



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

APR 13 2001

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910


Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 040 (COR) entitled: "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" which I have signed into law as **Public Law No. 26-04**.

This legislation authorizes the issuance by the Guam Economic Development Authority (GEDA) of bonds secured by the proceeds of the Master Settlement Agreement entered into on November 23, 1998 by Guam, the Four (4) principal United States tobacco product manufacturers, and various other governmental parties. The issuance of these bonds will allow GEDA to obtain \$40 Million in proceeds, to be divided between Five (5) trust funds set up under Public Law No. 25-187. These trusts are the Health and Security Trust Fund (50%), used for the Guam Memorial Hospital; the UOG Endowment Fund (15%); the GCC Endowment Fund (15%); the Youth Tobacco Education and Prevention Fund (10%), used by the Department of Mental Health and Substance Abuse for the prevention of tobacco and drug addictions; and the Health and Human Services Fund (10%), used by the Department of Public Health and Social Services for health care, tobacco prevention education, and technological equipment for persons with disabilities.

This legislation insulates the bond issuance from other government finances and agencies. GEDA is the sole agency responsible for the bonds and the repayment of the bonds is solely from bond proceeds, and not from the government. Hopefully, this bond issue can be concluded as soon as possible to derive up front funding from these settlement proceeds for these very needy areas for our people.

Very truly yours,


Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Antonio R. Unpingco
Speaker

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>sc</u>
Time	<u>10:37 a.m.</u>
Date	<u>04/16/01</u>

0139

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 040 (COR) "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," was on the 10th day of April, 2001, duly and regularly passed.

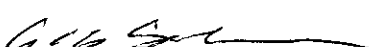


ANTONIO R. UNPINGCO
Speaker

Attested:

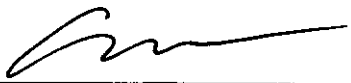


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this April 10th day of April, 2001,
at 8:25 o'clock P.M. 

Assistant Staff Officer
Maga'lahaen's Office


APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 4-12-01

Public Law No. 26-04

OFFICE OF THE LEGISLATIVE SECRETARY ACKNOWLEDGMENT RECEIPT
Received By <u></u>
Time <u>10:37 a.m.</u>
Date <u>04/16/01</u>

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 40 (COR)

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

Introduced by:

V. C. Pangelinan
K. S. Moylan
L. F. Kasperbauer
J. F. Ada
T. C. Ada
F. B. Aguon, Jr.
J. M.S. Brown
E. B. Calvo
F. P. Camacho
M. C. Charfauros
Mark Forbes
L. A. Leon Guerrero
A. L.G. Santos
A. R. Unpingco
J. T. Won Pat

**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.**

1 (b) *'Board'* means the Board of Directors of the Authority.

2 (c) *'Bonds'* means bonds, notes or other evidences of
3 indebtedness of the Authority payable *solely* from and secured
4 *solely* by the tobacco receipts, issued pursuant to this Chapter.

5 (d) *'Escrow'* means the escrow as that term is defined in
6 the Master Settlement Agreement.

7 (e) *'Escrow agent'* means the escrow agent as that term is
8 defined in the Master Settlement Agreement.

9 (f) *'Government'* means the government of Guam.

10 (g) *'Independent auditor'* means the independent auditor as
11 that term is defined in the Master Settlement Agreement.

12 (h) *'Master Settlement Agreement'* means the settlement
13 agreement and related documents entered into on November 23,
14 1998, by Guam, the four (4) principal United States tobacco
15 product manufacturers, and various other governmental parties,
16 as amended and supplemented.

17 (i) *'Participating manufacturers'* means the participating
18 manufacturers as that term is defined in the Master Settlement
19 Agreement.

20 (j) *'Tobacco receipts'* means all of the payments to be made
21 by the escrow agent and derived from payments made by the
22 participating manufacturers and allocated to the government
23 under the Master Settlement Agreement, other than pursuant to
24 Article XVII of that agreement.

1 (k) *'Tobacco trust funds'* means the funds specified in
2 §221203 of Title 5 of the Guam Code Annotated.

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

4 (a) The tobacco receipts due to the government after April
5 10, 2001 under the Master Settlement Agreement, and the
6 government's right to be paid tobacco receipts after April 10, 2001,
7 under the Master Settlement Agreement, are hereby irrevocably
8 and absolutely assigned to the Authority. On and after the date of
9 enactment of this Chapter, the government shall have no right,
10 title, or interest in or to the tobacco receipts and other rights
11 described in the first sentence of this Section, and such tobacco
12 receipts and other rights are property of the Authority and *not* of
13 the government. The government hereby directs the independent
14 auditor and the escrow agent to make all these payments to the
15 Authority, or its designee, in accordance with instructions that
16 may be given by the Authority from time to time.

17 The assignment and direction made in this Subsection are
18 irrevocable and are a part of the contractual obligation owed to the
19 bondholders. The government, through the Director of the
20 Department of Administration, shall within thirty (30) days of the
21 enactment of this Chapter, notify the independent auditor and the
22 escrow agent that the tobacco receipts have been assigned to the
23 Authority and shall instruct the independent auditor and the
24 escrow agent that all tobacco receipts due after April 10, 2001 are
25 to be paid directly to the Authority, or its designee.

1 (b) In consideration of the assignment by the government
2 to the Authority pursuant to Subsection (a), the Authority shall:

3 (1) cause all proceeds of bonds issued under this
4 Chapter (other than bonds issued to refund bonds
5 previously issued under this Chapter) to be delivered
6 promptly to the respective tobacco trust funds, *except* as
7 needed to pay costs of issuance of the bonds or to establish
8 any required reserve fund for the bonds; *and*

9 (2) cause all amounts released from the lien of the
10 indenture for bonds issued under this Chapter to be
11 delivered promptly to the respective tobacco trust funds.

