

**10 GCA HEALTH AND SAFETY
CH. 51A GUAM SOLID WASTE AUTHORITY**

**CHAPTER 51A
GUAM SOLID WASTE AUTHORITY**

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SOURCE: Chapter 51A was added by P.L. 31-020:3 (Apr. 18, 2011).

2011 NOTE: P.L. 31-020 (Apr. 18, 2011), contained several referenced sections which were found to be inconsistent with the numbering scheme of this chapter. Renumbered by Compiler to reflect the correct citation.

**ARTICLE 1
GENERAL PROVISIONS**

SOURCE: Article 1 added by P.L. 31-020:3 (Apr. 18, 2011), effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A101. Short Title.
- § 51A102. Definitions.
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- § 51A112. Acquisition of Existing Systems, Employees and Debt.
- § 51A113. Exemption from Taxation, and In Lieu Payments.
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§ 51A116. Annual Budget.

§ 51A117. Employment.

§ 51A101. Short Title.

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

§ 51A102. Definitions.

As used in this Chapter, unless otherwise indicated:

- (a) Authority means the Guam Solid Waste Authority (GSWA).
- (b) General Manager (GM) means the General Manager of GSWA.
- (c) Best public interest means any activity which: lessens the demand for landfill sites, conserves land resources and serves to insure proper, cost effective, and environmentally sound disposal of solid waste; and, does not pose health risks to human life or endanger plant and animal life.
- (d) Board means the Board of Directors of the Guam Solid Waste Authority (GSWA).
- (e) Business means and includes any activity or conduct, whether proprietary, partnerships, corporate or whatever form, engaged in, or caused to be engaged in, with the object of gain or economic benefit, either direct or indirect, but shall not include casual sales, personal service contracts, fundraising activities by political candidates, or the activities of non-profit associations.
- (f) Collection or Collect means the removal of solid waste from a generator.
- (g) Collector means any individual, governmental organization or business, which has received a permit to collect and transport waste in accordance with applicable laws and regulations.
- (h) Combustion means to thermally break down certain types of solid waste in an enclosed device using controlled temperatures.
- (i) Composting means the controlled degradation of organic solid waste.

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(j) Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(k) Dump means a land site where solid waste is disposed without a valid permit, or a landfill that has historically been in regulatory noncompliance.

(l) Duplex means a residential building containing two (2) separate dwelling units either side by side or one above the other.

(m) Dwelling means a building or portion thereof designed exclusively for residential occupancy by one (1) family for living and sleeping purposes, and not to exceed two (2) dwelling units.

(n) Dwelling unit means one (1) or more rooms and a single kitchen in a dwelling, designed as a unit for occupancy by one (1) family for living and sleeping purposes.

(o) Financial assurance means a financial guarantee assuring that funds are available to pay for the design, construction, operation and closure of a solid waste landfill facility, for rendering post-closure at a solid waste landfill facility, for corrective action and to compensate third parties for bodily injury and property damage caused by sudden and non-sudden accidents related to the operation of a solid waste landfill facility.

(p) Generator means any person that generates or produces solid waste.

(q) Government means the government of Guam, all of its agencies, whether line or autonomous, and all public corporations.

(r) Hardfill means a method of compaction and earth cover of solid wastes other than those containing garbage or other putrescible (putrescent) waste, including, but not limited to, demolition material, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis. No combustible materials shall be deposited in a hardfill.

(s) Combustible Materials means any solid or liquid that may be ignited.

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(t) Combustible Solids is defined in Title 49 of the Code of Federal Regulations, Chapter 1, Subtitle B, Part 173.124, and are those solids capable of igniting and burning.

(u) Combustible Liquids is defined in Title 29 of the Code of Federal Regulations, Chapter 17, Subtitle B, Part 1910.106, and shall mean any materials having a flash point at or above 100 degrees Fahrenheit (37.8 degrees Celsius), but below 200 degrees Fahrenheit (93.3 degrees Celsius), except any mixture having components with flashpoints of 200 degrees Fahrenheit (93.3 degrees Celsius), or higher, the total volume of which make up ninety-nine percent (99%) or more of the total volume of the mixture.

(v) Hazardous Waste means any material or substance which, by reason of its composition or characteristics:

(1) hazardous waste is defined in the Solid Waste Disposal Act, 42 USC § 6901, et seq., as amended, replaced or superseded and the regulations implementing same;

(2) a hazardous substance is defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601, et seq.;

(3) hazardous material, the disposal of which is regulated by the Toxic Substances Control Act, 15 USC § 2601, et seq., as amended, replaced or superseded, and the regulations implementing same;

(4) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954;

(5) pathological, infectious or biological waste;

(6) treated as hazardous waste or as a hazardous substance under applicable law;

(7) requires a hazardous waste or similar permit for its storage, treatment, incineration or disposal;

(8) may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

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- (9) may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise damaged.
- (w) Highway means the entire width between the boundary lines of every right-of-way or publicly maintained travel ways when any part thereof is open to the use of the public for purposes of vehicular travel.
- (x) Incinerator means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste.
- (y) Multi-family dwelling means a building containing three (3) or more dwellings.
- (z) Operator means any person who accepts solid waste from a collector for transfer, storage, recycling, combustion, processing or disposal.
- (aa) Performance bond means a security for financial loss caused by the act or default performance of a person or by uncontrollable conditions.
- (bb) Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, or any agency, department, or instrumentality of the Federal or local government, or any other legal representatives, agents or assigns.
- (cc) Plan means the interim or final Solid Waste Management Plan (SWMP) prepared and adopted by the GEPA in accordance with the Administrative Adjudication Law.
- (dd) Plasma torch heating technology means converting electrical energy into heat energy producing clean fuel gas and recyclable slag.
- (ee) Plasma Remediation In-Situ Materials (PRISM) means a plasma torch technology process that melts down and converts landfill material into slag and fuel gas.
- (ff) Pollution means the condition caused by the presence in the environment of substances of such character and in such quantities that the quality of the environment is impaired or rendered offensive to life.
- (gg) Processing means any method, system or other treatment designed to change the physical, chemical or biological character or

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composition of any solid waste. This includes the neutralization of any hazardous waste; the rendering of any hazardous waste non-hazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume; or any other activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous.

(hh) Recyclable materials includes the following materials discarded from households, businesses, commercial and industrial establishments, hotels, and government, agricultural, landscaping, yard maintenance and military operations which may be reused, or for which a market exists:

(1) aluminum means any product manufactured of aluminum or aluminum alloy;

(2) battery means any lead acid battery or dry cell battery discarded on Guam, independent of intended use;

(3) biomass means any large biomass source, such as trees, wood, grass, hedge cuttings, jungle growth, yard waste and sewage sludge;

(4) construction debris means the materials from building construction;

(5) corrugated cardboard means kraft, jute or test liner pulp which is made by combining two (2) or more webs of paper and formed or shaped into wrinkles or folds or into alternate ridges and grooves;

(6) demolition waste means the materials obtained from the demolition or razing of buildings;

(7) glass means any product manufactured from a mixture of silicates, borates or phosphates;

(8) metal scrap means any metal, in whole or in parts, from buildings, equipment, machinery or vehicles;

(9) newspaper means a publication which is distributed and contains news articles, opinions, features, and advertising and is printed on impermanent wood pulp materials;

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- (10) office paper means computer paper and white and colored ledger paper;
- (11) used oil means any petroleum-based, mineral, or synthetic oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties; and
- (12) such other materials which the Authority determines, from time to time, may be recycled.
- (ii) Recycle or Recycling means the method by which recovered resources are converted for use as raw material or feedstock to make new products.
- (jj) Resource recovery means the process of recovering recyclable materials or the recovery of energy from solid waste.
- (kk) Resource Recovery Facility (RRF) is a facility that recovers for sale or reuse of recyclable materials.
- (ll) Reusing means the reintroduction of a commodity in the economic stream without any changes.
- (mm) Sanitary landfill means an approved site where solid waste and ash are disposed using modern sanitary landfilling techniques in accordance with Federal and local regulations.
- (nn) Sanitary landfilling means an engineered method of disposing of solid waste on land in accordance with Federal and local laws and regulations in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with approved material at the end of each working day.
- (oo) Separation means the systematic division of solid waste into designated components.
- (pp) Single Family Residence means a detached building designed for and/or occupied exclusively by one (1) family, or one (1) of two (2) dwelling units on a duplex.
- (qq) Solid waste means any garbage, refuse or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded and/or spilled materials, including solid, liquid, semisolid or contained gaseous material resulting from

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industrial, mining, commercial, and agriculture operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 402 of the Federal Water Pollution Control Act, as amended (68 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) .

(rr) Solid waste management means the purposeful, systematic control of the generation, storage, collection, transportation, separation, processing and disposal of solid waste.

(ss) Solid waste management facilities means any facility, or any machinery, equipment, vehicles, structures or any part of accessories thereof installed or acquired for the primary purpose of collection, transportation, storage, recycling, processing or disposal of solid waste, and shall include sanitary landfills, resource recovery facilities, or plasma torch.

(tt) Solid Waste Management Plan means a comprehensive plan and all amendments and revisions thereto for provisions of solid waste management throughout Guam.

(uu) Solid waste management practices means the actions to effectuate the generation, storage, collection, transportation, processing, recycling, plasma torch or resource recovery or disposal of solid waste.

(vv) Solid Waste Management System (SWMS) means the entire system covered in the SWMP and designated by the Director for the storage, collection, generation, transportation, processing, recycling, plasma torch and disposal of solid waste within Guam.

(ww) Source separated waste means recyclable materials that are set aside by the generator for segregated collection and transport to solid waste management facilities.

(xx) Storage means the interim containment of solid waste in accordance with Federal and local regulations.

(yy) Transfer station means any intermediate waste facility in which solid waste collected from any source is temporarily deposited

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and stored while awaiting transportation to another solid waste management facility.

