

# Public Law 26-004

## Bill No. 40 (COR)

As substituted by the Committee on Ways and Means, and amended on the Floor.

### Introduced by:

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**AN ACT TO ADD CHAPTER 80 TO TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GEDA TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS, TO SELL AND ASSIGN TO GEDA THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SAID BONDS.**

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

**Section 1. Tobacco Settlement Revenue Bond Act.** Chapter 80 is hereby *added* to Division 2 of Title 12 of the Guam Code Annotated to read as follows:

#### **“CHAPTER 80.**

#### **GEDA TOBACCO SETTLEMENT REVENUE BOND ACT.**

Section 80101. **Short Title.**

Section 80102. **Legislative Statement and Intent.**

Section 80103. **Definitions.**

Section 80104. **Tobacco Receipts; Assignment to Authority.**

Section 80105. **Powers of the Board.**

Section 80106. **Authorization of Bonds.**

Section 80107. **Accounts to be Maintained Separately.**

Section 80108. **Modification of Master Settlement Agreement.**

Section 80109. **Right of Authority to Fulfill Agreements with Bondholders Protected.**

Section 80110. **Protection of Tobacco Receipts.**

Section 80111. **Master Settlement Agreement and Model Statute Valid and Enforceable.**

Section 80112. **Performance of Master Settlement Agreement.**

Section 80113. **Chapter to be *Liberally Construed*.**

Section 80114. **Severability.**

Section 80101. **Short Title.** This Chapter may be cited as the '*Guam Economic Development Authority Tobacco Settlement Revenue Bond Act*.'

Section 80102. **Legislative Statement and Intent.** *I Liheslaturan Guåhan* hereby incorporates by reference and reiterates the findings made in Public Law Number 25-187 concerning the sale and securitization of the tobacco settlement payments allocable to Guam under the Master Settlement Agreement between the major United States tobacco manufacturers and forty-six (46) states, Guam, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands. It is the intent of *I Liheslaturan Guåhan* to approve the terms of the sale and securitization as required by §221202 of Article 12 of Chapter 22 of Title 5 of the Guam Code Annotated.

Section 80103. **Definitions.** As used in this Chapter, the following words and phrases are defined to mean:

- (a) '*Authority*' means the Guam Economic Development Authority, as established by Chapter 50 of this Division.
- (b) '*Board*' means the Board of Directors of the Authority.
- (c) '*Bonds*' means bonds, notes or other evidences of indebtedness of the Authority payable *solely* from and secured *solely* by the tobacco receipts, issued pursuant to this Chapter.
- (d) '*Escrow*' means the escrow as that term is defined in the Master Settlement Agreement.
- (e) '*Escrow agent*' means the escrow agent as that term is defined in the Master Settlement Agreement.
- (f) '*Government*' means the government of Guam.
- (g) '*Independent auditor*' means the independent auditor as that term is defined in the Master Settlement Agreement.
- (h) '*Master Settlement Agreement*' means the settlement agreement and related documents entered into on November 23, 1998, by Guam, the four (4) principal United States tobacco product manufacturers, and various other governmental parties, as amended and supplemented.
- (i) '*Participating manufacturers*' means the participating manufacturers as that term is defined in the Master Settlement Agreement.
- (j) '*Tobacco receipts*' means all of the payments to be made by the escrow agent and derived from payments made by the participating manufacturers and allocated to the government under the Master Settlement Agreement, other than pursuant to Article XVII of that agreement.
- (k) '*Tobacco trust funds*' means the funds specified in §221203 of Title 5 of the Guam Code Annotated.

