


I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) REGULAR SESSION

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Bill No. 524-31 (cor)

Introduced by:

J. T. Won Pat, Ed.D. 

AN ACT TO ADD CHAPTER 51A TO TITLE 12, GUAM
CODE ANNOTATED REGARDING THE ISSUANCE OF
BONDS AND OTHER OBLIGATIONS OF THE
GOVERNMENT OF GUAM FOR THE SOLE PURPOSE OF
REFUNDING PRIOR BONDS AND OTHER
OBLIGATIONS TO ACHIEVE DEBT SERVICE SAVINGS

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Intent and Findings. *I Liheslaturan Guahan finds* that on
3 September 13, 2012, the Board of Governors of the Federal Reserve System released a
4 statement stating that:

5 "Consistent with its statutory mandate, the Committee seeks to foster maximum
6 employment and price stability. The Committee is concerned that, without
7 further policy accommodation, economic growth might not be strong enough to
8 generate sustained improvement in labor market conditions. Furthermore,
9 strains in global financial markets continue to pose significant downside risks to
10 the economic outlook.

11 The statement continued:

12 "To support continued progress toward maximum employment and price
13 stability, the Committee expects that a highly accommodative stance of monetary

1 policy will remain appropriate for a considerable time after the economic
2 recovery strengthens. In particular, the Committee also decided today to keep
3 the target range for the federal funds rate at 0 to 1/4 percent and currently
4 anticipates that exceptionally low levels for the federal funds rate are likely to be
5 warranted at least through mid-2015.”

6 *I Liheslaturan Guahan* further finds that, such a commitment by the Federal Reserve
7 Board may positively affect government of Guam operations by allowing the
8 government to refinance or restructure its debt.

9 It is therefore the intent of *I Liheslaturan Guahan* to authorize the Guam
10 Economic Development Authority (GEDA), within certain limitations, to arrange for
11 the refinancing and/or restructuring of the government of Guam General Obligation
12 Bonds, Series 1993 A.

13 **Section 2. Authorization to Refinance and Restructure Existing Obligations.**

14 Chapter 51A is hereby added to Title 12 of the Guam Code Annotated to read as
15 follows:

16 **"CHAPTER 51A.**

17 **2012 Authorization to Refund Restructure Obligations to Achieve**
18 **Savings.**

19 **Section 51A101. Definitions.**

20 **Section 51A102. Authorization and Approval of Issuance, Terms and**
21 **Conditions of A Specific Bond the Sole Purpose of Achieving Debt**
22 **Service Savings.**

23 **Section 51A103. Permitted Investments.**

24 **Section 51A104. Financial Contracts to Achieve Savings.**

25 **Section 51A105. Local Sale of Bonds.**

26

1 **Section 51101. Definitions.** The definitions set forth herein shall govern
2 the construction and interpretation of this Chapter:

3 (a) 'Prior bond' means for purposes of this Chapter the following
4 obligation which is to be redeemed or otherwise retired with the proceeds
5 of the refunding bond and investment earnings thereon:

6 (1) A. GENERAL OBLIGATION BONDS, SERIES 1993 A (For
7 education capital projects; Real Property Taxes pledged; due Fiscal
8 Year 2018 as final year; P.L. 29-19 and P.L. 29-21)

9 (b) 'Refunding bond' means a bond authorized or approved pursuant
10 to this Chapter for the purpose of providing moneys to redeem or otherwise
11 retire a prior bond, funding any necessary bond reserves or paying expenses
12 incurred in connection with the issuance of such refunding bond.

13 (c) 'Yield' shall have the same meaning as when used in Section 148 of the
14 Internal Revenue Code of 1986, as amended. That is, 'yield' means the annual
15 discount rate which, when used to discount all payments of debt service on an
16 issue of bonds to the date of issuance of the bonds, using a semiannual
17 compounding interval, results in the aggregate present value of such payments
18 being equal to an amount equal to the re-offering price to the public of such
19 bond less fees to be paid for credit enhancement of such bonds from proceeds
20 thereof.

21 (d) 'Debt service' means the scheduled principal of and interest on
22 bonds plus fees to be paid (other than from bond proceeds) for credit
23 enhancement of such bonds and the net amounts to be paid or received
24 under any financial contract entered into under Section 51A105 of this Chapter.
25 For purposes of this definition, any prior bond bearing interest at a variable rate
26 shall be assumed to bear interest at the then-current interest rate on such bond.

