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**HAGÁTÑA, GUAM**  
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## Scope of this Supplement

In December of 2005, the Guam Code Annotated 2005 Edition was released, which updated the code through parts of Public Law 28-68 then in effect. This supplement updates Volume 5 of the 2005 Edition through Public Law 28-100 which was signed into law on February 7, 2006. Included in this supplement are corrections made to Volume 5. The following table identifies the updated and corrected sections.

## Table of Sections Updated

<b>Title</b>	<b>Section</b>	<b>Action</b>	<b>Public Law</b>
11	1106 (d)	Added	28-68 : II:V:3e
11	1107 (e)	R/R	28-68 : IV:49
11	1109	Amended	28-68 : IV:45
11	1111	Amended	28-68 : II:I:10
11	1113	Amended	28-68 : IV:45
11	26202 (e)	Amended	28-106 : 2
11	26302 (d)	Repealed	28-68 : IV:27
11	26302 (e)	R/R	28-68 : IV:26
11	26603 (d)	R/R	28-68 : IV:25
11	51102 (a)	Amended	28-68 : IV:97
11	76213 (a),(c),(d),(e)	Amended	28-68 : IV:94
11	26208- 26208.1	R/R	28-68 : II:III:22
11	52101- 52102	Added	28-68 : II:I:1
12	3117	Amended	28-68 : IV:42
12	8104 (13)	Added	28-113 : 2
12	8112 (b)	Amended	28-118 : 2
12	9108 (a)	R/R	28-68 : IV:62
12	9109 (c)	Repealed	28-68 : IV:103
12	14104 (m)	Added	28-113 : 3
12	50103 (k)	Amended	28-68 : IV:71
12	50103 (k)	Amended	28-71 : 5
12	50103 (p)	Repealed	28-68 : IV:53
12	50103	Added	28-68 : IV:71

<b>Title</b>	<b>Section</b>	<b>Action</b>	<b>Public Law</b>
12	14201- 14240	R/R	28-71 : 2
12	50301- 50302	Repealed	28-68 : IV:54

## TITLE 11 FINANCE & TAXATION

### 11 GCA § 1106. Organization and Personnel.

(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and direction of the Director and shall have jurisdiction of such matters, exercise such powers, and perform such duties as may be assigned to it by the Director or otherwise by applicable law.

(b) The Director may appoint and remove officers and other employees within the Department in accordance with the provisions of the Personnel Policy and the Civil Service Commission, 4 GCA Chapter 4.

(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

(d) The Director may appoint an attorney within the merit system, who shall serve at his pleasure and whose compensation shall be consistent with the local laws governing attorney's salaries. The Director may appoint one assistant attorney. The Attorneys, who must have been admitted to the practice of law in Guam, shall advise the Director on all legal matters to which the Department is a party or in which the Department is legally interested.

**SOURCE:** GC § 49275. Subsection (d) added by P.L. 28-068:II:V:3(e) (Sept. 30, 2005).

### 11 GCA § 1107. General Powers and Duties of Director.

As head of the Department, the Director:

- (a) Shall administer the Department;
- (b) Shall exercise and discharge the powers and duties of the Department through such divisions or other organizational units as he may establish pursuant to this Title or as otherwise provided by law;
- (c) Shall enforce the provisions of this Title and of any other laws imposing any power, duty or other function upon the Department;
- (d) May formulate and adopt rules necessary or proper for the internal administration of the Department.
- (e) Shall expend fifty percent (50%), pro rata, of the funds in the Tax Collection Enhancement Fund to employ Attorneys, Tax Technicians, Revenue Agents, Revenue Officers and for other related expenses in order to increase collection of taxes and for the salaries of employees serving as Passport Acceptance Agents. He shall deposit fifty percent (50%), pro rata,

of the funds in the Tax Collection Enhancement Fund to the Public School Library Resources Fund created by 17 GCA § 4120.1.

**SOURCE:** GC § 49276. Subsection (e) added by P.L. 27-005:III:4. Subsection (e) repealed and reenacted by P.L. 28-068:IV:49 (Sept. 30, 2005).

### **11 GCA § 1109. Transfer of Officers and Employees.**

All officers and employees of the Department of Finance and Department of Commerce engaged in performing functions herein transferred shall be transferred to the Department of Revenue and Taxation. The Director, in the interest of improved departmental management and subject to the approval of the Director of Administration, shall have the power to abolish unnecessary offices and positions.

**SOURCE:** GC § 49278. Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

### **11 GCA § 1111. Creation of Tax Collection Enhancement Fund. No Commingling.**

There is hereby created, separate and apart from other funds of the government of Guam, a reserve fund known as the ‘Tax Collection Enhancement Fund (the ‘Fund’)’. The Fund shall *not* be commingled with any other fund of the government of Guam. Expenditures from the Fund shall be pursuant to 11 GCA § 1107(e).

**SOURCE:** Added by P.L. 27-05:III:5. Amended by P.L. 28-068:II:I:10 (Sept. 30, 2005).

### **11 GCA § 1113. Office of the Taxpayer Advocate.**

(a) Office of the Taxpayer Advocate. The Office of the Taxpayer Advocate (hereinafter referred to as the ‘OTA’) is hereby established as an office within the Guam Department of Revenue and Taxation. The OTA shall be a separate division within the Department, and may be physically located separate and apart from the primary office activities of the agency. The OTA shall be governed by the provisions set forth within Section 7803(c) of the Internal Revenue Code.

(b) Personnel Requirements. The Director of the Department of Revenue and Taxation shall establish, through the concurrence of the Director of Administration, appropriate positions and compensation necessary for the administration and operation of the OTA. Upon the approval of such positions and the appropriate compensation package, the Director shall provide *I Maga’lahen Guåhan* and the Speaker of *I Liheslaturan Guåhan* with a copy of said documents within ten (10) days of its receipt.

**SOURCE:** Added by P.L. 27-139:2. Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

## **11 GCA § 26202. Rates.**

The following rates shall apply in computing, assessing and collecting the gross receipts tax:

(a) Tax on the business of selling tangible personal property. Upon every person engaging or continuing within Guam in the business of selling any tangible property whatsoever (not including however, bonds or other evidence of indebtedness or stocks), there shall be a tax equivalent to four percent (4%) of gross proceeds of sales; except that on the gross proceeds of the operation of poker machines, there shall be a tax equivalent to eight percent (8%) on the gross proceeds of each machine, as determined by subtracting the winnings, pay-outs and malfunction refunds from total receipts of each machine.

(1) *Provided*, that gross proceeds of export sales of tangible property in foreign commerce shall not constitute a part of the measure of the tax imposed. Although not constituting a part of the measure of the tax imposed, all such sales shall be reported in the manner provided for the reporting of the tax imposed by § 26202(a).

(2) *Provided*, that any person engaging or continuing in business as a retailer and a wholesaler shall pay the tax required solely on the gross proceeds of sales of the retail business, and his books must be kept so as to show separately the gross proceeds of sale of each business.

(3) *Provided*, that a manufacturer or producer engaging in the business of selling his manufactured products at retail in Guam shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed by this Chapter for the privilege of engaging in the business of selling such products at retail in the territory of Guam; and

(4) *Provided*, that a manufacturer or producer, other than a manufacturer of alcoholic beverages, engaging in the business of selling his products to manufacturers, wholesalers, or licensed retailers, or persons actually selling the products to the United States Government, shall not be required to pay the tax imposed in this Act for the privilege of selling such products at wholesale. Nor shall any such manufacturer or producer, other than a manufacturer of alcoholic beverages, be required to pay the tax imposed in this Act for the privilege of selling products for delivery to the purchaser outside of

Guam. The point of delivery for a purchaser outside of Guam may be on Guam, if the product's ultimate destination or consumption is outside of Guam.

**NOTE:** This subsection was amended by P.L. 17-67, effective September 7, 1984.

(b) (1) [Repealed.]

(2) [Repealed.]

(3) Tax upon boxing. The tax levied and assessed under Subsections (b)(1) and (b)(2) (repealed) of this Section shall not apply to boxing for which a tax equivalent to twelve percent (12%) of the gross income of such boxing business is hereby levied and assessed.

(c) Tax on service business. Upon every person engaging or continuing within Guam, in any service business or calling not otherwise specifically taxed under this Section, [there shall be] a tax equivalent to four percent (4%) of the gross income of such business.

(d) Professions. Upon every person engaging or continuing within Guam in the practice of a profession, excluding those expounding the religious doctrines of any church, [there shall be] a tax equivalent to four percent (4%) of the gross income of such practice. ["There shall be" added by editor, 1970 Ed. of the Government Code]

(e) Tax on Contractors. There shall be levied, assessed and collected a tax rate of four percent (4%) measured against the gross income of any contractor; *provided*, that there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of tax levied under this Subsection on another taxpayer who is a contractor, as defined in §26101(b); *provided*, that any person claiming a deduction under this Subsection shall be required to show in the person's return either the name and contractor's license number or the registration number for a professional engineer, architect or land surveyor or the Certificate of Authorization (COA) number for a business authorized to provide engineering, architecture or land surveying services by the Guam Board of Registration for Professional Engineers, Architects, Land Surveyors of the person paying the tax on the amount deducted by the person.