§ 51A103. Continuation of Existence.

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

§ 51A104. Powers and Duties of the Authority.

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

(1) administer those powers listed under this Chapter 51A, Title 10 of the Guam Code Annotated;

(2) acquire by grant, purchase, gift, devise or lease, or by the exercise of the right of eminent domain in accordance with the provisions and subject to limitations of Title 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;

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

(4) (A) establish and modify from time to time, with approval of the Public Utility Commission (PUC), reasonable rates and charges for the collection, transportation, disposal, storage, recycling and processing of solid waste to recover the full cost of providing solid waste management services, and collect money from customers using such services.

(B) Similarly, the Authority shall establish and modify from time to time, with the approval of the Public Utilities Commission, reasonable rate and charges for servicing of debt obtained to undertake capital improvements to solid waste management;

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

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

(8) employ, retain or contract for the services of qualified solid waste management specialists or experts, as individuals or as organizations, to provide technical advice and assistance;

(9) 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 Act;

(10) control, operate, improve, equip, maintain, repair, renew, replace, reconstruct, alter and insure that the solid waste management system is compliant with any applicable zoning, building, environmental and health regulations of Guam; and

(11) do any and all other things necessary to the full and convenient exercise of the above powers;

(12) (A) enter into public-private partnerships for solid waste management facilities and operations, the closure and beneficial use of the Ordot Landfill site, source reduction, recycling, composting, resource recovery, waste reduction and transfer stations.

(B) This duty shall also address construction debris or demolition waste, metallic debris, white goods, tires and green waste and hazardous waste contracts;

(13) organize, plan for, secure and manage resources and promote the implementation of the Solid Waste Management Plan;

(14) evaluate and promote capital improvements and maintenance programs to the solid waste management system;

(15) address the necessity for a facility for the shredding of tires for recycling or for use as rubberized asphalt;

(16) address the necessity for a facility for the recycling of glass, including its use as glassphalt;

(17) address the necessity for a facility for the recycling of scrap metals, including discarded vehicles, appliances and equipment, e-waste such as T.V monitors, computers, and televisions, including shredding for containerization or other shipment;

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(18) require the preparation of any necessary environmental impact assessments or environmental impact reports, and plans for any mitigation measures;

(19) mandate the inspection and monitoring of all solid waste management facilities to ensure compliance with this Act, the Plan, other law, rules and regulations applicable to Guam;

(20) apply for all grants-in-aid requests and administer any such programs or funds, except those established for recycling.

(21) (A) 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.

(B) 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.

(C) Certified Technical and Professional personnel are defined as personnel employed by the Guam Solid Waste Authority who are professional engineers, attorneys, and other licensed professionals.

(D) Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

(b) 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 provision of this Code.

2017 NOTE: Subsection/subitem designations altered/added pursuant to authority granted by 1 GCA §1606.

§ 51A105. Governance of Authority.

All powers vested in the Authority, except as provided herein, shall be exercised by a GWSA Board of Directors comprised of five (5) members

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appointed by *I Maga'lahi* (the Governor) with the advice and consent of *I Liheslatura* (the Legislature). A majority of the members shall constitute a quorum. The official vote of the majority of members shall be required for a decision of the Board. The Board may adopt Rules and Regulations pursuant to AAL governing the conduct of its affairs.

§ 51A106. General Manager (GM).

(a) The Board shall appoint a General Manager, who shall be its chief executive officer and shall serve at its pleasure. The General Manager shall, at a minimum, possess the following qualifications:

(1) a combined minimum of six (6) years of documented experience successfully managing a solid waste management system of similar size as the GSWA system, and

(2) graduation from an accredited institution of higher education with a Bachelors degree in Business Management, Engineering Management, Engineering Technology or Civil Engineering.

(b) The Board shall fix the General Manager's compensation, notwithstanding any other provision of law. The General Manager shall manage the construction, maintenance, operation and administration of business affairs of the Authority.

(c) The Board may contract with a business entity to perform any or all of the duties, and to exercise any or all of the powers of the General Manager as provided in this Section, and the General Manager, subject to the approval of the Board, may contract with a business entity to perform some of the duties or to render expert and technical assistance in the operation of the Authority.

(1) The initial term of such a management contract shall be for a period of up to three (3) years.

(2) The Authority shall also have the option for two (2) renewal terms of five (5) years each.

(3) The contracted business entity pursuant to this Section must have a minimum of ten (10) years experience in the management and operation of a solid waste system of similar or greater scope than the Authority.

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(d) The powers and responsibilities of the General Manager shall include the following:

- (1) to enforce all rules and regulation of the Authority;
- (2) to attend all meetings of the Authority and submit a general report of the affairs of the Authority;
- (3) to keep the Board advised as to the needs of the Authority, to approve demands for the payment of obligations of the Authority, and to approve expenditures and collection of revenue within the purposes and amounts authorized by the annual budget;
- (4) to prepare, or cause to be prepared, all plans and specifications for the constructions of work by the Authority in accordance with the annual budget;
- (5) to select and appoint the employees of the Authority, except as otherwise provided by this Chapter, and to plan, organize, coordinate and control the services of such employees in the exercise of the powers of the Authority under the general direction of the Board;
- (6) to cause to be published within one hundred twenty (120) days from the end of each fiscal year a financial report, which shall include an annual financial audit pursuant to § 1908 and § 1909 of Chapter 19, Title 1 Guam Code Annotated. This report should present the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof. The publication shall be made in the manner provided by the Board; and
- (7) to perform such other and additional duties as the Board may require.

2017 NOTE: Subitem designations added in subsection (c) pursuant to authority granted by 1 GCA §1606.

§ 51A107. Assistant General Manager: Operations and Technical Support.

The General Manager, with the consent of the Board, may appoint an Assistant General Manager for Operations and Technical Support, who shall serve at the pleasure of the General Manager.

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(a) The Assistant General Manager for Operations and Technical Support shall be entitled to receive compensation as recommended by the General Manager, and approved by the Board.

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

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

§ 51A108. Assistant General Manager: Administration.

The General Manager, with the consent of the Board, may appoint an Assistant General Manager for Administration, who shall serve at the pleasure of the General Manager.

(a) The Assistant General Manager for Administration shall be entitled to receive compensation as recommended by the General Manager, and approved by the Board.

(b) Such Assistant General Manager shall devote his/her entire time to the business of the Authority and shall have full charge and control, subject to the direction of the General Manager, of all administration of the Authority.

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

§ 51A109. Chief Financial Officer.

The Board may appoint a Chief Financial Officer, who shall be a Certified Public Accountant. The Board shall fix the Chief Financial Officer's compensation. The Chief Financial Officer shall have full charge and control of the fiscal, business and accounting operations of the Authority, subject to the supervision of the Board.

§ 51A110. Other Officers.

(a) The Board may also appoint a Secretary, a Comptroller, and an Attorney, who all shall serve at the pleasure of the Board, and whose duties and compensation shall be fixed by the Board.

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(1) The Board may appoint one (1) or more assistants to any such office.

(2) Any of such offices may be consolidated in one (1) person.

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

(c) (1) The Attorney, who must have been admitted to practice in Guam,

(A) shall advise the Board and the General Manager on all legal matters to which the Authority is a party or

(B) in which the Authority is legally interested, and

(C) may represent the Authority in connection with legal matters before *I Liheslatura* (the Legislature), boards, and other agencies of the government of Guam.

(2) The Attorney General shall represent the Authority in litigation concerning the affairs of the Authority; provided, that he may delegate this duty to the Attorney of the Authority, with respect to any such litigation.

(d) (1) The Comptroller must

(A) possess a minimum of five (5) years of overall combined accounting and finance experience,

(B) have thorough knowledge of accounting principles and procedures,

(C) have experience creating financial statements,

(D) have experience with general ledger functions and the month-end/year-end closing process, and

(E) excellent accounting software user and administration skills.

(2) The Comptroller is accountable for the accounting operations of the Authority, to include

(A) the production of periodic financial reports,

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(B) maintenance of an adequate system of accounting records, and a comprehensive set of controls and budgets designed to mitigate risk,

(C) enhance the accuracy of the Authority's reported financial results, and

(D) ensure that reported results comply with generally accepted accounting principles.

(3) The Comptroller is additionally responsible for cash management and risk management.

SOURCE: Added by P.L. 31-020:3 (Apr. 18, 2011), effective 90 days after enactment. Amended by P.L. 34-068:2 (Nov. 28, 2017).

2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA §1606.

§ 51A111. Employees.

(a) (1) All employees of the Authority *shall* be eligible for all insurance, retirement, worker's compensation and other benefits as extended to employees of the government of Guam, and

(2) *shall* be employees of the government of Guam for the purposes of the application of all civil service laws and personnel rules and regulations that apply to government of Guam employees, inclusive of all scales, tables and schedules for compensation.

(b) With respect to compensation, this Section *shall not* apply to the compensation of the General Manager, Assistant General Manager: Administration, Assistant General Manager: Operations, and Technical Support, Secretary, Attorney, the Comptroller, or the Chief Financial Officer.

SOURCE: Added by P.L. 31-020:3 (Apr. 18, 2011), effective 90 days after enactment. Amended by P.L. 34-068:3 (Nov. 28, 2017).

2017 NOTE: Subsection/subitem designations added pursuant to authority granted by 1 GCA §1606.

§ 51A112. Acquisition of Existing Systems, Employees and Debt.

Ninety (90) days after the effective date of this Act the Authority shall assume in writing from the Department of Public Works, Solid Waste Management Division:

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(a) all real property under the DPW Solid Waste Management Division (SWMD) administration and items of property, materials and supplies which the SWMD owns or controls, including construction work in progress; and

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

(c) (1) Each government of Guam employee assigned to the Department of Public Works, Solid Waste Management Division at the date of the transfer pursuant to statute shall be transferred to the Authority.

(2) All classified and unclassified employees occupying solid waste technicians positions shall be classified.

