

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN

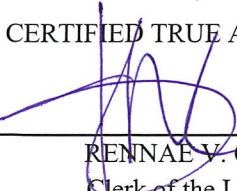
2019 (FIRST) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Bill No. 79-35 (COR) As amended by the Committee on General Government Operations, Appropriations, and Housing.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building May 17, 2019					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator William M. CASTRO	✓					
Senator Régine Biscoe LEE	✓					
Senator Kelly G. MARSH (TAITANO), PhD	✓					
Senator James C. MOYLAN	✓					
Speaker Tina Rose MUÑA BARNES	✓					
Senator Louise B. MUÑA					✓	✓
Vice Speaker Telen Cruz NELSON	✓					
Senator Sabina Flores PEREZ	✓					
Senator Clynton E. RIDGELL	✓					
Senator Joe S. SAN AGUSTIN	✓					
Senator Amanda L. SHELTON	✓					
Senator Telo T. TAITAGUE	✓					
Senator Jose "Pedo" TERLAJE	✓					
Senator Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES	✓					

TOTAL:	14				1	1
	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

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2019 (FIRST) Regular Session

Bill No. 79-35 (COR)

As amended by the Committee on General Government Operations,
Appropriations, and Housing.

*

Introduced by:

Sabina Flores Perez
Joe S. San Agustin
Tina Rose Muña Barnes
Telo T. Taitague
Louise B. Muña
William M. Castro
James C. Moylan
Jose “Pedo” Terlaje
Kelly Marsh (Taitano), PhD

**AN ACT TO *ADD* A NEW § 1512.4 TO ARTICLE 5 OF
CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED,
RELATIVE TO AUTHORIZING *I MAGA'HÅGAN*
GUÅHAN (THE GOVERNOR OF GUAM) TO ISSUE
GOVERNMENT OF GUAM BONDS FOR THE PURPOSE
OF FINANCING A NEW LANDFILL CELL FOR THE
LAYON LANDFILL.**

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

2 **Section 1.** A new § 1512.4 is hereby *added* to Article 5 of Chapter 1, Title
3 5 of Guam Code Annotated, to read as follows:

4 “§ 1512.4. **Authorization to Issue Bonds to Finance New Landfill Cell**
5 **Development for the Benefit of the Guam Solid Waste Authority.**

6 (a) **Definitions.** The following terms wherever used or referred to in
7 this Section or in any indenture or certificate entered into pursuant hereto

1 (except to the extent modified therein in accordance with this Section) *shall*
2 have the following meanings, respectively, unless a different meaning appears
3 from the context:

4 (1) *Authority* means the Guam Solid Waste Authority, or its
5 successors and assigns.

6 (2) *Pledged Revenue* means any revenue of the System
7 pledged to the payment of bonds or the obligations of the Authority
8 with respect thereto.

9 (3) *Revenue of the System* means all lawfully available gross
10 income and other amounts received by or on behalf of the Authority as
11 revenues of any kind from the ownership or operation of any part of the
12 System, including all rates, fees and charges received by the Authority,
13 and all proceeds of insurance or grants covering business interruption
14 loss (and related losses and expenses) relating to the System, and all
15 other income and revenue howsoever derived by the Authority from the
16 ownership or operation of, or arising from, the System, together with
17 all interest, profits or other income derived from the investment of
18 amounts in the Solid Waste Operations Fund, to be deposited to the
19 Solid Waste Operations Fund in accordance with 10 GCA § 51A833.

20 (4) *Solid Waste Operations Fund* means the fund by that name
21 established pursuant to 10 GCA § 51A301.

22 (5) *System* means the solid waste management system, now or
23 hereafter existing, owned and/or operated by the Authority or its
24 contractors, agents or subcontractors, including, but not limited to,
25 landfills (whether closed or open), transfer stations, recycling facilities,
26 collection trucks, appurtenant equipment such as scales, ground water
27 monitoring equipment and pollution control equipment, and

1 administrative facilities supporting the provision of solid waste
2 management services, including facilities for payroll, billing and
3 collections.

