money in Funds and Accounts.** All
12 money in the funds and accounts created by this Article *or* any indenture is
13 hereby continuously appropriated for expenditure to carry out the purposes
14 herein and therein provided.

15 **§51837. Credit Enhancement.** *I Maga'lahaen Guåhan* is hereby
16 authorized to enter into such contracts *or* agreements, on behalf of the
17 government, with such banks, insurance companies *or* other financial
18 institutions as *I Maga'lahaen Guåhan* determines are necessary *or* desirable to
19 improve the security and marketability of the bonds. Such contracts *or*
20 agreements may contain an obligation to reimburse, with interest, any such
21 banks, insurance companies *or* other financial institutions for advances used to
22 pay principal of *or* interest on the bonds and to indemnify any such banks,
23 insurance companies *or* other financial institutions for costs and expenses
24 incurred in connection with any such advance. Any such reimbursement
25 obligation and any other obligations of the government under such contracts *or*
26 agreements *shall* be secured by a pledge of the revenue of the system, but *only*

1 *if* and to the extent that revenue of the system has been pledged to the bonds. In
2 the event that the bonds *shall* constitute the valid and binding general
3 obligations of the government pursuant to Title 10, Guam Code Annotated,
4 §51823, any such obligations *shall* be general obligations of the government of
5 Guam and any such advance, *if* necessary, *shall* be treated for Organic Act
6 purposes as creating an obligation issued to refund the bonds.

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

13 **§51838. No Personal Liability.** Neither *I Maga'lahaen Guåhan*, the
14 Director, any employee of the *Department*, any employee of the government
15 *nor* any elected official of the government *shall* be individually *or* personally
16 liable for the payment of any amounts due on any bonds, *or* for any other
17 liability arising in connection with the bonds; provided, however, that nothing
18 in this Title 10, Guam Code Annotated, §51838, *shall* relieve any employee *or*
19 elected official from the performance of any ministerial duty required by law.

20 **§51839. Waiver of Immunity.** Notwithstanding any substantive *or*
21 procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the
22 government *shall not* be entitled to immunity from any suit *or* action in contract
23 on the indebtedness authorized by this Article. For the purposes of this Act
24 only, immunity is waived as to the award of attorney fees in connection with
25 any suit brought to enforce any right *or* obligation given under this Act *or* in

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

3 **§51840. Construction of Article.** This Article *shall* be liberally
4 construed to carry out the objects and purposes and the declared policy of the
5 government of Guam as in this Article set forth. Nothing contained in this
6 Article *shall* be construed directly *or* by implication to be in any way in
7 derogation *or* limitation of powers conferred upon *or* existing in the
8 *Department*, the Director *or I Maga'lahañ Guåhan* by virtue of any provisions
9 of the Organic Act *or* laws of Guam.

10 **§51841. Approval by Guam Economic Development Authority.**
11 §50103(k), Title 12, Guam Code Annotated, provides that agencies and
12 instrumentalities of the Government of Guam *shall* issue bonds and other
13 obligations only by means of and through the agency of the Guam Economic
14 Development Authority (GEDA). *No* issue of bonds authorized by this Article
15 *shall* be sold until the Board of Directors of GEDA has adopted a resolution
16 approving the sale of such issue.

17 **§51842. Approval of Voters Not Required.** Notwithstanding §§
18 17311 and 17312 of Title 3, Guam Code Annotated, the issuance of the bonds
19 authorized by this Section *shall not* be required to be subject to the approval of,
20 *or* placed before, the voters of Guam.

21 **§51843.** Bonds authorized pursuant to this Article 8 *shall* only be
22 issued if the Income Tax Refund –Cola Deficit Financing Bonds authorized in 5
23 G.C.A. §1512.1 are also issued at the same time or earlier.

24 **Section 2. Local Sales of Bonds.** GEDA *shall* undertake its best efforts to
25 cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam
26 Code Annotated, and approved pursuant to Section 3 of this Act, to be offered for sale

1 to residents of Guam, as well as to residents of other jurisdictions, *if* and to the extent
2 that such offer and any sales resulting from such offer *do not* increase the costs to the
3 government of issuing and repaying such bonds. Notwithstanding any other provision
4 of law to the contrary, these bonds may be sold to employees of the *Department of*
5 *Public Works*.