(f) Tax on banks, banking institutions, small lenders and building and loan associations. Upon every person engaging or continuing within Guam in the business of operating any bank, banking institutions, building and loan association, small lending business, or lending institutions, there shall be a tax equivalent to four percent (4%) of the net income received from business.

(1) Net Income. For the purpose of this Section, net income shall mean the gross income of such taxpayer received from all sources less the following deductions therefrom:

a) Salaries or bonuses paid and other compensation from personal services.

b) Interest or discount paid.

c) Rents paid.

d) Ordinary operating expenses such as supplies, utility services, insurance premiums other than for life insurance, provided that any deductible insurance expense shall be allowable only to the extent that such a premium is applicable to the tax period against which it is claimed.

e) Loans or obligations charged off the books of the bank as losses unless charged against reserves then in existence.

f) Losses other than loan losses, such as those occasioned by fire or other casualty, theft, embezzlement, and the like, but only to the extent not covered by insurance proceeds collected.

g) Transfers from earnings to reserve for bad debts or other contingencies provided for.

h) Miscellaneous direct expenses such as legal, advertising, auditing, and the like.

i) Loss on property sold and depreciation on property owned.

(2) A person liable for the payment of taxes levied under this Section shall be required to file an annual return, and shall not be required to file monthly returns. The tax year shall be calendar year except that the taxpayer may use his annual accounting period when prior permission is obtained from the Tax Commissioner. The annual return under this Subsection shall be filed not later than ninety (90) days following the close of the taxpayer's tax year.

(g) Dealing in foreign currency. Upon every person engaging or continuing within Guam in the business of purchasing and selling foreign money, there shall be a tax equivalent to four percent (4%) of the gross profit of such business represented by the difference between the cost and selling price of the foreign currency measured in United States dollars.

(h) Tax on other business. Upon every person engaging or continuing within Guam in any business, trade, activity, occupation or calling not

specifically included in any other provision of this Article, there shall likewise be a tax equivalent to four percent (4%) of the gross income of such business. This Section shall apply to the gross income of persons taxable under other provisions of this Chapter but which gross income is not derived from the exercise or privilege taxable thereunder.

(i) Insurers. Upon every person engaged or continuing within Guam in the business of an insurer, there shall be a tax at the rate of four percent (4%) of gross income received as premium for the writing of insurance, less returned premiums and less all commissions attributable to the sale and purchase of an insurance policy or policies of the insurer paid by said insurer to agents of the same, and four percent (4%) of any other gross income earned or derived on Guam.

(j) Tour Agencies. Upon every person engaging or continuing within Guam in the business of a tour agency or travel agency, where tourism-related services are furnished to consumers by independent vendors through arrangements made by a travel agency, or tour packager, and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, a tax equivalent of four percent (4%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

Where transient accommodations are furnished through arrangements made by a travel agency or tour packager, the gross income is divided between the provider of the transient accommodations on the one hand and the travel agency, or tour packager, on the other hand, a tax equivalent of four percent (4%) shall be imposed on each person with respect to such person's respective portion of the proceeds, and no more.

(1) As used in this Subsection *tourism-related services* shall mean dinner cruises, transportation included in a tour package, sight seeing tours, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist.

2) As used in this Subsection 'transient accommodations' shall mean hotel, lodging facility, or similar facility located on Guam and subject to the provisions of 11 GCA §30101.

**SOURCE:** GC § 19541. Subsection (a) amended by P.L. 18-33:34; (a)(1) amended by P.L. 17-50; (a)(2) by P.L. 18-2:7; Subsection (a)(4) amended by P.L. 17-34 and P.L. 17-67:8; Subsection (e) amended by P.L. 11-156; repealed/reenacted by P.L. 26-149:1 (eff. 9/27/2002); amended by P.L. 28-106:2 (April 14, 2006) (eff. Sept. 24, 2002). First paragraph of subsection (f) amended by P.L. 27-05:V:6c). Subsection (j) added by P.L. 25-117. Subsection (i) amended by P.L. 24-253:2.

**NOTE:** [2003] P.L. 27-05:V:6 (a) and (b) stated with respect to this entire section:

## Section 6. Increase in Gross Receipts Tax Rates.

(a) Notwithstanding any other provision of law, the four percent (4%) gross receipts tax rate contained in 11 GCA § 26202 (a),(c),(d),(e),(f),(g),(h), (i), and (j) shall be amended to six percent (6%), effective April 1, 2003. This Section shall cease to be effective after September 30, 2005, at which time the rate shall revert to four percent (4%).

(b) Not less than six (6) months prior to September 30, 2005, I Maga'lahen Guåhan [the Governor] shall submit a plan to I Liheslaturan Guåhan [the Legislature] on the deletion of the Gross Receipts or Business Privilege Tax, and the implementation of a sales tax or other tax.

**NOTE:** P.L. 9-124, effective August 26, 1967, contained the following pertinent language:

"Notwithstanding the provisions of P.L. 9-60, Ninth Guam Legislature, the increase in the rates of the Gross Receipt Tax, as set forth in said law, shall not apply to the proceeds of any transaction entered into prior to the effective date of said public law including any transaction resulting from a public bid opened prior to the effective date of said public law, the rates of tax which were in effect prior to said public law to be applied to the proceeds of any such transaction, provided that this Act shall be of no force and effect eighteen (18) months after the effective date of its approval and upon its expiration Public Law 9-60 shall govern the taxation of the proceeds of any transaction regardless of when said transaction was entered into. The Commissioner of Revenue and Taxation is authorized to issue such regulations as are necessary to effectuate the purpose of this Act, which the Legislature hereby declares to be that of equitably treating taxpayers who entered into transactions prior to the increase in gross receipt tax."

P.L. 17-50 contained the following language: "The amendment made to Subsection .0101 of Section 19541 [§ 26202(a)(1)] of Section 2 of this Act shall be effective as of January 25, 1984."

## **11 GCA § 26302. Excise Tax on Alcoholic Beverages.**

An excise tax is imposed upon all alcoholic beverages (except alcoholic beverages manufactured in Guam) sold in Guam by manufacturer, manufacturer's agents, rectifiers or wholesalers or sellers of alcoholic beverages selling alcoholic beverages with respect to which no tax has been paid within areas of which the Federal government exercises jurisdiction at the following rates:

(a) Malted Fermented Beverage. A tax in the amount of Seven Cents (\$0.07) per each twelve (12) fluid ounces or fraction thereof on all malted fermented beverages to be applied to the measure of the container in which it is offered for sale.

(b) Distilled Beverages. A tax in the amount of Eighteen Dollars (\$18.00) per gallon on all distilled beverages to be applied to the measure of the container in which it is offered for sale; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(c) Vinous Beverages. A tax at the rate of Four Dollars and Ninety-Five Cents (\$4.95) per wine gallon on all vinous beverages to be applied to the measure of the container in which it is offered for sale; provided, however, that the tax levied by this Section shall be prorated in units of measure less than one (1) gallon; and provided further, that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(d) **[Repealed.]**

(e) Proceeds of Excise Tax on Alcoholic Beverages. All proceeds from taxes collected under this Section shall be deposited in the “*Healthy Futures Fund*” created pursuant to 11 GCA § 26603(d).

**SOURCE:** GC § 19560, amended by P.L. 10-115 and further amended by P.L. 17-4. Amended by P.L. 27-05:V:1. Subsection (d) amended by P.L. 27-29:VI:16. Subsection (d) repealed by P.L. 28-068:IV:27 (Sept. 30, 2005). Subsection (e) repealed and reenacted by P.L. 28-068:IV:26 (Sept. 30, 2005).

### **11 GCA § 26603. Rates.**

The following rates shall apply in computing, assessing and collecting Tobacco Tax:

(a) Cigarettes. A tax at the rate of Five Dollars (\$5.00) per one hundred (100) cigarettes to be prorated in accordance with the number of cigarettes contained in the individual package taxed.

(b) Cigars. The tax rates for cigars shall be based on the following sizes:

1. Mini Cigars: Twenty Cents (\$0.20) Per Cigar. Mini Cigars are defined as cigars with a ring size of forty (40) or less, or a length of less than four and one-half inches (4.5”), regardless of ring size as specified by the manufacturer’s label.

2. Standard Cigars: Twenty-Two Cents (\$0.22) Per Cigar. Standard Cigars are defined as cigars with a ring size of more than forty (40), but less than sixty-four (64) as specified by the manufacturer’s label.

