

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
79-35 (COR)	Sabina Flores Perez Joe S. San Agustin Tina Rose Muña Barnes Telo T. Taitague Louise B. Muña William M. Castro James C. Moylan Jose "Pedro" Terlaje Kelly Marsh (Taitano), PhD	AN ACT TO ADD §1512.4 TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNOR OF GUAM, /MAGA'LAHEN GUÅHAN, TO ISSUE GOVERNMENT OF GUAM BONDS FOR THE PURPOSE OF FINANCING A NEW LANDFILL CELL FOR THE LAYON LANDFILL.	4/10/19 8:35 a.m.						

**I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) REGULAR SESSION**

Bill No. 79-35 (COR)

Introduced by:

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

2019 APR 10 AM 8:35 PM

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**
2 **Section 1.** Section 1512.4 is hereby added to Title 5, Guam Code Annotated
3 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
7 to in this Section or in any indenture or certificate entered into
8 pursuant hereto (except to the extent modified therein in accordance
9 with this Section) shall have the following meanings, respectively,
10 unless a different meaning appears from the context:

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

3 (2) Pledged Revenue means any Revenue of the
4 System and any General Fund revenue pledged to the payment
5 of bonds.

6 (3) Revenue of the System means all lawfully
7 available gross income and other amounts received by or on
8 behalf of the Authority as revenues of any kind from the
9 ownership or operation of any part of the system, including all
10 rates, fees and charges received by the Authority, and all
11 proceeds of insurance or grants covering business interruption
12 loss (and related losses and expenses) relating to the system,
13 and all other income and revenue howsoever derived by the
14 Authority from the ownership or operation of, or arising from,
15 the system, together with all interest, profits or other income
16 derived from the investment of amounts in the Solid Waste
17 Operations Fund, to be deposited to the Solid Waste Operations
18 Fund in accordance with §51833, Title 10, Guam Code
19 Annotated.

20 (4) Solid Waste Operations Fund means the fund by
21 that name established pursuant to §51A301, Title 10, Guam
22 Code Annotated.

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

1 equipment such as scales, ground water monitoring equipment
2 and pollution control equipment, and administrative facilities
3 supporting the provision of solid waste management services,
4 including facilities for payroll, billing and collections.
5

6 **(b) Authorization of Issuance of Bonds.** *I Maga'laha*
7 *Guåhan* is authorized to issue one or more series of bonds of the
8 government of Guam from time to time as provided in this Section, in
9 an aggregate principal amount not to exceed Thirty Million Dollars
10 (\$30,000,000.00) to finance the construction of a new cell for the
11 Layon Landfill for the benefit of the Guam Solid Waste Authority (the
12 "Authority"), and related costs, and, in addition, to fund necessary
13 reserves and pay expenses incurred in connection with the issuance of
14 such bonds not already included in an existing appropriation for or the
15 regular budget of any government agency or instrumentality or public
16 corporation providing any service in connection with the issuance of
17 such bonds; *provided, however,* that bonds may not be issued in an
18 amount that would cause a violation of the debt limitation provisions
19 of 48 USC 1423a (§11 of the Organic Act of Guam).

20 **(c) Terms and Conditions Determined by Certificate or**
21 **Indenture.** The terms and conditions of the bonds shall be as
22 determined by *I Maga'laha Guåhan* by the execution of a certificate
23 or indenture authorizing the issuance of the bonds upon or prior to the
24 issuance of the bonds; *provided, however,* that such terms and
25 conditions shall be consistent with this Section, and that the bonds
26 shall mature not later than the date twelve (12) years after their date
27 of issuance and shall bear interest at such rates and be sold for such

1 price or prices as shall result in a yield to the bondholders not
2 exceeding six percent (6.0%) per annum.