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA §1606.

§ 51A113. Exemption from Taxation, and In Lieu Payments.

As an instrumentality of the government of Guam, the Authority and all property acquired by or for the Authority and all revenues and income therefrom are exempt from taxation by the government of Guam, or by any political subdivision or public corporation thereof and from all taxes imposed under the authority of *I Liheslaturan Guåhan* (the Guam Legislature), or with respect to which *I Liheslatura* (the Legislature) is authorized to grant exemption.

§ 51A114. General Operations.

Rates for Services. The Authority shall apply to the Public Utilities Commission (PUC) for establishment of its rates for its services including, but not limited to:

- (a) Operating Costs:
 - (1) Layon Landfill
 - (2) Commercial Transfer Stations
 - (3) Retail Transfer Stations
 - (4) Residential Trash Collection

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- (5) Bulky and Metallic Waste collection
- (6) Recycling
- (7) Customer Service and Education
- (8) Equipment Maintenance
- (9) Household Hazardous Waste
- (10) Administration
- (b) Reserve Fund Costs:
 - (1) Debt Service
 - (2) Equipment Replacement
 - (3) New Cell Development
 - (4) Closure of Cells
 - (5) Post Closure Care

§ 51A115. Accounting and Expenditures.

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

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

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

(2) the specific demands which are made are approved by the Board before payment.

(c) The Board shall employ, in accordance with the appropriate procurement laws and the annual budget, a firm of locally licensed, independent Certified Public Accountants who shall annually examine the financial status and workings of the Authority for the previous fiscal year.

(1) Said firm shall submit no later than February 1st of each year, a written report on the financial status and workings of the Authority

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during the previous fiscal year to *I Maga'lahaen Guåhan* (Governor of Guam), the General Manager, and *I Liheslaturan Guåhan*.

(2) *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan* may request special reports within thirty (30) days after the end of each fiscal quarter.

(3) The financial information presented in the reports required by this Section shall be in accordance with the Uniform System of Accounts adopted by the Board. Claims against the Guam Solid Waste Authority shall be submitted to the Attorney General of Guam in accordance with the Government Claims Act.

2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA §1606.

§ 51A116. Annual Budget.

For the purposes of Chapter 51A of Title 10 of the Guam Code Annotated, the term annual budget means a balanced budget for expenditures of the Guam Solid Waste Authority for a fiscal year to be funded by the anticipated revenues and other funds to be received and expended for the same fiscal year, submitted by the Authority to *I Liheslaturan Guåhan* (the Guam Legislature) and approved by Law for the next fiscal year.

§ 51A117. Employment.

(a) (1) Pursuant to the provisions of Title 4 GCA §§ 4105 and 4106, the Board *shall* establish rules and regulations regarding selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Authority, which *shall* be transmitted to *I Liheslaturan Guåhan* (the Guam Legislature) to be ratified.

(2) All contracts for the hiring of off-island employees *shall* conform to the provisions of Title 4 GCA §§ 6501 and 6501.1.

(b) Classified employees of the Authority *shall* be members of the Government of Guam Retirement Fund.

(1) The Authority *shall* contribute to the Government of Guam Retirement Fund on the basis of annual billings as determined by the Board of Trustees of the Government of Guam Retirement Fund, for

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the government share of the cost of the retirement benefits applicable to the Authority's employees and their beneficiaries.

(2) The Authority *shall* also contribute to the Worker's Compensation Fund, on the basis of annual billings as determined by the Worker's Compensation Commissioner, for the benefit payments made from such Fund on account of the Authority's employees.

(c) Notwithstanding any other provisions of law, neither the General Manager, Assistant General Managers, Secretary, the Comptroller, nor Chief Financial Officer of the Authority *shall* be within the classified service of the government of Guam, but *shall* be hired, compensated, and employed under the terms and conditions fixed by, and at the pleasure of the Board.

SOURCE: Added by P.L. 31-020:3 (Apr. 18, 2011), effective 90 days from date of enactment pursuant. Subsections (d), (e), and (f) added by P.L. 34-058:1 (Nov. 1, 2017). Amended by P.L. 34-068:4 (Nov. 28, 2017).

2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A118. [Transition.]

The following Subsections *shall* apply for purposes of effectuating the transition of personnel, procurement authority, and financial management from federal receivership to full management and operation of the Authority by the Authority upon termination of said receivership:

(a) All existing classified employees *shall* remain classified with no diminution in any benefits or rights as established in this Chapter;

(b) Notwithstanding any other provisions of law, the Authority, in order to effect a stabilization of services during and after transition from federal receivership, *shall* be empowered to retain any non-government of Guam employee through employment contracts, who is not within the classified service of the government of Guam, and who is not entitled to any government benefits under this Chapter, for no more than three (3) years from the date of transfer of management from federal receivership; and

(c) All short term operational contracts, obligations, services, and procurement in effect at the time of transition *shall* remain in effect until they terminate pursuant to the terms of their respective agreements. Notwithstanding Chapter 5 of Title 5 GCA, in the event

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that the contract(s) to provide labor, supplies, and services determined by the Authority to be essential to the uninterrupted operation of the Authority, expires on the day of turnover or within three (3) years from the date of turnover, the Authority is authorized to extend those contracts for a period of up to three (3) years, but in no event *shall* an extension under this Section exceed three (3) years from the date of turnover.

SOURCE: Added by P.L. 34-058:2 (Nov. 1, 2017) as an untitled provision.

§ 51A119. Management Audit by Public Utilities Commission.

The Public Utilities Commission (PUC) *shall* perform a management audit of the existing operations of the Guam Solid Waste Authority. Said audit *shall* be initiated within sixty (60) days from the date of enactment of this Act and, to the maximum extent possible, completed by December 30, 2017. The PUC *shall* have the full authority and powers conferred upon it by its enabling legislation in Chapter 12 of Title 12 GCA.

SOURCE: Added by P.L. 34-058:3 (Nov. 1, 2017).

§ 51A120. Service Rates.

(a) Rates and charges for the collection, transportation, disposal, storage, recycling and processing of solid waste in effect at the time of enactment of this Act *shall* remain in effect and be adopted by the Authority until the Public Utilities Commission (PUC) has approved a petition for adjustment of rates.

(b) The Authority *shall not* submit any proposed rate change to the PUC until the following actions have occurred:

(1) the Authority *shall* publish notice of any proposed rate change in a newspaper of general circulation, as defined in 5 GCA § 8104, at least sixty (60) days prior to submitting the proposed rate change to the PUC. The notice required herein *shall* include the Authority's intention to submit its proposed rate change to the PUC, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted; and

(2) the Authority *shall* publish notice of any proposed rate change on its website at least sixty (60) days prior to submitting the

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proposed rate change to the PUC. The notice required herein *shall* include the Authority's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted.

SOURCE: Added P.L. 34-058:4 (Nov. 1, 2017).

§ 51A121. Acquisition of Existing Systems, Employees and Debt.

No later than thirty (30) days before the effective date of transfer of operational control from the federal receiver to the Authority, the Authority *shall* assume in writing from the federal receiver:

(a) all real property under the federal receiver's administration, and items of property, materials, and supplies under the custody of the federal receiver, including construction work in progress; and

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

SOURCE: Added by P.L. 34-058:5 (Nov. 1, 2017).

**ARTICLE 2
GUAM SOLID WASTE AUTHORITY REVENUE BONDS**

SOURCE: Article 2 added by P.L. 31-020:3 (Apr. 18, 2011), effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A201. Authorization of Indebtedness Through GEDA.
- § 51A202. Guam Economic Development Authority as Central Financial Manager.
- § 51A203. Evidence of Transfers Filed at the Department of Land Management.
- § 51A204. Statutory Approval Required for Sale.
- § 51A205. Acceptance of Payments, Installation Applications and Service/Repair Requests via the Internet.

§ 51A201. Authorization of Indebtedness through GEDA.

The Guam Economic Development Authority (GEDA) may obtain funds through the issuance of bonds or other obligations on behalf of the Authority.

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

(b) Subordinated Indebtedness. In addition, the Authority, acting through GEDA, may incur indebtedness for any other lawful purpose of the Authority, provided that such indebtedness shall have a term not exceeding fifty (50) years and shall be subordinate to any contractual obligation of the Authority to the holders of any indebtedness issued pursuant to Subsection (a) of this Section.

(c) Short Term Borrowing. Pursuant to GEDA, the Authority may incur indebtedness with the approval of *I Maga'lahi* (the Governor) for any lawful purpose for a term not exceeding five (5) years; provided, that such indebtedness shall be subject and subordinate to any contractual obligation of the Authority to the holders of any bonds issued pursuant to Subsections (a) or (b) of this Section. The principal of and interest of any such short term borrowing may be repaid from revenues, or if incurred for a purpose for which bonds may be issued, from revenues or from the proceeds of sale of bonds.

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

(e) Waiver of Immunity. Notwithstanding any substantive or procedural provision of Chapter 6, 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.

§ 51A202. Guam Economic Development Authority as Central Financial Manager.

Notwithstanding any other provisions of this Article, the Guam Economic Development Authority shall act as the Central Financial Manager and Consultant to the Authority and shall provide technical assistance in obtaining funds through the issuance of bonds or other obligations. The Authority must comply with all provisions under this Section relative to the financial requirements and needs as directed by GEDA.

§ 51A203. Evidence of Transfers Filed at the Department of Land Management.

(a) Transfer of real property interests pursuant to this Act, including, but not limited to, fee estates, easements and land use rights evidenced by easements, leases and licenses, shall be filed in the form of deeds or assignments signed by *I Maga'lahen Guåhan* in good form containing specific property descriptions, lot numbers and map numbers, at the Department of Land Management within three hundred sixty (360) days of the effective date of this Act.

(b) Any transfer not filed within such time frame shall lapse and be of no further force and effect unless re-initiated or authorized by separate statutory legislation authority.