1 (e) 'Debt service savings' means the present value of debt service on the
2 refunding bond is less than the present value of debt service on the prior bond,
3 taking into account any moneys transferred from the refunded bond to the
4 refunding bond and taking into account any moneys contributed to either or
5 both bond issues. Present value shall be calculated for this purpose using the
6 yield on the refunding bonds as the discount rate.

7 (f) 'Bond' means any bond, note or other evidence of indebtedness.

8 (g) 'GEDA' means the Guam Economic Development Authority.

9 **Section 51A102. Authorization and Approval of Issuance, Terms and**
10 **Conditions of A Specific Bond of the Government for the Sole Purpose of**
11 **Achieving Debt Service Savings.** *I Maga'lahaen Guahan* is authorized to issue on
12 behalf of the government of Guam a bond of the government consisting of a
13 refunding bond, subject to the following requirements, limitations, terms and
14 conditions:

15 (a) The issuance of the refunding bond shall not cause a violation of the
16 debt limitation provisions of 48 USC 1423a (511 of the Organic Act of Guam).

17 (b) All obligations of the government to pay debt service on, and the
18 redemption price of, the prior bond shall be discharged concurrently with the
19 issuance of the refunding bond. Thereafter, the prior bond shall be payable solely
20 from and secured solely by an escrow established for such purpose.

21 (c) The debt service on the refunding bonds shall represent a present
22 value savings over the prior bond.

23 (d) The final principal payment of the refunding bond shall not mature
24 later than year 2023 and the annual debt service shall be approximately equal in
25 each fiscal year. The present value of the aggregate future principal and interest
26 requirements on the refunding bonds shall be less than the present value of the

1 aggregate remaining principal and interest requirements on the prior bond
2 calculated as of the date of closing of the refunding bond.() The refunding bond
3 shall be payable from and secured by the same source or sources of revenues as
4 the prior bond refunded all or any portion of by the issue and the amounts to be
5 received under any financial contract entered into under Section 51A105 of this
6 Chapter and shall not be payable from or secured by any other source or sources
7 of revenues except as may be authorized by statute. Any pledge or lien on
8 revenues or other moneys authorized to be granted with respect to the prior
9 bond refunded by the issue is hereby authorized to be granted with respect to the
10 refunding bond. If the prior bond being refunded is a general obligation of the
11 government, the refunding bond shall be general obligations of the government.

12 (i) The proceeds of the refunding bond may be used to call for redemption
13 or defease the prior bond and to pay costs of issuance related to the refunding
14 bonds.

15 (f) The terms and conditions of the refunding bond shall be as
16 determined by I *Maga'lahaen Guahan* by the execution of a certificate or indenture
17 authorizing the issuance of the bond. The certificate or indenture shall contain
18 terms and conditions that are consistent with this Chapter, and shall include
19 substantially the same additional bond tests, rate covenants and other covenants
20 as were applicable with respect to the prior bonds.

21 (h) A refunding bond authorized by this Chapter shall constitute valid
22 and binding obligations of the government of Guam. All officers charged by law
23 with any duty in the collection of any revenues from which debt service on the
24 issue will be payable shall do every lawful thing necessary to collect the
25 amount necessary for such purpose. The validity such bond shall not be affected

1 by the validity or regularity of any proceedings for the implementation of the
2 capital improvement projects funded by the prior bond.

3 (i) Any appropriation of revenues or other moneys made by the statute
4 authorizing the issuance of the prior bond is hereby continued as an
5 appropriation with respect to the refunding bond

6 (j) Notwithstanding any substantive or procedural provision of Chapter
7 6, Title 5, Guam Code Annotated, the government of Guam waives immunity
8 from any suit or action in contract on the bond authorized by this Chapter, but
9 does not waive sovereign immunity as to the personal liability of elected officials
10 and employees of the government of Guam.

11 (k) The technical form and language of the refunding bond, including
12 provisions for execution, exchange, transfer, registration, paying agency, lost
13 or mutilated bonds, negotiability, cancellation and other terms, covenants or
14 conditions not inconsistent with this Chapter and including covenants relating
15 to the collection of revenues, shall be as specified in the certificate or indenture
16 executed by *I Maga'lahaen Guahan* authorizing the issuance of the refunding
17 bond. The certificate or indenture may appoint one or more trustees or other
18 fiduciaries authorized to receive and hold in trust the proceeds of the bond and
19 moneys relating thereto, to protect the rights of bondholders and to perform
20 such other duties as may be specified in the certificate or indenture. Trustees on
21 the prior bond may remain as trustees on the refunding bond without going
22 through a new procurement process. *I Maga'lahaen Guahan* is also authorized to
23 execute, on behalf of the government of Guam, any appropriate agreements,
24 certificates or other instruments relating to the bonds and the sale of the bond.

