


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

Bill No. 424-30(cov)

Introduced by:

T.C. Ada 

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AN ACT TO *AMEND* §79100 AND §79101 OF CHAPTER 79 OF CHAPTER 12 OF THE GUAM CODE ANNOTATED, AND TO REPEAL CHAPTER 51, TITLE 10 OF GCA AND REENACTED UNDER A NEW CHAPTER 15, TITLE 12 OF GCA FOR AN AUTONOMOUS GUAM SOLID WASTE AUTHORITY.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the collection, transportation, separation, processing, reduction and
4 disposal of solid waste requires administration with specialized expertise to
5 operate and maintain an efficient, environmentally acceptable and
6 sustainable solid waste management system.

7 *I Liheslaturan Guåhan* finds that the United States of America, on
8 behalf of the United States Environmental Protection Agency filed a civil
9 lawsuit against the Government of Guam for continued violation of the
10 Clean Water Act. Despite an administrative order issued on July 24, 1990 to
11 the Government of Guam Department of Public Works, continued violation
12 of the Clean Water Act resulted in a Consent Decree between the United
13 States and the Government of Guam. Currently, the administration of the
14 solid waste services is performed by a Receiver, Gershmann, Brickner, &
15 Bratton, who has been designated by the U.S. Federal District Court. As

1 specified in the Court Order, GBB has full power and authority to enforce
2 the terms of a Consent Decree, and assume all of the responsibilities,
3 functions, duties, powers and authority of the Solid Waste Management
4 Division of the Department of Public Works and any and all departments or
5 other divisions of the Department of Public Works insofar as they affect the
6 Government of Guam’s compliance with the Consent Decree.

7 *I Liheslaturan Guåhan* therefore finds that the operation of the solid
8 waste management program requires the establishment of a specialized
9 organization, such as the Guam Solid Waste Authority (GSWA) as outlined
10 in this Act, under the governance of the Consolidated Commission on
11 Utilities, to implement the Guam Solid Waste Management Plan.

12 It is the intent of *I Liheslaturan Guåhan* to establish the Guam Solid
13 Waste Authority (GSWA) to prepare for and ensure a successful transition
14 that will occur upon termination of the consent decree, and the return of
15 solid waste services to the Government of Guam.

16 **Section 2.** §79100 of Chapter 79 of Title 12 of the Guam Code Annotated is
17 hereby *amended* to read as follows:

18 **§79100. Creation of Commission.** There is established an elected
19 Consolidated Commission on Utilities whose purpose is to exercise powers
20 vested in them by the laws establishing the Guam Power Authority (‘GPA’),
21 the Guam Solid Waste Authority (‘GSWA’) and the Guam Waterworks
22 Authority (‘GWA’). The Consolidated Commission on Utilities, hereinafter
23 referred to as “Commission” shall be elected by registered voters of Guam.

24 **Section 3.** §79101 of Chapter 79 of Title 12 of the Guam Code Annotated is
25 hereby *amended* to read as follows:

1 **§79101. Commissioners.** The Commission shall be comprised of
2 five (5) Commissioners elected at-large by the voters of Guam in a General
3 Election. To be eligible to be a Commissioner, a person must be a registered
4 voter of Guam and a minimum of twenty-five (25) years of age, and shall
5 have been a resident of Guam for at least five (5) years immediately prior to
6 the date of the Commissioner’s election.

7 A person may not simultaneously serve as a Commissioner and an
8 employee of the Guam Waterworks Authority, the Guam Power Authority,
9 the Guam Solid Waste Authority, or the Public Utilities Commission, or
10 simultaneously serve as a Commissioner and an unclassified or contracted
11 employee of the government of Guam. An adjunct instructor, adjunct
12 teacher, or adjunct professor employed by the University of Guam or the
13 Guam Community College may serve as a Commissioner.

14 Persons retired from the government of Guam may serve as
15 Commissioners. At their first official meeting, the Commissioners shall
16 elect from among the Commissioners a chairperson, who shall preside over
17 meetings of the Commission. A majority of the Commissioners holding
18 office shall constitute a quorum. The affirmative vote of the majority of
19 Commissioners holding office shall constitute the decision of the
20 Commission. The Commission may adopt rules and regulations governing
21 the conduct of its affairs.