(c) Any subsequent easements or transfers of property from the government of Guam, including the Chamorro Land Trust Commission, shall be in the form of deeds or assignments in good form containing specific property descriptions, lot numbers and map numbers, recorded at the Department of Land Management.

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A204. Statutory Approval Required for Sale.

(a) Notwithstanding any of the provisions of this Act, specific legislative statutory approval shall be required prior to sale, transfer or lease of any real property assets or lands of the Guam Solid Waste Authority. Nothing herein shall be construed as such approval.

(b) In addition, notwithstanding any other provision contained herein, the provisions of Title 1 GCA § 1800 shall be applicable to the Guam Solid Waste Authority.

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2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A205. Acceptance of Payments, Installation Applications and Service/Repair Requests via the Internet.

(a) Notwithstanding any other provision of law, the Guam Solid Waste Authority shall provide that the following services be made available via the internet:

- (1) acceptance of online payments;
- (2) application for installation of new and additional services,
and
- (3) requests for service and repair.

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

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

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

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

**ARTICLE 3
SOLID WASTE OPERATIONS FUND**

SOURCE: Formerly § 51118 of Chapter 51 of this title. Repealed and reenacted by P.L. 31-020:4 (Apr. 18, 2011) as Article 3 of this chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

§ 51A301. Solid Waste Operations Fund.

(a) Commercial Haulers. For commercial, including multi-family dwellings and government agencies, the charge is a disposal tipping fee and does not include collection fees independently charged by commercial waste haulers.

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(b) Commercial and Residential Tipping Fees. All commercial and residential tipping fees charged by the Authority shall be subject to the review and approval of the Public Utilities Commission.

(c) Business and Governmental Tipping Fees. A tipping fee per cubic yard, uncompacted, shall be established for business and government generators, subject to approval by the Public Utilities Commission (PUC), and shall be published in a rate order developed by the PUC.

(d) Residential Tipping Fees. A residential tipping fee, which may include collection charges and a Self-Drop Fee, may be established subject to the approval of the PUC.

(e) PUC Rate-making. The Public Utilities Commission of Guam (PUC) is hereby authorized to establish, amend and approve, in accordance with Chapter 12 of Title 12, Guam Code Annotated, all commercial, government and residential tipping and user fees (including without limitation a self-drop fee, a variable residential tipping fee and, collectively referred to as 'tipping fees'), which when established shall replace those previously created by law.

(1) Tipping fees authorized and established by PUC shall be based on volume and on an analysis of operations costs, including those cost components specifically listed under Title 10 GCA § 51A114.

(2) PUC is empowered to undertake a focused management audit of the existing operations of the Guam Solid Waste Authority.

(3) In performing its duties under this Section, PUC shall have the full authority and powers conferred upon it by its enabling legislation, Title 12 GCA 12000 et. sec., including the audit power conferred upon it by Public Laws 25-05:12 and 26-78:2.

(f) Solid Waste Operations Fund.

(1) All tipping, user and other fees authorized under this Section and collected based on duly established rules and regulations or on a PUC rate order shall be deposited in a special fund designated and hereby established as the Solid Waste Operations Fund.

(2) All tipping/user fees in the Fund shall be used solely for solid waste management purposes and, pursuant to PUC order, for the payment of regulatory costs and expenses as may be incurred by PUC in performing its regulatory duties under Subsection (e).

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2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA § 1606.

**ARTICLE 4
ANNUAL CONTRACT FOR SCRAP REMOVAL**

SOURCE: Added by P.L. 23-064:1 (Dec. 5, 1995) as Chapter 51, Article 3 of this title. Repealed by P.L. 31-020:5 (Apr. 18, 2011) and reenacted as Article 4 of this chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A401. Contract to Remove Scrap.
- § 51A402. Biennial Contract.
- § 51A403. Environmental Impact Study.
- § 51A404. Conformity to Waste Removal Regulations.
- § 51A405. Reports.

§ 51A401. Contract to Remove Scrap.

The General Manager, after duly advertising for a request for proposals for the removal of scrap metal, shall enter into a contract with any interested business organization, either local or off-island, to collect and remove from Guam scrap metal. The successful offeror may not be charged for the scrap metal but shall post a performance bond equal to seventy percent (70%) of contract value to assure contract completion of the removal project within twenty-four (24) months from receiving from the General Manager a Notice to Proceed. A “Scrap Metal” for the purpose of this Article means abandoned vehicles and other abandoned metal implements of which the Authority has jurisdiction and the right to dispose. In so disposing of such scrap metal, the General Manager shall not charge any fees to the owner of the same.

§ 51A402. Biennial Contract.

The General Manager shall advertise for and execute such a contract every two (2) years with any qualified party on the same terms as are set out in § 51A401 of this Article.

§ 51A403. Environmental Impact Study.

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The Guam Solid Waste Authority shall cause an environmental impact study to be undertaken by the successful offeror prior to the issuance of a permit and the Notice to Proceed to ensure that scrap removal project will not have potential adverse ecological damage to aquifers or the environment at the temporary consolidation site and source location.

§ 51A404. Conformity to Waste Removal Regulations.

The successful offeror shall perform all work under this Article in compliance with applicable rules and regulations of GEPA on the removal of scrap metal and hazardous waste. As a minimum, the Authority shall ensure that all successful offerors include as part of their processing, an intake system to screen and remove batteries and other potentially hazardous residual material including, engine oil, hydraulic fluids and coolant and freon from air conditioning units.

§ 51A405. Reports.

Each successful bidder shall file a report on a quarterly basis with *I Maga'lahan Guåhan* (the Governor of Guam), *I Liheslaturan Guåhan* (the Guam Legislature) and the Guam Solid Waste Authority outlining the following:

- (a) total type and amount of scrap metals, batteries and other potentially hazardous residual material referenced in § 51A404;
- (b) cost comparison of the cost of the scrap metal program versus landfill disposal of scrap metals, or any less-than-conventional methods of scrap metal waste reduction; and
- (c) recommendations for permanent implementation and improvements to the recycling program.

**ARTICLE 5
CONTRACT FOR COLLECTION OF RECYCLABLE PAPER**

SOURCE: Added by P.L. 24-245:3 (Aug. 14, 1998) as Chapter 51, Article 4 of this title. Repealed by P.L. 31-020:6 (Apr. 18, 2011) and reenacted as Article 5 of this chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

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- § 51A501. Contract to Accept and Collect Recyclable Paper.
- § 51A502. Biennial Contract.
- § 51A503. Conformity to All Laws and Rules and Regulations.
- § 51A504. Reports.

§ 51A501. Contract to Accept and Collect Recyclable Paper.

The Authority, in accordance with the applicable procurement laws, and after advertising for a request for proposals (RFP) for the collection of recyclable paper, shall enter into a two (2) year contract with any qualified local interested business or nonprofit organization, to accept and collect recyclable paper to include newsprint, office paper and magazines from the public, and to implement a plan to prevent them from entering Guam's waste stream.

(a) The qualified local business or nonprofit organization shall have active recycling experience and knowledge in Guam.

(b) The RFP shall include the requirement that the prospective contractor accepts and pays for all recyclable paper, to include newsprint, office paper and magazines offered by the public.

(c) The successful offeror shall be one who bids the highest amount per pound to be paid to the public for the recyclable paper for the duration of the contract term.

(d) The successful offeror may not be charged for the recyclable paper but shall post a performance bond equal to seventy percent (70%) of contract value to assure contract completion of the recyclable paper collection project within twenty-four (24) months from receiving from the General Manager a Notice to Proceed.

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A502. Biennial Contract.

The Authority shall advertise for and execute such a contract every two (2) years with any qualified party on the same terms as are set out in § 51A501 of this Article.

§ 51A503. Conformity to All Laws and Rules and Regulations.

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The successful offeror shall perform all work under this Article in compliance with all applicable laws, including those of this Chapter, and rules and regulations of GEPA as may be established. As a minimum, the Authority shall ensure that all offerors include as part of their processing, a plan to remove the collected paper from Guam's waste stream.

§ 51A504. Reports.

Each successful bidder shall file a report on a quarterly basis with *I Maga'lahaen Guåhan* (the Governor of Guam), *I Liheslaturan Guåhan* (the Guam Legislature) and the Guam Solid Waste Authority outlining the following:

- (a) total type and amount of paper recycled;
- (b) cost comparison of the cost of the paper-recycling program versus landfill disposal of paper, or any less-than-conventional methods of paper waste reduction; and
- (c) recommendations for permanent implementation and improvements to the recycling program.

ARTICLE 6
MUNICIPAL RECYCLING PROGRAM

SOURCE: Added by P.L. 27-037:2 (Nov. 14, 2003) as Chapter 51, Article 6 of this title. Repealed by P.L. 31-020:7 (Apr. 18, 2011) and reenacted as Article 6 of this chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A601. Definitions.
- § 51A602. Creation of Municipal Recycling Proceeds Fund for Each Village.
- § 51A603. Creation of the Municipal Recycling Program.

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§ 51A604. Authorization for Municipal Planning Councils to Use the Proceeds from the Sale of Recyclable Materials for Village Needs.

§ 51A601. Definitions.

For purposes of this Article, except as otherwise provided, the following words and phrases, together with all of the common derivatives thereof, shall have the meaning ascribed to them as follows:

(a) GEPA means the Guam Environmental Protection Agency.

(b) Recycling means the process by which recovered resources are transformed into new products in such a manner that products lose their initial identity, as defined in § 51102(r) of Chapter 51 of Title 10 of the Guam Code Annotated.

