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CH. 14 GUAM WATERWORKS AUTHORITY

CHAPTER 14
GUAM WATERWORKS AUTHORITY

SOURCE: Added by P.L. 23-119:1.

- Article 1. General Provisions.
- Article 2. Guam Waterworks Authority Revenue Bonds.
- Article 3. Drought Management and Comprehensive Water Conservation Plan.
- Article 4. Outsourcing.

ARTICLE 1
GENERAL PROVISIONS

- § 14101. Short Title.
- § 14102. Definitions.
- § 14103. Continuation of Existence.
- § 14104. Powers.
- § 14105. Governance of Authority.
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- § 14107. Assistant General Manager: Operations and Technical Support.
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- § 14110. Acquisition of Existing Systems, Employees, and Debt.
- § 14111. Exemption from Taxation, and In-Lieu Payments.
- § 14112. New Services.
- § 14113. Accounting and Expenditures.
- § 14114. Employment.
- § 14115. Evidence of Transfers Filed at the Department of Land Management.
- § 14116. Statutory Approval Required for Sale.
- § 14117. Denial of Water Service.

§ 14101. Short Title.

This Chapter may be cited as the *Guam Waterworks Authority Act*.

§ 14102. Definitions.

As used in this Chapter, unless otherwise indicated:

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(a) '*Authority*' means the Guam Waterworks Authority.

(b) '*Board*' means the Consolidated Commission on Utilities established in Chapter 79 of Title 12 of the Guam Code Annotated.

(c) '*Director*' means a Commissioner of the Consolidated Commission on Utilities.

SOURCE: Repealed/reenacted by P.L. 26-76:2 to reflect the new Consolidate Utilities structure.

§ 14103. Continuation of Existence.

Guam Waterworks Authority is continued in existence as a public corporation.

SOURCE: Repealed/reenacted by P.L. 26-76:3 to reflect the new Consolidated Utilities structure.

§ 14104. Powers.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting *certified, technical and professional* personnel, subject to the provisions of the Administrative Adjudication Act. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit, and shall include an orderly and

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systematic method of recruitment and the establishment of a list of qualified applicants. *Certified, technical and professional personnel* are defined as personnel employed by GWA who are professional engineers, attorneys, and other licensed professionals, or who are highly skilled employees with certificates such as plant operators and other similar engineering and technical personnel, including, but not limited to, those jobs listed in Attachment B. Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

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

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

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

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

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

c. Third priority shall be for industrial use.

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

e. Fifth priority shall be for any other purposes.

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

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

All water rights and rights to use water shall be determined according to the foregoing, and there shall be no riparian water rights in Guam. This Act establishes priorities only, and shall not

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establish any vested water rights in any person, other than in the Government of Guam.

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

§ 14104.1. Contractual Restrictions.

Any contract by the Authority to contract maintenance services relative to sewage pumps, booster pumps, and all pumps and other facilities directly associated with water wells shall be subject to the following provisions:

(a) any procurement of service or goods, shall be entirely subject to the Procurement Laws of Guam, and all related rules and regulations;

(b) all successful bidders must have a minimum of three (3) years of demonstrated expertise in the maintenance of electro-mechanical pump devices; and

(c) no contract for service awarded shall be for a duration of more than two (2) years, and must include provisions for periodic and timely inspections of all facilities whose maintenance is contracted, with provisions for the revocation of contracts, without penalty to the Authority, for any breach of contract or failure to provide adequate service, as contracted.

No other contract, beyond the maintenance contracts specifically detailed in this Section, may be entered into by the Authority for a duration in excess of one (1) year, except as permitted under the terms of the build, operate and transfer program ('BOT') specifically authorized in Guam law or as otherwise permitted herein.

SOURCE: Added by P.L. 26-76:15.

§ 14105. Governance of Authority.

All powers vested in the Authority, except as provided herein, shall be exercised by the Consolidated Commission on Utilities, as established in Chapter 79 of Title 12 of the Guam Code Annotated.

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SOURCE: Repealed/reenacted by P.L. 26-76:4 to reflect Consolidated Utilities structure.

§ 14106. General Manager.

(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:

a combined minimum of ten (10) years of documented experience successfully managing a public or private utility, or business activity similar to or greater in scope and size to the Authority; and either:

(1) graduation from an accredited institution of higher education with a bachelor's degree in business or public sector management or closely related field or discipline, or

(2) graduation from an accredited institution of higher education with a bachelor's degree in engineering or engineering technology. The Board shall fix the general manager's compensation, notwithstanding any other provision of law. The general manager shall have full charge and control of the construction of the works of the Authority and their maintenance and operation, and also of the administration of the business affairs of the Authority.