3. Large Cigars: Twenty-Five Cents (\$0.25) Per Cigar. Large Cigars are defined as cigars with a ring size of more than sixty-four (64), or a length of more than eight inches (8”), regardless of the ring size as specified by the manufacturer’s label.

4. Where no ring size or length is specified by the manufacturer’s label, the tax shall be Twenty-Two Cents (\$0.22) per cigar. For purposes of this Section, ring size shall be defined as the usually

accepted measure used by cigar manufacturers for determining the diameter of cigar at its widest point. A ring size of one (1) is equal to one sixty-fourth (1/64) of an inch.

(c) Other Tobacco Products. A tax at the rate of Three Dollars and Fifty Cents (\$3.50) per pound for all other tobacco products to be prorated in accordance with the size of the package to be taxed.

(d) Creation of the Healthy Futures Fund. There is hereby created the Healthy Futures Fund (Fund) which shall be maintained separate and apart from other funds of the government of Guam and shall be kept in a separate bank account and shall *not* be subject to any transfer authority of *I Maga'lahañ Guåhan*. All proceeds from taxes collected under this Section shall be deposited into the Fund and shall not be commingled with the General Fund. The Fund is subject to *I Liheslaturan Guåhan*'s appropriation for the following purposes:

(1) health, education, public safety and social programs providing awareness on tobacco and alcohol and substance abuse prevention, cessation, treatment and control; programs and activities for improving overall health and well-being; and, programs that enforce alcohol regulations;

(2) public safety and social programs that enforce alcohol and substance abuse regulations, reduce underage drinking, support traffic safety, reduce drug-related violence and abuse;

(3) community-based drug and substance abuse prevention programs; and

(4) matters pertinent to the items, *supra*, as deemed appropriate by *I Liheslaturan Guåhan*.

Preference shall be given to programs directed towards youth, low-income or at-risk persons and families, drug, alcohol, tobacco and substance prevention, cessation, and treatment, preventative health care, and chronic disease management.

The Director of Administration shall report on a quarterly basis to the Speaker of *I Liheslaturan Guåhan* the revenues collected and expended from this Fund and shall post such report on the Department's website.

**SOURCE:** GC § 19591, as amended by P.L. 17-4. Amended by P.L. 25-104:2. Repealed/reenacted by P.L. 27-05:V:2. Subsection (d) amended by P.L. 27-29:VI:17. Subsection (d) repealed and reenacted by P.L. 28-068:IV:25 (Sept. 30, 2005).

## **11 GCA § 51102. Deposit of Funds.**

(a) The Director of the Department of Administration ('DOA') shall directly deposit within ten (10) days at the end of each month to the Trust Fund a sum equivalent to a percentage of the total income collections for the month equal to its percentage of the budgeted forecasted amount set aside for Income tax refunds, earned income tax credits and child tax credits adopted in that fiscal year's budget, so that at the end of the calendar year, the total amount set aside for income tax refunds, earned income tax credits and child tax credits shall have been deposited into the Trust Fund. The funds deposited in the Trust Fund by the Director of DOA shall automatically be transferred to the Income Tax Reserve Fund once the Tax Commissioner is ready to make the necessary payments pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code Annotated. The interest and investment earnings shall remain within the Trust Fund.

(b) The Director of DOA shall directly deposit within ten (10) days at the end of each quarter to the Trust Fund a percentage of the Self-Employed Payroll Withholding Taxes collections for the quarter equal to its percentage of the budgeted forecasted amount set aside for income tax refunds, earned income tax credits and child tax credits adopted in that fiscal year's budget, so that at the end of the calendar year, the total amount set aside for income tax refunds, earned income tax credits and child tax credits shall have been deposited into the Trust Fund. The funds deposited into the Trust Fund by the Director of DOA shall automatically be transferred to the Income Tax Reserve Fund, once the Tax Commissioner is ready to make the necessary payments pursuant to 11 GCA § 50105. The interest and investment earnings shall remain within the Trust Fund.

(c) The Director of DOA shall directly deposit within ten (10) days at the end of each month to the Trust Fund a percentage of income tax collections for the month equal to its percentage of the budgeted forecasted amount set aside for income tax refunds, earned income tax credits and child tax credits adopted in that fiscal year's budget, so that at the end of the calendar year, the total amount set aside for income tax refunds, earned income tax credits and child tax credits shall have been deposited into the Trust Fund. The funds deposited into the Trust Fund by the Director of DOA shall automatically be transferred to the Income Tax Reserve Fund, once the Tax Commissioner is ready to make the necessary payments pursuant to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code Annotated. The interest and investment earnings shall remain within the Trust Fund.

**SOURCE:** Subsection (a) amended by P.L. 28-068:IV:97 (Sept. 30, 2005).

## **11 GCA § 76213. Private School Endorsements.**

Endorsements for private schools must be obtained by any person who engages in the business of conducting a private school for profit for the education or training of other persons in any field or course of whatever nature; provided, however, that all public schools are specially exempt therefrom. Such required endorsements are:

(a) For elementary and secondary institutions: certification by the Guam Public School System that each person teaching, instructing or aiding in the teaching and instructing of such private school has the necessary training, experience and knowledge to qualify him to teach the particular subjects or courses which he desires to teach, as may be prescribed by the rules and regulations pertaining thereto.

(b) Health certificate from the Department of Public Health and Social Services pertaining to the health and sanitary conditions of the premises wherein the private school is to be conducted.

(c) For post secondary private institutions and their agents corresponding with Guam State Education policies, endorsement from the GPSS Superintendent must be obtained in the verification of each person teaching or instructing having possessed a terminal degree from an accredited institution recognized by the United States Department of Education (USDOE) directly or through an affiliated institution, or is properly credentialed with the necessary experience and knowledge to teach a particular subject or course.

(d) For post secondary institutions which seek to offer or confer any degree or diploma, that the degrees or diplomas offered are accredited by an accrediting institution of the United States, directly or through an affiliated institution, recognized by the United States Department of Education (USDOE). Post secondary institutions which seek to offer or confer any degree or diploma and are in the process of obtaining accreditation through a recognized USDOE accrediting body or is in the process of, or has received accreditation from a non-sanctioned USDOE accrediting body shall disclose its accreditation status to each student upon the start of classes.

(e) Excluded from obtaining endorsements under this section are:

(1) Education solely avocational or recreational in nature;

(2) A nonprofit institution owned, controlled and operated and maintained by a bona fide church or religious denomination or religious organization if such education is limited to instruction in the principles of that church or denomination or organization or to courses offered for the purposes of training the adherents of such church or denomination

in the care of the sick in accordance with its religious tenets and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination;

(3) Postsecondary educational institutions established, operated and governed by the government of Guam;

(4) Education sponsored by a bona fide trade, business, professional or fraternal organization which is recognized by the regulatory body of that trade, business or profession and is solely for that organization's membership; and

(5) Institutions exclusively offering instruction at any or all levels from preschool through twelfth (12th) grade.

**SOURCE:** GC § 16216 amended by P.L. 16-44 (1980). Subsection (a) amended by P.L. 28-068:IV:94(a) (Sept. 30, 2005). Subsections (c)(d) and (e) added by P. L. 28-068:IV:94(b) (Sept. 30, 2005).

**NOTE:** P.L. 16-44:6 provided:

The provisions of Sections 4 and 5 of this Act shall take effect July 1, 1980 with respect to licensure of institutions but the Accreditation Board shall meet and prepare regulations so that the licensure provisions may be fully effective as of July 1, 1980.

## **11 GCA § 26208. Creation of the Guam Memorial Hospital Authority Pharmaceuticals Fund.**

There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the Guam Memorial Hospital Authority Pharmaceuticals Fund. This Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account. Five and sixty-one hundredths percent (5.61%) of all Gross Receipts Taxes collected in Guam shall be deposited in the Guam Memorial Hospital Authority Pharmaceuticals Fund and shall be appropriated by *I Liheslaturan Guåhan* to fund all pharmaceutical, drug and medicine requirements for Guam Memorial Hospital. The Department of Administration shall deposit, on the last day of each month, a sum equal to five and sixty-one hundredths percent (5.61%) of all Gross Receipts Taxes collected for that month, in the Guam Memorial Hospital Authority Pharmaceuticals Fund.

**SOURCE:** Added by P.L. 24-17:1. Amended by P.L. 24-34:9; P.L. 25-03; P.L. 25-71:9; P.L. 27-19:5. Repealed and reenacted by P.L. 28-068:II:III:22 (Sept. 30, 2005).