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

13 **Section 3. Approval of Government of Guam Solid Waste Management**
14 **System Bonds.** *I Liheslaturan Guåhan*, pursuant to §50103 of Title 12, Guam Code
15 Annotated, and §51803 of Title 10, Guam Code Annotated, hereby approves the
16 issuance and sale by the government of bonds pursuant to Article 8, Chapter 51, Title
17 10, Guam Code Annotated (the Act), in one (1) *or* more series *or* issues (together with
18 any related reimbursement obligations); provided that the issuance, terms and
19 conditions of the bonds and any reimbursement agreements *shall* have been approved
20 by the Guam Public Utilities Commission, and further provided, that such bonds *shall*
21 have, together with any lease-back obligations issued pursuant to Article 9, Chapter
22 51, Title 10, Guam Code Annotated, an aggregate principal amount *not to exceed* Two
23 Hundred Two Million Four Hundred Twenty-five Thousand Dollars (\$202,425,000),
24 for the payment of the costs of the closure of the Ordot Dump and the construction of
25 the new landfill, *or* to reimburse the government for the payment, after the date of this
26 legislation, of such system bond costs, *or* for the purpose of refunding any such

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

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

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

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

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

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

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

22 (h) *Revenue of the system* means all gross income and other
23 amounts received by *or* on behalf of the *Department* as revenues of any
24 kind from the ownership *or* operation of any part of the system, including
25 all rates, fees and charges received by the *Department*, and all proceeds
26 of insurance *or* grants covering business interruption loss (and related

1 losses and expenses) relating to the system, and all other income and
2 revenue howsoever derived by the *Department* from the ownership *or*
3 operation of, *or* arising from, the system, together with all interest, profits
4 *or* other income derived from the investment of amounts in the Solid
5 Waste Operations Fund, to be deposited to the Solid Waste Operations
6 Fund in accordance with §51833, Title 10, Guam Code Annotated.

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

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

13 (k) *System* means the solid waste management system, now *or*
14 hereafter existing, owned and/or operated by the *Department* *or* its
15 contractors, agents *or* subcontractors, including, but *not limited to*,
16 landfills (whether closed *or* open), transfer stations, recycling facilities,
17 collection trucks, appurtenant equipment such as scales, ground water
18 monitoring equipment and pollution control equipment, and
19 administrative facilities supporting the provision of solid waste
20 management services, including facilities for payroll, billing and
21 collections.

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

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

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

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

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

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

16 **§51903. Authorization to Enter Into Long-Term Leases.** *I*
17 *Maga'lahaen Guåhan* may enter into a lease and lease-back on behalf of the
18 *Department* for the financing of the acquisition, construction, improvement,
19 equipping, repair, renewal, replacement, *or* reconstruction of any solid waste
20 facility, together with operation and maintenance of all *or* any portion of such
21 solid waste facility over the term of the lease-back, according to the needs of
22 the *Department* and consistent with this Article.

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

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

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

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

25 **§51904. Procurement.** Subject to the approval of *I Liheslaturan*
26 *Guåhan*, the government of Guam *or* the *Department* may solicit proposals, in

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

5 **§51905. Powers of *Department*.** Notwithstanding any provision of
6 law *or* regulation, the *Department* has power and is hereby authorized, in
7 addition to all other powers conferred upon the *Department* by the Guam Solid
8 Waste Management and Litter Control Act *or* any other provision of this
9 Chapter *or* by any law of Guam, to exercise any *or* all of the powers granted to
10 the *Department* by this Article.

11 **§51906. Assignments.** To facilitate the purposes of this Article and
12 to provide security for the bondholders, the contractor may assign, with the
13 consent of the *Department*, the lease and the lease-back to any trustee,
14 underwriter *or* other appropriate party as may be necessary to facilitate the
15 issuance of certificates of participation in lease-back payments *or* other
16 financial instruments to provide the financing for the solid waste facility.

17 **§51907. Use of Tax-Exempt Financing.** To minimize the financing
18 cost to the *Department*, all financing utilized by the contractor to fund the
19 construction, operation and maintenance of a solid waste facility *shall* be
20 through tax-exempt obligations, *if* a mechanism to do so is available. The
21 purpose for this requirement is to assure that the *Department* pays the lowest
22 possible interest rate so that the cost of financing the construction, operation
23 and maintenance of a solid waste facility to the *Department*, amortized through
24 the lease-back payments from the *Department* to the contractor, will be lower
25 than regular commercial rates.

1 **§51908. Lease-Back May be Secured by Revenue of the System.**

2 A lease-back *shall* provide that payment of obligations thereunder *may* be
3 secured by a pledge of and lien upon all *or* any portion of the revenue of the
4 system, subject to any parity lien created pursuant to Article 8 of this Chapter.
5 Any such pledge and lien *shall* be valid and binding from the time the pledge is
6 made. The revenue of the system pledged and thereafter received by the
7 government *or* by any trustee, depository *or* custodian *shall* be deposited in a
8 separate subaccount of the revenue account in the Solid Waste Operations Fund
9 and *shall* be immediately subject to the lien of such pledge without any physical
10 delivery thereof or further act, and the lien of such pledge *shall* be valid and
11 binding against all parties having claims of any kind in tort, contract *or*
12 otherwise, against the government *or* such trustee, depository *or* custodian,
13 irrespective of whether the parties have notice thereof. The instrument by
14 which such pledge is created need *not* be recorded, *except* to the extent that
15 such instrument conveys an interest in land *or* improvements thereon.