4 (b) Authorization of Issuance of Bonds. *I Maga'hågan Guåhan* is
5 authorized to issue one (1) or more series of bonds of the government of Guam
6 from time to time as provided in this Section, in an aggregate principal amount
7 not to exceed Thirty Million Dollars (\$30,000,000) to finance the construction
8 of a new cell for the *Layon* Landfill for the benefit of the Guam Solid Waste
9 Authority (Authority), including construction management services and
10 related costs (the *Layon* Landfill Cell Project), and, in addition, to fund any
11 necessary reserves and pay any expenses incurred in connection with the
12 issuance of such bonds not already included in an existing appropriation for
13 or the regular budget of any government agency or instrumentality or public
14 corporation providing any service in connection with the issuance of such
15 bonds; provided, however, that bonds may not be issued in an amount that
16 would cause a violation of the debt limitation provisions of 48 USC § 1423a
17 (§ 11 of the Organic Act of Guam).

18 (c) Terms and Conditions Determined by Certificate or Indenture.
19 The terms and conditions of the bonds *shall* be as determined by *I*
20 *Maga'hågan Guåhan* by the execution of a certificate or indenture authorizing
21 the issuance of the bonds upon or prior to the issuance of the bonds; provided,
22 however, that such terms and conditions *shall* be consistent with this Section,
23 and that the bonds *shall* mature not later than the date twelve and one-half
24 (12.5) years after their date of issuance and such bonds *shall* bear interest at
25 such rates and be sold for such price or prices as *shall* result in a yield to the
26 bondholders not exceeding six percent (6.0%) per annum.

1 (d) Source of and Security for Payment. The bonds or the
2 Authority's obligations with respect thereto *shall* be secured by a first lien
3 pledge of any or all of the Pledged Revenues as may be further specified in
4 the certificate or the indenture described in Subsection (c) of this Section or
5 an agreement between the Authority and the government. Such pledge made
6 hereunder *shall* be valid and binding from the time the bonds are issued. The
7 Pledged Revenues pledged and thereafter received by the government of
8 Guam or by any trustee, depository or custodian *shall* be deposited in a
9 separate account and *shall* be immediately subject to the lien of such pledge
10 without any physical delivery thereof or further act, and the lien of such pledge
11 *shall* be valid and binding against all parties having claims of any kind in tort,
12 contract or otherwise against the Authority or such trustee, depository or
13 custodian, irrespective of whether the parties have notice thereof. The
14 indenture or certificate or agreement by which the bonds are issued or such
15 pledge is created need not be recorded. Any such pledge *shall* be a first lien,
16 and *shall* not be subordinate to any other use of Pledged Revenues.

17 All bonds issued pursuant to this Section or obligations of the Authority
18 with respect thereto, may be secured by a statutory lien on the Pledged
19 Revenues. This lien *shall* arise automatically without the need for any action
20 or authorization by *I Maga'hågan Guåhan*, the government of Guam, the
21 Authority, or any other person or entity. Such lien *shall* be valid and binding
22 from the time such bonds are issued. The Pledged Revenues *shall* immediately
23 be subject to such lien, and the lien *shall* automatically attach to the Pledged
24 Revenues and be effective, binding, and enforceable against the Authority, its
25 successors, assignees, and creditors, and all others asserting rights therein,
26 irrespective of whether those parties have notice of the lien and without the
27 need for any physical delivery, recordation, filing, or further act. Pledged

1 Revenues that are not required to make payments on the bonds *shall*
2 automatically, and without the need for any further action, be released from
3 such lien and *shall* be available for appropriation for any other lawful purpose
4 of the System. The statutory lien described in this Subsection *shall not* be
5 subject to Division 9 of Title 13, Guam Code Annotated, or any successor
6 statute. The Pledged Revenues received by the government of Guam or by
7 any trustee, depository or custodian *shall* be deposited in accordance with the
8 provisions of the applicable indenture.