### **11 GCA §26208.1. Appropriation to the Guam Memorial Hospital Authority Pharmaceuticals Fund.**

The contents of the Guam Memorial Hospital Authority Pharmaceuticals Fund are appropriated to the Guam Memorial Hospital Authority. This appropriation is continuous, contingent on the annual submission of a detailed budget *no later than* January 30 to *I Liheslaturan Guåhan*. The Director of Administration shall transfer, on the first day of each month, all funds contained in the Guam Memorial Hospital Authority Subsidy Fund to the Guam Memorial Hospital Authority. Nothing herein shall prohibit *I Liheslaturan Guåhan* from appropriating any other supplemental amounts to the Guam Memorial Hospital Authority.

**SOURCE:** Added by P.L. 28-068:II:III:22 (Sept. 30, 2005).

### **11 GCA § 52101. Creation of the Guam Public School System Operations Fund.**

There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the ‘Guam Public School System Operations Fund’. This fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account to be in the name of the Guam Public School System (GPSS). Eighty-three point two percent (83.2%) of all withholding taxes, interest and penalties collected in Guam shall be deposited in the Guam Public School System Operations Fund and shall be appropriated by *I Liheslaturan Guåhan* to cover the operational expenses of the Guam Public School System and any use associated with the Guam Public School System, as determined in the Guam Public School System budget in accordance with 10 GCA Chapter 3, by the Guam Education Policy Board or the laws of Guam. The Superintendent of Education shall conduct public hearings at the public schools prior to the submission of the budget to the Guam Education Policy Board in order to address each school’s individual budgetary requirements. The Director of Administration shall deposit, on the last day of each month, a sum equal to eighty-three point two percent (83.2%) of all withholding taxes, interest and penalties collected for that month in the Guam Public School System Operations Fund, *except* that the Department of Administration for the first (1<sup>st</sup>) month of Fiscal Year 2006, on October 7, 2005, shall make a deposit reflective of eighty-three point two percent (83.2%) of the prior month’s collections for withholding taxes, interest and penalties. The Director of Administration shall, on the first (1st) day of each month, transfer to the Guam Public School System all funds held in the Guam Public School System Operations Fund, *except* that for the first (1st) month of Fiscal Year 2006, on October 15, 2005, the Director of Administration shall transfer all funds contained in the Guam Public School System Operations Fund to the Guam Public School System. Nothing herein shall be construed as preventing *I Liheslaturan Guåhan* from making additional appropriations to the Guam Public School System. *I Maga’lahen Guåhan’s*

transfer authority shall *not* apply to this or any other appropriation to the Guam Public School System, *except* that *I Maga'lahaen Guåhan* may transfer funds into the Guam Public School System to the extent permitted by law.

**11 GCA § 52102. Appropriation to the Guam Public School System Operations Fund.**

The contents of the Guam Public School System Operations Fund are appropriated to the Guam Public School System for the operations of the Guam Public School System and for purposes directly associated with its operation, for the implementation of the compensation study provided for in P.L. 28-36 and P.L. 28-49, provided that the GPSS shall seek further appropriation from *I Liheslaturan Guåhan* for implementation, if needed, said implementation to be effective for School Year 2006-2007, and for improvement of the Guam Public School System, inclusive of capital improvements, as may be found necessary by the Superintendent of Education. This appropriation is continuous, and contingent on the annual submission of a detailed budget, in accordance with Chapter 3 of Title 17 of the Guam Code Annotated, to *I Liheslaturan Guåhan*, notwithstanding any other provision of law. Nothing herein shall prohibit *I Liheslaturan Guåhan* from appropriating supplemental amounts to the Guam Public School System. All appropriations to the Guam Public School System are not subject to the allotment process administered by the Bureau of Budget and Management Research (BBMR), nor to any budget reserve administered by BBMR. The Superintendent of Education and the Director of Administration shall submit a detailed quarterly report to *I Liheslaturan Guåhan* on the receipt and expenditure of said funds *no later than* thirty (30) days after the close of each quarter and post the same on the GPSS website.

**TITLE 12 AUTONOMOUS AGENCIES**

**12 GCA § 3117. Employees.**

(a) The Station Manager shall establish, after approval of the Board, the conditions of entry to, maintenance in and dismissal from employment in the Corporation not in conflict with the provisions of the Director of Administration. Employees shall be provided Workmen's Compensation coverage, Health Insurance and shall be members of the Guam Retirement Fund, provided, that contract employees shall not be members of the Guam Retirement Fund.

(b) The Station Manager shall be responsible for recruitment of all employees of the Corporation.

**SOURCE:** §61016 GC, as amended by P.L. 13-93. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

## **12 GCA § 8104. Powers.**

The Authority shall have and exercise each and all of the following powers:

(1) Generate, transmit, distribute, sell and exchange electric power on Guam;

(2) Acquire, in accordance with 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 the 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; provided further that the Authority shall not enter any agreement for the purchase of oil or any other petroleum product which extends longer than five (5) years;

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

(4) Establish and modify from time to time, with approval of the Public Utility Commission, reasonable rates and charges for electric service at least adequate to cover the full cost of such service, including the cost of debt service, and collect money from customers using such service, all subject to any contractual obligation of the Board to the holders of any bonds; and refund charges collected in error.

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

(6) Construct works along or across any street or public highway or watercourse or over any of the lands which are the property of the Territory; and with respect to federal lands, the Authority shall have the same powers with respect to the construction of such works as possessed by the government of Guam. The Authority shall restore any such street or highway to its former state as near as may be and shall not use it in a manner to impair unnecessarily its usefulness;

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

(8) Enter into contracts with the Government of the Territory or with the United States for loans or grants;

(9) Employ, retain or contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist its Board of Directors and employees;

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

(11) Control, operate, improve, equip, maintain, repair, renew, replace, reconstruct, alter and insure the electric system subject to compliance with any applicable zoning, building and health regulations of the territory of Guam;

(12) Do any and all other things necessary to the full and convenient exercise of the above powers.

(13) Adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting *certified, technical and professional* personnel, subject to the provisions of the Administrative Adjudication Act. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants. *Certified, technical and professional personnel* are defined as personnel employed by GPA who are professional engineers, attorneys, and other licensed professionals, or who are highly skilled employees with certificates such as plant operators and other similar engineering and technical personnel, including, but not limited to, those types of jobs listed in Attachment A. Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

Nothing contained in this Section or elsewhere in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act of Guam or statutes of the Territory or any other provisions of this Code.

**SOURCE:** §21503 GC. Subsection (2) amended by P.L. 16-124 and by P.L. 18-08:16. Subsection (4) amended by P.L. 16-73, R/R by P.L. 16-119, amended by P.L. 17-48, R/R by P.L. 17-74. Subsection (13) added by P.L. 28-113:2 (April 14, 2006).

## **12 GCA § 8122. Authorization for Tax Exempt Commercial Paper Program.**

(a) Authorization for Tax Exempt Commercial Paper Program. The Public Utilities Commission *PUC* and the Guam Economic Development Authority *GEDA* have authorized the Guam Power Authority *GPA* to enter into a

borrowing or financing program referred to as tax exempt commercial paper *TECP*. GPA is authorized to establish a tax exempt commercial paper program in accordance with the approvals of the PUC and GEDA.

(b) Purposes: Terms of Borrowing. GPA is authorized to incur debt under the Tax Exempt Commercial Paper Program up to a limit of Fifty Million Dollars (\$50,000,000). This amount may be used to replace the existing lines of credit. At no time will the total outstanding balance borrowed from *TECP* and lines of credit arising from operation and maintenance purposes exceed this amount without approval from the Public Utilities Commission.

**SOURCE:** Added by P.L. 24-65:1. Subsection (b) amended by P.L. 24-143:17. Repealed/reenacted by P.L. 25-04:5. Subsection (b) amended by P.L. 28-116:2 (Apr. 26, 2006).

## **12 GCA § 9108. General Manager.**

(a) The Board, by an affirmative vote of at least eight (8) votes, shall appoint a General Manager. The General Manager shall serve as the Bureau's chief administrative officer, and his duties and compensation shall be determined and approved by the Board. The General Manager will serve at the pleasure of the Board.

(b) The day-to-day operations of the Bureau shall be the province of the General Manager. The General Manager shall be primarily responsible for the maintenance, operation, development, and administration of the Bureau's business affairs.

(c) The duties of the General Manager shall include the following:

- (i) Insuring that the Board's rules and regulations are enforced;
- (ii) Attending all Board meetings unless excused by the Board;
- (iii) Keeping the Board advised as to the needs of the Bureau;
- (iv) Approving demands for the payment of obligations of the Bureau within the purposes and amounts authorized by the Board;
- (v) Selecting, appointing, terminating, with or without cause, and supervising employees of the Bureau;
- (vi) Publishing a financial report in a manner provided by the Board within one hundred twenty (120) days from the end of each fiscal year showing the result of operations for the preceding fiscal year and the financial status of the Bureau on the last day thereof;
- (vii) Rendering a monthly accounting statement to the Board in such form as the Board directs;

(viii) Annually submitting to the Board and the Governor programs and financial plans in accordance with the provisions of the Executive Budget Act set forth in Title VI, Chapter III of the Government Code of Guam; and

(ix) Performing such other and additional duties as the Board may direct.