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

13 (a) In addition to the powers contained elsewhere in this
14 Division, the board has all power necessary, useful or appropriate
15 to administer the functions of the Authority under this Chapter
16 and to effectuate the purposes of this Chapter, including, but *not*
17 limited to, the power to:

18 (1) have perpetual succession, *subject to* termination
19 by amendment of this Division *only after* the date on which
20 no bonds issued under this Chapter are outstanding, plus
21 one (1) year and one (1) day thereafter;

22 (2) sue and be sued in its own name;

23 (3) adopt, promulgate, amend and repeal bylaws,
24 *not* inconsistent with provisions in this Chapter;

1 (4) enter into contracts, arrangements, agreements
2 and other instruments necessary or convenient to the
3 exercise of the powers granted in this Chapter;

4 (5) enter into agreements relating to the tobacco
5 trust funds for the purpose of managing and controlling the
6 transfer of funds between the Authority and the tobacco
7 trust funds, and governing the investment and the
8 monitoring and record keeping of these funds, for purposes
9 of maintaining the exemption from Federal income tax of
10 interest on bonds and for other purposes;

11 (6) enter into, amend and terminate agreements in
12 the nature of interest rate swaps, forward security supply
13 contracts, agreements for the management of interest rate
14 risks, agreements for the management of cash flow, and
15 other agreements of a similar nature, with respect to bonds
16 issued pursuant to this Chapter;

17 (7) arrange for insurance, guarantees, letters of
18 credit, and other forms of collateral or security, or credit
19 support from any public or private entity for the payment of
20 any bonds, including the power to pay premiums or fees on
21 any insurance, guarantees, letters of credit, and other forms
22 of collateral or security, or credit support; provided,
23 however, that any reimbursement obligation of the
24 Authority under such arrangement shall be payable *solely*

1 from the same sources as debt service on the bonds is
2 payable;

3 (8) enter into contracts and expend funds to obtain
4 accounting, management, legal, financial consulting,
5 trusteeship and other professional services necessary or
6 convenient to the operations of the Authority;

7 (9) direct the escrow agent with respect to the
8 disbursement to the Authority, or its designee, of the tobacco
9 receipts, and receive and accept the tobacco receipts;

10 (10) invest funds held by the Authority under this
11 Chapter in any investment permitted by the indenture under
12 which the bonds are issued;

13 (11) direct the Attorney General of the government to
14 enforce in the name of the government or the Authority, and
15 *if* permissible, to enforce directly through the Authority's
16 own attorneys in the name of the government or the
17 Authority, the Master Settlement Agreement, but the board
18 may *not* give any approval of any amendment to the Master
19 Settlement Agreement without the approval of *I Liheslaturan*
20 *Guåhan; and*

21 (12) do all other things necessary or convenient to
22 exercise powers granted or reasonably implied by this
23 Chapter.

24 (b) The Authority is an independent public
25 instrumentality of the government, and the exercise of its powers

1 pursuant to this Chapter is an essential governmental function.
2 Notwithstanding any other provision of law, the Authority is *not*
3 authorized, and no public officer, organization, entity or other
4 person shall authorize the Authority, to become a debtor in a case
5 under the United States Bankruptcy Code (Title 11 of the United
6 States Code), to make an assignment for the benefit of creditors, or
7 to become the subject of any similar case or proceeding. The
8 provisions of this Subsection (b) are for the benefit of the holders
9 of any bonds and are a part of the contractual obligation owed to
10 such bondholders, and the government shall *not* modify or delete
11 the provisions of this Subsection (b) before the date, which is one
12 (1) year and one (1) day after the Authority no longer has any
13 bonds outstanding.

14 **Section 80106. Authorization of Bonds.**

15 (a) The Authority may issue bonds, from time to time, for
16 the purposes and in the manner provided in this Chapter. The
17 Authority may issue bonds to refund all or any portion of bonds
18 previously issued under this Chapter.

19 (b) All bonds must be payable *solely* from and secured
20 *solely* by the tobacco receipts, or the portion of the tobacco receipts
21 the board determines to pledge for payment of the bonds.

22 (c) Neither the members of the board, nor any person
23 executing the bonds or any notes, nor any employee of the
24 Authority or the government shall be liable individually or
25 personally on the bonds or notes, or be subject to any personal

1 liability or accountability by reason of the issuance of the bonds;
2 provided, however, that nothing in this Chapter shall relieve any
3 such person from the performance of any ministerial duty
4 required by law.

5 (d) The board has no power to pledge the faith, credit or
6 taxing power of the government in connection with the issuance of
7 the bonds, and each bond must recite on its face that it is a limited
8 obligation of the Authority issued pursuant to and in accordance
9 with this Chapter; that it is payable *solely* from and secured *solely*
10 by the tobacco receipts; that it is *not* an obligation of the
11 government; and that it is *not* backed by the full faith, credit or
12 taxing power of the government. Failure to include this language
13 on the face of any bond does *not* cause the bond to become an
14 obligation of the government, or a pledge of the full faith, credit or
15 taxing power of the government.

16 (e) Any pledge made by the Authority of the tobacco
17 receipts is valid and binding from the time when the pledge is
18 made, and the tobacco receipts pledged and then or thereafter
19 received by the Authority are immediately *subject to* the lien of the
20 pledge, and the pledge shall constitute a lien and security interest,
21 which shall immediately attach to the tobacco receipts, without
22 any physical delivery thereof or further act. The lien of the pledge
23 is valid and binding against all parties having claims of any kind
24 in tort, contract or otherwise against the Authority, irrespective of
25 whether the parties have notice of such pledge. Neither the

1 resolution of the Authority or any indenture, trust agreement or
2 other instrument by which a pledge is created need be recorded or
3 filed to perfect the pledge.

