



OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

TO: Governor's Counsel
Legislative Counsel

FROM: Deputy Attorney General, Civil Division

DATE: April 1, 2009

SUBJECT: Bill No. 1 (2-S)

The Office of the Attorney General received Bill No. 1 (2-S) today and has conducted a preliminary review of the proposed legislation. The following comments are based upon our initial review and discussions with the Guam Economic Development Authority ("GEDA"), the Department of Administration, the Bureau of Budget and Management Research, and GEDA financial advisor Bank of America, and including information provided by GEDA's bond counsel, Stanley Dirks.

The District Court's Order dated February 13, 2009 indicated that Section 30 backed revenue bonds could be a viable alternative means of financing the Consent Decree projects; thus, the Court stated that it would suspend the weekly payments required pursuant to the payment schedule adopted by the Court, provided that it is satisfied that, at a minimum:

- 1) The Legislature authorizes, without the need for any further legislative authorization or action, the maximum amount of bonds needed for full implementation of the Consent Decree projects as certified to the court by the Attorney General and Government of Guam's bond counsel; and the Governor and the Guam Economic Development Authority in good faith and to the court's satisfaction, move to sell the first series of these bonds as soon as possible and such other bonds at a later date as are required to keep the Consent Decree projects funded and on schedule; or
- 2) The Government of Guam finds any other viable financing alternative that does not delay or impede the timetable as previously court ordered.

The Court has required revenue bonds that will fully implement the Consent Decree projects -- estimated to be approximately \$159 million. Only \$20 million has thus far been obtained for the funding of the Consent Decree projects out of the \$159 million. *See* Court's Order dated February 13, 2009.

Bill No. 1 (2-S) authorizes the Governor to incur indebtedness not to exceed \$202,425,000 for the payment, or reimbursement to the government for its prior payment, of the costs of the closure of the Ordot Dump and the construction of the new landfill, by the issuance of bonds to raise funds for the Consent Decree projects. The Bill authorizes the issuance of Solid Waste Management System revenue bonds which can be secured by any one or more of the following: (1) a pledge of system revenues, (2) a pledge of Section 30 revenue, and (3) the full faith and credit of the Government of Guam.

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We note that Public Law No. 30-1 provided that these bonds "shall only be issued if the Income Tax Refund COLA Deficit Financing Bonds authorized in 5 G.C.A. §1512.1 are also issued at the same time or earlier." Bill No. 1 (2-S) authorizes both the deficit financing bonds, which can be sold with a yield up to 10% *per annum*, and the Solid Waste Management System revenue bonds, to be issued and secured by the full faith and credit of the Government of Guam and/or a pledge of Section 30 revenues.

In our Memorandum dated March 27, 2009, we indicated that per GEDA, the amount available for future debt obligation was \$346,710,659; and that previous legislation had authorized the issuance of the Government of Guam deficit financing bonds in an anticipated amount of \$280,000,000, and bonds for the construction of the John F. Kennedy High School in an anticipated amount of \$60,000,000. As a result, we had concluded that the Government of Guam's ability to incur debt was limited to the amount of \$6,710,659 -- the remaining amount of debt the Government of Guam may incur under the debt limitation contained in Section 11 of the Organic Act. However, it is our understanding that Bill No. 1 (2-S) increases the Organic Act debt limit to an amount that should be sufficient to accommodate the issuance of both the landfill bonds and the deficit financing bonds.

Bill No. 1 (2-S) appears to meet the requirements of the Court's Order dated February 13, 2009, in that it authorizes, without the need for any further legislative authorization or action, the maximum amount of bonds needed for full implementation of the Consent Decree projects. In addition, the Bill allows the issuance of revenue bonds which may be secured by a pledge of Section 30 revenues as a means of financing the Consent Decree projects.

Sincerely,



J. Patrick Mason