22 **Section 4.** Chapter 51 of Title 10 of the Guam Code Annotated is *repealed*
23 and *reenacted* under a new Chapter 15 of Title 12 of the Guam Code
24 Annotated which shall read:

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§15100. Short Title.

This Chapter may be cited as the Guam Solid Waste Authority Act.

§15101. Definitions. As used in this Chapter, unless otherwise indicated:

- (1) *Board* shall mean the Consolidated Commission on Utilities (CCU).
- (2) *Authority* shall mean the Guam Solid Waste Authority.
- (3) *Director* shall mean a member of the Board.

§ 15102. Continuation of Existence. The Solid Waste Management Division, a sub-entity of the Department of Public Works shall continue in existence as an autonomous, public corporation now referred to as the Guam Solid Waste Authority (GSWA).

§ 15103. Powers. The Authority shall have and exercise each and all of the following powers:

(a) Administer those powers listed under this Chapter 15, Title 12 of the Guam Code Annotated.

(b) Acquire in accordance with Public Law 20-06, §7, and Title VII-A of the Government Code and subject to the laws of Guam, by grant, purchase, gift, devise or lease, or by the exercise of the right of eminent domain in accordance with the provisions and subject to limitations of 21 GCA Chapter 15, and hold and use any real or personal property necessary or convenient or useful for the carrying on of any of the powers pursuant to the provisions of this Chapter;

(c) Establish its internal organization and management and adopt regulations for the administration of its operations;

(d) Establish and modify from time to time, with approval of the Public Utility Commission (PUC), reasonable rates and charges for the collection, transportation, disposal, storage, recycling and processing of solid waste to

1 recover the full cost of providing such services, and collect money from
2 customers using such services. Similarly, the Authority shall establish and
3 modify from time to time, with the approval of the Public Utilities
4 Commission, reasonable rate and charges for servicing of debt obtained to
5 undertake capital improvements to solid waste management;

6 (e) Enter into contracts and execute all instruments necessary or
7 convenient in the exercise of its powers, adopt a seal and sue or be sued in
8 its own corporate name;

9 (f) At any time or from time to time, incur indebtedness pursuant to
10 Article 2 of this Chapter;

11 (g) Enter into contracts with the Government of Guam or with the
12 United States for loans or grants;

13 (h) Employ, retain or contract for the services of qualified solid waste
14 management specialists or experts, as individuals or as organizations, to
15 provide technical advice and assistance;

16 (i) Adopt such rules and regulations as may be necessary for the
17 exercise of the powers and performance of the duties conferred or imposed
18 upon the Authority or the Board by this Article;

19 (j) Control, operate, improve, equip, maintain, repair, renew, replace,
20 reconstruct, alter and insure that the solid waste management system is
21 compliant with any applicable zoning, building and health regulations of the
22 territory of Guam; and

23 (k) Do any and all other things necessary to the full and convenient
24 exercise of the above powers;

25 Nothing contained in this Section or elsewhere in this Article shall be
26 construed directly or by implication to be in any way in derogation or
27 limitation of powers conferred upon or existing in the Authority or the Board

1 by virtue of any provisions of the Organic Act of Guam or Statutes of the
2 Territory or any other provision of this Code.

3 **§ 15104. Governance of Authority.** All powers vested in the Authority,
4 except as provided herein, shall be exercised by the Consolidated
5 Commission on Utilities, as established in Chapter 79 of Title 12 of the
6 Guam Code Annotated.

7 **§ 15105. General Manager.**

8 (a) The Board shall appoint a general manager who shall be its chief
9 executive officer and shall serve at its pleasure. The general manager shall,
10 at a minimum, possess the following qualifications: (1) a combined
11 minimum of six (6) years of documented experience successfully managing
12 a Solid Waste Management System of similar size as the GSWA system, and
13 (2) graduation from an accredited institution of higher education with a
14 Bachelors degree in Business Management or Engineering Management.
15 The Board shall fix the general manager's compensation, notwithstanding
16 any other provision of law. The general manager shall have full charge and
17 control of the construction of the works of the Authority and their
18 maintenance and operation, and also of the administration of the business
19 affairs of the Authority.