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

19 All bonds issued pursuant to this Section, shall be secured by a
20 statutory lien on the Pledged Revenues. This lien shall arise
21 automatically without the need for any action or authorization by *I*
22 *Maga'lahaen Guåhan*, the government of Guam, or any other person
23 or entity. Such lien shall be valid and binding from the time such
24 bonds are issued. The Pledged Revenues shall immediately be subject
25 to such lien, and the lien shall automatically attach to the Pledged
26 Revenues and be effective, binding, and enforceable against *I*
27 *Maga'lahaen Guåhan*, the government of Guam, their successors,

1 assignees, and creditors, and all others asserting rights therein,
2 irrespective of whether those parties have notice of the lien and
3 without the need for any physical delivery, recordation, filing, or
4 further act. Pledged Revenues that are not required to make payments
5 on the bonds shall automatically, and without the need for any further
6 action, be released from such lien and shall be available for
7 appropriation for any other lawful purpose of the government. The
8 statutory lien described in this paragraph shall not be subject to
9 Division 9 of Title 13 of the Guam Code Annotated or any successor
10 statute. The Pledged Revenues received by the government of Guam
11 or by any trustee, depository or custodian shall be deposited in
12 accordance with the provisions of the applicable indenture.

13 In addition to the statutory lien provided for above, all or any
14 part of the Pledged Revenues may be pledged, if and to the extent
15 determined by *I Maga'lahaen Guåhan*, to secure the payment of any
16 bonds. Any such pledge shall be valid and binding against all parties
17 in accordance with its terms and have priority against all parties in
18 accordance with its terms from the time the pledge is made, and
19 property so pledged shall immediately be subject to the lien of the
20 pledge without the need for physical delivery, recordation, filing, or
21 other further act. The pledge shall not be subject to Division 9 of Title
22 13 of the Guam Code Annotated or any successor statute. The
23 indenture by which such pledge is created need not be recorded. All
24 Pledged Revenue so pledged is hereby appropriated for the purpose
25 for which it has been pledged. Indebtedness issued by the government
26 pursuant to this Article and that is payable from Pledged Revenue

1 may not be issued in an amount that would cause a violation of the
2 debt limitation provisions of Section 11 of the Organic Act.
3

4 For the benefit of holders of the bonds, the Authority shall
5 contract with the government of Guam for the purposes of
6 effectuating this pledge of Pledged Revenues to secure the bonds and
7 to agree to other covenants and conditions that may be required to
8 issue the bonds.
9

10 (e) **Valid and Binding.** Such bonds may also be secured by a
11 pledge by the government of Guam of its full faith and credit for the
12 punctual payment of both principal of and interest on the bonds and
13 covenants that there shall be collected annually in the same manner
14 and at the same time as government revenue for other purposes is
15 collected, such sum as is required to pay the principal of and interest
16 on the bonds, in the event Pledged Revenues are insufficient to
17 support the payment thereof, all as specified in a certificate or an
18 indenture described in subsection (c) hereof. The bonds authorized by
19 this Section shall constitute the valid and binding general and/or
20 limited obligations of the government of Guam, additionally secured
21 by a pledge of the Pledged Revenues described in subsection (d) of
22 this Section, all as further specified below in such subsection. The
23 government of Guam pledges its full faith and credit for the punctual
24 payment of both principal of and interest on the bonds and covenants
25 that there shall be collected annually in the same manner and at the
26 same time as government revenue for other purposes is collected, such
27 sum as is required to pay the principal of and interest on the bonds.

1 There are hereby appropriated from the General Fund such sums as
2 may be necessary in each year in addition to the amounts appropriated
3 under subsection (f) of this Section to equal the amount of money
4 necessary to pay the principal and interest on such bonds. All officers
5 charged by law with any duty in the collection of the revenues of the
6 government from which debt service on the bonds will be payable
7 shall do every lawful thing necessary to collect such sum. The
8 validity of any such bonds shall not be affected by the validity or
9 regularity of any proceedings for the payment of the General Fund
10 expenses paid or to be paid with the proceeds of the bonds.

11 **(f) Appropriation of Revenues.** All revenues are hereby
12 appropriated for the purposes of paying the principal and interest on
13 the bonds issued pursuant to this Section. Revenues released from the
14 lien of the indenture or certificate pursuant to which the bonds are
15 issued shall be available for appropriation by *I Liheslaturan Guåhan*
16 for any other lawful purpose.