**SOURCE:** Added by P.L. 17-32. Subsection (a) repealed and reenacted by P.L. 28-068:IV:62 (Sept. 30, 2005).

## **12 GCA § 9109. Other Personnel.**

(a) The General Manager may employ, subject to the approval of the Board, a Deputy Manager and secretary. The duties and compensation of such personnel shall be determined by the General Manager with the advice and approval of the Board.

(b) The Board may employ or retain an attorney, or firm of attorneys, who shall be admitted to practice before the courts of Guam, who shall advise the Board and the General Manager on all legal matters to which the Bureau is a party or in which the Bureau is legally interested, and may represent the Board in connection with legal matters before the Legislature, other Boards and other agencies of the Territory. The Attorney General shall represent the Bureau in litigation in which the Bureau is interested, provided that the Attorney General may deputize or designate the attorney for the Bureau as a Special Assistant Attorney General for this purpose. The terms, conditions and compensation of employment of any such attorney shall be determined by the Board, and the attorney shall serve at the pleasure of the Board.

### **(c) [Repealed.]**

**SOURCE:** Added by P.L. 17-32. Subsection (c) added by P.L. 27-106:VI:21. Subsection (c) repealed by P.L. 28-068:IV:103 (Sept. 30, 2005).

## **12 GCA § 14104. Powers.**

The Authority shall have, in accordance with the laws applicable to it and its annual budget, the following powers:

(a) to produce, treat, transmit, store, distribute and sell water on Guam, and collect, treat and dispose of waste water on Guam;

(b) to acquire, in accordance with Public Law Number 20-06:7, 5 GCA Chapter 5 (Procurement Law) and all applicable laws, by grant, purchase, gift, devise or lease, or by the exercise of the right of eminent domain in accordance with the provisions of 21 GCA Chapter 15, and hold and use any real or personal property necessary or convenient for the carrying on any of these enumerated powers;

(c) to establish its own internal organization and management, and adopt regulations for the administration of its operations;

(d) to establish and modify from time to time, with the approval of the Public Utilities Commission, reasonable rates and charges for the water and waste water services adequate to recover the full cost of providing such services, and to collect money from customers using such services (The Authority shall establish and modify from time to time, with the approval of the Public Utilities Commission, reasonable rates and charges for servicing of debt obtained to undertake capital improvements of water and wastewater facilities.);

(e) to enter into contracts which have been awarded under the relevant procurement laws and are appropriately budgeted for in its annual budget, and to execute all instruments necessary for the exercise of its powers, adopt a seal and to sue and be sued in its own corporate name;

(f) to construct works along or across any street or public highway or watercourse or public utility easement, or over any of the lands which are the property of the government of Guam; and with respect to Federal lands, the Authority shall have the same powers with respect to the construction of such works as are possessed by the government of Guam (The Authority shall restore any such street or highway to its former state and shall not impair its usefulness.);

(g) from time to time, to incur indebtedness with the approval of *I Liheslaturan Guåhan*;

(h) to enter into contracts with the government of Guam or with the United States for loans or grants;

(i) to employ, retain or contract, in accordance with all applicable procurement laws and its annual budget, the services of qualified persons, businesses or entities to act as specialists and experts to advise and assist its Board of Directors and employees;

(j) to adopt such rules and regulations as may be necessary for the exercise of these enumerated powers;

(k) to control, operate, improve, equip, maintain, repair, renew, replace, reconstruct, alter and redesign the water and waste water disposal systems of Guam in accordance with applicable zoning, building and health regulations of Guam and the United States; and

(l) do all things necessary to the full and convenient exercise of its powers.

(m) Adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting *certified, technical and professional* personnel, subject to the provisions of the Administrative Adjudication Act. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants. *Certified, technical and professional personnel* are defined as personnel employed by GWA who are professional engineers, attorneys, and other licensed professionals, or who are highly skilled employees with certificates such as plant operators and other similar engineering and technical personnel, including, but not limited to, those jobs listed in Attachment B. Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

**SOURCE:** Amended by P.L. 26-15:2. Subsection (m) added by P.L. 28-113:3 (April 14, 2006).

**NOTE:** Subsection (b): (1) P.L. 20-06:7, referenced therein, states:

All surface water and ground water in Guam are declared to be a public asset and to belong to all of the people of Guam held in trust by the government of Guam. Such water shall be utilized as follows:

a. First priority shall be for use or resale by the Public Utility Agency of Guam for any purpose, or for household use, for bonafide farms, plant nurseries, aquaculture, ranches, other bonafide agricultural uses, for golf courses of less than 4000 square meters or for ornamental lawns and gardens of less than 4000 square meters.

b. Second priority shall be for any other use by the government of Guam for public recreation and for other public purposes only and not for purposes enumerated in subsections (c) and (d) below.

c. Third priority shall be for industrial use.

d. Fourth priority shall be for irrigation of golf courses of more than 4000 square meters or larger, or for irrigation of lawns or ornamental gardens of 4000 square meters or larger.

e. Fifth priority shall be for any other purposes.

Any use of higher priority shall have preference over any use of lower priority regardless of which use was first in time.

As between water uses of equal priority, first in time shall have a temporary priority to the extent of such prior use for so long as the water is actually beneficially used on a regular or seasonal basis, but if not used such temporary water right shall be deemed abandoned pursuant to the common law.

All water rights and rights to use water shall be determined according to the foregoing, and there shall be no riparian water rights in Guam. This

Act establishes priorities only, and shall not establish any vested water rights in any person, other than in the Government of Guam.

Until statutes further regulating the use of water are subsequently enacted into law, no permits not now required by law shall be required to use water not supplied by the Public Utility Agency of Guam in accordance with the foregoing priorities. Until subsequent law so provides, no fees or charges may be charged by the Government of Guam for the use of water other than fees and charges now authorized by law for water delivered by the Public Utility Agency of Guam.

## **12 GCA § 50103. Purposes and Authorized Activities of Corporation.**

(a) It is the purpose of this Division to create a public corporation to assist in the implementation of an integrated program for the economic development of Guam. It is intended for this Corporation to be a catalyst in the economic development which this Division seeks, aiding private enterprise without unfairly competing with it. It is a further purpose of this Division to enable the Corporation to expand the supply of money available in the territory of Guam to finance the construction of residential dwellings, including single family dwellings, multiple family dwellings, condominiums and cooperative apartments. It is hereby declared that there exists in the territory of Guam a substantial and serious shortage of housing in all categories, and that this shortage is inimical to the health and welfare of the residents of the Territory and to the economic development of the Territory. The inadequate supply of such housing results in the continuing existence and proliferation of substandard and decadent housing, with all its attendant consequences of disease, crime, injuries, retardation of education, and high costs of services such as police and fire protection. It will thus serve the public welfare to stimulate an increase in the supply of decent, safe and sanitary housing, not only insofar as it benefits those who live in such housing but in that such housing will materially assist in the prevention of crime, the improvement of education, the reduction of hazards from fire or structurally unsafe buildings, the improvement of the public health and a lowering of the cost of services. The expansion of the supply of housing in Guam is seriously hindered by a substantial, serious and continuing shortage of long-term mortgage money, resulting in part from the inability of United States based insurance companies to provide mortgage money in Guam because of United States income tax reasons. It is, therefore, imperative that mortgage financing be made available and the supply of available money to finance housing construction be increased. Without the assistance contemplated in this Division, the financing of or construction of decent, safe and sanitary housing in sufficient amounts to house the residents of Guam cannot be accomplished. A public exigency exists which makes the assistance contemplated by this Division a public purpose, and the necessity in the public interest for the provisions hereinafter enacted is hereby

declared as a matter of legislative determination.