20 The Board may contract with a corporation to perform any or all of the
21 duties, and to exercise any or all of the powers of the general manager as
22 provided in this Section, and the general manager, subject to the approval of
23 the Board, may contract with a corporation to perform some of the duties or
24 to render expert and technical assistance in the operation of the Authority.
25 Such a management contract shall be for no longer than ten (10) years with
26 approval by the Legislature. A corporation contracted pursuant to this
27 Section must have a minimum of Ten (10) years experience in the operation

1 of a solid waste or utility of similar or greater scope than the Authority.

2 (b) The powers of the General Manager shall include the following:

3 (i) To see that all rules and regulation of the Authority are enforced;

4 (ii) To attend all meetings of the Board and submit a general report of
5 the affairs of the Authority;

6 (iii) To keep the Board and *I Liheslaturan Guåhan* advised as to the
7 needs of the Authority, to approve demands for the payment of obligations
8 of the Authority, and to approve expenditures and collection of revenue
9 within the purposes and amounts authorized by the annual budget;

10 (iv) To prepare, or cause to be prepared, all plans and specifications for
11 the constructions of work by the Authority in accordance with the annual
12 budget;

13 (v) To select and appoint the employees of the Authority, except as
14 otherwise provided by this Chapter, and to plan, organize, coordinate and
15 control the services of such employees in the exercise of the powers of the
16 Authority under the general direction of the Board;

17 (vi) To cause to be published within one hundred twenty (120) days
18 from the end of each fiscal year a financial report showing the result of
19 operations for the preceding fiscal year and the financial status of the
20 Authority on the last day thereof. The publication shall be made in the
21 manner provided by the Board; and

22 (vii) To perform such other and additional duties as the Board may
23 require.

24 **§15106. Assistant General Manager: Operations and Technical**
25 **Support.**

26 (a) The General Manager, with the consent of the Board, shall appoint
27 an Assistant General Manager for Operations and Technical Support, who

1 shall serve at the pleasure of the General Manager.

2 (b) The Assistant General Manager of Operations and Technical
3 Support shall be entitled to receive compensation as recommended by the
4 General Manager and approved by the Board.

5 (c) Such Assistant General Manager shall devote his entire time to the
6 business of the Authority and shall have full charge and control, subject to
7 the direction of the General Manager, of all operations, engineering, and
8 technical services pertaining to the generation, storage, collection,
9 transportation, processing, recycling, resource recovery or disposal of solid
10 waste.

11 (d) Such Assistant General Manager shall have such other duties as
12 may be designated by the General Manager.

13 **§15107. Assistant General Manager: Administration and Fiscal**
14 **Services.**

15 (a) The General Manager, with the consent of the Board, shall appoint
16 an Assistant General Manager for Administration and Fiscal Services, who
17 shall serve at the pleasure of the General Manager.

18 (b) The Assistant General Manager of Administration and Fiscal
19 Services shall be entitled to receive compensation as recommended by the
20 General Manager and approved by the Board.

21 (c) Such Assistant General Manager shall devote his entire time to the
22 business of the Authority and shall have full charge and control, subject to
23 the direction of the General Manager, of all administration, accounting and
24 fiscal services of the Authority.

25 (d) Such Assistant General Manager shall have such other duties as
26 may be designated by the General Manager.

27 **§ 15108. Chief Financial Officer.** The Board shall appoint a chief financial

1 officer who shall be a Certified Public Accountant. The Board shall fix the
2 chief financial officer's compensation. The chief financial officer shall have
3 full charge and control of the fiscal, business and accounting operations of
4 the Authority, subject to the supervision of the Board.

5 **§ 15109. Other Officers.**

6 (a) The Board may also appoint a Secretary, and an Attorney, who all
7 shall serve at the pleasure of the Board and whose duties and compensation
8 shall be fixed by the Board. The Board may appoint one or more assistants
9 to any such office. Any of such offices may be consolidated in one person.