The Board may contract with a corporation 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 corporation to perform some of the duties or to render expert and technical assistance in the operation of the Authority. Such a management contract shall be for no longer than three (3) years duration. A corporation contracted pursuant to this Section must have a minimum of seven (7) years experience in the operation of a water or wastewater utility of similar or greater scope than the Authority.

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

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

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

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(iii) To keep the Board and I Liheslaturan Guåhan 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;

(iv) 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;

(v) 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;

(vi) To cause to be published within one hundred twenty (120) days from the end of each fiscal year a financial report showing 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

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

SOURCE: Subsection (b) (iii), (iv) amended by P.L. 26-15:3 and 4. Subsection (a) repealed/reenacted by P.L. 26-76:9.

§ 14107. Assistant General Manager: Operations & Technical Support.

[Repealed.]

SOURCE: Subsection (b) repealed by P.L. 26-15:5. Section repealed by P.L. 26-76:16.

§ 14108. Chief Financial Officer.

The Board shall appoint a chief financial officer who shall serve at its pleasure. The chief financial officer 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.

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SOURCE: Repealed/reenacted by P.L. 26-76:10.

§ 14109. Other Officers.

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

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

(c) The Attorney, who must have been admitted to practice in Guam, shall advise the Board and the General Manager on all legal matters to which the Authority is a party or in which the Authority is legally interested and may represent the Authority in connection with legal matters before the Legislature, boards and other agencies of the Territory. 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.

§ 14109.5. Employees.

All employees of the Authority shall be eligible for all insurance, retirement, workmen's compensation and other benefits as extended to employees of the government of Guam, and 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.

With respect to compensation, this Section shall not apply to the compensation of the general manager or the chief financial officer.

SOURCE: Added by P.L. 26-76:11.

§ 14110. Acquisition of Existing Systems, Employees, and Debt.

(a) On the first day of the month following one hundred eighty (180) days after the effective date of this Act the Authority shall assume in writing from the Government of Guam and the Public Utility Agency of Guam (the Agency):

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(i) all real property under the Agency's administration and items of property, materials and supplies which the Agency owns or controls, including construction work in progress.

(ii) 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 Agency or attributable to the Agency.

(iii) Each employee of the Government of Guam and assigned to the Public Utility Agency of Guam at the date of the transfer pursuant to statute shall be transferred to the Authority. All classified employees shall remain classified.

(iv) In addition to the foregoing and not in limitation thereof, all liabilities and debts, including but not limited to contingent liabilities, short term debts and long term debt, including Water System Revenue Debt authorized by §6132 of the Government Code (added by P.L. 20-16) and the Line of Credit for Tumon sewer reversal and other projects authorized by Section 3 of P. L. 23-97.

§ 14111. Exemption from Taxation, and In-Lieu Payments.

As an instrumentality of the Territory, the Authority and all property acquired by or for the Board and all revenues and income therefrom are exempt from taxation by the Territory or by any political subdivision or public corporation thereof and from all taxes imposed under the authority of the Legislature of the Territory, or with respect to which the Legislature is authorized to grant exemption.

§14112. General Operations.

(a) Rates for Services. The Authority shall apply to the Public Utilities Commission ('PUC') for approval for its rates for its services. In order to obtain such approval, the Authority must demonstrate to the PUC that:

(1) there is a public need for the services being provided, and

(2) the Authority's provision of said services benefits the community.

(b) Integration and Inter-operation of Systems. It shall be the aim of the Authority to provide Guam with a fully integrated inter-operating water and wastewater system by combining all U.S. Military systems in

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use on Guam to be thereafter administered under civilian authority for both the military and civilian communities. Accordingly, the Authority shall develop a proposal for acquiring full ownership in and operation of existing U.S. Military water and wastewater utility systems situated on Guam for submission to I Liheslaturan Guahan [the Legislature for its prior approval, as well as full ownership and use of all Guam fresh water resources, surface and/or subsurface, within Federal lands and property deemed appropriate for this purpose.

(1) Joint Operating Agreements. The Authority shall enter into one (1) or more joint operating agreements with private contractors operating U.S. Military water production and distribution systems or wastewater disposal systems, or both, regulated under the Federal Clean Water Act and Safe Drinking Water Act, in conformance with its rules and regulations and with the statutory authority contained in this Chapter. Under such a joint operating agreement, the Authority and the private contractor's joint operations shall be integrated into the Authority's Island-wide waterworks and wastewater disposal systems.

(2) Regulation of Such Private Contractors. The Authority shall duly promulgate new or expanded rules and regulations, in coordination with the Guam Environmental Protection Agency, concerning the operational monitoring, surveillance and reporting of such a private contractor or contractors operating a U.S. Military water production and distribution system or wastewater system, or both, which are being operated under a joint operating agreement with the Authority. No permit or license shall be issued until the operator is in full compliance with Federal and Guam statutes and rules, and the PUC has approved the operator's operation and its joint operating agreement with the Authority.