17 **(g) Additional Bonds.** Nothing in this Section shall be
18 construed to prevent the government of Guam from issuing, after
19 appropriate enabling legislation, other obligations of the government
20 secured by Pledged Revenues on a parity with or subordinate to the
21 bonds authorized by this Section on such terms as may be provided by
22 the indenture or certificate pursuant to which the bonds are issued.
23 Nothing in this Section shall be construed to prevent the government
24 of Guam from issuing, after appropriate enabling legislation, other
25 obligations of the government secured by the general obligation of the
26 government on a parity with or subordinate to the bonds authorized by

1 this Section on such terms as may be provided by the indenture or
2 certificate pursuant to which the bonds are issued.

3 **(h) Waiver of Immunity; Submission to Jurisdiction.**

4 Notwithstanding any substantive or procedural provision of Chapter 6
5 of Title 5, Guam Code Annotated, the government of Guam waives
6 immunity from any suit or action in contract on the bonds, but does
7 not waive sovereign immunity as to the personal liability of elected
8 officials and employees of the government of Guam. The government
9 hereby submits to jurisdiction of the Federal District Court for the
10 District of Guam for purposes of any such suit or action in contract on
11 the bonds.

12 **(i) No Personal Liability.** No employee or elected official of
13 the government of Guam shall be individually or personally liable for
14 the payment of any amounts due on any bonds issued under this
15 Section, or for any other liability arising in connection with the bonds;
16 provided, however, that nothing in this Section shall relieve any
17 employee or elected official from the performance of any ministerial
18 duty required by law.

19 **(j) Form of Bonds; Covenants; Appointment of Fiduciaries.**

20 The technical form and language of the bonds, including provisions
21 for execution, exchange, transfer, registration, paying agency, lost or
22 mutilated bonds, negotiability, cancellation and other terms or
23 conditions not inconsistent with this Section, including covenants
24 relating to the collection of Pledged Revenues, shall be as specified in
25 the certificate or indenture executed by *I Maga'lahaen Guåhan*
26 authorizing the issuance of the bonds. The certificate or indenture
27 shall appoint one or more trustees, co-trustees or other fiduciaries

1 authorized to receive and hold in trust the proceeds of the bonds, the
2 Pledged Revenues and other moneys relating thereto, to protect the
3 rights of bondholders and to perform such other duties as may be
4 specified in the indenture. *I Maga'lahaen Guåhan* is also authorized to
5 execute, on behalf of the government of Guam, any appropriate
6 agreements, certificates or other instruments relating to the bonds and
7 the sale of bonds.

8 (k) **Authorization for Credit Enhancement.** *I Maga'lahaen*
9 *Guåhan* is authorized to enter into such contracts or agreements with
10 such banks, insurance companies or other financial institutions as he
11 determines are necessary or desirable to improve the security and
12 marketability of the bonds issued under this Section, if and only if
13 such contracts or agreements reduce the cost of the debt by more than
14 the cost of credit enhancement. Such contracts or agreements may
15 contain an obligation to reimburse, with interest, any such banks,
16 insurance companies or other financial institutions for advances used
17 to pay principal of or interest on the bonds and to indemnify any such
18 banks, insurance companies or other financial institutions for costs
19 and expenses incurred in connection with any such advance. Any
20 such reimbursement obligation and any other obligations of the
21 government under such contracts or agreements shall be general
22 obligations of the government of Guam and shall additionally be
23 secured by a pledge of, Pledged Revenues, and any such advance, if
24 necessary, shall be treated for Organic Act purposes as creating an
25 obligation issued to refund the bonds.

26 (l) **Use of Proceeds from the Sale of the Bonds.** The proceeds
27 from the sale of the bonds shall be used and are hereby appropriated

1 to (i) finance the construction of a new cell for the Layon Landfill and
2 construction management services, (ii) establish necessary reserves,
3 (iii) pay expenses relating to the authorization, sale and issuance of
4 the bonds, including, without limitation, printing costs, costs of
5 reproducing documents, credit enhancement fees, underwriting, legal,
6 financial advisory and accounting fees and charges, fees paid to banks
7 or other financial institutions providing credit enhancement, costs of
8 credit ratings and other costs, charges and fees in connection with the
9 issuance, sale and delivery of the bonds, and (iv) fund capitalized
10 interest on the bonds for a period ending not later than thirty (30)
11 months.