(c) Recyclable materials means materials which still have useful physical or chemical properties after serving a specific purpose for the same or other purpose. Recyclable materials are as follows:

(1) batteries (i.e., lead-acid, portable computer batteries, nickel-cadmium, sealed types for power backup);

(2) automobiles, buses, and trucks or any form of motorized vehicle;

(3) tires (passenger/commercial);

(4) enameled white goods;

(5) home appliances (other small appliances that are not considered enameled white goods);

(6) glass and plastic bottles;

(7) foam padding;

(8) lead;

(9) metals (ferrous/non-ferrous);

(10) organic material (i.e., tree trimmings, palm fronds, grass, food waste, soiled cardboard);

(11) paper products;

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- (12) wood pallets and scrap wood;
- (13) construction and demolition debris ('C&D');
- (14) x-ray film;
- (15) automobile oil and fluids;
- (16) Freon and other refrigerant gases;
- (17) electronic waste (i.e., computers, circuit boards, televisions, and portable phones);
- (18) heavy equipment; and
- (19) other recyclable materials deemed recyclable by GEPA pursuant to the Rules and Regulations.

(d) Recycling Company means any business licensed by the Department of Revenue and Taxation, and issued a permit, as required in § 51104 of Chapter 51 of Title 10 of the Guam Code Annotated, from the Guam Environmental Protection Agency to conduct business on Guam.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed "51102(18)" to "51102(r)" in subsection (b) to comply with the hierarchy of subsections in § 51102, 10 GCA.

2011 NOTE: Subsection (b) defines "Recycling" in comparison to 10 GCA, § 51102 (r) which by contrast defines "Generator."

§ 51A602. Creation of Municipal Recycling Proceeds Fund for Each Village.

There is hereby established a Municipal Recycling Proceeds Fund for each municipality which shall be maintained separate and apart from any other funds, including the General Fund of the government of Guam, and independent records and accounts shall be maintained in connection therewith.

- (a) The proceeds from the sale of recyclable materials collected, in accordance with the Municipal Recycling Program, from each village shall be deposited in the respective Municipal Recycling Proceeds Fund.

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(b) All revenue deposited in each Municipal Recycling Proceeds Fund shall not be commingled with General Fund monies and shall be kept in a separate bank account.

(c) All proceeds from fees collected in accordance with § 51A703 of this Chapter shall be deposited in the Municipal Recycling Proceeds Fund for the respective village and used exclusively for the purposes authorized in § 51A704 of this Chapter.

(d) The Municipal Planning Council of each municipality shall administer the Municipal Recycling Proceeds Fund for its municipality which shall be subject to audits by the Public Auditor.

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A603. Creation of the Municipal Recycling Program.

There is hereby created a Municipal Recycling Program within the Guam Solid Waste Authority to promote recycling on the municipal level in partnership with the village mayors. The program shall incorporate the following components:

(a) Recycling Drop-Off Bins. GSWA shall solicit drop-off bins from recycling companies that would be made available to each mayor participating in the Municipal Recycling Program.

(1) The recycling drop-off bins shall be rust-proof, and located at a suitable site within the respective villages so that the residents will have a repository to which they can bring recyclable materials in accordance with guidelines established by the Guam Solid Waste Authority.

(2) The mayors of each village participating in the program will be responsible for the security and cleaning of the bins, and the supervision of their use for recycling purposes.

(b) Village Education Program. In coordination with the village mayors, GEPA and GSWA shall create educational programs to promote recycling and the use of the recycling drop-off bins within each village.

(c) Sale of Recyclable Materials.

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(1) In partnership with the village mayors, GSWA shall arrange for the sale of recyclable materials, collected at the Recycling Drop-off Bins in each village, to recycling companies.

(2) The proceeds from the sale of recyclable materials shall be deposited into the respective Municipal Recycling Proceeds Fund of the village from which the recyclable materials were collected.

(d) The Program shall first begin with pilot programs at three (3) villages; one (1) each from northern, central, and southern Guam. The selection of the three (3) villages shall be made by GSWA in concert with the village mayors.

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A604. Authorization for Municipal Planning Councils to Use the Proceeds from the Sale of Recyclable Materials for Village Needs.

The proceeds from the sale of recyclable materials from a village site shall be retained for use by the municipal government of that village in its Municipal Recycling Proceeds Fund. Expenditures from a village's Municipal Recycling Proceeds Fund shall be exclusively for the needs of that village as determined by the respective Municipal Planning Council through adoption of a resolution.

ARTICLE 7
RECYCLING ENTERPRISE ZONE

SOURCE: Added by P.L. 28-092 (Dec. 12, 2005), An Act to Create a Recycling Enterprise Zone at the Jose D. Leon Guerrero Commercial Port," as an uncodified permanent law. Codified by the Compiler as Chapter 51, Article 7 of this title. Repealed by P.L. 31-020:8 (Apr. 18, 2011) and reenacted as Article 7 of this chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A701. Definitions.
- § 51A702. Establishment of Recycling Enterprise Zone.
- § 51A703. Eligibility of Recycling Companies for use of the Recycling Enterprise Zone.

§ 51A701. Definitions.

For purposes of this Act, and except as otherwise provided, the following words and phrases, together with all of the common derivatives thereof, shall have the meaning ascribed to them as follows:

(a) JLGCP shall mean the Jose D. Leon Guerrero Commercial Port.

(b) Recycle or Recycling means the method by which recovered resources are converted for use as raw material or feedstock to make new products, as defined in § 51102(ii) of Chapter 51, Title 10 of the Guam Code Annotated.

(c) Recycling company means any business licensed by the Department of Revenue and Taxation, and has been issued a permit as required in § 51104 of Chapter 51, Title 10 of the Guam Code Annotated by the Guam Environmental Protection Agency (GEPA) to conduct business on Guam and that specifically commits eighty percent (80%) of its operations to recycling.

(d) Transshipment shall mean to transfer for further transportation from one (1) ship or conveyance to another.

(e) Recyclable materials means materials that still have useful physical or chemical properties after serving a specific purpose for the same or other purpose. Recyclable materials are as follows:

- (1) batteries (i.e., lead-acid, portable computer batteries, nickel-cadmium, sealed types for power backup);
- (2) automobiles, buses, and trucks or any form of motorized vehicle;
- (3) tires (passenger/commercial);
- (4) enameled white goods;
- (5) home appliances (other small appliances that are not considered enameled white goods);
- (6) glass and plastic bottles;
- (7) foam padding;
- (8) lead;

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- (9) metals (ferrous/non-ferrous);
- (10) organic material (i.e., tree trimmings, palm fronds, grass, food waste, soiled cardboard);
- (11) paper products;
- (12) wood pallets and scrap wood;
- (13) construction and demolition debris ('C&D');
- (14) x-ray film;
- (15) automobile oil and fluids;
- (16) freon and other refrigerant gases;
- (17) electronic waste (i.e., computers, circuit boards, televisions, and portable phones);
- (18) heavy equipment; and
- (19) other recyclable materials deemed recyclable by GEPA pursuant to the Rules and Regulations.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed "51102(35)" to "51102(ii)" in subsection (b) to comply with the hierarchy of subsections in § 51102, 10 GCA.

§ 51A702. Establishment of Recycling Enterprise Zone.

There is established a "Recycling Enterprise Zone" at the Jose D. Leon Guerrero Commercial Port for use by recycling companies for the processing of automobiles, trucks and tires for recycling purposes, and the transshipment of recyclable materials.

(a) The size of the zone and its site on the JLGCP property shall be designated by the Board of Directors of the Port Authority of Guam and guided by the provisions of Section 7.1.4 of the Integrated Solid Waste Management Plan.

(b) Such designation shall be made within sixty (60) days of the enactment hereof and the site shall be made available for lease to eligible recycling companies.

(c) The Board of Directors of the Port Authority of Guam shall determine and charge a reasonable rate for the lease of said property.

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2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 51A703. Eligibility of Recycling Companies for use of the Recycling Enterprise Zone.

Lease space in the Recycling Enterprise Zone shall only be available to companies that qualify for Qualifying Certificates as recycling companies under guidelines established by the Guam Economic Development Authority.

**ARTICLE 8
SOLID WASTE MANAGEMENT SYSTEM BONDS**

SOURCE: Added by P.L. 30-001:1 (Feb. 27, 2009) as Chapter 51, Article 8 of this title. Repealed by P.L. 31-020:9 (Apr. 18, 2011) and reenacted without change to this article and chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A801. Short Title.
- § 51A802. Definitions.
- § 51A803. Power to Incur Indebtedness.
- § 51A804. Powers of Department.
- § 51A805. Rates, Fees and Charges; Refunds.
- § 51A807. *I Maga'lahi* to Determine Issuance of Bonds and Incurring of Other Indebtedness.
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- § 51A822. Bonds May be Secured by Revenue of the System.
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- § 51A835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts.
- § 51A836. Appropriation of Money in Funds and Accounts.
- § 51A837. Credit Enhancement.
- § 51A838. No Personal Liability.
- § 51A839. Waiver of Immunity.
- § 51A840. Construction of Article.
- § 51A841. Approval by Guam Economic Development Authority.
- § 51A842. Approval of Voters Not Required.
- § 51A843. Untitled Section.

§ 51A801. Short Title.

This Article may be cited as the Guam Solid Waste Management System Bond Act.

§ 51A802. 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

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therein in accordance with this Article) shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) Bonds means an instrument of indebtedness, whether in the form of bonds, notes or another such instrument, issued by the government and providing for repayment of the principal amount of the indebtedness, plus interest, over a specified timeframe.

(b) Bondholder or holder of bonds, or any similar term, means any person who shall be:

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

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

(c) Department means the Department of Public Works, acting on behalf of the government of Guam.

(d) Director means the Director of the Department of Public Works.

(e) Guam Solid Waste Management and Litter Control Act means Chapter 51 of Title 10 of the Guam Code Annotated.

(f) Indenture means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a certificate of the Governor of Guam (I Maga'lahañ Guåhan) or by other instrument.

(g) 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).

(h) 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.

(i) Pledged revenue means any revenue of the system and any General Fund revenue, including any Section 30 revenue, pledged to the payment of bonds.