4 (f) The Authority may sell bonds issued under this
5 Chapter either in a negotiated sale, or through a competitive
6 bidding process in accordance under procedures established by
7 the board. The determination of whether to sell bonds through
8 negotiation or through competitive bidding shall be made by the
9 board.

10 (g) The Authority may *not* issue any bonds, *unless* the
11 board has first adopted its resolution authorizing the issuance,
12 finding that the issuance and the proposed use of the bond
13 proceeds is in accordance with this Chapter, and authorizing the
14 execution and delivery of any indenture providing for the pledge
15 and other terms of the bonds.

16 (h) The technical form and language of the bonds,
17 including provisions for execution, exchange, transfer,
18 registration, paying agency, lost or mutilated bonds, negotiability,
19 cancellation and other tenets, covenants or conditions *not*
20 inconsistent with this Chapter, shall be as specified in the
21 indenture approved by the board. Regardless of their form or
22 character, bonds issued under this Chapter shall be negotiable
23 instruments for all purposes, *subject only* to the provisions of such
24 bonds for registration. Such indenture may also appoint one (1) or
25 more trustees or other fiduciaries authorized to receive and hold

1 in trust the tobacco receipts, the proceeds of the bonds and other
2 moneys relating thereto, to protect the rights of bondholders and
3 to perform such other duties as may be specified in the indenture.
4 Covenants of the Authority in the indenture may include, without
5 limitation, the establishment and maintenance of reserve funds for
6 the payment of debt service on bonds *if* the tobacco receipts are
7 inadequate in any year, restrictions on the later issuance of
8 additional bonds or making the later issuance *subject to* certain
9 conditions relating to available debt service coverage or otherwise,
10 conditions on the timing of the release of all or a portion of the
11 tobacco receipts from the lien of the indenture, the enforcement of
12 the Master Settlement Agreement, or any other matter that the
13 board considers appropriate, *subject to* Subsections (d), (i) and (j) of
14 this Section.

15 (i) The Authority may *not* enter into any covenant that
16 purports to create any right on the part of the board, the
17 Authority, any bondholder, or any trustee to recover amounts
18 consisting of the tobacco receipts once those amounts have been
19 released from the lien of the indenture. Any covenant in violation
20 of this Subsection is void and of no effect.

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

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

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

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

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

12 **Section 80109. Right of Authority to Fulfill Agreements with**

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

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

1 (a) the full and timely payment of principal, interest and
2 premiums on or purchase price of bonds issued under this
3 Chapter; *or*

4 (b) the pledge described in §80106(e), and the full and
5 timely application of the pledged property as provided in the
6 indenture for bonds issued under this Chapter. None of the
7 property described in the first sentence of §80104(a) shall be
8 subject to garnishment, execution, attachment or other process,
9 writ or remedy in connection with the assertion or enforcement of
10 any debt, claim, settlement or judgment against the government or
11 the Authority, *except* as provided in the indenture for bonds issued
12 under this Chapter.

13 **Section 80111. Master Settlement Agreement and Model**
14 **Statute Valid and Enforceable.** Notwithstanding any provision of
15 general or special laws to the contrary, the Master Settlement
16 Agreement and the model statute referred to in the Master Settlement
17 Agreement, as enacted by the government, are each valid and
18 enforceable in accordance with their respective terms.

19 **Section 80112. Performance of Master Settlement Agreement.**
20 Article XII of the Master Settlement Agreement imposes continuing and
21 material obligations on the government, and a failure by the
22 government to continue performing those obligations shall constitute a
23 material breach excusing the performance of the other parties to the
24 Master Settlement Agreement.

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

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

21 **Section 2. Local Sales of Bonds.** The Authority shall undertake its
22 best efforts to cause a portion of any bonds issued pursuant to Chapter 80 of
23 Division 2 of Title 12 of the Guam Code Annotated, to be offered for sale to
24 residents of Guam, as well as to residents of other jurisdictions, *if* and to the

1 extent that such offer, and any sales resulting from such offer, do *not* increase
2 the costs to the Authority of issuing and repaying such bonds.

3 **Section 3. Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to
4 §50103(k) of Title 12 of the Guam Code Annotated, hereby approves the
5 issuance and sale by the Guam Economic Development Authority of bonds in
6 a principal amount *not to exceed* Forty Million Dollars (\$40,000,000); provided,
7 that the conditions to the issuance of such bonds shall have been met, such
8 bonds have a final maturity *not later than* the Year 2043, bear interest at such
9 rate and are sold for such price or prices as shall result in a yield to the
10 bondholders *not exceeding* eight percent (8%) per annum, and are issued and
11 sold pursuant to an indenture in substantially the form presented to the
12 session of *I Liheslaturan Guåhan*, in which this Act was passed.

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

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I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 4/10/01

VOTING SHEET

S Bill No. 40 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓			X	
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

15 0 0 0 0

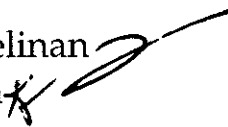
CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 40(cop)
Introduced by:

v. c. pangelinan
K. Moylan 

AN ACT TO ADD A NEW CHAPTER 80 TO
DIVISION 2 OF TITLE 12, GUAM CODE
ANNOTATED, RELATIVE TO AUTHORIZING
THE GUAM ECONOMIC DEVELOPMENT
AUTHORITY TO ISSUE TOBACCO SETTLEMENT
REVENUE BONDS TO FUND THE PURPOSES
SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF
TITLE 5, GUAM CODE ANNOTATED, TO SELL
AND ASSIGN TO GUAM ECONOMIC
DEVELOPMENT AUTHORITY THE
GOVERNMENT'S TOBACCO SETTLEMENT
PAYMENTS FOR THE PURPOSE OF SECURING
AND PAYING SUCH BONDS, AND TO APPROVE
THE ISSUANCE OF SUCH BONDS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 hereby incorporates by reference and reiterates the findings made in Public
4 Law Number 25-187 concerning the sale and securitization of the tobacco
5 settlement payments allocable to Guam under the Master Settlement
6 Agreement between the major United States tobacco manufacturers and forty-
7 six states, Guam, the District of Columbia, the Commonwealth of Puerto Rico,
8 the U.S. Virgin Islands, American Samoa and the Commonwealth of the
9 Northern Mariana Islands.

