

I Mina' Trenta Na Liheslaturan Guåhan
2009 (FIRST) Regular Session

Bill No. B195-30COR)

Introduced by:

v. c. pangelinan

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

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds the
3 \$202.425M Limited-Obligation (Section 30) Bonds, Series 2009A proceeds for financing a
4 new landfill as authorized in Public Law 30-1 and amended by Public Law 30-7 are no
5 longer needed for this purpose due to alternative financing of One Hundred Four Million
6 Dollars (\$104,000,000) combination loan and grant approved by the United States
7 Department of Agriculture (USDA) as part of the American Recovery and Reinvestment Act
8 (ARRA).

9 *I Liheslaturan Guåhan* finds that a contributor toward the people of Guam being
10 denied timely payment of income tax refunds is a result of the Ordot Dump Consent Decree
11 (“Consent Decree) with the Federal District Court of Guam (“Court”) Case No. 02-00022.
12 Since the judgment order of the Court, every fiscal year Budget Act has been negatively
13 impacted by the use of general and special funds appropriated for operations and the
14 provision of the set aside for income tax refunds for projects and payments related directly to
15 the construction of a new landfill and the closure of the Ordot Dump.

16 *I Liheslaturan Guåhan* finds that the people of Guam have been further denied
17 timely payment of income tax refunds as a result of the government of Guam financing
18 operational deficits and insufficient budgets for the provision of the set aside to pay income

1 tax refunds. At the start of fiscal year 2010 after payment of One Hundred Twelve Million
2 Dollars (\$112,000,000) of 2009 deficit bonds proceeds toward income tax refunds, the
3 Government of Guam will still be in arrears paying income tax refunds to tax payers by an
4 estimated amount of One Hundred Eighty Million Dollars (\$180,000,000). This amount will
5 continue to accrue interest at a rate between seven (7) to eight (8) percent per year, if not paid
6 in a timely manner. The revenue collected by the government of Guam is not sufficient to
7 pay off this debt and support essential government services.

8 *I Liheslaturan Guåhan* further finds that the people of Guam desire leadership that
9 prioritizes the return of hard earned money paid to the government of Guam in excess of tax
10 obligations. These monies are rightfully due to the taxpayers of Guam in a timely manner.

11 *I Liheslaturan Guåhan* further finds at a minimum of Ten Million Dollars
12 (\$10,000,000) was removed or has been encumbered from the general and special funds in
13 fiscal years 2004 through 2009 for Consent Decree projects including engineering services,
14 technical specialist consultants, project management, and environmental consultants and
15 studies. *I Liheslaturan Guåhan* seeks to make permanent the reimbursement of said funds
16 used for the Consent Decree and make these funds available to pay prior or current year
17 income tax refunds.

18 *I Liheslaturan Guåhan* further finds that One Hundred Thirty Four Thousand
19 (134,000) square meters of land (Lot # 3434, GAFAO) on which the Ordot Dump sits on top
20 has not been condemned or purchased by the government of Guam. The Ordot Dump is on
21 track to be closed in 2012 and *I Liheslaturan Guåhan* desires that any and all land
22 transactions related to Lot # 3434, GAFAO be settled prior to 2012.

23 *I Liheslaturan Guåhan* further finds that the Port Authority of Guam (“Port”) master
24 plan to expand and modernize port operations estimates a required capital investment of over

1 Two Hundred Sixty Million Dollars (\$260,000,000). The need to expand Port operations is a
2 direct result of relocating Marines from Okinawa to Guam by 2014 (military buildup). The
3 military buildup requires a quick ramp up of construction activity. The current Port
4 operations cannot support the required influx of cargo needed to complete the pending
5 military buildup within the next five (5) years. After the military buildup is concluded, Port
6 operations will normalize and any related expansions to support the military buildup will not
7 likely be necessary for non-military buildup activity. The required need for expansion of
8 Port operations is temporary and directly benefits and is a result of the United States Military
9 and should not burden the taxpayers of Guam.

10 Public Law 29-125 required a financial feasibility study of the Port Master Plan
11 Update 2007 Report. The completed feasibility study identifies Ninety Nine Percent (99%)
12 of financing for the Jose D. Leon Guerrero Commercial Port from Federal Sources, including
13 a Fifty Four Million Dollar (\$54,000,000) loan from the USDA.

14 *I Liheslaturan Guåhan* acknowledges the need to purchase reliable cranes to ensure
15 both continuity and reliability for Port operations and desires to provide a funding source for
16 this purpose so a crane surcharge is not an immediate additional burden to taxpayers above
17 tariff increases proposed in the feasibility study.

18 Therefore, *I Liheslaturan Guåhan* intends to repeal and re-enact §51821, Article 8 of
19 Title 10 Guam Code Annotated to re-prioritize the payments made out of the sale of Bonds.

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

22 **“§51821. Payments Which May be Made Out of Proceeds of Sale of Bonds.**

23 The proceeds of sale of any bonds *shall* be expended in order of priority for the
24 following purposes:

1 (a) Up to Twenty Million Dollars (\$20,000,000) but not less than Ten Million Dollars
2 (\$10,000,000) for reimbursement of any expenses, including but not limited to engineering,
3 inspection, legal, consultants' *or* paying agents' fees relating *or* incidental to:

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

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

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

13 (b) up to Two Million Dollars (\$2,000,000) for compensation for the acquisition of
14 private property used for the Ordot Landfill by an instrumentality or agency of the
15 government of Guam;

16 (c) Twenty Million Dollars (\$20,000,000) toward the closure of the Ordot Dump;

17 (d) Forty Million Dollars (\$40,000,000) shall be used for payment of individual and
18 corporate tax refunds including interest;

19 (e) Up to Eighteen Million Dollars (\$18,000,000) for the purchase of gantry cranes to
20 be used as part of operations at the Jose D. Leon Guerrero Commercial Port;

21 (f) For payment of any costs *or* expenses of the acquisition, construction *or*
22 improvement of the system *or* any part thereof (including any closed landfill *or* dump) *or* any
23 costs *or* expenses incidental thereto, including payment to the United States *or* any other

1 public body for the portion to be borne by the government of the cost of any work done by
2 the United States *or* such public body for *or* jointly *or* in conjunction with the *Department*;

3 (g) For payment to any non-government of Guam entity or personnel of any costs *or*
4 expenses relating to the authorization, issuance *or* sale of bonds;

5 (h) For deposit in any one (1) *or* more reserve funds *or* accounts in lieu of insurance
6 *or* in any working capital fund *or* account *or* contingency fund *or* account relating to the
7 system;

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

12 (j) For deposit in any reserve *or* sinking fund;

13 (k) For the payment of any prior bonds *or* other obligations of the government issued
14 for solid waste management purposes;

15 (l) Any surplus funds remaining from the proceeds of the bond after funding priorities
16 (a) though (k) shall be used for payment of individual and corporate tax refunds including
17 interest.

18 All reimbursements or disbursements related to (a), (d) and (l) of this section shall be
19 deposited directly into the Income Tax Refund Reserve Fund to pay prior and current year
20 income tax refund liabilities.”

21 **Section 3.** The portion of any bond proceeds used for projects of any autonomous
22 agency or instrumentality of the government of Guam *shall be* repaid by said autonomous
23 agency or instrumentality. The repayment obligation of the autonomous agency or
24 instrumentality *shall be* calculated by dividing the autonomous agency or instrumentality

1 borrowed principal by the total bond proceeds and multiplying by required annual debt
2 service payments.

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

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