10 (b) The Secretary shall have charge of all records and minutes of the
11 Board.

12 (c) The Attorney, who must have been admitted to practice in Guam,
13 shall advise the Board and the General Manager on all legal matters to which
14 the Authority is a party or in which the Authority is legally interested and
15 may represent the Authority in connection with legal matters before the
16 Legislature, boards and other agencies of the Territory. The Attorney
17 General shall represent the Authority in litigation concerning the affairs of
18 the Authority provided that he may delegate this duty to the Attorney of the
19 Authority, with respect to any such litigation.

20 **§ 15110. Employees.** All employees of the Authority shall be eligible for all
21 insurance, retirement, workmen's compensation and other benefits as
22 extended to employees of the government of Guam, and shall be employees
23 of the government of Guam for the purposes of the application of all civil
24 service laws and personnel rules and regulations that apply to government of
25 Guam employees, inclusive of all scales, tables and schedules for
26 compensation. With respect to compensation, this Section shall not apply to
27 the compensation of the General Manager, Assistant General Manager:

1 Administration and Fiscal Services, Assistant General Manager: Operations
2 and Technical Support Secretary, Attorney, or the Chief Financial Officer.

3 **§ 15111. Acquisition of Existing Systems, Employees, and Debt.** On the
4 first day of the month following one hundred eighty (180) days after the
5 effective date of this Act, the Authority shall assume in writing from the
6 Government of Guam and the Solid Waste Management Division:

7 (i) all real property under the Authority’s administration and items of
8 property, materials and supplies which the Authority owns or controls,
9 including construction work in progress.

10 (ii) all working capital, cash, accounts payable and receivable, deposits,
11 advances payable and receivable, all books, records and maps and all other
12 rights, obligations, assets, liabilities, agreements, and privileges of the
13 Authority or attributable to the Authority.

14 (iii) Each Government of Guam employee assigned to the Department
15 of Public Works, Solid Waste Management Division at the date of the
16 transfer pursuant to statute shall be transferred to the Authority. All
17 classified employees shall remain classified.

18 **§ 15112. Exemption from Taxation, and In Lieu Payments.** As an
19 instrumentality of the Territory, the Authority and all property acquired by
20 or for the Board and all revenues and income from taxation by the Territory
21 or by any political subdivision or public corporation thereof and from all
22 taxes imposed under the authority of the Legislature of the Territory, or with
23 respect to which the Legislature is authorized to grant exemption.

24 **§15113. General Operations.** Rates for Services. The Authority shall apply
25 to the Public Utilities Commission (PUC) for ratification of its existing rates
26 for its services.

27 **§ 15114. Accounting and Expenditures.**

1 (a) The Board shall adopt and maintain a system of accounting.

2 (b) The Board shall authorize, by means of the annual budget, payment
3 of demands against the Authority resulting from the exercise of its powers
4 under this Act if:

5 (i) the purposes and amounts of such demands are projected in the
6 budget, expressed in terms of major account groups of the Uniform System
7 of Accounts, which has been adopted by the Board after receiving
8 recommendations from the General Manager; and

9 (ii) the specific demands which are made are approved by the
10 Board before payment.

11 (c) The Board shall employ, in accordance with the appropriate
12 procurement laws and the annual budget, a firm of locally licensed,
13 independent Certified Public Accountants who shall annually examine the
14 financial status and workings of the Authority for the previous fiscal year.
15 Said firm shall submit no later than February 1st of each year, a written
16 report on the financial status and workings of the Authority during the
17 previous fiscal year to *I Magalahren Guåhan* [Governor], the General
18 Manager and *I Liheslaturan Guåhan*. *I Magalahren Guåhan* may request
19 special reports within thirty (30) days after the end of each fiscal quarter.
20 The financial information presented in the reports required by this Section
21 shall be in accordance with the Uniform System of Accounts adopted by the
22 Board. Claims against the Guam Solid Waste Authority shall be submitted to
23 the Attorney General of Guam in accordance with the Government Claims
24 Act.