SOURCE: Repealed and reenacted by P.L. 24-295:7.

§ 14113. 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:

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(i) 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

(ii) if 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. Said firm shall submit to I Magalahren Guåhan [Governor], the General Manager and I Liheslaturan Guåhan, no later than February 1st of each year, a written report on the financial status and workings of the Authority during the previous fiscal year. The Board shall provide said report to I Magalahren Guåhan and I Liheslaturan Guåhan. I Magalahren Guåhan may request special reports within thirty (30) days after the end of each fiscal quarter. 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 Waterworks Authority shall be submitted to the Attorney General of Guam in accordance with the Government Claims Act.

SOURCE: Amended by P.L. 26-15:6.

§ 14113.1 Annual Budget.

For the purposes of Chapter 14 of Title 12 of the Guam Code Annotated, the term ‘annual budget’ means a balanced budget for expenditures of the Guam Waterworks 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 to I Liheslaturan Guåhan and approved by law, with amendment and modification as may be desired by I Liheslaturan Guåhan. The budget shall not request an appropriation from the General Fund.

(a) On or before May 1, of each year, the Board shall approve and submit to I Liheslaturan Guåhan the annual budget for the following fiscal year.

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(b) On or before the start of the following fiscal year, I Liheslaturan Guåhan shall approve, reject or modify the annual budget. No transfer of funds approved or authorized by the annual budget shall be valid, unless approved by I Liheslaturan Guåhan.

(c) If the Board fails to submit a budget for the next fiscal year, or if I Liheslaturan Guåhan fails to approve the annual budget before the next fiscal year, the current fiscal year's budget shall become law for the next fiscal year, subject to legislative modification.

SOURCE: Added by P.L. 26-15:7.

NOTE: The effective dates of the P.L. 26-15 amendments are:

Section 8. Effective Dates. This Act shall become effective immediately upon enactment. For purposes of Fiscal Year 2002, the Guam Waterworks Authority ("GWA") shall submit its proposed annual budget to I Liheslaturan Guåhan within twenty (20) days of enactment of this Act. Said annual budget shall not contain any transfer of funds provisions and shall reduce costs to conform to GWA's revenue generation estimate for Fiscal Year 2002. I Liheslaturan Guåhan shall have until September 1, 2001 to approve, reject or modify GWA's Fiscal Year 2002 budget. In the event that I Liheslaturan Guåhan fails to act upon GWA's Fiscal Year 2002 budget by September 1, 2001, said budget proposed by GWA shall become their budget for Fiscal Year 2002, subject to further subsequent modification by I Liheslaturan Guåhan and to the budgetary limitations set forth in this Section.

Effective upon enactment of this Act, the Authority shall not enter into any contract with a term greater than two (2) years, except as otherwise specifically permitted by law. Any such contract shall be void ab initio.

§ 14114. Employment.

(a) Pursuant to the provisions of 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; provided, however, that all contracts for the hiring of off-island employees shall conform to the provisions of 4 GCA §§6501 and 6501.1.

(b) Classified employees of the Authority shall be members of the government of Guam Retirement Fund. 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 the government share of the cost of the retirement benefits applicable to the Authority's employees and their beneficiaries.

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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, Treasurer, Comptroller nor Attorney 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.

§ 14115. Evidence of Transfers Filed at the Department of Land Management.

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 the Governor of Guam in good form containing specific property descriptions, lot numbers and map numbers, at the Department of Land Management within 360 days of the effective date of this Act. 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.

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.

§ 14116. Statutory Approval Required for Sale.

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 Waterworks Authority. Nothing herein shall be construed as such approval. In addition, notwithstanding any other provision contained herein, the provisions of 1 GCA § 1800 shall be applicable to the Guam Waterworks Authority.

§ 14117. Denial of Water Services.

Notwithstanding any other provision of law, the Guam Waterworks Authority shall not deny any person a water meter or water services

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whenever an applicant for a water meter or water services has paid all necessary basic connection fees or offered to pay such basic fees, when there is a functional water line within one hundred feet (100') of the applicant's property boundary, or when an existing waterline is within one hundred feet (100') of an applicant's boundary that can be made operational by Guam Waterworks Authority connecting it to any main water line.

SOURCE: Added by P.L. 27-155:1 as section 14410. However, section 14410 is in Article 4, Outsourcing. To fit harmoniously within the code, the Compiler renumbered the newly added section to section 14117, which is more appropriately within Article 1, General Provisions.

