



Office of the Governor of Guahan

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

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

2010 AUG 30 AM 8:55

AUG 27 2010

MW

30-10-073

Office of the Speaker
Judith T. Won Pat, Ed. D.

Date 8/27/10
Time 3:58 P
Received by [Signature]

Dear Speaker Won Pat:

Submitted herewith is Substitute Bill No. 195-30 (COR), "AN ACT TO REPEAL AND REENACT §51821 OF ARTICLE 8, CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE USE OF PROCEEDS OF SALE BONDS," which I have vetoed.

Bill No. 195-30 was passed on the premise that the USDA loan would be obtained as alternative financing for the federal Consent Decree to construct the new landfill and close the dump. However, to substantially care for the best interest of the people of Guahan, we declined the USDA loan. The government of Guahan could not afford the USDA loan without identifying a viable and alternative funding source for the Limited-Obligation (Section 30) Bonds, Series 2009A. The USDA loan was conditioned upon Section 30 funds as security for the financing. Clearly, this would have burdened government operations and reduce if not exhaust available debt capacity. I did not want to limit future borrowing capacity most especially if an emergency warranted it.

Bill No. 195-30 proposes to prioritize the expenditure of bond proceeds contrary to the government's contract with bondholders. Bill No. 195-30 prioritizes the expenditure of bond proceeds for GovGuam reimbursement and acquisition compensation in advance of landfill construction, debt service reserve fund, cost of issuance, and capitalized interest. This is a clear violation of the contract with bondholders.

Bill No. 195-30 also repeals the authorization to reimburse the General Fund for the cash deposits the federal court ordered the government to pay. Bond proceeds for the debt service reserve fund, cost of issuance, loan payment, capitalized interest and weekly payment reimbursement are not available for reprogramming. They have either been spent or are restricted by the terms of the bond indenture to being used for their respective original purposes.

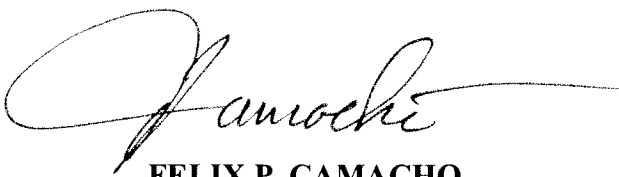
According to the bond documents, a change in the use of bond proceeds from capital projects to working capital, (i.e. Reimbursement or expenses related to payment of past due bills) may trigger a default. A declaration of default, depending on the nature of the default, may trigger an acceleration of the bond maturities, or may be cause for a lawsuit to be filed by the bondholders.

Perhaps a more acceptable approach to address the compensation for the acquisition of private property used for the Ordot Landfill for bondholders and the federal court might be proposed legislation to provide that any surplus of Section 30 bond proceeds remaining after the landfill and Ordot Dump closure are completed would be used. However, it may only be used for the costs of capital improvement projects approved by the Legislature, and subject to any requirements in the Section 30 bond indenture.

An original purpose for the bond was to assure the United States District Court that a source of money is readily available to pay the costs of the new landfill and the closure of Ordot Dump and thereby convince the court not to reinstate its order requiring the government to make weekly payments to provide an escrow for the payment of such costs. In order to prevent the reinstatement of court-ordered weekly payments, any amount needed for the purpose of providing assurance to the District Court that a source of money is readily available to pay the costs of the new landfill and the closure of Ordot Dump must remain on deposit with the bond trustee in the Construction Account until the court is satisfied that an alternative source of moneys is assured. The only way to be certain that the court is satisfied to that effect would be to apply to the court for an order that would, in effect, release the portion of the bond proceeds no longer needed to provide such assurance. The effectiveness of any legislation that purports to mandate the use of the bond proceeds for the purpose other than the original purposes should be conditioned on, or delayed until after, such a court order.

Violating our contract provisions with bond holders has serious repercussions. As such, I have vetoed Bill No. 195-30.

*Sinseru yan Magåhet,*



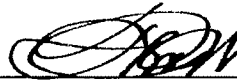
**FELIX P. CAMACHO**  
*I Maga' Låhen Guahan*  
Governor of Guam

Attachment

**I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2010 (SECOND) Regular Session**

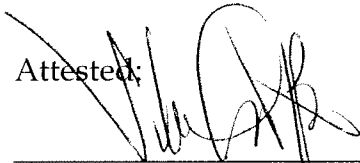
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Substitute Bill No. 195-30 (COR), "AN ACT TO REPEAL AND REENACT §51821 OF ARTICLE 8, CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE USE OF PROCEEDS OF SALE OF BONDS"**, was on the 16<sup>th</sup> day of August, 2010, duly and regularly passed.



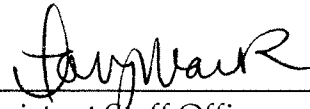
Judith T. Won Pat, Ed. D.  
Speaker

Attested:



Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 17<sup>th</sup> day of Aug., 2010, at  
4:40 o'clock P.M.



Assistant Staff Officer  
*Maga'lahaen's Office*

APPROVED:



FELIX P. CAMACHO  
*I Maga'lahaen Guåhan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

Office of the Speaker  
Judith T. Won Pat, Ed. D.