25 (l) *I Maga'lahaen Guahan* is authorized to enter into such contracts or
26 agreements with such banks, insurance companies or other financial institutions

1 as he determines are necessary or desirable to improve the security and
2 marketability of any issue of a bond authorized by this Chapter. Such contracts
3 or agreements may contain an obligation to reimburse, with interest, any such
4 banks, insurance companies or other financial institutions for advances used to
5 pay principal of or interest on the issue. Any such reimbursement obligation
6 shall be payable solely from the same sources as debt service on the issue is
7 payable, and any such advance, if necessary, shall be treated as creating a
8 reimbursement obligation issued to refund the issue.

9 (m) No employee or elected official of the government of Guam shall be
10 individually or personally liable for the payment of any amounts due on any
11 bond issued under this Chapter, or for any other liability arising in connection
12 with the bond; provided, however, that nothing in this Chapter shall relieve any
13 employee or elected official from the performance of any ministerial duty
14 required by law.

15 (n) Section 50103(k), Title 12, Guam Code Annotated, provides that
16 agencies and instrumentalities of the government of Guam shall issue bonds and
17 other obligations only by means of and through the agency of the GEDA. No
18 issue of bonds authorized by this Chapter shall be sold until the Board of
19 Directors of GEDA has adopted a resolution approving the sale of such issue.

20 (o) Section 50103(k) also provides that GEDA shall not sell any bonds
21 without approval by *I Liheslaturan Guahan* of the terms and conditions of the
22 issuance of the bonds. *I Liheslaturan Guahan* hereby approves the issuance, terms
23 and conditions of the bonds authorized by this Chapter.

24 **Section 51A103. Permitted Investments.** The proceeds of the bond
25 issued by the government or any agency, authority or instrumentality thereof
26 under this Chapter, and any revenues relating to such bonds, may be invested in,

1 but only in, the types of investments permitted by the certificate or indenture
2 pursuant to which such bonds is issued.

3 **Section 51A104. Financial Contracts to Achieve Savings.** Any agency,
4 authority or instrumentality of the government and *I Maga'lahaen Guihan* on
5 behalf of the government of Guam, in connection with, or incidental to, the
6 issuance of a bond under this Chapter, or the carrying of any investment or
7 program of investment under this Chapter, may enter into any contracts which
8 GEDA determines to be necessary or appropriate to place the obligation or
9 investment of the agency, authority or instrumentality of the government, as
10 represented by the bond, investment or program of investment and the
11 contract or contracts, in whole or in part, on the interest rate, currency, cash-
12 flow, or other basis desired by GEDA in the furtherance of the purposes of this
13 Chapter, including, without limitation, contracts commonly known as interest
14 rate swap agreements, currency swap agreements, forward payment conversion
15 agreements, futures, or contracts providing for payments based on levels of,
16 or changes in, interest rates, current exchange rates, or contracts to exchange
17 cash flows or a series of payments, or contracts, including, without limitation,
18 interest rate floors or caps, options, put or call to hedge payment, currency, rate,
19 spread, or similar exposure. These contracts or arrangements may also be
20 entered into by GEDA in connection with, or incidental to, entering into or
21 maintaining any agreement which secures bonds. These contracts and
22 arrangements shall be entered into with the parties, selected by the means, and
23 contain the payment, security, default, remedy, and other terms and conditions,
24 determined by GEDA, after giving due consideration for the creditworthiness
25 of the counterparties, where applicable, including any rating by a nationally
26 recognized rating agency or any other criteria as may be appropriate.

1 **Section 51105. Local Sale of Bonds.** GEDA shall undertake its best
2 efforts to cause a portion of any bond issued pursuant to this Chapter, to be
3 offered for sale in Guam, as well as in other jurisdictions, if and to the extent that
4 such offer and any sales resulting from such offer do not increase the cost to the
5 government of Guam of issuing and repaying such bond.”

6 **Section 3. Appropriation of reduction in Debt Service from the Refinancing**
7 **and Restructuring of the General Obligation Bond Series 1993 A Bond.** To the extent
8 that there is a reduction in annual debt service on the refunding bond as compared to
9 the debt service on the prior bond for the fiscal years ending 2014 through 2019, then
10 the resulting difference in debt service shall be appropriated to the following entities
11 and purpose in equal amounts;

- 12 a. The University of Guam;
- 13 b. The Mayors Council of Guam for capital improvement projects for all
14 villages; and
- 15 c. Tax Refund Reserve