1 It is the intent of *I Liheslaturan Guåhan* to approve the terms of the sale
2 and securitization as required by §221202 of Article 12 of Chapter 22 of Title 5,
3 Guam Code Annotated.

4 **Section 2. Tobacco Settlement Revenue Bond Act.** Chapter 80 of
5 Division 2 of Title 12, Guam Code Annotated, is added to read:

6 **“CHAPTER 80**

7 **TOBACCO SETTLEMENT REVENUE BOND ACT**

8 **§80105. Short title.** This Chapter may be cited as the “Guam
9 Economic Development Authority Tobacco Settlement Revenue Bond
10 Act”.

11 **§80110. Definitions.** As used in this Chapter:

12 (1) “Authority” means the Guam Economic Development
13 Authority, as established by Chapter 50 of this Division.

14 (2) “Board” means the Board of Directors of the
15 Authority.

16 (3) “Bonds” means bonds, notes, or other evidences of
17 indebtedness of the Authority payable solely from and secured
18 solely by the tobacco receipts, issued pursuant to this Chapter.

19 (4) “Escrow” means the escrow as that term is defined in
20 the Master Settlement Agreement.

21 (5) “Escrow agent” means the escrow agent as that term is
22 defined in the Master Settlement Agreement.

23 (6) “Government” means the Government of Guam.

24 (7) “Independent auditor” means the independent auditor
25 as that term is defined in the Master Settlement Agreement.

1 (8) “Master Settlement Agreement” means the settlement
2 agreement and related documents entered into on November 23,
3 1998, by Guam, the four principal United States tobacco product
4 manufacturers and various other governmental parties, as
5 amended and supplemented.

6 (9) “Participating manufacturers” means the participating
7 manufacturers as that term is defined in the Master Settlement
8 Agreement.

9 (10) “Tobacco receipts” means all of the payments to be
10 made by the escrow agent and derived from payments made by
11 the participating manufacturers and allocated to the government
12 under the Master Settlement Agreement, other than pursuant to
13 Article XVII of that agreement.

14 (11) “Tobacco trust funds” means the funds specified in
15 §221203 of Title 5, Guam Code Annotated.

16 **§80115. Tobacco receipts; assignment to Authority.** (a) The
17 tobacco receipts due to the government after June 30, 2001 under the
18 Master Settlement Agreement, and the government’s right to be paid
19 tobacco receipts after June 30, 2001, under the Master Settlement
20 Agreement, are hereby irrevocably and absolutely assigned to the
21 Authority. On and after the date of enactment of this Chapter, the
22 government shall have no right, title, or interest in or to the tobacco
23 receipts and other rights described in the first sentence of this Section,
24 and such tobacco receipts and other rights are property of the Authority
25 and not of the government. The government hereby directs the
26 independent auditor and the escrow agent to make all these payments

1 to the Authority or its designee in accordance with instructions that may
2 be given by the Authority from time to time. The assignment and
3 direction made in this subsection are irrevocable and are a part of the
4 contractual obligation owed to the bondholders. The government
5 through the Director of Administration shall within thirty (30) days of
6 the enactment of this Chapter, notify the independent auditor and the
7 escrow agent that the tobacco receipts have been assigned to the
8 Authority and shall instruct the independent auditor and the escrow
9 agent that all tobacco receipts due after June 30, 2001 are to be paid
10 directly to the Authority or its designee.

11 (b) In consideration of the assignment by the government to the
12 Authority pursuant to subsection (a), the Authority shall:

13 (1) cause all proceeds of bonds issued under this Chapter
14 (other than bonds issued to refund bonds previously issued under
15 this Chapter) to be delivered promptly to the respective tobacco
16 trust funds, except as needed to pay costs of issuance of the bonds
17 or to establish any required reserve fund for the bonds; and

18 (2) cause all amounts released from the lien of the
19 indenture for bonds issued under this Chapter to be delivered
20 promptly to the respective tobacco trust funds.

21 **§80120. Powers of board.** (a) In addition to the powers
22 contained elsewhere in this Division, the board has all power necessary,
23 useful, or appropriate to administer the functions of the Authority
24 under this Chapter and to effectuate the purposes of this Chapter,
25 including, but not limited to, the power to:

1 (1) have perpetual succession, subject to termination by
2 amendment of this Division only after the date on which no bonds
3 issued under this Chapter are outstanding plus one year and one
4 day thereafter;

5 (2) sue and be sued in its own name;

6 (3) adopt, promulgate, amend, and repeal bylaws, not
7 inconsistent with provisions in this Chapter;

8 (4) enter into contracts, arrangements, agreements and
9 other instruments necessary or convenient to the exercise of the
10 powers granted in this Chapter;

11 (5) enter into agreements relating to the tobacco trust
12 funds for the purpose of managing and controlling the transfer of
13 funds between the Authority and the tobacco trust funds and
14 governing the investment and the monitoring and recordkeeping
15 of these funds, for purposes of maintaining the exemption from
16 federal income tax of interest on bonds and for other purposes;

17 (6) enter into, amend, and terminate agreements in the
18 nature of interest rate swaps, forward security supply contracts,
19 agreements for the management of interest rate risks, agreements
20 for the management of cash flow, and other agreements of a
21 similar nature, with respect to bonds issued pursuant to this
22 Chapter;

23 (7) arrange for insurance, guarantees, letters of credit, and
24 other forms of collateral or security or credit support from any
25 public or private entity for the payment of any bonds, including
26 the power to pay premiums or fees on any insurance, guarantees,