25 **§ 15115. Annual Budget.** For the purposes of Chapter 15 of Title 12 of the
26 Guam Code Annotated, the term *annual budget* means a balanced budget for
27 expenditures of the Guam Solid Waste Authority for a fiscal year to be

1 funded by the anticipated revenues and other funds to be received and
2 expended for the same fiscal year, submitted to the Consolidated
3 Commission on Utilities and approved by resolution, with amendment and
4 modification as may be desired by the CCU. The budget shall not request an
5 appropriation from the General Fund.

6 (a) If the Board fails to submit a budget for the next fiscal year, the
7 current fiscal year's budget shall be deemed approved for the next fiscal
8 year, subject to Board modification.

9 **§ 15116. Employment.**

10 (a) Pursuant to the provisions of 4 GCA §§4105 and 4106, the Board
11 shall establish rules and regulations regarding selection, promotion,
12 performance evaluation, demotion, suspension and other disciplinary action
13 for the employees of the Authority; provided, however, that all contracts for
14 the hiring of off island employees shall conform to the provisions of 4 GCA
15 §§6501 and 6501.1.

16 (b) Classified employees of the Authority shall be members of the
17 government of Guam Retirement Fund. The Authority shall contribute to the
18 government of Guam Retirement Fund on the basis of annual billings as
19 determined by the Board of Trustees of the government of Guam Retirement
20 Fund, for the government share of the cost of the retirement benefits
21 applicable to the Authority's employees and their beneficiaries. The
22 Authority shall also contribute to the Worker's Compensation Fund, on the
23 basis of annual billings as determined by the Worker's Compensation
24 Commissioner, for the benefit payments made from such Fund on account of
25 the Authority's employees.

26 (c) Notwithstanding any other provisions of law, neither the General
27 Manager, Assistant General Managers, Secretary, Chief Financial Officer,

1 nor Attorney of the Authority shall be within the classified service of the
2 government of Guam but shall be hired, compensated and employed under
3 the terms and conditions fixed by, and at the pleasure of the Board.

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5 **Article 2. Guam Solid Waste Authority Revenue Bonds.**

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7 **§15200. Authorization of Indebtedness Through GEDA.**

8 **§15201. GEDA as Central Financial Advisor.**

9 **§15202. Evidence of Transfers Filed at the Department of Land**
10 **Management.**

11 **§15203. Statutory Approval Required for Sale.**

12 **§15204. Acceptance of Payments, Installation Applications and**
13 **Service Repair Requests via the Internet.**

14
15 **§15200. Authorization of indebtedness through GEDA.** The Guam
16 Economic Development Authority ('GEDA') may obtain funds through the
17 issuance of bonds or other obligations on behalf of the Authority.

18 (a) **Bonds or Notes.** Accordingly, the Authority, through GEDA, with
19 the approval of *I Magalahren Guåhan* and *I Liheslaturan Guåhan* is
20 authorized to incur indebtedness, and to issue bonds or notes therefor,
21 secured by a pledge of all or any portion of the revenues of the Authority, to
22 establish and facilitate the Solid Waste Management Plan, and collection,
23 transportation, storage, recycling, processing, or disposal of solid waste,
24 which shall include sanitary landfills, and resource recover facilities.

25 (b) **Subordinated Indebtedness.** In addition, the Authority, acting
26 through GEDA, may incur indebtedness for any other lawful purpose of the
27 Authority, provided that such indebtedness shall have a term not exceeding

1 fifty (50) years and shall be subordinate to any contractual obligation of the
2 Authority to the holders of any indebtedness issued pursuant to subsection
3 (a) of this section.

4 (c) **Short Term Borrowing.** Pursuant to GEDA, the Authority may
5 incur indebtedness with the approval of the Governor for any lawful purpose
6 for a term not exceeding five (5) years; provided, that such indebtedness
7 shall be subject and subordinate to any contractual obligation of the
8 Authority to the holders of any bonds issued pursuant to paragraphs (a) or
9 (b) of this section. The principal of and interest of any such short term
10 borrowing may be repaid from revenues, or if incurred for a purpose for
11 which bonds may be issued, from revenues or from the proceeds of sale of
12 bonds.