9 In addition to the statutory lien provided for in this Subsection, all or
10 any part of the Pledged Revenues may be pledged, if and to the extent
11 determined by *I Maga'hågan Guåhan*, to secure the payment of any bonds or
12 any obligation of the Authority with respect thereto. Any such pledge *shall* be
13 valid and binding against all parties in accordance with its terms and have
14 priority against all parties in accordance with its terms from the time the
15 pledge is made, and property so pledged *shall* immediately be subject to the
16 lien of the pledge without the need for physical delivery, recordation, filing,
17 or other further act. The pledge *shall not* be subject to Division 9 of Title 13,
18 Guam Code Annotated or any successor statute. The indenture or certificate
19 or agreement by which such pledge is created need not be recorded. All
20 Pledged Revenue so pledged is hereby appropriated for the purpose for which
21 it has been pledged. Indebtedness issued by the government pursuant to this
22 Section and that is payable from Pledged Revenue may not be issued in an
23 amount that would cause a violation of the debt limitation provisions of
24 Section 11 of the Organic Act.

25 The Authority may contract with the government of Guam for the
26 purposes of effectuating this pledge of Pledged Revenues to secure the bonds

1 or the Authority's obligations with respect thereto and to agree to other
2 covenants and conditions that may be required to issue the bonds.

3 (e) Valid and Binding. Such bonds may alternatively or additionally
4 be secured by a pledge by the government of Guam of its full faith and credit
5 for the punctual payment of both principal of and interest on the bonds and
6 covenants that there *shall* be collected annually in the same manner and at the
7 same time as government revenue for other purposes is collected, such sum
8 as is required to pay the principal of and interest on the bonds, in the event
9 Pledged Revenues are insufficient to support the payment thereof, all as
10 specified in a certificate or an indenture described in Subsection (c) hereof.
11 The bonds authorized by this Section *shall* constitute the valid and binding
12 general and/or limited obligations of the government of Guam, additionally
13 secured by a pledge of the Pledged Revenues described in Subsection (d) of
14 this Section, all as further specified below in such Subsection. The
15 government of Guam pledges its full faith and credit for the punctual payment
16 of both principal of and interest on the bonds and covenants that there *shall*
17 be collected annually in the same manner and at the same time as government
18 revenue for other purposes is collected, such sum as is required to pay the
19 principal of and interest on the bonds. There are hereby appropriated from the
20 General Fund such sums as may be necessary in each year in addition to the
21 amounts appropriated under Subsection (f) of this Section to equal the amount
22 of money necessary to pay the principal and interest on such bonds. All
23 officers charged by law with any duty in the collection of the revenues of the
24 government from which debt service on the bonds will be payable shall do
25 every lawful thing necessary to collect such sum. The validity of any such
26 bonds *shall not* be affected by the validity or regularity of any proceedings for

1 the payment of the General Fund expenses paid or to be paid with the proceeds
2 of the bonds.

3 (f) Appropriation of Revenues. All revenues are hereby
4 appropriated for the purposes of paying the principal and interest on the bonds
5 issued pursuant to this Section. Revenues released from the lien of the
6 indenture or certificate pursuant to which the bonds are issued *shall* be
7 available for appropriation by *I Liheslaturan Guåhan* for any other lawful
8 purpose.

9 (g) Additional Bonds. Nothing in this Section shall be construed to
10 prevent the Authority from issuing, after appropriate enabling legislation,
11 other obligations secured by Pledged Revenues on a parity with or subordinate
12 to the bonds or the Authority's obligations with respect thereto authorized by
13 this Section on such terms as may be provided by the indenture or certificate
14 pursuant to which the bonds are issued. Nothing in this Section shall be
15 construed to prevent the government of Guam from issuing, after appropriate
16 enabling legislation, other obligations of the government secured by the
17 general obligation of the government on a parity with or subordinate to the
18 bonds authorized by this Section on such terms as may be provided by the
19 indenture or certificate pursuant to which the bonds are issued.