1 letters of credit, and other forms of collateral or security or credit
2 support; provided, however, that any reimbursement obligation of
3 the Authority under such arrangement shall be payable solely
4 from the same sources as debt service on the bonds is payable;

5 (8) enter into contracts and expend funds to obtain
6 accounting, management, legal, financial consulting, trusteeship
7 and other professional services necessary or convenient to the
8 operations of the Authority;

9 (9) direct the escrow agent with respect to the
10 disbursement to the Authority or its designee of the tobacco
11 receipts and receive and accept the tobacco receipts;

12 (10) invest funds held by the Authority under this Chapter
13 in any investment permitted by the indenture under which the
14 bonds are issued;

15 (11) direct the Attorney General of the government to
16 enforce in the name of the government or the Authority, and if
17 permissible to enforce directly through the Authority's own
18 attorneys in the name of the government or the Authority, the
19 Master Settlement Agreement, but the board may not give any
20 approval of any amendment to the Master Settlement Agreement
21 without the approval of *I Liheslaturan Guåhan*; and

22 (12) do all other things necessary or convenient to exercise
23 powers granted or reasonably implied by this Chapter.

24 (b) The Authority is an independent public instrumentality of
25 the government and the exercise of its powers pursuant to this Chapter
26 is an essential governmental function. Notwithstanding any other

1 provision of law, the Authority is not authorized, and no public officer,
2 organization, entity, or other person shall authorize the Authority, to
3 become a debtor in a case under the United States Bankruptcy Code
4 (Title 11 of the United States Code), to make an assignment for the
5 benefit of creditors, or to become the subject of any similar case or
6 proceeding. The provisions of this subsection (b) are for the benefit of
7 the holders of any bonds and are a part of the contractual obligation
8 owed to such bondholders, and the government shall not modify or
9 delete the provisions of this subsection (b) before the date which is one
10 year and one day after the Authority no longer has any bonds
11 outstanding.

12 **§80125. Authorization of Bonds.** (a) The Authority may
13 issue bonds, from time to time, for the purposes and in the manner
14 provided in this Chapter. The Authority may issue bonds to refund all
15 or any portion of bonds previously issued under this Chapter.

16 (b) All bonds must be payable solely from and secured solely by
17 the tobacco receipts, or the portion of the tobacco receipts the board
18 determines to pledge for payment of the bonds.

19 (c) Neither the members of the board nor any person executing
20 the bonds or any notes nor any employee of the Authority or the
21 government shall be liable individually or personally on the bonds or
22 notes or be subject to any personal liability or accountability by reason
23 of the issuance of the bonds, provided, however, that nothing in this
24 Chapter shall relieve any such person from the performance of any
25 ministerial duty required by law.

1 (d) The board has no power to pledge the faith, credit, or taxing
2 power of the government in connection with the issuance of the bonds,
3 and each bond must recite on its face that it is a limited obligation of the
4 Authority issued pursuant to and in accordance with this Chapter, that
5 it is payable solely from and secured solely by the tobacco receipts, that
6 it is not an obligation of the government, and that it is not backed by the
7 full faith, credit, or taxing power of the government. Failure to include
8 this language on the face of any bond does not cause the bond to
9 become an obligation of the government, or a pledge of the full faith,
10 credit, or taxing power of the government.

11 (e) Any pledge made by the Authority of the tobacco receipts is
12 valid and binding from the time when the pledge is made, and the
13 tobacco receipts pledged and then or thereafter received by the
14 Authority are immediately subject to the lien of the pledge, and the
15 pledge shall constitute a lien and security interest which shall
16 immediately attach to the tobacco receipts, without any physical
17 delivery thereof or further act. The lien of the pledge is valid and
18 binding against all parties having claims of any kind in tort, contract, or
19 otherwise against the Authority, irrespective of whether the parties have
20 notice of such pledge. Neither the resolution of the Authority or any
21 indenture, trust agreement or other instrument by which a pledge is
22 created need be recorded or filed to perfect the pledge.

23 (f) The Authority may sell bonds issued under this Chapter
24 either in a negotiated sale, or through a competitive bidding process in
25 accordance under procedures established by the board. The

1 determination of whether to sell bonds through negotiation or through
2 competitive bidding shall be made by the board.

3 (g) The Authority may not issue any bonds unless the board has
4 first adopted its resolution authorizing the issuance, finding that the
5 issuance and the proposed use of the bond proceeds is in accordance
6 with this Chapter and authorizing the execution and delivery of any
7 indenture providing for the pledge and other terms of the bonds.

8 (h) The technical form and language of the bonds, including
9 provisions for execution, exchange, transfer, registration, paying agency,
10 lost or mutilated bonds, negotiability, cancellation and other tenets,
11 covenants or conditions not inconsistent with this Chapter, shall be as
12 specified in the indenture approved by the board. Regardless of their
13 form or character, bonds issued under this Chapter shall be negotiable
14 instruments for all purposes, subject only to the provisions of such
15 bonds for registration. Such indenture may also appoint one or more
16 trustees or other fiduciaries authorized to receive and hold in trust the
17 tobacco receipts, the proceeds of the bonds and other moneys relating
18 thereto, to protect the rights of bondholders and to perform such other
19 duties as may be specified in the indenture. Covenants of the Authority
20 in the indenture may include, without limitation, the establishment and
21 maintenance of reserve funds for the payment of debt service on bonds
22 if the tobacco receipts are inadequate in any year, restrictions on the
23 later issuance of additional bonds or making the later issuance subject to
24 certain conditions relating to available debt service coverage or
25 otherwise, conditions on the timing of the release of all or a portion of
26 the tobacco receipts from the lien of the indenture, the enforcement of

1 the Master Settlement Agreement, or any other matter that the board
2 considers appropriate, subject to subsections (d), (i) and (j) of this
3 section.