The Legislature has also found and determined that there exists an acute shortage of adequate, modern and efficient hospital facilities in Guam and that unless measures are adopted to alleviate such conditions, the need for such facilities will become increasingly more urgent and serious. It is hereby declared that the safety, health and welfare of the people of Guam requires the provision of adequate, modern and efficient hospital facilities in the various parts of the Territory, and that it is the policy of the Territory and a purpose of this Division to provide the means necessary for the acquisition, construction and provision of hospital facilities to serve the general public and to make reasonably accessible to all the people of Guam modern and efficient hospital facilities. The Legislature has further found and declared that the financing, acquisition, construction, reconstruction, rehabilitation or improvement of hospital facilities and the provision of such facilities as may be incidental or appurtenant thereto are public uses and public purposes for which public money may be expended and that the enactment of this Division is necessary and proper for effectuating the purposes hereof as hereinafter provided. The Legislature hereby further finds and determines that there exists in the Territory conditions of substantial and persistent unemployment, thus adversely affecting the economy of our island and the prosperity, safety, health and general welfare of its inhabitants and their standard of living; and that the availability of financial assistance and suitable facilities are important inducements to new and varied employment promoting enterprises to locate in the Territory, and to existing enterprises to remain and expand in our island. The provision of buildings, structures and other facilities to increase opportunity for employment in manufacturing, industrial, commercial, recreational, retail and service enterprises in the Territory is in the public interest and is a public purpose to induce and accelerate opportunity for employment in such enterprises. In order to aid in supplying these needs and to assist in the immediate reduction of unemployment and to provide sufficient employment for the citizens of the Territory in the future, it is necessary and in the public interest to aid and encourage the immediate commencement of new construction projects of all types. The availability of financial assistance by the Territory will reduce present unemployment and improve future employment opportunities by encouraging and inducing the undertaking of such construction projects, the location, retaining or expanding of employment promoting enterprises with the Territory. By virtue of the Territory's architectural and cultural heritage, its positions as principal centers of communication and transportation, this government is capable of ameliorating the conditions of deterioration which impede sound community growth and development; and that building a proper balance of industrial and commercial facilities and increasing the attractiveness of the Territory to persons of all income levels is essential to the Territory as a

desirable place to live, work, shop and enjoy life's amenities; that the accomplishment of these objectives is beyond remedy solely by regulatory process and cannot be dealt with effectively by the ordinary operations of private enterprise without the powers provided herein, and that the exercise of the powers herein provided is critical to continuing the process of revitalizing the Territory and will serve an urgent public use and purpose. In order to aid in remedying the aforesaid conditions and to further and implement the purposes of this Division, the authority and powers conferred under this Division and expenditure of money pursuant thereto constitute a serving of a valid public purpose and that enactment of the provisions of Article 5 of this Division is in the public interest and for the public benefit and good and is so declared to be as a matter of expressed legislative determination.

(b) The Corporation is authorized to control and implement that part of the basic plan for the economic development of Guam, assigned to it by the Governor of Guam. The Corporation shall also be an active participant in the development of said basic plan.

(c) The Corporation is authorized to conduct or cause to be conducted research into natural resources, experiments, marketing methods and export possibilities, and to make known and publicize the results of such activities; provided, however, that when the Corporation proposes to enter into any research or similar investigative activity, it shall first ascertain that such activity is not being duplicated elsewhere in the government of Guam.

(d) The Corporation is authorized to promote investments of entrepreneurial capital in Guam, if need be form and operate its own industries, invest in and provide technical assistance in support of its objectives, develop and maintain facilities for lease or sale and provide for the expansion of agricultural, industrial, hospital, housing and tourist facilities through financial assistance and other means.

(e) Except as specifically prohibited herein, the Corporation is authorized to make loans or guarantees of loans to any persons, firm, partnership or corporation licensed to do business in Guam in furtherance of the purposes and activities stated in this Division. All loans so made shall be of such sound value or so secured as to reasonably assure repayment, or shall be of such vital need to the economy of Guam as to warrant additional risks or subsidies. Each loan made by the Corporation may be sold to a commercial lending institution for a sum not less than the principal balance of said loan and the proceeds thereof returned to the capital fund of the Corporation, subject to the terms of any resolution of the Board of Directors of the Corporation authorizing the issuance of revenue bonds. Each loan made by the Corporation shall include, wherever possible, an option on the part of the Corporation to convert up to fifty percent (50%) of the total

loan so made into equity of one form or another.

(f) The Corporation is authorized to issue, sell or dispose of revenue bonds and other obligations from time to time under such terms and conditions as the Guam Legislature, by appropriate legislation may prescribe. The proceeds of such bonds and obligations shall be used solely to finance specifically authorized corporate programs.

(g) The Corporation is authorized to invest its funds in any enterprise, undertaking or other activity which, in its judgment, will further development of desirable agriculture, industry, hospital facilities, housing and commerce, and of tourism in this Territory.

(h) The Corporation is authorized to obtain land belonging to the government of Guam as required to carry out its purposes and objectives, under such terms and tenure as the Legislature, by appropriate legislation, may prescribe.

(i) The Corporation is authorized to purchase from any person, firm, corporation or governmental entity, and to refinance, mortgages on residential real property, including single family dwellings, multiple family dwellings, condominiums and cooperative apartments, which are insured or guaranteed by an agency or instrumentality of the United States of America, by the territory of Guam, or by any other person, firm, corporation or governmental entity approved by the Board of Directors of the Corporation. The Corporation is also authorized to make commitments to purchase mortgages, conditioned upon the insurance of such mortgages by an agency or instrumentality of the United States of America, by the territory of Guam, or by any other person, firm, corporation or governmental entity approved by the Board of Directors of the Corporation.

Notwithstanding anything to the contrary herein, the Corporation is not authorized to make direct loans to any person, firm, corporation or governmental entity on residential real property, including single family dwellings, multiple family dwellings, condominiums and cooperative apartments.

(j) The Corporation is designated and authorized to be a development company as that term is defined in §662 of Title 15 of the United States Code.

(k) The Corporation shall act as a central financial manager and consultant for those agencies or instrumentalities of the Government requiring financial guidance and assistance. Such technical assistance by the Corporation shall include, but not be limited to, obtaining of funds through bond or other obligations, structuring such bond issuances, preparation and dissemination of financial and investment information, including bond prospectuses, development of interest among investment bankers and bond brokers, maintenance of

relationships with bond rating agencies and brokerage houses and, generally, acting as the centralized and exclusive financial planner and investment banker for all the agencies and instrumentalities of the Government to include, but not be limited to, such public corporations as the Guam Economic Development and Commerce Authority, the Jose D. Leon Guerrero Commercial Port of Guam, the A.B. Won Pat International Airport Authority Guam, the Guam Power Authority, the Guam Memorial Hospital Authority, the University of Guam, *the Guam Waterworks Authority* and all other agencies or instrumentalities of the Government given the power, now or in the future, to issue and sell bonds or other obligations for the purpose of raising funds. Such agencies or instrumentalities of the Government shall issue bonds and other obligations only by means of and through the agency of the Corporation, and each such agency or instrumentality shall furnish the Corporation long-term estimates of financial needs so that the Corporation can coordinate a long-term plan for obtaining necessary funds for all such agencies and instrumentalities on a rational, non-competitive and efficient basis. The Corporation shall not issue or sell any bond without the approval of *I Liheslatura* of the terms and conditions of the bonds. For the purpose of this Subsection, the terms bond or other obligations do not include an instrument evidencing debt for a term of one (1) year or less. The provisions of this Section whereby the Corporation shall act as a central financial manager and consultant for those agencies requiring financial assistance shall not apply to those bonds or obligations which are sold by or to an agency of the Government of the United States, however, the provisions of this Section where *I Liheslatura* must approve the terms and conditions of the issuance of the bonds shall apply to said bonds or obligations. The provisions of this Subsection shall *not* apply to bonds or other obligations issued pursuant to Article V or Article VI of this Division on or before March 31, 1984, provided such bonds or other obligations are secured by a pledge of and lien upon the revenues and other funds or moneys derived from the projects or programs financed by the proceed of the sale of such bonds or other obligations and *not* by revenues and other funds or moneys derived from other projects or programs of the Corporation.

(l) The Corporation is authorized to make loans or to guarantee loans to non-profit cooperative associations licensed to do business in Guam in furtherance of the purposes and activities stated in this Act. All loans or guarantees so made shall be of such sum, value or so secured as to reasonably assure repayment or shall be of such vital need to the economy of Guam as to warrant additional risk or subsidies. As used in this subsection, *non-profit cooperative association* means any corporation organized under the provisions of 18 GCA Chapter 13.

(m) The Guam Economic Development Agency (GEDA) shall be

responsible for actively promoting Guam as a location for the establishment of Export trading companies.

(n) The Authority shall promote and encourage the expansion and development of markets for the products of Guam.

(o) The Authority shall promote and encourage the location and development of new businesses on Guam, as well as the retention and expansion of existing businesses, with particular emphasis upon encouraging the tourist and the large-scale fisheries industries.