13 (d) **Character of Indebtedness.** All indebtedness incurred by the
14 Authority pursuant to this Article shall be repayable solely from monies of
15 the Authority available therefor, including revenues, and shall not be
16 deemed to be public indebtedness of the Territory as that term is used in
17 Section 11 of the Organic Act.

18 (e) **Waiver of Immunity.** Notwithstanding any substantive or
19 procedural provision of Chapter 6, Title 5, Guam Code Annotated, the
20 Authority shall not be entitled to immunity from any suit or action in
21 contract on the indebtedness authorized by this Article.

22 **§15201. Guam Economic Development Authority as Central Financial**
23 **Manager.** Notwithstanding any other provisions of this Article, the Guam
24 Economic Development Authority shall act as the Central Financial
25 Manager and Consultant to the Authority and shall provide technical
26 assistance in obtaining funds through the issuance of bonds or other
27 obligations. The Authority must comply with all provisions under this

1 section relative to the financial requirements and needs as directed by
2 GEDA.

3 **§ 15202. Evidence of Transfers Filed at the Department of Land**
4 **Management.** Transfer of real property interests pursuant to this Act,
5 including but not limited to fee estates, easements and land use rights
6 evidenced by easements, leases, and licenses, shall be filed in the form of
7 deeds or assignments signed by *I Magaláhen Guåhan* in good form
8 containing specific property descriptions, lot numbers and map numbers, at
9 the Department of Land Management within 360 days of the effective date
10 of this Act. Any transfer not filed within such time frame shall lapse and be
11 of no further force and effect unless re-initiated or authorized by separate
12 statutory legislation authority. Any subsequent easements or transfers of
13 property from the Government of Guam, including the Chamorro Land Trust
14 Commission, shall be in the form of deeds or assignments in good form
15 containing specific property descriptions, lot numbers and map numbers,
16 recorded at the Department of Land Management.

17 **§ 15203. Statutory Approval Required for Sale.** Notwithstanding any of
18 the provisions of this Act, specific legislative statutory approval shall be
19 required prior to sale, transfer or lease of any real property assets or lands of
20 the Guam Solid Waste Authority. Nothing herein shall be construed as such
21 approval. In addition, notwithstanding any other provision contained herein,
22 the provisions of 1 GCA § 1800 shall be applicable to the Guam Solid Waste
23 Authority.

24 **§ 15204. Acceptance of Payments, Installation Applications and**
25 **Service/Repair Requests via the Internet.**

26 (a) Notwithstanding any other provision of law, the Guam Solid Waste
27 Authority shall, within one (1) year of the enactment of this Section, provide

1 that the following services be made available via the internet:

2 (1) Acceptance of online payments;

3 (2) Application for installation of new and additional services, and

4 (3) Requests for service and repair.

5 (b) The Guam Solid Waste Authority shall provide an email address(es)
6 for inquiries regarding subsection (a) (1), (2) and (3).

7 (c) Nothing herein shall be construed as limiting the Authority's ability
8 to receive payments through online payment and/or banking services.

9 (d) The Guam Solid Waste Authority shall set, by Administrative Rule,
10 the timeframes to which email inquiries must be addressed and dispensed
11 with.

12 (e) The Guam Solid Waste Authority shall adopt appropriate security
13 measures necessary to protect its customers from fraud and identity theft.
14

15 **Article 3. Transition to autonomous Guam Solid Waste Authority.**

16 **§15300. Transition.**

17 **§15301. Effective Date.**

18 **§15300. Transition.** All personnel, assets, equipment, funds, property,
19 records and programs under the Solid Waste Management Division of the
20 Department of Public Works shall be transferred to the administration of the
21 Guam Solid Waste Authority.

22 **§15301. Effective Date.** The provisions of this Act shall take effect (with
23 the exception of Article 1) when the United States District Court determines
24 the requirements of Section XIV of the Consent Decree (Civil Case No. 02-
25 00022, United States of American, Plaintiff, v. Government of Guam,

1 Defendant) are fulfilled, and governance of the Municipal Solid Waste
2 management is returned to the Government of Guam. Article 1 shall be
3 effective upon enactment.