4 (i) The Authority may not enter into any covenant that
5 purports to create any right on the part of the board, the Authority, any
6 bondholder, or any trustee to recover amounts consisting of the tobacco
7 receipts once those amounts have been released from the lien of the
8 indenture. Any covenant in violation of this subsection is void and of no
9 effect.

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

15 **§80130. Accounts to be maintained separately.** All funds
16 and accounts of the Authority established pursuant to this Chapter shall
17 be held and maintained separately from all other funds, properties,
18 assets, and accounts of the Authority, the government and its other
19 agencies.

20 **§80140. Modification of Master Settlement Agreement.**
21 During the period of time that any bonds issued under this Chapter are
22 outstanding, the government may not agree to the amendment of the
23 Master Settlement Agreement without the approval of the Authority;
24 and this restriction on amendment of the Master Settlement Agreement
25 is a part of the covenant with the bondholders.

1 **§80145. Right of Authority to fulfill agreements with bond**
2 **holders protected.** The government pledges and agrees with the
3 Authority and the holders of the bonds, that the government shall not
4 limit or alter the rights of the Authority to fulfill the terms of its
5 agreements with such holders, and shall not in any way impair the
6 rights and remedies of such holders or the security for such bonds until
7 the bonds, together with the interest on them and all costs and expenses
8 in connection with any action or proceeding by or on behalf of such
9 holders, are fully paid and discharged.

10 **§80150. Protection of Tobacco Receipts.** No person acting
11 under any provision of law or principle of equity shall be permitted in
12 any way to impede or in any manner interfere with:

13 (a) the full and timely payment of principal, interest, and
14 premiums on or purchase price of bonds issued under this
15 Chapter; or

16 (b) the pledge described in §80125(e), and the full and
17 timely application of the pledged property as provided in the
18 indenture for bonds issued under this Chapter. None of the
19 property described in the first sentence of §80115(a) shall be
20 subject to garnishment, execution, attachment, or other process,
21 writ, or remedy in connection with the assertion or enforcement of
22 any debt, claim, settlement, or judgment against the government
23 or the Authority, except as provided in the indenture for bonds
24 issued under this Chapter.

25 **§80155. Master Settlement Agreement and Model Statute**
26 **Valid and Enforceable.** Notwithstanding any provision of general

1 or special laws to the contrary, the Master Settlement Agreement and
2 the model statute referred to in the Master Settlement Agreement, as
3 enacted by the government, are each valid and enforceable in
4 accordance with their respective terms.

5 **§80160. Performance of Master Settlement Agreement.**

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

11 **§80165. Chapter to be liberally construed.** This Chapter

12 shall be liberally construed to effectuate its intent and their purposes,
13 without implied limitations. All rights and powers granted to the
14 Authority in this Chapter shall be cumulative with those derived from
15 other sources and shall not, except as expressly stated in this Chapter, be
16 construed in limitation thereof. Insofar as the provisions of this Chapter
17 are inconsistent with the provisions of any other statute, the provisions
18 of this Chapter are controlling. If any clause, sentence, paragraph,
19 section, or part of this Chapter is determined by any court of competent
20 jurisdiction to be invalid, such determination shall not affect, impair, or
21 invalidate the remainder of this Chapter but is confined in its operation
22 to the clause, sentence, paragraph, section, or part of the Chapter
23 directly involved in the controversy in which such determination shall
24 have been rendered.

25 **Section 3. Local Sales of Bonds.** The Authority shall undertake its
26 best efforts to cause a portion of any bonds issued pursuant to Chapter 80 of

1 Division 2 of Title 12, Guam Code Annotated, to be offered for sale to
2 residents of Guam, as well as to residents of other jurisdictions, if and to the
3 extent that such offer and any sales resulting from such offer do not increase
4 the costs to the Authority of issuing and repaying such bonds.

5 **Section 4. Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to
6 §50103(k) of Title 12, Guam Code Annotated, hereby approves the issuance
7 and sale by the Guam Economic Development Authority of bonds in a
8 principal amount not to exceed forty million dollars (\$40,000,000) provided,
9 that the conditions to the issuance of such bonds shall have been met, such
10 bonds have a final maturity not later than the year 2043, bear interest at such
11 rate and are sold for such price or prices as shall result in a yield to the
12 bondholders not exceeding eight percent (8%) per annum, and are issued and
13 sold pursuant to an indenture in substantially the form presented to the
14 session of *I Liheslaturan Guåhan*, in which this act was passed.

15 **Section 5. Ratification of Prior Acts.** *I Liheslaturan Guåhan* hereby
16 approves, confirms and ratifies all actions heretofore taken by or on behalf of
17 the government in connection with the Master Settlement Agreement,
18 including but not limited to the execution and delivery of the Master
19 Settlement Agreement.

Senator Kaleo S. Moylan
Chairperson, Committee on Ways and Means
Mina'Bente Sais Na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature

April 10, 2001

*This is
part a
copy*

Honorable Antonio R. Unpingco
Speaker
Mina'Bente Sais Na Liheslaturan Guåhan
Hagåtña, Guam 96910

VIA: Chairperson, Committee on Rules, General Government Operations,
Reorganization and Reform and Federal, Foreign and General Affairs

Dear Mr. Speaker:

The Committee on Ways and Means, to which was referred Bill No. 040 (COR), "AN ACT TO ADD CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS," has had the same under consideration, and now wishes to report back the same with the recommendation to do pass as substituted.

The Committee votes are as follows:

<u>8</u>	To Do Pass
<u>0</u>	Not to Pass
<u>0</u>	Abstain
<u>0</u>	Inactive File

A copy of the Committee Report and other pertinent documents are attached for your immediate reference and information.