ARTICLE 2
GUAM WATERWORKS AUTHORITY REVENUE BONDS AND OTHER
INDEBTEDNESS

SOURCE: Added by P.L. 24-161:1 (Apr. 9, 1998). Repealed and reenacted by P.L. 28-071:2 (Nov 3, 2005).

- § 14201. Short Title.
- § 14202. Definitions.
- § 14203. Powers of Board; Incurring Indebtedness.
- § 14204. Amounts of Rates and Charges; Refunds.
- § 14205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.
- § 14206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.
- § 14207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.
- § 14208. Indenture Providing Terms and Conditions of Bonds.
- § 14209. Issues of Bonds.
- § 14210. Covenants and Agreements That May be Contained in Indenture.
- § 14211. Trustee for Authority and Holders of Bonds.
- § 14212. Duties and Powers of Trustee.
- § 14213. Issuance and Interchange of Coupon and Registered Bonds.
- § 14214. Redemption of Bonds Prior to Maturity.
- § 14215. Places of Payment.

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- § 14216. Execution and Authentication of Bonds.
- § 14217. Dates and Maturities of Bonds.
- § 14218. Sale of Bonds.
- § 14219. Payment of Bonds from Sources Other Than Revenues.
- § 14220. Payments Which May be Made Out of Proceeds of Sale of Bonds.
- § 14221. Bonds May be Secured by Revenues of System.
- § 14222. Temporary Bonds.
- § 14223. Replacement of Bonds or Coupons.
- § 14224. Tax Exemptions.
- § 14225. Bonds as Legal Investments and as Security for Performance of any Act.
- § 14226. Refunding Bonds.
- § 14227. Use of Other Funds for System.
- § 14228. Insurance.
- § 14229. Pledge by the Government of Guam.
- § 14230. Guam Waterworks Authority Construction Fund.
- § 14231. Guam Waterworks Authority Revenue Fund.
- § 14232. Investment of Money in Funds.
- § 14233. Use of Balances of Funds and of Surplus Money in Funds.
- § 14234. Appropriation of Money in Funds.
- § 14235. Short Term Borrowing.
- § 14236. Payment Agreements.
- § 14237. Credit Enhancement.
- § 14238. No Personal Liability.
- § 14239. Waiver of Immunity.
- § 14240. Construction of Article.

§ 14201. Short Title.

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

§ 14202. Definitions.

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

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- (a) “*Authority*” has the meaning given in 12 GCA § 14102.
- (b) “*Board*” has the meaning given in 12 GCA § 14102.
- (c) “*Bonds*” means bonds, notes or other evidences of indebtedness.
- (d) “*Bondholder*” or “*holder of bonds*” or any similar term means any person who shall be:
 - (i) the bearer of any outstanding bond or bond registered to bearer or not registered; or
 - (ii) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer.
- (e) “*Credit provider*” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any credit support arrangements for some or all of the bonds.
- (f) “*Credit provider reimbursement agreement*” means any agreement providing for the Authority to repay, from revenues, amounts advanced by a credit provider as credit support for bonds.
- (g) “*Credit support*” means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a credit provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any bonds.
- (h) “*Guam Waterworks Authority Act*” means Chapter 14 of Title 12 of the Guam Code Annotated.
- (i) “*Indenture*” means an agreement pursuant to which bonds are issued, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument.
- (j) “*Organic Act*” means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (Title 48, § 1421 et seq. of the United States Code).
- (k) “*Payment agreement*” has the meaning given such term in 12 GCA § 14236.
- (l) “*Person*” includes any individual, firm, corporation,

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association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(m) “*Revenue*” means all gross income and other amounts received or receivable by the Authority as revenues of any kind from the ownership or operation of any part of the system, including all rates, fees and charges (including ground water, surface water and treated water charges and all wastewater service charges), received by the Authority for providing water and sewer services, all amounts received by the Authority pursuant to any payment agreement, and all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the system, and all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the system, together with all interest, profits or other income derived from the investment of amounts in the Guam Waterworks Authority Revenue Fund.

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

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

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

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

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

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system;

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

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

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

§ 14203. Powers of Board; Incurring Indebtedness.

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

(a) pursuant to 12 GCA § 14235; or

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

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

§ 14204. Amounts of Rates and Charges; Refunds.

Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness issued by the Authority, all rates

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

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

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

- (a) Proceedings taken by the Authority for the acquisition, construction or improvement of the system or any part thereof;
- (b) Any contracts made by the Authority in connection with the acquisition, construction or improvement of the system or any part thereof; or
- (c) The failure to complete the system or any part thereof for which bonds are authorized to be issued.

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

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

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

§ 14207. Board to Declare Purpose and Maximum Amount of Bonds

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to be Issued.