20 (h) Waiver of Immunity; Submission to Jurisdiction.
21 Notwithstanding any substantive or procedural provision of Chapter 6 of Title
22 5, Guam Code Annotated, the government of Guam waives immunity from
23 any suit or action in contract on the bonds, but does not waive sovereign
24 immunity as to the personal liability of elected officials and employees of the
25 government of Guam. The government hereby submits to jurisdiction of the
26 Federal District Court for the District of Guam for purposes of any such suit
27 or action in contract on the bonds.

1 (i) No Personal Liability. No employee or elected official of the
2 government of Guam shall be individually or personally liable for the payment
3 of any amounts due on any bonds issued under this Section, or for any other
4 liability arising in connection with the bonds; provided, however, that nothing
5 in this Section shall relieve any employee or elected official from the
6 performance of any ministerial duty required by law.

7 (j) Form of Bonds; Covenants; Appointment of Fiduciaries. The
8 technical form and language of the bonds, including provisions for execution,
9 exchange, transfer, registration, paying agency, lost or mutilated bonds,
10 negotiability, cancellation and other terms or conditions not inconsistent with
11 this Section, including covenants relating to the collection of Pledged
12 Revenues, *shall* be as specified in the certificate or indenture executed by *I*
13 *Maga'hågan Guåhan* authorizing the issuance of the bonds. The certificate or
14 indenture *shall* appoint one (1) or more trustees, co-trustees or other
15 fiduciaries authorized to receive and hold in trust the proceeds of the bonds,
16 the Pledged Revenues and other moneys relating thereto, to protect the rights
17 of bondholders and to perform such other duties as may be specified in the
18 indenture. *I Maga'hågan Guåhan* is also authorized to execute, on behalf of
19 the government of Guam, any appropriate agreements, certificates or other
20 instruments relating to the bonds and the sale of bonds.

21 (k) Authorization for Credit Enhancement. *I Maga'hågan Guåhan*
22 is authorized to enter into such contracts or agreements with such banks,
23 insurance companies or other financial institutions as she determines are
24 necessary or desirable to improve the security and marketability of the bonds
25 issued under this Section, if and only if such contracts or agreements reduce
26 the cost of the debt by more than the cost of credit enhancement. Such
27 contracts or agreements may contain an obligation to reimburse, with interest,

1 any such banks, insurance companies or other financial institutions for
2 advances used to pay principal of or interest on the bonds and to indemnify
3 any such banks, insurance companies or other financial institutions for costs
4 and expenses incurred in connection with any such advance. Any such
5 reimbursement obligation and any other obligations of the government under
6 such contracts or agreements *shall* be general obligations of the government
7 of Guam and *shall* additionally be secured by a pledge of Pledged Revenues,
8 and any such advance, if necessary, *shall* be treated for Organic Act purposes
9 as creating an obligation issued to refund the bonds.

10 (l) Use of Proceeds from the Sale of the Bonds. The proceeds from
11 the sale of the bonds *shall* be used and are hereby appropriated to (i) finance
12 the *Layon* Landfill Cell Project; (ii) establish any necessary reserves in
13 connection with the foregoing project; (iii) pay expenses relating to the
14 authorization, sale and issuance of the bonds, including, without limitation,
15 printing costs, costs of reproducing documents, credit enhancement fees,
16 underwriting, legal, financial advisory and accounting fees and charges, fees
17 paid to banks or other financial institutions providing credit enhancement,
18 costs of credit ratings and other costs, charges and fees in connection with the
19 issuance, sale and delivery of the bonds; and (iv) fund capitalized interest on
20 the bonds for a period not longer than thirty (30) months from the date of
21 issuance of such bonds.

22 (m) Permitted Investments. The proceeds of the bonds, and any
23 Pledged Revenues relating to such bonds, may be invested in, but only in, the
24 types of investments permitted by the certificate or indenture pursuant to
25 which such bonds are issued.

26 (n) Approval by the Guam Economic Development Authority. 12
27 GCA § 50103(k) provides that agencies and instrumentalities of the

1 government of Guam *shall* issue bonds and other obligations only by means
2 of and through the agency of the Guam Economic Development Authority
3 (GEDA). No issue of bonds authorized by this Section shall be sold until the
4 Board of Directors of GEDA has adopted a resolution approving the sale of
5 such issue.