Thank you,



KALEO S. MOYLAN
Chairperson

Enclosure:

Committee on Ways and Means

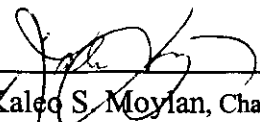
Vote Sheet on

Bill No. 040 (COR)

As substituted by the Committee

AN ACT TO ADD CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
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 Kaleo S. Moylan, Chairperson ✓

Joanne M.S. Brown, Vice Chairperson

Antonio R. Unpingco, Speaker & Ex-Officio

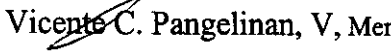

 Eddie B. Calvo, Member ✓


 Felix P. Camacho, Member ✓


 Mark C. Charfauros, Member X


 Mark Forbes, Member ✓


 Lawrence F. Kasperbauer, Member X


 Vicente C. Pangelinan, V, Member ✓

*Committee on Ways and Means
Report On*

Bill No. 040 (COR)

As substituted by the Committee.

AN ACT TO ADD CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS.

PUBLIC HEARING:

The Committee on Ways and Means, to which was referred Bill No. 040 (COR), "AN ACT TO ADD CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS," conducted a public hearing on Tuesday, April 10, 2001, at the Guam Legislature Public Hearing Room. Senator Kaleo S. Moylan, Chairperson of the Committee on Ways and Means convened the hearing at 9:30 a.m. Also in attendance were Senators Vicente C. Pangelinan, Lou A. Leon Guerrero, Lawrence F. Kasperbauer and Eddie B. Calvo.

TESTIMONY

Appearing before the Committee was Joey B. Cepeda, Deputy Administrator, Lestor Carlson and Patrick Mantanane all from the Guam Economic Development Authority. Mr. Cepeda testified that the legislation embodies the cumulative efforts of both the Guam Legislature and the Administration in providing a mechanism to best utilize the proceeds from the Tobacco Settlement Revenues as agreed to under the terms and conditions of the Master Settlement Agreement reached between the major tobacco manufactures, the 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.

Mr. Cepeda went on to say that Bill No. 40 (COR) sets out the structure for the securitization of the Tobacco Settlement Revenues and provides a fail safe provision to the island

which clearly places the burden of repayment of the tobacco Bonds solely on the anticipated Tobacco Settlement Revenue and that there is no recourse whatsoever to the residents nor the government of Guam.

In closing, Mr. Cepeda informed the Committee that recognizing that Bill No. 40 (COR) is a sound and well conceived use of funds earmarked for the future improvement of health care and health education, the GUam Economic development Authority wholeheartedly endorses passage of Bill No. 40 (COR) and stands ready to support any and all necessary endeavors to see this come to pass.

There being no further discussion, the Chair adjourned the hearing on Bill No. 040 (COR) at 9:50 a.m.

COMMITTEE FINDINGS

The Committee on Ways and Means to which was referred Bill No. 040 (COR) finds:

- ⊖ That the declining revenues of the General Fund along with the other revenue sources of the government have resulted in hardships and pressures placed upon the ability of the government to provide essential services to the residents of Guam.
- ⊖ Given the constraints imposed upon the General Fund to fully pay for these services - health care and higher education, in particular, it is incumbent that alternative sources are found and creative use of future revenues be implemented. One (1) such revenue source is the tobacco Master Settlement Agreement reached and signed between the major United States tobacco manufacturers and forty-six 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.
- ⊖ The Committee further finds that the signing of a Master Settlement Agreement should result in Guam receiving substantial sums of money in perpetuity. Guam has reached State-specific finality, the Master Settlement Agreement has become effective in accordance with its terms, and Guam has agreed to its allocation of the first tobacco settlement payments made under the Master Settlement Agreement as an allocation to Guam.
- ⊖ The Committee also finds that several jurisdictions have sold their allocations of payments under the Master Settlement Agreement and applied the sale proceeds toward their most critical needs. By doing so they have accelerated the realization of the tobacco settlement payments receivable under the Master Settlement Agreement, and reduced their exposure to the payment risks associated with the Master Settlement Agreement and the credit risks associated with the tobacco industry.

- ⊖ It is the intent of *I Liheslaturan Guåhan* to establish a policy that responds to the current funding requirements of the services it wishes to provide to the people by securitizing the tobacco settlement payments. This method of financing will be non-recourse to, and requires no credit support by, the government of Guam.
- ⊖ Article 12 of Chapter 22 of Title 5 of the Guam Code Annotated, authorizes the Guam Economic Development Authority to solicit through the request for proposal process for qualified and licensed investment banking firms for investment services for the purpose of selling or securitizing the Guam Allocation made under the Master Settlement Agreement entered into between the government of Guam and leading tobacco manufacturers.
- ⊖ The proceeds of the sale and securitization of the Guam Allocation shall be distributed in the following manner:
 - (a) fifty percent (50%) into the Health Security Trust Fund;
 - (b) fifteen percent (15%) into the UOG Endowment Fund;
 - (c) fifteen percent (15%) into the GCC Endowment Fund;
 - (d) ten percent (10%) into the Youth Tobacco Education and Prevention Fund (YTEP Fund); *and*
 - (e) ten percent (10%) into the Health and Human Services Fund (HAHS Fund).
- ⊖ A Health Security Trust Fund (PL 25-187) has been established and is separate and apart from other funds of the government of Guam. Furthermore, the Fund, shall *not* be commingled with the General Fund and shall be kept in a separate bank account, and shall be *subject to* legislative appropriation and expended exclusively for the purpose of funding the operations and capital expenditure at the Guam Memorial Hospital. It also provides that the Health Security Trust Fund, *subject to* legislative approval, may be invested or reinvested in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds. The appropriations from the Health Security Trust Fund shall be limited to fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund.
- ⊖ Monies are to be deposited into the UOG Higher Education Endowment Funds and the GCC Endowment Funds. To protect the integrity of these funds, they are created, separate and apart from other funds of the government of Guam, and shall *not* be commingled with the General Fund and shall be kept in a separate bank account and administered by the respective institutions. Furthermore, the appropriations from the UOG Higher Education Endowment Fund and GCC Endowment Funds shall be limited to 50% of the initial deposit from the proceeds of the sale for the first 3 years.
- ⊖ The monies deposited into the HAHS Fund, shall be expended exclusively for the purposes enumerated in §221103, 5 GCA and the general intent of this Act. Also,

the HAHS Fund, *subject to* legislative approval, may be invested or reinvested in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds.