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

§ 14208. Indenture Providing Terms and Conditions of Bonds.

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

§ 14209. Issues of Bonds.

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be as authorized by the Board.

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

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

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

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

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

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

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

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

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

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

(f) A provision requiring the Authority to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon revenues or any part thereof, or which might impair the security of the bonds.

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

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respect to such revenues.

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

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

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

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

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

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

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

(l) A provision permitting the Authority to issue additional bonds or one or more additional series of bonds, equally secured with bonds theretofore issued under the indenture, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof or for the purpose of refunding any prior bonds or any other prior obligations of the Authority; and a provision limiting the power of the Authority to issue any additional

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bonds so secured or any other additional bonds for such purpose.

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

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

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

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

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

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

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individual bondholder.

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

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

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

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

§ 14211. Trustee for Authority and Holders of Bonds.

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

(b) The Authority may provide in an indenture:

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

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

§ 14212. Duties and Powers of Trustee.

The Authority shall prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption

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thereof, the registration and discharge from registration thereof and the management of any and all funds provided as security therefore.

§ 14213. Issuance and Interchange of Coupon and Registered Bonds.

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

§ 14214. Redemption of Bonds Prior to Maturity.

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

§ 14215. Places of Payment.

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

§ 14216. Execution and Authentication of Bonds.

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

§ 14217. Dates and Maturities of Bonds.

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

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of issuance.

§ 14218. Sale of Bonds.

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

§ 14219. Payment of Bonds from Sources Other Than Revenues.

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

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

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

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

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

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

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

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

(d) For deposit in any one or more reserve funds or accounts in

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lieu of insurance or in any working capital fund or account or contingency fund or account relating to the system;

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

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

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

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

§ 14221. Bonds May be Secured by Revenues of System.

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

§ 14222. Temporary Bonds.

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

§ 14223. Replacement of Bonds or Coupons.

The Authority may provide for the replacement of lost, destroyed or

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mutilated bonds or coupons.

§ 14224. Tax Exemptions.

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

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

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

§ 14226. Refunding Bonds.

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

§ 14227. Use of Other Funds for System.

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

§ 14228. Insurance.

The Authority may insure against loss of revenues from any cause whatsoever. The Authority may insure against public liability or property damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of

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such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

§ 14229. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Authority has the ability to implement the capital improvements authorized to be paid by this legislation in order to meet the needs of Guam ratepayers for reliable and affordable services. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely repayments of their loans. In order to mirror the previous pledge that allowed Guam Power Authority to successfully re-enter the financial markets as found in 12 GCA § 8113.3, and to model similar language found in laws authorizing debt for the A.B. Won Pat International Airport Authority, Guam, the government of Guam hereby pledges that while any bonds of the Authority issued under this Article remain outstanding and not fully performed or discharged (a) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article, (b) to maintain the rights and remedies of bondholders provided in this Article and any indenture, (c) to protect the exclusive right of the Authority to operate or maintain within Guam any water or wastewater system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive water and/or wastewater system, and (d) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired employees of the Authority (or its lawful predecessors) as may be required by the laws of Guam.

§ 14230. Guam Waterworks Authority Construction Fund.

The proceeds from the sale of all bonds authorized by this Article

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

§ 14231. Guam Waterworks Authority Revenue Fund.

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

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

§ 14232. Investment of Money in Funds.

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

§ 14233. Use of Balances of Funds and of Surplus Money in Funds.

Any balance remaining in any of the funds or accounts created by

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

§ 14234. Appropriation of Money in Funds.

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

§ 14235. Short Term Borrowing.

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

(a) from revenues; or

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

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

§ 14236. Payment Agreements.

In addition to and in amplification of the powers conferred upon the Board by the Guam Waterworks Authority Act, this Article or any other law of Guam or of the United States, the Board has power and is hereby

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

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

§ 14237. Credit Enhancement.

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

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

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

§ 14238. No Personal Liability.

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

§ 14239. Waiver of Immunity.

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

§ 14240. Construction of Article.

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

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**ARTICLE 3
DROUGHT MANAGEMENT AND COMPREHENSIVE
WATER CONSERVATION PLAN**

SOURCE: This Article was added by P.L. 24-161:1 as Chapter 14.

- § 14301. Title.
- § 14302. Findings.
- § 14303. Adoption of Drought Condition Standards and Low Groundwater Level Conditions and Severity Alert Phases.
- § 14304. Governor's Powers.
- § 14305. Implementing Rules and Regulations.
- § 14306. Coordination, Guam Environmental Protection Agency, Private Well Owners, and Military.

§ 14301. Title.