Section 80104. **Tobacco Receipts; Assignment to Authority.**

- (a) The tobacco receipts due to the government after April 10, 2001 under the Master Settlement Agreement, and the government's right to be paid tobacco receipts after April 10, 2001, under the Master Settlement Agreement, are hereby irrevocably and absolutely assigned to the Authority. On and after the date of enactment of this Chapter, the government shall have no right, title, or interest in or to the tobacco receipts and other rights described in the first sentence of this Section, and such tobacco receipts and other rights are property of the Authority and *not* of the government. The government hereby directs the independent auditor and the escrow agent to make all these payments to the Authority, or its designee, in accordance with instructions that may be given by the Authority from time to time.
- The assignment and direction made in this Subsection are irrevocable and are a part of the contractual obligation owed to the bondholders. The government, through the Director of the Department of Administration, shall within thirty (30) days of the enactment of this Chapter, notify the independent auditor and the escrow agent that the tobacco receipts have been assigned to the Authority and shall instruct the independent auditor and the escrow agent that all tobacco receipts due after April 10, 2001 are to be paid directly to the Authority, or its designee.
- (b) In consideration of the assignment by the government to the Authority pursuant to Subsection (a), the Authority shall:
- (1) cause all proceeds of bonds issued under this Chapter (other than bonds issued to refund bonds previously issued under this Chapter) to be delivered promptly to the respective tobacco trust funds, *except* as needed to pay costs of issuance of the bonds or to establish any required reserve fund for the bonds; *and*
  - (2) cause all amounts released from the lien of the indenture for bonds issued under this Chapter to be delivered promptly to the respective tobacco trust funds.

**Section 80105. Powers of the Board.**

- (a) In addition to the powers contained elsewhere in this Division, the board has all power necessary, useful or appropriate to administer the functions of the Authority under this Chapter and to effectuate the purposes of this Chapter, including, but *not* limited to, the power to:
- (1) have perpetual succession, *subject to* termination by amendment of this Division *only after* the date on which no bonds issued under this Chapter are outstanding, plus one (1) year and one (1) day thereafter;
  - (2) sue and be sued in its own name;
  - (3) adopt, promulgate, amend and repeal bylaws, *not* inconsistent with provisions in this Chapter;
  - (4) enter into contracts, arrangements, agreements and other instruments necessary or convenient to the exercise of the powers granted in this Chapter;
  - (5) enter into agreements relating to the tobacco trust funds for the purpose of managing and controlling the transfer of funds between the Authority and the tobacco trust funds, and governing the investment and the monitoring and record keeping of these funds, for purposes of maintaining the exemption from Federal income tax of interest on bonds and for other purposes;
  - (6) enter into, amend and terminate agreements in the nature of interest rate swaps, forward security supply contracts, agreements for the management of interest rate risks, agreements for the management of cash flow, and other

- agreements of a similar nature, with respect to bonds issued pursuant to this Chapter;
- (7) arrange for insurance, guarantees, letters of credit, and other forms of collateral or security, or credit support from any public or private entity for the payment of any bonds, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security, or credit support; provided, however, that any reimbursement obligation of the Authority under such arrangement shall be payable *solely* from the same sources as debt service on the bonds is payable;
  - (8) enter into contracts and expend funds to obtain accounting, management, legal, financial consulting, trusteeship and other professional services necessary or convenient to the operations of the Authority;
  - (9) direct the escrow agent with respect to the disbursement to the Authority, or its designee, of the tobacco receipts, and receive and accept the tobacco receipts;
  - (10) invest funds held by the Authority under this Chapter in any investment permitted by the indenture under which the bonds are issued;
  - (11) direct the Attorney General of the government to enforce in the name of the government or the Authority, and *if* permissible, to enforce directly through the Authority's own attorneys in the name of the government or the Authority, the Master Settlement Agreement, but the board may *not* give any approval of any amendment to the Master Settlement Agreement without the approval of *I Liheslaturan Guåhan*; and
  - (12) do all other things necessary or convenient to exercise powers granted or reasonably implied by this Chapter.
- (b) The Authority is an independent public instrumentality of the government, and the exercise of its powers pursuant to this Chapter is an essential governmental function. Notwithstanding any other provision of law, the Authority is *not* authorized, and no public officer, organization, entity or other person shall authorize the Authority, to become a debtor in a case under the United States Bankruptcy Code (Title 11 of the United States Code), to make an assignment for the benefit of creditors, or to become the subject of any similar case or proceeding. The provisions of this Subsection (b) are for the benefit of the holders of any bonds and are a part of the contractual obligation owed to such bondholders, and the government shall *not* modify or delete the provisions of this Subsection (b) before the date, which is one (1) year and one (1) day after the Authority no longer has any bonds outstanding.