Date 8/27/10  
Time 3:58P  
Received by [Signature]

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

**Bill No. 195-30 (COR)**

As substituted by the Committee on Economic  
Development, Health & Human Services, and Judiciary,  
and amended on the Floor.

Introduced by:

v. c. pangelinan  
F. B. Aguon, Jr.  
T. C. Ada  
V. Anthony Ada  
F. F. Blas, Jr.  
E. J.B. Calvo  
B. J.F. Cruz  
J. V. Espaldon  
Judith P. Guthertz, DPA  
T. R. Muña Barnes  
Adolpho B. Palacios, Sr.  
R. J. Respicio  
Telo Taitague  
Ray Tenorio  
Judith T. Won Pat, Ed.D.

**AN ACT TO *REPEAL* AND *REENACT* §51821 OF  
ARTICLE 8, CHAPTER 51 OF TITLE 10, GUAM CODE  
ANNOTATED, RELATIVE TO THE USE OF PROCEEDS  
OF SALE OF BONDS.**

1        **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2        **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that the Two Hundred Two Million Four Hundred Twenty-Five Thousand Dollars  
4 (\$202,425,000) Limited-Obligation (Section 30) Bonds, Series 2009A proceeds for  
5 financing a new landfill as authorized in Public Law 30-1, and amended by Public

1 Law 30-7, are no longer needed for this purpose due to alternative financing of  
2 One Hundred Four Million Dollars (\$104,000,000) combination loan and grant  
3 approved by the United States Department of Agriculture (USDA) as part of the  
4 American Recovery and Reinvestment Act (ARRA).

5 *I Liheslaturan Guåhan* further finds that, at a minimum, Ten Million Dollars  
6 (\$10,000,000) was removed or has been encumbered from the General and Special  
7 Funds in Fiscal Years 2004 through 2009 for Consent Decree projects, including  
8 engineering services, technical specialist consultants, project management, and  
9 environmental consultants and studies. *I Liheslaturan Guåhan* seeks to make  
10 permanent the reimbursement of said funds used for the Ordot Dump Consent  
11 Decree and make these funds available to pay prior or current year income tax  
12 refunds.

13 *I Liheslaturan Guåhan* further finds that one hundred thirty-four thousand  
14 (134,000) square meters of land (Lot No. 3434, GAFAO) which is being used for  
15 the Ordot Dump *has not* been condemned or purchased by the government of  
16 Guam. The Ordot Dump is on track to be closed in 2012 and *I Liheslaturan*  
17 *Guåhan* desires that any and all land transactions related to Lot No. 3434, GAFAO  
18 be settled prior to 2012.

19 **Section 2.** §51821 of Article 8, Chapter 51 of Title 10, Guam Code  
20 Annotated, is hereby *repealed* and *reenacted* to read as follows:

21 **“§51821. Payments Which May be Made Out of Proceeds of**  
22 **Sale of Bonds.** The proceeds of sale of any bonds *shall* be expended in  
23 order of priority for the following purposes:

24 (a) *up to* Twenty Million Dollars (\$20,000,000), but *not less than*  
25 Ten Million Dollars (\$10,000,000) for reimbursement of any expenses,  
26 including, but *not* limited to, engineering, inspection, legal, consultants’ *or*  
27 paying agents’ fees relating *or* incidental to:

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

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

4 (3) professional technical services to prepare the technical  
5 specifications for a bid invitation for a Finance, Build, Operate, and  
6 Lease Back (FBOL) to meet the requirements for USEPA compliant  
7 municipal solid waste services on Guam, and for the evaluation of  
8 bids which have been submitted, and to provide its findings and  
9 recommendation to *I Maga'lahi* (the Governor) and *I Liheslatura* (the  
10 Legislature) within one hundred eighty (180) days from enactment of  
11 the Act;

12 (b) *up to* Three Million Dollars (\$3,000,000) for compensation for  
13 the acquisition of private property used for the *Ordot* Landfill by an  
14 instrumentality or agency of the government of Guam. An appraisal of the  
15 private property used for the *Ordot* Landfill must be obtained prior to  
16 acquisition thereof;

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

24 (d) for payment to any non-government of Guam entity or  
25 personnel of any costs *or* expenses relating to the authorization, issuance *or*  
26 sale of bonds;

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

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

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

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

11          **Section 3.** The portion of any bond proceeds used for projects of any  
12          autonomous agency or instrumentality of the government of Guam *shall be* repaid  
13          by said autonomous agency or instrumentality. The repayment obligation of the  
14          autonomous agency or instrumentality *shall be* calculated by dividing the  
15          autonomous agency or instrumentality borrowed principal by the total bond  
16          proceeds and multiplying by required annual debt service payments.

17          **Section 4. Severability.** *If* any provisions of this Act or the application  
18          thereof to any person or circumstance is held invalid, such invalidity shall *not*  
19          affect any other provision or application of this Act which can be given effect  
20          without the invalid provision or application, and to this end the provisions of this  
21          Act are severable.