6 (o) Approval of Voters Not Required. Notwithstanding 17 GCA §§
7 17311 and 17312, the issuance of the bonds authorized by this Section *shall*
8 *not* be required to be subject to the approval of, or placed before, the voters of
9 Guam.

10 (p) Alternate Authority for Loan. *I Maga'hågan Guåhan* is
11 authorized to borrow on behalf of the government of Guam as provided in this
12 Subsection from one (1) or more banks, banking syndicates, commercial
13 lending institutions, or investment funds an amount not to exceed the amount
14 necessary to provide Thirty Million Dollars (\$30,000,000) for the purpose of
15 financing the *Layon* Landfill Cell Project and related costs, including reserves,
16 as a short-term construction loan for a period of not to exceed twenty-four
17 (24) months, or a long-term loan for a period not to exceed twelve and one-
18 half (12.5) years.

19 (1) The terms and conditions of any such loan *shall* be as
20 determined by *I Maga'hågan Guåhan* by the execution of a loan
21 agreement; provided, however, that the loan (A) *shall* be subject to
22 prepayment from the proceeds of the bonds authorized by Subsection
23 (b) of this Section; (B) may be secured in a substantially similar manner
24 to the bonds authorized by Subsection (b) of this Section; (C) *shall*, if
25 not paid with the proceeds of revenue bonds, have annual principal
26 payments over the five (5) year period commencing one (1) year after
27 its funding date; and (D) *shall* bear interest at such fixed or variable rate

1 or rates as may be negotiated by *I Maga'hågan Guåhan* in the best
2 interests of the government.

3 (2) No loan authorized by this Section shall be entered into
4 until the Board of Directors of GEDA has approved the loan by
5 resolution.

6 (3) The loan *shall not* be subject to the approval of the voters
7 of Guam.

8 (4) *I Liheslaturan Guåhan*, pursuant to 12 GCA § 50103(k),
9 hereby approves a borrowing by the government of Guam for the
10 purposes and in the principal amount authorized by this Section;
11 provided, that the loan is entered into subject to the terms and
12 conditions mandated in this Section.

13 (q) Approval of Guam Public Utilities Commission Not Required.
14 Notwithstanding 12 GCA § 12106, neither the issuance of the bonds nor the
15 loan authorized by this Section shall be subject to the approval of the Guam
16 Public Utilities Commission.”

17 **Section 2. Local Sales of Bonds.** *I Maga'hågan Guåhan shall* undertake
18 her best efforts to cause a portion of any bonds issued pursuant to Section 1 of this
19 Act (5 GCA § 1512.4) to be offered for sale to residents of Guam, as well as to
20 residents of other jurisdictions, if and to the extent that such offer and any sales
21 resulting from such offer do not increase the costs to the government of Guam of
22 issuing and repaying such bonds.

23 **Section 3. Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to 12
24 GCA § 50103(k), hereby approves the issuance and sale by the government of Guam
25 of bonds for the purposes and in the principal amounts not to exceed the purpose and
26 limits set forth in Section 1 of this Act; provided, that the conditions to the issuance
27 of such bonds *shall* have been met, such bonds have a final maturity date not later

1 than twelve and one-half (12.5) years after their date of issuance, bear interest at
2 such rate and are sold for such price or prices as *shall* result in a yield to the
3 bondholders not exceeding six percent (6.0%) per annum, and are issued and sold in
4 the manner, for the purposes and subject to the requirements and limitations
5 provided in 5 GCA § 1512.4.

6 **Section 4. Bond Proceeds Not Subject to Transfer Authority.** The
7 proceeds of the bonds approved by Section 3 of this Act *shall not* be subject to any
8 transfer authority of *I Maga'hågan Guåhan*.

9 **Section 5. Severability.** If any provision of this Act or its application to any
10 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*
11 *not* affect other provisions or applications of this Act that can be given effect without
12 the invalid provision or application, and to this end the provisions of this Act are
13 severable.