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(j) Rates, fees and charges means all rates, fees and charges (including tipping fees, residential pick-up fees, collection fees, self-drop fees and all other solid waste management service charges), received or receivable by or on behalf of the Department for providing solid waste management services.

(k) Revenue of the system means all gross income and other amounts received by or on behalf of the Department as revenues of any kind from the ownership or operation of any part of the system, including all rates, fees and charges received by the Department, 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 Department 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 Solid Waste Operations Fund, to be deposited to the Solid Waste Operations Fund in accordance with § 51A833, Title 10, Guam Code Annotated.

(l) Section 30 revenue means revenues derived by the government of Guam under Section 30 of the Organic Act (Title 48, § 1421h of the United States Code).

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

(n) System means the solid waste management system, now or hereafter existing, owned and/or operated by the Department or its contractors, agents or subcontractors, including, but not limited to, landfills (whether closed or open and including Ordot Dump), transfer stations, recycling facilities, collection trucks, appurtenant equipment such as scales, ground water monitoring equipment and pollution control equipment, and administrative facilities supporting the provision of solid waste management services, including facilities for payroll, billing and collections.

(o) System operation and maintenance costs means such reasonable and necessary current expenses of the Department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

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

(2) 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;

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

(4) the costs incurred in the collection of all or any part of the revenues.

(p) United States means the United States of America.

SOURCE: Amended by P.L. 30-007:1 (Apr. 2, 2009).

§ 51A803. Power to Incur Indebtedness.

(a) *I Maga'lahaen Guåhan*, through the agency of the Guam Economic Development Authority pursuant to § 50103(k), Title 12, Guam Code Annotated, and with the approval of *I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in addition to all other powers conferred by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam or of the United States, to incur indebtedness on behalf of the government of Guam, by the issuance of bonds pursuant to this Article 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 to reimburse the government for its payment, after the date of this legislation, of such system bond costs, or for the purpose of refunding any such system bonds or any other prior obligations of the government issued for any of such system purposes, or for any combination of such system purposes for which bonds may be issued and secured as provided in this Article.

(b) It is hereby declared that the system and each facility of 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). Indebtedness issued by the government pursuant to this Article that is payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public

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indebtedness of Guam as that term is used in said Section 11. Indebtedness that is issued by the government pursuant to this Article and that is payable from either Section 30 revenue or the General Fund may not be issued in an amount that would cause a violation of the debt limitation provisions of said Section 11.

(c) No obligation that is undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the Department or against any property or funds of the government of Guam or the Department, except to the extent of the pledge of pledged revenue provided by the indenture and any pledge of the full faith and credit of the government of Guam pursuant to § 51A822.5 of this Article.

SOURCE: Amended by P.L. 30-007:2 (Apr. 2, 2009).

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 51A804. Powers of Department.

(a) Notwithstanding any provision of law or regulation, the Department has power and is hereby authorized, in addition to all other powers conferred upon the Department by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam, to exercise any or all of the powers granted to the Department by this Article.

(1) The Department has jurisdiction over and may collect and transport to permitted solid waste facilities, or contract for the collection and transportation to permitted solid waste facilities, of solid waste from all individual dwelling units, single-family residences, duplexes, and government-managed housing units or residences.

(2) The Department may operate the Ordot Dump, or it may contract for the operation of the Ordot Dump, in accordance with Guam law and its permit under this Chapter. The Department may contract for the operation of the landfill.

(b) The Department may also operate, or contract for the operation of, all other permitted solid waste management facilities and operations not addressed above and within the policy guidelines of the Integrated Solid Waste Management Plan.

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(1) Any such contract for the operation of the Ordot Dump or the landfill may be entered into pursuant hereto or pursuant to Article 9 of this Chapter and may be with any person or corporation duly qualified to provide such services, whether public or private, domestic or foreign.

(2) Notwithstanding this or any other provision of law, the authorization to enter into a privatization, partnership, or contract by the Department for the operation of the system shall require a cost benefit analysis, economic impact study, and legislative approval.

SOURCE: Amended by P.L. 30-007:3 (Apr. 2, 2009).

2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 51A805. Rates, Fees and Charges; Refunds.

(a) Notwithstanding any provision of law or regulation to the contrary, the Department is authorized to establish and modify from time to time, with prior approval by the Public Utilities Commission, reasonable rates, fees and charges for solid waste services at least adequate to cover the full cost of such services, including the costs of debt service for capital improvements of permitted solid waste facilities, and to collect money from all users or customers, and to refund charges collected in error. Rates, fees and charges may be collected before or after the provision of the service for which they are charged.

(b) Except to the extent otherwise permitted or required by an indenture pursuant to which bonds are issued, rates, fees and charges, together with other moneys made available to the Department for such purposes, shall at all times be fixed to yield annual revenue of the system at least equal to the sum of annual principal payments and interest charges on all bonds then outstanding, all coverage and reserve fund requirements relating to such bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and the annual system operation and maintenance costs.

(c) An indenture, lease or contract of indebtedness may provide for payment from revenue of the system of refunds of rates and charges that are collected in error and that are refundable by the Department.

SOURCE: Amended by P.L. 30-007:4 (Apr. 2, 2009).

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 51A806. Validity of Authorization and Issuance of Bonds.

The validity of the authorization and issuance of any bonds by the government pursuant to this Article is not dependent on nor affected in any way by:

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

(b) any contracts made by the Department 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.

§ 51A807. *I Maga'lahi* to Determine Issuance of Bonds and Incurring of Other Indebtedness.

I Maga'lahaen Guåhan shall determine the time, form and manner of issuance of bonds.

§ 51A808. *I Maga'lahi* to Declare Purpose and Maximum Amount of Bonds to be Issued.

Before issuing any bond or bonds, *I Maga'lahaen Guåhan* 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.

§ 51A809. Indenture Providing Terms and Conditions of Bonds.

I Maga'lahaen Guåhan may enter into one (1) or more indentures on behalf of the government 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 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 has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§ 51A810. Issues of Bonds.

An indenture may provide for one (1) or several series of bonds and that any series may be divided into one (1) 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 series 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 as authorized by *I Maga'lahaen Guåhan*.

§ 51A811. 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 government as *I Maga'lahaen Guåhan* deems necessary or advisable, including, without limiting the generality of the foregoing, any one (1) or more of the following:

(a) A provision that payments of principal and interest of bonds shall be secured by a pledge of all or by part of the revenue of the system or the Section 30 revenue or both.

(b) Provisions creating one (1) or more funds or accounts into which all or any part of pledged revenue shall be deposited:

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

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

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

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(f) A provision requiring the government 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 pledged revenue 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 government 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 pledged revenue or that otherwise impairs or impedes the right of the holders of bonds or other obligations with respect to such pledged revenue.

(h) A provision requiring the government, with the prior approval of the Guam Public Utilities Commission, to fix, prescribe and collect annually rates or other charges in connection with the solid waste management services furnished from the system which, together with other available revenues, including, to the extent provided by an indenture, Section 30 revenue, will be:

(1) 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;

(2) sufficient to pay any payments due under any lease or lease-back entered into pursuant to Article 9 of this Chapter;

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

(4) 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 solid waste management service shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the government to hold or cause to be held in trust the pledged revenue or any part thereof, or to any fund or account created by any indenture for the further security or protection

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of such bonds and to apply such pledged revenue or cause it to be applied only as provided in the indenture and to invest all or any part of such pledged revenue 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 government 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 government to issue additional bonds or to enter into one (1) or more lease-back obligations pursuant to Article 9 of this Chapter, in each case equally secured with bonds theretofor issued under the indenture and lease-back obligations previously entered into, 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 government relating to the system; and a provision limiting the power of the government 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 government 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 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 government 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 government 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

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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.

(q) With respect to any provision relating to the modification or amendment of an indenture, the government may agree that bonds held by the government, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, agency or instrumentality of any kind or 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 government or proscribing the procedure for the conduct of any such action by an individual bondholder.

(s) A provision permitting the government to purchase outstanding bonds 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.

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

SOURCE: Amended by P.L. 30-007:5 (Apr. 2, 2009).

§ 51A812. Trustee for Government and Holders of Bonds.

(a) The government or any agent designated by the government shall act as trustee for the government and the holders of bonds issued hereunder and the government 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 government may provide in an indenture:

(1) for the deposit of all or any portion of the pledged revenue with the government and for the holding thereof by the government in one (1) or more separate funds or accounts in the Solid Waste Operations Fund; and

(2) for the transfer to the trustee of all or any portion of the pledged revenue as are provided as security for the bonds and for the holding thereof by the trustee in one (1) 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.

§ 51A813. Duties and Powers of Trustee.

The government 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 administration of any and all funds provided as security therefore.

§ 51A814. Issuance and Interchange of Bearer and Registered Bonds.

An indenture may provide that bonds may be issued as bearer bonds or as registered bonds and for the interchange of bearer bonds for registered bonds and registered bonds for bearer bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as *I Maga'lahen Guåhan* may determine.

§ 51A815. 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.

§ 51A816. Places of Payment.

An indenture may provide for the payment of the principal and interest of bonds at any one (1) or more places in Guam or in the United States and in any specified coin or currency of the United States.

§ 51A817. 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 (1) or more officers of the

government and by additional authentication by endorsement by the manual signature or a signature stamp of any one (1) or more officers of the government or of any agent designated by the government as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds ceases to be an officer or agent before the delivery of the bonds, 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.

§ 51A818. Dates and Maturities of Bonds.

Bonds shall bear dates prescribed 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.

§ 51A819. Sale of Bonds.

Bonds authorized to be issued under this Article shall be sold for cash, in accordance with the provisions of a certificate or agreement executed by *I Maga'lahren Guåhan*. The bonds may be sold at either public or private sale, and upon such terms and conditions as shall be authorized by *I Maga'lahren Guåhan*, which may provide that the bonds may be sold at less than their par or face value.

§ 51A820. Payment of Bonds from Sources Other Than Pledged Revenue.