16 **§51909. Pledge by the Government of Guam.** The government of

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

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

7 **§51910. Responsibility for Construction, Operation and**
8 **Maintenance of the Solid Waste Facility.** The lease-back may require that the
9 contractor be responsible for all costs, expenses and fees of any kind *or* nature,
10 associated with the improvements, on-site infrastructure, construction, permits
11 and financing associated with the completion of a solid waste facility, *except* as
12 expressly provided by the lease-back for costs, expenses and fees previously
13 incurred by the government. The lease-back may require that the contractor be
14 responsible for the ongoing operation and maintenance of the solid waste
15 facility during the term of the lease-back.

16 **§51911. Credit Enhancement.** *I Maga'lahaen Guåhan* is hereby
17 authorized to enter into such contracts *or* agreements, on behalf of the
18 *Department*, with such banks, insurance companies *or* other financial
19 institutions as it determines are necessary *or* desirable to improve the security
20 and marketability of the lease-back obligations; provided that said contracts *or*
21 agreements to improve the security and marketability of the lease-back
22 obligations *shall not* obligate, appropriate, *or* otherwise provide additional
23 funding for the improvement to the security *or* marketability without legislative
24 approval. Such contracts *or* agreements may contain an obligation to reimburse,
25 with interest, any such banks, insurance companies *or* other financial
26 institutions for advances used to pay lease-back obligations and to indemnify

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

11 **§51912. No Personal Liability.** Neither *I Maga'lahen Guåhan*, the
12 Director, any employee of the *Department*, any employee of the government
13 nor any elected official of the government *shall* be individually *or* personally
14 liable for the payment of any amounts due under any lease *or* lease-back, *or* for
15 any other liability arising in connection with a lease *or* lease-back; provided,
16 however, that nothing in this §51912, Title 10, Guam Code Annotated, *shall*
17 relieve any employee *or* elected official from the performance of any
18 ministerial duty required by law.

19 **§51913. Rules, Regulations and Restrictions.** The *Department*
20 may promulgate rules and regulations pursuant to Guam law necessary to
21 implement the provisions of this Article.

22 **§51914. Construction of Article.** This Article *shall* be liberally
23 construed to carry out the objects and purposes and the declared policy of the
24 government of Guam as in this Article set forth. Nothing contained in this
25 Article *shall* be construed directly *or* by implication to be in any way in
26 derogation *or* limitation of powers conferred upon *or* existing in the

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

3 **§51915. Severability.** *If* any provision of this Article or its
4 application to any person *or* circumstance is found to be invalid *or* contrary to
5 law, such invalidity *shall not* affect other provisions *or* applications of this
6 Article which can be given effect without the invalid provisions or application,
7 and to this end the provisions of this Article are severable.”

8 **Section 5. Approval of Lease and Lease-Back.** Official action and approval
9 by the Legislature, *I Liheslaturan Guåhan*, is required for the execution and delivery
10 of the lease and lease-back by the government pursuant to Article 9, Chapter 51, Title
11 10, Guam Code Annotated; provided, that the terms and conditions of the lease and
12 lease-back *shall* have been approved by the Guam Public Utilities Commission, and
13 further provided, that the certificates of participation *or* other financial instruments
14 *shall* have, together with any bonds issued pursuant to Article 8, Chapter 51, Title 10,
15 Guam Code Annotated, an aggregate principal amount *not to exceed* Two Hundred
16 Two Million Four Hundred Twenty-five Thousand Dollars (\$202,425,000), *shall* have
17 a final maturity *not later than* 2041, *shall* result in a yield to the holders of the
18 certificates of participation *or* other financial instruments *not* exceeding nine percent
19 (9%) per annum, and *shall* be entered into for the purposes and subject to the
20 requirements and limitations provided in Article 9, Chapter 51, Title 10, Guam Code
21 Annotated.

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

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

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

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

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

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

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

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

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

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

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

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

19 **Section 9. Severability.** *If* any provision of this Act or its application to any
20 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*
21 not affect other provisions or applications of this Act which can be given effect
22 without the invalid provisions or application, and to this end the provisions of this Act
23 are severable.