This Chapter shall be known as the '*Guam Drought Management and Comprehensive Water Conservation Plan.*'

§ 14302. Findings.

The findings of the Guam Legislature are that:

(a) Guam has two (2) major seasons: wet and dry; and two (2) secondary seasons, referred to as transitional seasons, that can be either rainy or dry. Some years bring torrential typhoon storms while others bring droughts, thus causing a wide variation in annual rainfall figures. The extent of Guam's weather changes is greatly affected by climatic changes that occur in the vast Pacific Ocean, most notably by a weather condition known as '*El Nino*,' characterized by a rise in ocean water temperatures in the central and eastern equatorial Pacific Ocean.

(b) Worldwide climatologists have recently begun to understand the widespread effects that an *El Nino* event has on global weather patterns. Occurring every three (3) to seven (7) years, *El Nino* begins with an eastward shift of warm Pacific Ocean waters, which disrupts normal atmosphere wind patterns and thus upsets normal patterns of wet and dry weather. Some areas that do not usually get rain are hit hard, while many normally wet areas dry

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up. The Western Pacific is especially susceptible to these dry periods.

(c) The effects of *El Nino* on Guam's wet and dry seasons have been significant. The 1982-1983 event, which cost global damage estimated at Thirteen Billion Dollars (\$13,000,000,000) and claimed nearly two thousand (2,000) lives, was one (1) of Guam's most severe dry period. During this period, the Island's municipal water system was unable to adequately meet Island-wide water demands, particularly for fire fighting. Severe water shortages and outages were experienced in the villages of Merizo and Umatac as springs and surface water sources dried up. While a less severe *El Nino* drought followed in 1986, which lasted through 1987, the Guam Waterworks Authority ('GWA') fell short of meeting normal daily water demands. A prolonged *El Nino* event from 1991 to 1995 again resulted in the Island's water system's inability to meet demands during abnormally dry spells. The Island's current water system is not able to meet current peak demands and will have a difficult time meeting future non-peak demands without development of additional water source alternatives.

(d) Because previous *El Nino* events have been met with short-term crisis, intervention measures, such as water rationing and scheduled water outages, it is recognized that a long-term water resource management plan is non-existent. The lack of such a plan increases the Island's vulnerability to drought or water shortages due to extremely dry conditions. Since the scientific community has now come to understand that *El Ninos* are cyclical in nature and that certain weather changes are predictable, a plan is imperative so that management and allocation of our finite water resources be balanced among the populace whenever disruptions in weather conditions and normal rainfall patterns threaten the availability of our water supply.

(e) While the Territorial Emergency Plan maintained and administered by the Guam Civil Defense includes 'drought' or 'water shortages' in its definition, the scope of the plan in this regard does not define, in specific terms and standard terminology, factors that trigger a drought condition, the severity of the conditions, and actions or measures to employ for each phase of severity.

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(f) Because of the physical size and remoteness of Guam, it is imperative that the utilization of water resources among the military and civilian sectors be fair and equitable, and that measures employed to mitigate the effects of water shortages due to drought must be done so uniformly among the various sections of our Island community. No such plan exists to ensure uniformity and equity in the administration of water crisis mitigation measures.

§ 14303. Adoption of Drought Condition Standards and Low Groundwater Level Conditions and Severity Alert Phases.

(a) Fena Reservoir, owned and operated by the U. S. Navy Public Works Center ('PWC'), is the largest source of potable surface water supply on Guam. Currently, government of Guam's overall water production includes purchases of approximately seventy percent (70%) of Fena Reservoir's total production, and thus negative changes in Fena's water level reduces GWA's overall water supply for civilian users. Therefore, PWC's Water Conservation Levels ('WCL'), established by USCINCPAC REP GUAM/CNMI/FSM/ROP INSTRUCTION 11330.1, including any amendments thereto, are hereby adopted as the Island's drought condition standards and levels of severity, and are to be made an integral part of the Guam Drought Management and Comprehensive Water Conservation Plan.

(b) Concurrently, and in addition to adoption of PWC's Fena-level WCL, standards for low groundwater (water wells) level conditions, plus severity alert phases, shall be developed and adopted as an integral part of the Guam Drought Management and Comprehensive Water Conservation Plan.

§ 14304. Governor's Powers.

The Governor shall, due to the emergency drought conditions existing on Island, immediately develop the Guam Drought Management and Comprehensive Water Conservation Plan to respond to water crises and water shortages. Said plan shall be filed with the Guam Legislature no later than April 15, 1998 and shall be implemented on the filing date. The Guam Legislature may approve, disapprove or modify the plan.

§ 14305. Implementing Rules and Regulations.