- ⊖ Youth Tobacco Education and Prevention Fund under the administration and control of the Department Mental Health and Substance Abuse shall be held in an account or accounts at a Guam financial institution, or institutions, separate and apart from all other accounts and funds of the government of Guam, and shall *not* be subject to the transfer authority of *I Maga'lahaen Guåhan*. One hundred percent (100%) of the funds in the YTEPF Fund shall be utilized by the Department of Mental Health and Substance Abuse, for youth compliance monitoring and tobacco and drug prevention and education programs.

PROFILE ON BILL NO. 040 (COR)

- Brief Title:** *“Guam Economic Development Authority Tobacco Settlement Revenue Bond Act.”*
- Main Sponsor(s):** Senators V. C. Pangelinan and K. S. Moylan.
- Date Introduced:** Monday, March 12, 2001.
- Committee Referral:** From the Committee on Rules, General Government Operations, Reorganization and Reform and Federal, Foreign and General Affairs, to the Committee on Ways and Means on Friday, March 23, 2001.
- Pubic Hearing:** Tuesday, April 10, 2001.
- Official Title:** **“AN ACT TO ADD CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT’S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS.”**
- Recommendation:** To do pass.

Overview

Bill No. 040 (COR) 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 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.

Public Law Number 25-187 recognizes the declining revenues of the General Fund along with the other revenue sources of the government have resulted in hardships and pressures placed upon the ability of the government to provide essential services to the residents of Guam. Given the constraints imposed upon the General Fund to fully pay for these services - health care and higher education, in particular, it is incumbent that alternative sources are found and creative use of future revenues be implemented. One (1) such revenue source is the tobacco Master Settlement Agreement. The signing of tobacco Master Settlement Agreement resulted in Guam receiving substantial sums of money in perpetuity. Guam has reached State-specific finality, the Master Settlement Agreement has become effective in accordance with its terms, and Guam has agreed to its allocation of the first tobacco settlement payments made under the Master Settlement Agreement as an allocation to Guam.

It is the intent of *I Liheslaturan Guåhan* to establish a policy that responds to the current funding requirements of the services it wishes to provide to the people by securitizing the tobacco settlement payments. This method of financing will be non-recourse to, and requires no credit support by, the government of Guam.

Section Analysis

Section 1. Tobacco Settlement Revenue Bond Act. Adds a new Chapter 80 to Division 2 of Title 12 of the Guam Code Annotated. A closer look at Chapter 80 reveals the following:

“CHAPTER 80.

TOBACCO SETTLEMENT REVENUE BOND ACT.

Section 80101. Short Title. Cites and makes reference to Chapter 80 as the “*Guam Economic Development Authority Tobacco Settlement Revenue Bond Act.*”

Section 80102. Legislative Statement and Intent.

Section 80103. Definitions. Defines and clarifies certain words and phrases used through Chapter 80.

Section 80104. Tobacco receipts; assignment to Authority. Provides that the tobacco receipts due to the government after June 30, 2001 under the Master Settlement Agreement, and the government’s right to be paid tobacco receipts after June 30, 2001, under the Master Settlement Agreement, are hereby irrevocably and absolutely assigned to the Authority.

Section 80105. Powers of the Board. Provides that the Board shall have all power necessary, useful, or appropriate to administer the functions of the Authority

Section 80106. Authorization of Bonds. Authorizes GEDA 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.

Section 80107. Accounts to be maintained separately. Provides that all funds and accounts of the Authority established pursuant to Chapter 80 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. Provides that during the period of time that any bonds issued under pursuant to Chapter 80 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 bond holders protected. Provides that 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. Provides that no person shall be permitted in any way to impede or in any manner interfere with the provisions of Chapter 80.

Section 80111. Master Settlement Agreement and Model Statute Valid and Enforceable. Provides that notwithstanding any provision of law(s) 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. Provides that 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 their purposes, without implied limitations.

Section 80114. Severability.

Section 2. Local Sales of Bonds. Provides that the Authority shall undertake its best efforts to cause a portion of any bonds to be offered for sale to residents of Guam.

Section 3. Approval of Bonds. This Section 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). It also provides that the issuance of such bonds shall have a final

maturity not later than the year 2043 and bear interest not exceeding eight percent (8%) per annum.

Section 4. Ratification of Prior Acts. Reiterates the Guam Legislature's approval and confirmation 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.

COMMITTEE RECOMMENDATION

The Committee on Ways and Means, having reviewed the findings and recommendations on Bill No. 040 (COR) "AN ACT TO *ADD* CHAPTER 80 TO DIVISION 2 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ISSUE TOBACCO SETTLEMENT REVENUE BONDS TO FUND THE PURPOSES SPECIFIED BY ARTICLE 12 OF CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO SELL AND ASSIGN TO GUAM ECONOMIC DEVELOPMENT AUTHORITY THE GOVERNMENT'S TOBACCO SETTLEMENT PAYMENTS FOR THE PURPOSE OF SECURING AND PAYING SUCH BONDS, AND TO APPROVE THE ISSUANCE OF SUCH BONDS," recommends that the Bill No. 040 (COR), as substituted, be passed by *l Liheslaturan Guåhan*.