The government may use and expend all or any part of any funds other than pledged revenue or proceeds of any property owned by it other than the system, whether received by gift or appropriation (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 secured by pledged revenue, and of interest due thereon.

§ 51A821. 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 (1) 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

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(including any closed landfill or dump) 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 government of the costs of any work done by the United States or such public body for or jointly or in conjunction with the Department.

(1) Up to Three Million Dollars (\$3,000,000) for compensation for the acquisition of private property currently occupied and used as part of the Ordot Dump by an instrumentality or agency of the government of Guam, and as needed for the permanent closure of the Ordot Dump. An appraisal of the private property used for the Ordot Dump must be obtained prior to acquisition thereof.

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

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

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

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

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

(d) for deposit in any one (1) 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 not to exceed three (3) years thereafter;

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

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(g) for the payment of any prior bonds or other obligations of the government issued for solid waste management purposes.

(h) For reimbursement of the General Fund or other source of the government of Guam for cash deposits or other payments made by the government of Guam between March 1, 2009 and the date of issuance of these bonds pursuant to the February 13, 2009 Order in the U.S. District Court Case No. 02-00022.

SOURCE: Subsection (h) added by P.L. 30-007:6 (Apr. 2, 2009). Subsection (a) amended by P.L. 30-212:2 (Dec. 13, 2010).

§ 51A822. Bonds May be Secured by Revenue of the System.

(a) 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 revenue of the system, subject to any parity lien created or to be created pursuant to Article 9 of this Chapter.

(1) Any such pledge and lien shall be valid and binding against all parties in accordance with its terms and have priority against all parties in accordance with its terms from the time the pledge is made, and property so pledged shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation filing or other further act. The pledge shall not be subject to Division 9 of Title 13 of the Guam Code Annotated or any successor statute.

(2) The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the Revenue Account in the Solid Waste Operations Fund.

(3) The indenture by which such pledge is created need not be recorded. All such pledged revenue of the system is hereby appropriated for the purposes of paying the principal and interest on the bonds issued pursuant to this Article.

(b) Pledged revenue released from the lien of the indenture or certificate pursuant to which the bonds are issued shall be available for any other lawful purpose. If the bonds are secured solely by such a pledge of and lien upon all or a portion of the revenue of the system, then no such bond and no other obligation undertaken by the government under any indenture, lease or other instrument relating to such bond shall be or become a lien, charge or liability

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against the government of Guam or against the Department or against any property or funds of the government of Guam or the Department, except to the extent of the pledge of revenue of the system provided by such indenture, lease or other instrument.

SOURCE: Amended by P.L. 30-007:7 (Apr. 2, 2009).

2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 51A822.5. Bonds May be Secured by Section 30 Revenue.

(a) If and to the extent determined by *I Maga'lahaen Guåhan*, all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may be pledged to secure the payment of any bonds issued pursuant to this Article, subject to any previously created lien on or pledge of such Section 30 revenue and to any parity lien created pursuant to Article 9 of this Chapter.

(b) Any such pledge shall be valid and binding against all parties in accordance with its terms and have priority against all parties in accordance with its terms from the time the pledge is made, and property so pledged shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The pledge shall not be subject to Division 9 of Title 13 of the Guam Code Annotated or any successor statute.

(c) The Section 30 revenue pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in accordance with the provisions of the applicable indenture or, if not otherwise provided for in such indenture, in a separate subaccount of the Revenue Account in the Solid Waste Operations Fund. The indenture by which such pledge is created need not be recorded.

(d) All Section 30 revenue so pledged is hereby appropriated for the purpose for which it has been pledged. Pledged Section 30 revenue released from the lien of the indenture or certificate pursuant to which the bonds are issued shall be available for appropriation for any other lawful purpose of the government.

(e) Indebtedness issued by the government pursuant to this Article and that is payable from Section 30 revenue may not be issued in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

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SOURCE: Added by P.L. 30-007:8 (Apr. 2, 2009).

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 51A823. Valid and Binding.

(a) If and to the extent determined by *I Maga 'lahen Guåhan*, the bonds authorized by this Article shall constitute the valid and binding general obligations of the government of Guam, in addition to any applicable pledge of the revenues described in Title 10, Guam Code Annotated, § 51A822.

(b) The government of Guam pledges full faith and credit for the punctual payment of both the principal of and interest on such bonds and covenants that there shall be collected annually in the same manner and at the same time as government revenue for other purposes is collected, such sum as is required to pay the principal of and interest of such bonds.

(c) There are hereby appropriated from the General Fund such sums as may be necessary in each year in addition to any amounts appropriated under Title 10, Guam Code Annotated, § 51A822 to equal the amount of money necessary to pay principal and interest on such bonds.

(d) All officers charged by law with any duty in the collection of the revenues of the government from which debt service on such bonds will be payable shall do every lawful thing necessary to collect such sum. The validity of any such bonds shall not be affected by the validity or regularity of any proceedings for the payment of the costs paid or to be paid with the proceeds of such bonds.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 51A824. Temporary Bonds.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the government may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever, to be exchanged for definitive bonds when ready for delivery.

§ 51A825. Replacement of Bonds.

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

§ 51A826. Tax Exemption.

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.

§ 51A827. 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.

§ 51A828. Refunding Bonds.

I Maga'lahaen Guåhan may, on behalf of the government, provide for the issuance, sale or exchange of refunding bonds for the purpose of retiring indebtedness or other obligations issued to finance all or any portion of the system. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

§ 51A829. Use of Other Funds for System.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Department 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 Department and any money or funds made available to the Department 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 Solid Waste Management and Litter Control Act.

§ 51A830. Insurance.

The Department may insure against loss of revenue of the system from any cause whatsoever. The Department may insure against public liability or property damage from any cause. An indenture, lease or other instrument 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, lease, or other instrument for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Director, subject to the requirements of any indenture, lease, or

other instrument, any insurance may be provided by funded reserves or any other means.

§ 51A831. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Department 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 payments of their bonds. In accordance with prior similar situations and precedents, the government hereby pledges, while any bonds issued under this Article remain outstanding and not fully performed or discharged, (a) to maintain the rights, powers and duties of the Director, the Department 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; and (c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§ 51A832. Construction Account.

The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a Construction Account, which account is hereby created within the Solid Waste Operations Fund. The money in the account 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 Title 10, Guam Code Annotated, § 51A821, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

§ 51A833. Revenue Account.

All revenue of the system and, to the extent provided by an indenture or by Article 9 of this Chapter, the Section 30 revenue, shall be deposited to the credit of the applicable subaccount of the Revenue Account, which account is hereby created within the Solid Waste Operations Fund. The money in such subaccounts may be used for any of the following purposes in the order of priority set forth in any indenture as provided in Title 10, Guam Code

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Annotated, § 51A811(j) or any lease or lease-back as provided in Article 9 of this Chapter:

- (a) to pay principal or interest on any bonds or any other obligations of the Department;
- (b) to pay amounts due and owing under any lease or lease-back entered into pursuant to Article 9 of this Chapter;
- (c) to pay any amounts due and owing under any credit provider reimbursement agreement;
- (d) to pay the annual system operation and maintenance costs; and
- (e) for any other purposes of the system, as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

SOURCE: Amended by P.L. 30-007:9 (Apr. 2, 2009).

§ 51A834. Investment of Money in Funds and Accounts.

Moneys in the Revenue Account and Construction Account in the Solid Waste Operations Fund may be invested by the government or the trustee under any indenture, 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 deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

§ 51A835. Use of Balances of Funds and Accounts and Surplus Money in Funds and Accounts.

Any balance remaining in any of the funds or accounts created by this Article or any indenture, including the Construction Account established pursuant to Title 10, Guam Code Annotated, § 51A832, 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, 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 subject to legislative appropriation.

§ 51A836. Appropriation of Money in Funds and Accounts.

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

§ 51A837. Credit Enhancement.

(a) *I Maga'lahaen Guåhan* is hereby authorized to enter into such contracts or agreements, on behalf of the government, with such banks, insurance companies or other financial institutions as *I Maga'lahaen Guåhan* determines are necessary or desirable to improve the security and marketability of the bonds.

(1) 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. Any such reimbursement obligation and any other obligations of the government under such contracts or agreements may be secured by a pledge of pledged revenue, but only if and to the extent that such revenue has been pledged to the bonds.

(2) In the event that the bonds shall constitute the valid and binding general obligations of the government pursuant to Title 10, Guam Code Annotated, § 51A823, any such reimbursement obligations shall be general obligations of the government of Guam and any such advance, if necessary, shall be treated for Organic Act purposes as creating an obligation issued to refund the bonds.

(b) Any reimbursement agreement may include a provision that the obligations of the government under the agreement shall be secured by all or by part of pledged revenue; 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, lease or other instrument then in effect to which the government or the Department is a party.

SOURCE: Amended by P.L. 30-007:10 (Apr. 2, 2009).

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2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 51A838. No Personal Liability.

Neither *I Maga'lahren Guåhan*, the Director, any employee of the Department, any employee of the government nor any elected official of the government 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 Title 10, Guam Code Annotated, § 51A838, shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§ 51A839. Waiver of Immunity.

Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government 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.

§ 51A840. Construction of Article.

This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government 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 Department, the Director or *I Maga'lahren Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

§ 51A841. Approval by Guam Economic Development Authority.

Section 50103(k), Title 12, Guam Code Annotated, provides that agencies and instrumentalities of the Government of Guam shall issue bonds and other obligations only by means of and through the agency of the Guam Economic Development Authority (GEDA). No issue of bonds authorized by this Article shall be sold until the Board of Directors of GEDA has adopted a resolution approving the sale of such issue.

§ 51A842. Approval of Voters Not Required.

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Notwithstanding §§ 16311 and 16312 of Title 3, Guam Code Annotated, the issuance of the bonds authorized by this Section shall not be required to be subject to the approval of, or placed before, the voters of Guam.