GWA shall enact the rules and regulations, which shall include: steps for instituting conservation measures and the interruption of the

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water supply; procedures for the protection of water resources pursuant to GWA's statutory role as operator of Guam's sole municipal water and wastewater systems; mandatory restrictions and procedures for control of water use during water shortages; procedures to alert the community on the severity phases pursuant to § 14303 of this Article; and penalties for violations of the rules and regulations.

§ 14306. Coordination, Guam Environmental Protection Agency, Private Well Owners, and Military.

The Guam EPA, in coordination with GWA, the Department of Commerce, and all private and military well owners and operators, shall collect salinity and chloride on a monthly basis during drought conditions for use in determining low groundwater level conditions as required in § 14303(b) of this Chapter and other such data as may be deemed necessary to monitor and maintain the integrity of Guam's sole source aquifer, the Northern Lens. GEPA's determination that drought condition exist shall be based on the best scientific advice from WERI, National Weather Service, National Oceanographic Atmospheric Administration and other appropriate agencies, that a rise in Pacific Ocean temperatures is indicative of the onset of drought conditions on Guam.

ARTICLE 4
OUTSOURCING

SOURCE: This Article in its entirety was added by P.L. 26-144:1 on 9/17/2002.

- § 14401. Guam Waterworks Authority to Outsource Operations of Water Wells.
- § 14402. GWA to Outsource Operations of Water and Wastewater Pump Stations.
- § 14403. GWA to Outsource Installation, Maintenance and Reading of Water Meters.
- § 14404. Contract Limits.
- § 14405. Conflicts.
- § 14406. System As-built Required and Loss Prevention Workforce Established.
- § 14407. Termination of Contracts for Reasons Unrelated to Performance.

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- § 14408. Transfer Authority and Funding.
§ 14409. Water System Integration Working Group.

§ 14401. Guam Waterworks Authority to Outsource Operations of Water Wells.

Within sixty (60) days, the Guam Waterworks Authority ('GWA') shall issue a Request for Proposal ('RFP') soliciting bids or proposals from qualified parties for the operation and maintenance of all water wells currently operated by GWA, subject to the procurement laws of Guam. The scope of work required through this RFP shall include the daily operation of each water well; any repairs required by each water well, inclusive of all parts and labor; all water quality monitoring requirements as promulgated by the Guam Environmental Protection Agency ('GEPA'); water treatment; and preventative maintenance of all equipment directly associated with each well, including, but not limited to, pumps, generators and water treatment systems.

GWA shall not bear the cost of providing electrical power to any water wells subject to the provisions of this Section. GWA may either package all water wells in a single proposal, or may, upon its judgment, divide the existing water wells into no more than three (3) districts, each including a generally equivalent number of wells, and request proposals for each district.

The RFP shall include performance standards that will at a minimum require full compliance with all standards as promulgated by GEPA and the Environmental Protection Agency ('EPA') of the United States of America, as applicable to Guam, as well as production standards detailing a range of required output of potable water from wells as an aggregate, or by well district as an aggregate. Parties interested in submitting proposals shall have sixty (60) days to prepare and submit a response to GWA. The Public Auditor shall be an observer throughout the outsourcing process specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the outsourcing process specified in this Section.

GWA shall award bids subject to the RFP detailed in this Section within ninety (90) days of the date of issuance of the RFP; provided, that qualified contractors have submitted proposals in compliance with the procurement laws of Guam and the provisions of this Section.

§ 14402. GWA to Outsource Operations of Water and Wastewater Pump Stations.

Within sixty (60) days, GWA shall issue a RFP soliciting bids or proposals from qualified parties for the maintenance of all water and wastewater pump stations currently operated by GWA, subject to the procurement laws of Guam. The scope of work required through this RFP shall include any repairs required by each water or wastewater pump station, inclusive of all parts and labor; all monitoring requirements as promulgated by GEPA or GWA; and preventative maintenance of all equipment directly associated with each water or wastewater pump station, including, but not limited to, pumps and generators.

GWA may either package all water and wastewater pump stations in a single proposal, or may upon its judgment separately issue a RFP for water pump stations and one (1) for wastewater pump stations. The RFP detailed in this Section shall include performance standards that will at a minimum require full compliance with all standards as promulgated by GEPA and EPA of the United States of America, as applicable to Guam, as well as specific performance standards detailing required preventative maintenance.

Parties interested in submitting proposals shall have sixty (60) days to prepare and submit a response to GWA. The Public Auditor shall be an observer throughout the outsourcing process specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the outsourcing process specified in this Section.

GWA shall award bids subject to the RFP detailed in this Section within ninety (90) days of the date of issuance of the RFP; provided, that qualified contractors have submitted proposals in compliance with the procurement laws of Guam and the provisions of this Section.