**(p) [Repealed.]**

**SOURCE:** GC § 53552; Subsection (a) amended by P.L. 11-33, 12-69 and 16-66; Subsection (d) amended by P.L. 11-33 and 12-69; Subsection (e) amended by P.L. 11-33; Subsection (g) amended by P.L. 11-33 and 12-69; Subsection (i) added by P.L. 11-33; Subsection (j) added by P.L. 16-35; Subsection (k) added by P.L. 16-66 amended by P.L. 17-37, 17-39, 17-74; Subsection (l) added by P.L. 16-125 as (u); Subsection (m) added by P.L. 17-67; Subsection (l) amended by P.L. 20-97:1. Subsections (n), (o) and (p) added by P.L. 26-076:35; 36 and 37 (Mar. 12, 2002). The entire section 50103 was repealed and reenacted by P.L. 27-110:12. Section 50103 as it existed prior to P.L. 27-110:12 was reenacted by P.L. 28-068:IV:71 (Sept. 30, 2005) which states:

P.L. 27-110:12 is hereby repealed and of no effect as of the date of its enactment, except as provided herein, and the acts of the Guam Economic Development and Commerce Authority between said enactment and the present are not affected by its enactment.

Subsection (p) repealed by P.L. 28-068:IV:53 (Sept. 30, 2005). Subsection (k) amended by P.L. 28-068:IV:71 (Sept. 30, 2005); P.L. 28-071:5 (effective Sept. 30, 2005).

**12 GCA § 14201. Short Title.**

This Article may be cited as the “*Guam Waterworks Authority Revenue Bond Act.*”

**12 GCA § 14202. Definitions.**

The following terms, wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with this Article), shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) “*Authority*” has the meaning given in 12 GCA § 14102.

(b) “*Board*” has the meaning given in 12 GCA § 14102.

(c) “*Bonds*” means bonds, notes or other evidences of indebtedness.

(d) “*Bondholder*” or “*holder of bonds*” or any similar term means any person who shall be:

(i) the bearer of any outstanding bond or bond registered to bearer or not registered; or

(ii) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer.

(e) “*Credit provider*” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any credit support arrangements for some or all of the bonds.

(f) “*Credit provider reimbursement agreement*” means any agreement providing for the Authority to repay, from revenues, amounts advanced by a credit provider as credit support for bonds.

(g) “*Credit support*” means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a credit provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any bonds.

(h) “*Guam Waterworks Authority Act*” means Chapter 14 of Title 12 of the Guam Code Annotated.

(i) “*Indenture*” means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument.

(j) “*Organic Act*” means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (Title 48, § 1421 et seq. of the United States Code).

(k) “*Payment agreement*” has the meaning given such term in 12 GCA § 14236.

(l) “*Person*” includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(m) “*Revenue*” means all gross income and other amounts received or receivable by the Authority as revenues of any kind from the ownership or operation of any part of the system, including all rates, fees and charges (including ground water, surface water and treated water charges and all wastewater service charges), received by the Authority for providing water

and sewer services, all amounts received by the Authority pursuant to any payment agreement, and all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the system, and all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the system, together with all interest, profits or other income derived from the investment of amounts in the Guam Waterworks Authority Revenue Fund.

(n) “*System*” means the water and wastewater systems, now or hereafter existing, owned and/or operated by the Authority or its contractors, agents or subcontractors.

(o) “*System operation and maintenance costs*” means such reasonable and necessary current expenses of the Authority, paid or accrued, for operation, maintenance and repair of the System as may be determined by the Board, and the term may include at the Board’s option, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

(i) legal and overhead expenses of the Authority directly related and reasonably allocable to the administration of the system;

(ii) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(iii) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to system;

(iv) the costs incurred in the collection of all or any part of the Revenues; and

(v) any costs of utility services furnished to the system by the Authority or otherwise.

(p) “*United States*” means the United States of America.

### **12 GCA § 14203. Powers of Board; Incurring Indebtedness.**

Pursuant to Section 50103(k), Chapter 50, Title 12 GCA, the Board, through the agency of the Guam Economic Development and Commerce Authority (GEDCA) by statutory legislation, has power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the Board by the Guam Waterworks Authority Act or any other provision of this Chapter or by any law of Guam or of the United States, *but subject to the requirements of Title 12 GCA § 12004*, to exercise any or all of the powers granted to the Board by this

Article. The Board, through the agency of GEDCA, may at any time or from time to time, by statutory legislation, incur indebtedness:

(a) pursuant to 12 GCA § 14235; or

(b) by the issuance of bonds to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the Authority, or for any combination of such purposes for which bonds may be issued and secured as provided in this Article.

It is hereby declared that the system is and shall be a public improvement or undertaking as that term is used in Section 11 of the Organic Act (§ 1423a, Title 48, U.S. Code). All indebtedness issued by the Authority pursuant to this 12 GCA § 14203 shall be repayable only from funds of the Authority available therefore or solely from revenues of the system and, therefore, will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11.

**12 GCA § 14204. Amounts of Rates and Charges; Refunds.**

Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness issued by the Authority, all rates and charges shall at all times be fixed to yield annual revenues at least equal to (a) the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder, (b) the annual system operation and maintenance costs, and (c) the annual principal payments and interest charges on all other outstanding indebtedness issued by the Authority. An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and charges that are collected in error and that are refundable by the Authority.

**12 GCA § 14205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.**

The validity of the authorization and issuance of any bonds by the Authority is not dependent on nor affected in any way by:

(a) Proceedings taken by the Authority for the acquisition, construction or improvement of the system or any part thereof;

(b) Any contracts made by the Authority in connection with the acquisition, construction or improvement of the system or any part thereof;  
or

(c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

**12 GCA § 14206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.**

(a) The Board shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the Authority or against any property or funds of the government of Guam or the Authority, except to the extent of the pledge or revenues or part of revenues, as may be provided by the indenture pursuant to which such bonds are issued and every such bond shall contain a recital on its face stating that neither the payment of the principal or any part thereof, nor of any interest thereon, is a debt, liability or obligation of Guam.

**12 GCA § 14207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.**

Before issuing any bond or bonds, the Board shall declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose. Bonds shall not be issued or sold for such purpose in an amount exceeding such specified maximum.

**12 GCA § 14208. Indenture Providing Terms and Conditions of Bonds.**

The Authority may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and interchange of any bonds and coupons issued pursuant to this Article and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

**12 GCA § 14209. Issues of Bonds.**

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the

bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be authorized by the Board.

**12 GCA § 14210. Covenants and Agreements that may be Contained in Indenture.**

An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the Authority as the Board deems necessary or advisable, including, without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by all or by part of revenues and provisions creating one or more funds or accounts to be held by the Authority into which all or any part of revenues shall be deposited:

(i) for payment of the principal of and interest on bonds at or prior to maturity; or

(ii) for reserve or sinking funds for the further security of bonds.

(iii) All moneys in any such fund or account shall be paid out by the Authority or its agent to pay the principal of and interest on the bonds when due or when redeemed or purchased prior to maturity, as provided in any indenture.

(b) A provision requiring the Authority or its agent, as trustee as hereinafter provided, to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, or at the place or places and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture.

(c) A provision requiring the Authority to operate the system continuously, to the extent reasonably practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(d) A provision requiring the Authority to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the Authority to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the Authority to pay and discharge or cause to

be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon revenues or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the Authority to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, in any manner that impairs or impedes the operation of the system or any part thereof necessary to secure adequate revenues or that otherwise impairs or impedes the right of the holders of bonds with respect to such revenues.

(h) A provision requiring the Authority to fix, prescribe and collect annually rates or other charges in connection with the water and sewer services furnished from the system which, together with other available revenues, will be:

(i) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(ii) sufficient to pay the annual system operation and maintenance costs; and

(iii) in such additional amount as shall be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no water or sewer service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the Authority to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest thereon, or to any fund or account created by any indenture relating to such bonds for the further security or protection of such bonds and to apply such revenues or any part of revenues or cause them to be applied only as provided in the indenture and to invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the Authority in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the Authority to issue additional bonds or one or more additional series of bonds, equally secured with bonds

theretofore issued under the indenture, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof or for the purpose of refunding any prior bonds or any other prior obligations of the Authority; and a provision limiting the power of the Authority to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the Authority on the system or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds of the Authority then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the Authority of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the Authority and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

(q) With respect to any provision relating to the modification or amendment of an indenture, the Authority may agree that bonds held by the Authority, Guam, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind of class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment.

(r) A provision limiting the right of action by individual bondholders in the event of a default by the Authority or proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the Authority to purchase outstanding bonds of the Authority from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(t) A provision for any working capital fund or account or contingency fund or account relating to the system.

(u) A provision for the replacement of lost, destroyed or mutilated bonds or coupons.

(v) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

### **12 GCA § 14211. Trustee for Authority and Holders of Bonds.**

(a) The Authority or any agent designated by the Authority shall act as trustee for the Authority and the holders of bonds issued hereunder and the Authority may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The Authority may provide in an indenture:

(i) for the deposit of all or any portion of the revenues with the Authority and for the holding thereof by the Authority in one or more separate funds or accounts in the Guam Waterworks Authority Revenue Fund; and

(ii) for the transfer to the trustee of all or any portion of the revenues as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

### **12 GCA § 14212. Duties and Powers of Trustee.**

The Authority shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the registration and discharge from registration thereof and the management of any and all funds provided as security therefore.