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

16 (n) **Approval by Guam Economic Development Authority.**
17 §50103(k), Title 12, Guam Code Annotated, provides that agencies
18 and instrumentalities of the Government of Guam shall issue bonds
19 and other obligations only by means of and through the agency of the
20 Guam Economic Development Authority (“GEDA”). No issue of
21 bonds authorized by this Section shall be sold until the board of
22 directors of GEDA has adopted a resolution approving the sale of
23 such issue.

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

1 **(p) Alternate Authority for Loan.** *I Maga'lahaen Guahan* is
2 authorized to borrow on behalf of the government of Guam as
3 provided in this subsection from one or more banks, banking
4 syndicates, commercial lending institutions, or investment funds an
5 amount not to exceed the amount necessary to provide up to Thirty
6 Million Dollars (\$30,000,000.00) for the purpose of financing the
7 construction of a new cell for the Layon Landfill, the cost of
8 construction management and related costs for short-term construction
9 loan for a period of not to exceed twenty-four (24) months, or a long-
10 term loan for a period not to exceed twelve (12) years.

11 (1) The terms and conditions of the loan shall be as
12 determined by *I Maga'lahaen Guahan* by the execution of a loan
13 agreement; provided, however, that the loan (1) shall be subject
14 to prepayment from the proceeds of the bonds authorized by
15 subsection (b) above, (2) may be secured in a substantially
16 similar manner to the bonds authorized by subsection (b) above,
17 and (3) shall, if not paid with the proceeds of revenue bonds,
18 have annual principal payments over the five year period
19 commencing one year after its funding date, and (4) shall bear
20 interest at such fixed or variable rate or rates as may be
21 negotiated by *I Maga'lahaen Guahan* in the best interests of the
22 government.

23 (2) No loan authorized by this Section shall be entered
24 into until the Board of Directors of GEDA has approved the
25 loan by resolution.

26 (3) The loan shall not be subject to the approval of the
27 voters of Guam.

1 (4) *I Liheslaturan Guåhan*, pursuant to §50103(k), Title
2 12 Guam Code Annotated, hereby approves a borrowing by the
3 government of Guam for the purposes and in the principal
4 amount authorized by this Section; provided that the loan is
5 entered into subject to the terms and conditions mandated in
6 this Section.

7 **Section 2. Local Sales of Bonds.** *I Maga'lahaen Guåhan* shall undertake
8 his best efforts to cause a portion of any bonds issued pursuant to Section 2 of this
9 Act (Section 1512.4, Title 5, Guam Code Annotated), to be offered for sale to
10 residents of Guam, as well as to residents of other jurisdictions, if and to the extent
11 that such offer and any sales resulting from such offer do not increase the costs to
12 the government of Guam of issuing and repaying such bonds.

13 **Section 3. Approval of Bonds.** *I Liheslaturan Guåhan* pursuant to
14 §50103(k), Title 12, Guam Code Annotated, hereby approves the issuance and sale
15 by the government of Guam of bonds for the purposes and in the principal amounts
16 not to exceed the purpose and limits set forth in Section 2 of this Act; *provided* that
17 the conditions to the issuance of such bonds shall have been met, such bonds have
18 a final maturity date not later than twelve (12) years after their date of issuance,
19 bear interest at such rate and are sold for such price or prices as shall result in a
20 yield to the bondholders not exceeding six percent (6.0%) per annum, and are
21 issued and sold in the manner, for the purposes and subject to the requirements and
22 limitations provided in Section 1512.4, Title 5, Guam Code Annotated.

23 **Section 4. Bond Proceeds Not Subject to Transfer Authority.** The
24 proceeds of the bonds approved by Section 4 of this Act shall not be subject to any
25 transfer authority of *I Maga'lahaen Guåhan*.