§ 14403. GWA to Outsource Installation, Maintenance and Reading of Water Meters.

Within sixty (60) days, GWA shall issue a RFP soliciting bids or proposals from qualified parties for the maintenance, installation and reading of all residential and commercial water meters currently under the purview of GWA, subject to the procurement laws of Guam.

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The scope of work required through this RFP shall include surveying of all existing water meters, as well as illegal or un-metered hookups; the repair or replacement of all non-functioning meters; the installation of all new water meters, inclusive of meters at un-metered hook-ups; all monitoring requirements as promulgated by GWA; all meter reading and the transmission of such data to GWA for billing purposes and preventative maintenance of all equipment directly associated with each meter. The RFP detailed in this Section shall include performance standards that will at a minimum require full compliance with all standards as promulgated by GWA.

Parties interested in submitting proposals shall have sixty (60) days to prepare and submit a response to GWA. The Public Auditor shall be an observer throughout the outsourcing process specified in this Section, and shall receive copies of all documents involved and shall be invited to any meetings regarding the outsourcing process specified in this Section.

GWA shall award bids subject to the RFP detailed in this Section within ninety (90) days of the date of issuance of the RFP; provided, that qualified contractors have submitted proposals in compliance with the procurement laws of Guam and the provisions of this Section.

§ 14404. Contract Limits.

No contract awarded subject to the provisions of this Act may be awarded for a period of greater than five (5) years, except that a contract for the operation and maintenance of water wells may not be awarded for a period of greater than ten (10) years. All contracts awarded subject to the provisions of this Act must contain performance reviews at least annually, and provisions for contract termination or penalty based upon such review.

§ 14405. Conflicts.

No contract awarded subject to the provisions of this Act shall be awarded to any party who has a blood or marital relationship to the third degree of consanguinity with the General Manager of GWA, a board member of GWA, I Maga'lahaen Guåhan or a member of I Liheslaturan Guåhan.

§ 14406. System As-built Required and Loss Prevention Workforce Established.

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It is noted that no easily accessible as-built of the public water system of Guam exists, and that further, the public water system loses very significant amounts of water daily from undetermined or un-repaired leaks. GWA may reassign any qualified persons displaced as a result of the provisions of this Chapter to a designated loss prevention workforce whose purpose shall be twofold.

One, they shall be responsible for developing an as-built of the entirety of the public water distribution system, inclusive of all major and significant transmission and distribution lines. Two, they shall be responsible for identifying significant leakage in said system and for either repairing such leaks, or identifying them for repair through contractors, as determined by GWA.

§ 14407. Termination of Contracts for Reasons Unrelated to Performance.

Should at some point in the future, a determination be made by I Liheslaturan Guåhan, in law, that either a merger between the military and civilian water systems, as approved by the United States, be advisable, or that a broad-scale public-private partnership for the production of water or the transmission and treatment of wastewater be advisable, subject to legislative approval, and if any agreements entered into pursuant to this Chapter are viewed as impeding, such provisions may be included in each contract for the purchase of such contracts, except that no contract shall be purchased in any circumstance where a contractor's performance has been deemed to be unacceptable in accordance with the provisions of this Chapter.

§ 14408. Transfer Authority and Funding.

GWA is authorized to transfer funds from category to category within its own budget only for the purpose of funding the specific outsourcings detailed in this Chapter. Furthermore, I Maga'lāhen Guåhan is authorized to transfer funds from Special Funds of the Executive Branch of the government of Guam, including the Typhoons Chata'an and Halong Special Reimbursement Fund, to GWA to fulfill the purposes of this Chapter; provided, such transfers by I Maga'lāhen Guåhan shall not exceed Three Million Dollars (\$3,000,000) without further authorization or appropriation by statute.

§ 14409. Water System Integration Working Group.

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It is duly noted that the integration of the military and civilian water systems on Guam is an achievable and worthy goal, especially inasmuch as this integration may be productive in securing Federal funding for water and wastewater system improvements, or Federal loan guarantees to accomplish the same.

A Water System Integration Working Group is hereby established, to consist of I Maga'lahañ Guåhan; Guam's Delegate to Washington, D.C.; the Speaker of I Liheslaturan Guåhan; the majority leader of I Liheslaturan Guåhan; the minority leader of I Liheslaturan Guåhan; the legislative member with oversight over the water and wastewater systems; the President of the Mayors' Council of Guam; the Chairperson of the Guam Chamber of Commerce and the Chairperson of the Consolidated Utilities Commission, when seated. This workgroup is tasked with seeking an integration of the civilian and military water systems on Guam, as well as direct Federal funding or Federal loan guarantees, or other assistance, needed to improve Guam's water and wastewater infrastructure and systems.