### **12 GCA § 14213. Issuance and Interchange of Coupon and Registered Bonds.**

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for registered bonds and registered bonds for coupon bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as the Authority may determine.

**12 GCA § 14214. Redemption of Bonds Prior to Maturity.**

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

**12 GCA § 14215. Places of Payment.**

An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

**12 GCA § 14216. Execution and Authentication of Bonds.**

An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the Authority and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the Authority or of any agent designated by the Authority as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds or coupons ceases to be an officer or agent before the delivery of the bonds or coupons, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as if he had remained such officer or agent until the delivery of the bonds and coupons.

**12 GCA § 14217. Dates and Maturities of Bonds.**

Bonds shall bear dates prescribed by the Authority in the indenture providing for their issuance. Bonds may be serial bonds, term bonds or sinking fund bonds with such maturities as the indenture shall specify. No bond by its terms shall mature more than fifty (50) years after its date of issuance.

**12 GCA § 14218. Sale of Bonds.**

Bonds authorized to be issued under this Article shall be sold by the Authority for cash, in accordance with the provisions of a resolution providing for such sale adopted by the Board. The bonds may be sold at either public or private sale, and upon such terms and conditions as shall be authorized by the Board, which may provide that the bonds may be sold at less than their par or face value.

**12 GCA § 14219. Payment of Bonds from Sources Other Than Revenues.**

The Authority may use and expend all or any part of any funds other than revenues or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

**12 GCA § 14220. Payments Which May be Made Out of Proceeds of Sale of Bonds.**

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the Authority of the cost of any work done by the United States or such public body for or jointly or in conjunction with the Board;

(b) For payment of any engineering, inspection, legal, consultants' or paying agents' fees relating or incidental to:

(i) the acquisition, construction or improvement of the system or any part thereof; or

(ii) the authorization, issue or sale of bonds;

(c) For payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system;

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

(f) For deposit in any reserve or sinking fund;

(g) For the payment of the principal of and interest on any indebtedness incurred pursuant to 12 GCA § 14235 that is by its terms repayable from the proceeds of sale of bonds; or

(h) For the payment of any prior bonds or other obligations of the Authority.

**12 GCA § 14221. Bonds May be Secured by Revenues of System.**

An indenture may provide that payment of the bonds and the interest thereon shall be secured by a pledge of and lien upon all or any portion of the revenues of the system. Any such pledge and lien shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the Authority or by any trustee, depository or custodian shall be deposited in the Guam Waterworks Authority Revenue Fund and shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture by which such pledge is created need not be recorded.

**12 GCA § 14222. Temporary Bonds.**

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Authority may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

**12 GCA § 14223. Replacement of Bonds or Coupons.**

The Authority may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

**12 GCA § 14224. Tax Exemptions.**

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act.

**12 GCA § 14225. Bonds as Legal Investments and as Security for Performance of any Act.**

Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings, and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

**12 GCA § 14226. Refunding Bonds.**

The Authority may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article or any other prior obligations of the Authority. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

**12 GCA § 14227. Use of Other Funds for System.**

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Authority may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Guam Waterworks Authority Act.

**12 GCA § 14228. Insurance.**

The Authority may insure against loss of revenues from any cause whatsoever. The Authority may insure against public liability or property damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

**12 GCA § 14229. Pledge by the Government of Guam.**

The government of Guam is fully committed to ensuring that the Authority has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely repayments of their loans. In order to mirror the previous pledge that allowed Guam Power Authority to successfully re-enter the financial markets as found in 12 GCA § 8113.3, and to model similar language found in laws authorizing debt for the A.B. Won Pat International Airport Authority, Guam, the government of Guam hereby pledges that while any bonds of the Authority issued under this Article remain outstanding and not fully performed or discharged (a) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article, (b) to maintain the rights and remedies of bondholders provided in this Article and any

indenture, (c) to protect the exclusive right of the Authority to operate or maintain within Guam any water or wastewater system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive water and/or wastewater system, and (d) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired employees of the Authority (or its lawful predecessors) as may be required by the laws of Guam.

**12 GCA § 14230. Guam Waterworks Authority Construction Fund.**

The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a fund to be designated as the Guam Waterworks Authority Construction Fund, which fund is hereby created. The money in said Construction Fund shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 12 GCA § 14222, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

**12 GCA § 14231. Guam Waterworks Authority Revenue Fund.**

All revenues received from the operation of the system shall be deposited to the credit of the Guam Waterworks Authority Revenue Fund, which fund is hereby created. Moneys in the Guam Waterworks Authority Revenue Fund may be used for any of the following purposes in the order of priority set forth in any indenture as provided in § 14210(j):

- (a) to pay principal or interest on any bonds;
- (b) to pay any amounts due and owing under any payment agreement or any credit provider reimbursement agreement;
- (c) to pay the annual system operation and maintenance costs; and
- (d) for any other purposes of the Authority; all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

**12 GCA § 14232. Investment of Money in Funds.**

Moneys in the Guam Waterworks Authority Construction Fund and Revenue Fund may be invested by the Authority and any revenues in any other

fund or account held by or on behalf of the Authority or its agent may be invested by the Authority or its agent, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be collected by the Authority or its agent, as the case may be, and shall be deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

**12 GCA § 14233. Use of Balances of Funds and of Surplus Money in Funds.**

Any balance remaining in any of the funds or accounts created by this Article or any indenture after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system or to the Authority, as the Board may determine, subject to the limitations and restrictions in any indenture. After all bonds shall have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the Authority and shall be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the Authority herein or hereafter authorized by law.

**12 GCA § 14234. Appropriation of Money in Funds.**

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purposes herein and therein provided.

**12 GCA § 14235. Short Term Borrowing.**

Pursuant to the agency of GEDCA, the Board may at any time or from time to time, by resolution adopted by a majority of the members of the Board, authorize the Authority to incur indebtedness, with the approval of *I Maga'lahi* (the Governor), for any lawful purpose for any period not exceeding five (5) years evidenced by contract with any person. Any such indebtedness shall be incurred subject and subordinate to any contractual obligation of the Authority to the holders of any bonds and the principal thereof and interest thereon may be repaid:

- (a) from revenues; or
- (b) if incurred for a purpose for which bonds may be issued, from revenues or from the proceeds of sale of bonds.

The total cumulative amount borrowed pursuant to this Section shall not exceed Five Million Dollars (\$5,000,000.00).

**12 GCA § 14236. Payment Agreements.**

In addition to and in amplification of the powers conferred upon the Board by the Guam Waterworks Authority Act, this Article or any other law of Guam or of the United States, the Board has power and is hereby authorized to cause the Authority to enter into any contracts in connection with, or incidental to, the issuance of bonds or other indebtedness, or the carrying of any investment or program of investment or entering into or maintaining any agreement which secures bonds or other indebtedness (each, a “*payment agreement*”), which the Board determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or such indebtedness, investment, program of investment or agreement and the contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by the Board in furtherance of the purposes of this Chapter, including, without limitation, contracts commonly known as interest rate swap agreements or contracts providing for payments based on levels of, or changes in, interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, put or call to hedge payment, rate, spread, or similar exposure with the parties, selected by the means, and containing the payment, security, default, remedy, and other terms and conditions, authorized by the Board, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate; provided, that any amounts received by the Authority pursuant to any payment agreement shall constitute revenues and that any obligation of the Authority under any payment agreement shall be payable solely from revenues.

Any payment agreement may include a provision that any obligation of the Authority under any such payment agreement shall be secured by all or by part of revenues; provided that, at the time of execution and delivery of each payment agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture then in effect with respect to bonds.

**12 GCA § 14237. Credit Enhancement.**

The Board has the power and is hereby authorized to cause the Authority to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as it determines are necessary or desirable to improve the security and marketability of the bonds or the security of the government’s obligations under any contract or agreement entered into under 12 GCA § 14236. Such contracts or agreements may contain an obligation to reimburse, with

interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the Authority under any reimbursement agreement shall be payable solely from revenues.

Any reimbursement agreement may include a provision that the obligations of the Authority under the agreement shall be secured by all or by part of revenues; provided that, at the time of execution and delivery of each such agreement, any such provision shall be in compliance with and shall not violate or breach any provision of any indenture then in effect with respect to bonds.

**12 GCA § 14238. No Personal Liability.**

No member of the Board, employee of the Authority or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

**12 GCA § 14239. Waiver of Immunity.**

Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the Authority shall not be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as to the award of attorney fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds.

**12 GCA § 14240. Construction of Article.**

This Article shall be liberally construed to carry out the objects and purposes and the declared policy of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act or laws of Guam.