**Section 80106. Authorization of Bonds.**

- (a) The Authority may issue bonds, from time to time, for the purposes and in the manner provided in this Chapter. The Authority may issue bonds to refund all or any portion of bonds previously issued under this Chapter.
- (b) All bonds must be payable *solely* from and secured *solely* by the tobacco receipts, or the portion of the tobacco receipts the board determines to pledge for payment of the bonds.
- (c) Neither the members of the board, nor any person executing the bonds or any notes, nor any employee of the Authority or the government shall be liable individually or personally on the bonds or notes, or be subject to any personal liability or accountability by reason of the issuance of the bonds; provided, however, that nothing in this Chapter shall relieve any such person from the performance of any ministerial duty required by law.

- (d) The board has no power to pledge the faith, credit or taxing power of the government in connection with the issuance of the bonds, and each bond must recite on its face that it is a limited obligation of the Authority issued pursuant to and in accordance with this Chapter; that it is payable *solely* from and secured *solely* by the tobacco receipts; that it is *not* an obligation of the government; and that it is *not* backed by the full faith, credit or taxing power of the government. Failure to include this language on the face of any bond does *not* cause the bond to become an obligation of the government, or a pledge of the full faith, credit or taxing power of the government.
- (e) Any pledge made by the Authority of the tobacco receipts is valid and binding from the time when the pledge is made, and the tobacco receipts pledged and then or thereafter received by the Authority are immediately *subject to* the lien of the pledge, and the pledge shall constitute a lien and security interest, which shall immediately attach to the tobacco receipts, without any physical delivery thereof or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of such pledge. Neither the resolution of the Authority or any indenture, trust agreement or other instrument by which a pledge is created need be recorded or filed to perfect the pledge.
- (f) The Authority may sell bonds issued under this Chapter either in a negotiated sale, or through a competitive bidding process in accordance under procedures established by the board. The determination of whether to sell bonds through negotiation or through competitive bidding shall be made by the board.
- (g) The Authority may *not* issue any bonds, *unless* the board has first adopted its resolution authorizing the issuance, finding that the issuance and the proposed use of the bond proceeds is in accordance with this Chapter, and authorizing the execution and delivery of any indenture providing for the pledge and other terms of the bonds.
- (h) The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other tenets, covenants or conditions *not* inconsistent with this Chapter, shall be as specified in the indenture approved by the board. Regardless of their form or character, bonds issued under this Chapter shall be negotiable instruments for all purposes, *subject only* to the provisions of such bonds for registration. Such indenture may also appoint one (1) or more trustees or other fiduciaries authorized to receive and hold in trust the tobacco receipts, the proceeds of the bonds and other moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. Covenants of the Authority in the indenture may include, without limitation, the establishment and maintenance of reserve funds for the payment of debt service on bonds *if* the tobacco receipts are inadequate in any year, restrictions on the later issuance of additional bonds or making the later issuance *subject to* certain conditions relating to available debt service coverage or otherwise, conditions on the timing of the release of all or a portion of the tobacco receipts from the lien of the indenture, the enforcement of the Master Settlement Agreement, or any other matter that the board considers appropriate, *subject to* Subsections (d), (i) and (j) of this Section.
- (i) The Authority may *not* enter into any covenant that purports to create any right on the part of the board, the Authority, any bondholder, or any trustee to recover amounts consisting of the tobacco receipts once those amounts have been released from the lien of the indenture. Any covenant in violation of this Subsection is void and of no effect.

- (j) The Authority may establish such limitations on the investment of the proceeds of the bonds and other moneys relating to the bonds as may be necessary or desirable to establish and protect the exclusion of interest on the bonds from gross income for Federal income tax purposes.

**Section 80107. Accounts to be Maintained Separately.**

All funds and accounts of the Authority established pursuant to this Chapter shall be held and maintained separately from all other funds, properties, assets and accounts of the Authority, the government and its other agencies.