SOURCE: Amended by P.L. 31-255:3(e) and(f) (Dec. 11, 2012).

§ 51A843. Untitled Section.

Bonds authorized pursuant to this Article 8 shall only be issued if the Income Tax Refund – Cola Deficit Financing Bonds authorized in 5 GCA § 1512.1 are also issued at the same time or earlier.

**ARTICLE 9
SOLID WASTE MANAGEMENT SYSTEM LEASE FINANCING**

SOURCE: Added by P.L. 30-001:4 (Feb. 27, 2009) as Chapter 51, Article 9 of this title. Repealed by P.L. 31-020:9 (Apr. 18, 2011) and reenacted without change to this article and chapter, effective 90 days from date of enactment pursuant to P.L. 31-020:13.

- § 51A901. Short Title and Purpose.
- § 51A902. Definitions.
- § 51A903. Authorization to Enter Into Long-Term Leases.
- § 51A904. Procurement.
- § 51A905. Powers of Department.
- § 51A906. Assignments.
- § 51A907. Use of Tax-Exempt Financing.
- § 51A908. Lease-Back May be Secured by Revenue of the System.
- § 51A909. Pledge by the Government of Guam.
- § 51A910. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility.
- § 51A911. Credit Enhancement.
- § 51A912. No Personal Liability.
- § 51A913. Rules, Regulations and Restrictions.
- § 51A914. Construction of Article.
- § 51A915. Severability.

§ 51A901. Short Title and Purpose.

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This Article may be cited as the Guam Solid Waste Management System Lease Financing Act. The purpose of this Article is to authorize the use of lease financing in addition to, in lieu of, or in conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in order to achieve the most efficient and lowest cost financing, construction, operation and maintenance of the solid waste management system.

§ 51A902. Definitions.

The following terms wherever used or referred to in this Article or in any indenture, lease or lease-back 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) Contractor means the authorized entity which shall be the signatory on the lease and the lease-back and shall be fully responsible for carrying out the construction, financing, operation and maintenance of the solid waste facility. The contractor may cooperate with another entity or entities in any manner the contractor deems appropriate to provide for the financing, construction, operation and maintenance of the solid waste facility.

(b) Department means the Department of Public Works, acting on behalf of the government of Guam.

(c) Director means the Director of the Department of Public Works.

(d) Lease means a ground or site lease of property from the Department, the Chamorro Land Trust Commission, or other government entity, as applicable, to the Contractor.

(e) Lease-back means the facilities lease or other lease of the property from the Contractor back to the Department, over the term of which the costs of the construction, financing, operation and maintenance of a solid waste facility are amortized, according to the terms agreed to between the Department and the Contractor.

(f) Pledged revenue means any revenue of the system pledged to secure lease-back payments.

(g) Property means any property on which a solid waste facility is located.

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(h) Revenue of the system means all gross income and other amounts received by or on behalf of the Department as revenues of any kind from the ownership or operation of any part of the system, including all rates, fees and charges received by the Department, 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 Department 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 Solid Waste Operations Fund, to be deposited to the Solid Waste Operations Fund in accordance with § 51A833, Title 10, Guam Code Annotated.

(i) Solid waste facility means all or any portion of any landfills (whether closed or open and including Ordot Dump), transfer stations, recycling facilities, appurtenant equipment, and other capital facilities of the system.

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

(k) System means the solid waste management system, now or hereafter existing, owned and/or operated by the Department or its contractors, agents or subcontractors, including, but not limited to, landfills (whether closed or open), transfer stations, recycling facilities, collection trucks, appurtenant equipment such as scales, ground water monitoring equipment and pollution control equipment, and administrative facilities supporting the provision of solid waste management services, including facilities for payroll, billing and collections.

(l) System operation and maintenance costs means such reasonable and necessary current expenses of the Department, paid or accrued, for operation, maintenance and repair of the system, including, without limiting the generality of the foregoing:

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

(2) 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;

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

(4) the costs incurred in the collection of all or any part of the revenues.

Notwithstanding this or any other provision of law, the authorization to enter into a privatization, partnership, or contract by the Department for the operation of the system shall require a cost benefit analysis, economic impact study, and legislative approval.

§ 51A903. Authorization to Enter Into Long-Term Leases.

(a) *I Maga'lahren Guåhan* may enter into a lease and lease-back on behalf of the Department for the financing of the acquisition, construction, improvement, equipping, repair, renewal, replacement, or reconstruction of any solid waste facility, together with operation and maintenance of all or any portion of such solid waste facility over the term of the lease-back, according to the needs of the Department and consistent with this Article.

(b) The costs of the construction and financing of a solid waste facility financed pursuant to this Article shall be amortized in periodic installments over the term of the lease-back period, which shall be mutually determined by *I Maga'lahren Guåhan* and the contractor, but which will not exceed forty (40) years.

(1) The lease and lease-back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the Department will have the obligation to vacate the solid waste facility, and the contractor shall have the right of use and occupancy of the solid waste facility for the remainder of the term of the lease, unless new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the lease-back or such period of time as is necessary to repay in full any financing arranged pursuant to this Article.

(2) The Department shall pay the operation and maintenance costs of the solid waste facility on a periodic basis as incurred by the contractor on terms to be agreed to in the lease-back for each solid waste facility.

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(c) It is hereby declared that the system and each solid waste facility 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). Obligations incurred by the government pursuant to this Article that are payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system will not be and shall not be deemed to be public indebtedness of Guam as that term is used in said Section 11.

(d) No obligation undertaken by the government pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the Department or against any property or funds of the government of Guam or the Department, except to the extent of the pledge of revenue of the system provided by the lease-back.

2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 51A904. Procurement.

Subject to the approval of *I Liheslaturan Guåhan*, the government of Guam or the Department may solicit proposals, in compliance with the Guam Procurement Law, for the financing and construction of the solid waste facility, together with the operation and maintenance of the solid waste facility over the term of the lease-back, according to the needs of the Department and consistent with this Article.

§ 51A905. Powers of Department.

Notwithstanding any provision of law or regulation, the Department has power and is hereby authorized, in addition to all other powers conferred upon the Department by the Guam Solid Waste Management and Litter Control Act or any other provision of this Chapter or by any law of Guam, to exercise any or all of the powers granted to the Department by this Article.

§ 51A906. Assignments.

To facilitate the purposes of this Article and to provide security for the bondholders, the contractor may assign, with the consent of the Department, the lease and the lease-back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of certificates of participation in lease-back payments or other financial instruments to provide the financing for the solid waste facility.

§ 51A907. Use of Tax-Exempt Financing.

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To minimize the financing cost to the Department, all financing utilized by the contractor to fund the construction, operation and maintenance of a solid waste facility shall be through tax-exempt obligations, if a mechanism to do so is available. The purpose for this requirement is to assure that the Department pays the lowest possible interest rate so that the cost of financing the construction, operation and maintenance of a solid waste facility to the Department, amortized through the lease-back payments from the Department to the contractor, will be lower than regular commercial rates.

§ 51A908. Lease-Back May be Secured by Revenue of the System.

A lease-back shall provide that payment of obligations thereunder may be secured by a pledge of and lien upon all or any portion of the revenue of the system, subject to any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and lien shall be valid and binding from the time the pledge is made. The revenue of the system pledged and thereafter received by the government or by any trustee, depository or custodian shall be deposited in a separate subaccount of the revenue account in the Solid Waste Operations 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 government or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded, except to the extent that such instrument conveys an interest in land or improvements thereon.

§ 51A909. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Department has the ability to implement the capital improvements authorized to be leased 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 the holders of certificates of participation or other financial instruments are protected to ensure full and timely payment of obligations due under the lease-back. In accordance with prior similar situations and precedents, the government hereby pledges, while any obligations are owing on any lease-back entered into pursuant to this Article,

- (a) to maintain the rights, powers and duties of the Director, the Department and the Guam Public Utilities Commission, or their

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respective successors in accordance with law, to fulfill the terms of any agreements made with a contractor in accordance with this Article;

(b) to maintain the rights and remedies of a contractor provided in this Article and any lease or lease-back; and

(c) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the system without providing for the payment of the costs of such additional responsibilities.

§ 51A910. Responsibility for Construction, Operation and Maintenance of the Solid Waste Facility.

The lease-back may require that the contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the improvements, on-site infrastructure, construction, permits and financing associated with the completion of a solid waste facility, except as expressly provided by the lease-back for costs, expenses and fees previously incurred by the government. The lease-back may require that the contractor be responsible for the ongoing operation and maintenance of the solid waste facility during the term of the lease-back.

§ 51A911. Credit Enhancement.

I Maga'lahaen Guåhan is hereby authorized to enter into such contracts or agreements, on behalf of the Department, with such banks, insurance companies or other financial institutions as it determines are necessary or desirable to improve the security and marketability of the lease-back obligations; provided that said contracts or agreements to improve the security and marketability of the lease-back obligations shall not obligate, appropriate, or otherwise provide additional funding for the improvement to the security or marketability without legislative approval. 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 lease-back obligations 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 Department under any reimbursement agreement shall be payable solely from pledged revenue. Any reimbursement agreement may include a provision that the obligations of the Department under the agreement shall be secured by all or by part of pledged revenue; 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, lease or other instrument to which the government or the Department is a party.

§ 51A912. No Personal Liability.

Neither *I Maga'lahaen Guåhan*, the Director, any employee of the Department, any employee of the government nor any elected official of the government shall be individually or personally liable for the payment of any amounts due under any lease or lease-back, or for any other liability arising in connection with a lease or lease-back; provided, however, that nothing in this § 51A912, Title 10, Guam Code Annotated, shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§ 51A913. Rules, Regulations and Restrictions.

The Department may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Article.

§ 51A914. Construction of Article.

This Article shall be liberally construed to carry out the objects and purposes and the declared policy of the government 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 Department, the Director or *I Maga'lahaen Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

§ 51A915. Severability.

If any provision of this Article or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.