**Section 80108. Modification of Master Settlement Agreement.**

During the period of time that any bonds issued under this Chapter are outstanding, the government may *not* agree to the amendment of the Master Settlement Agreement without the approval of the Authority; and this restriction on amendment of the Master Settlement Agreement is a part of the covenant with the bondholders.

**Section 80109. Right of Authority to Fulfill Agreements with Bondholders Protected.** The government pledges and agrees with the Authority and the holders of the bonds, that the government shall *not* limit or alter the rights of the Authority to fulfill the terms of its agreements with such holders, and shall *not* in any way impair the rights and remedies of such holders or the security for such bonds until the bonds, together with the interest on them, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.

**Section 80110. Protection of Tobacco Receipts.** No person acting under any provision of law or principle of equity shall be permitted in any way to impede, or in any manner interfere with:

- (a) the full and timely payment of principal, interest and premiums on or purchase price of bonds issued under this Chapter; *or*
- (b) the pledge described in §80106(e), and the full and timely application of the pledged property as provided in the indenture for bonds issued under this Chapter. None of the property described in the first sentence of §80104(a) shall be subject to garnishment, execution, attachment or other process, writ or remedy in connection with the assertion or enforcement of any debt, claim, settlement or judgment against the government or the Authority, *except* as provided in the indenture for bonds issued under this Chapter.

**Section 80111. Master Settlement Agreement and Model Statute Valid and Enforceable.**

Notwithstanding any provision of general or special laws to the contrary, the Master Settlement Agreement and the model statute referred to in the Master Settlement Agreement, as enacted by the government, are each valid and enforceable in accordance with their respective terms.

**Section 80112. Performance of Master Settlement Agreement.**

Article XII of the Master Settlement Agreement imposes continuing and material obligations on the government, and a failure by the government to continue performing those obligations shall constitute a material breach excusing the performance of the other parties to the Master Settlement Agreement.

Section 80113. **Chapter to be *Liberally* Construed.** This Chapter shall be *liberally* construed to effectuate its intent and purposes, without implied limitations. All rights and powers granted to the Authority in this Chapter shall be cumulative with those derived from other sources, and shall *not, except* as expressly stated in this Chapter, be construed in limitation thereof. Insofar as the provisions of this Chapter are inconsistent with the provisions of any other statute, the provisions of this Chapter are controlling. *If* any clause, sentence, paragraph, section or part of this Chapter is determined by any court of competent jurisdiction to be invalid, such determination shall *not* affect, impair or invalidate the remainder of this Chapter, but is confined in its operation to the clause, sentence, paragraph, section or part of the Chapter directly involved in the controversy in which such determination shall have been rendered.

Section 80114. **Severability.** *If* any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.”

**Section 2. Local Sales of Bonds.** The Authority shall undertake its best efforts to cause a portion of any bonds issued pursuant to Chapter 80 of Division 2 of Title 12 of the Guam Code Annotated, to be offered for sale to residents of Guam, as well as to residents of other jurisdictions, *if* and to the extent that such offer, and any sales resulting from such offer, do *not* increase the costs to the Authority of issuing and repaying such bonds.

**Section 3. Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to §50103(k) of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the Guam Economic Development Authority of bonds in a principal amount *not to exceed* Forty Million Dollars (\$40,000,000); provided, that the conditions to the issuance of such bonds shall have been met, such bonds have a final maturity *not later than* the Year 2043, bear interest at such rate and are sold for such price or prices as shall result in a yield to the bondholders *not* exceeding eight percent (8%) per annum, and are issued and sold pursuant to an indenture in substantially the form presented to the session of *I Liheslaturan Guåhan*, in which this Act was passed.

**Section 4. Ratification of Prior Acts.** *I Liheslaturan Guåhan* hereby approves, confirms and ratifies all actions heretofore taken by or on behalf of the government in connection with the Master Settlement Agreement, including, but *not* limited to, the execution and delivery of the Master Settlement Agreement.