

CHAPTER 51
AUTHORIZATION TO REFUND OBLIGATIONS TO ACHIEVE SAVINGS

SOURCE: Added by P.L. 26-058:2.

- § 51101. Definitions.
- § 51102. Authorization and Approval of Issuance, Terms and Conditions of Bonds of the Government for the Sole Purpose of Achieving Debt Service Savings.
- § 51103. Approval of Issuance, Terms and Conditions of Bonds of Agencies, Authorities and Instrumentalities of the Government for the Sole Purpose of Achieving Debt Service Savings.
- § 51104. Permitted Investments.
- § 51105. Financial Contracts to Achieve Savings.
- § 51106. Local Sale of Bonds.
- § 51107. Education Facilities Fund.

§ 51101. Definitions.

The definitions set forth herein shall govern the construction and interpretation of this Chapter:

(a) '*Prior bond*' means for purposes of this Chapter the following obligations which are to be redeemed or otherwise retired with the proceeds of refunding bonds and investment earnings thereon:

(1) Loans made pursuant to Public Law No. 24-59, as amended, for the Guam Memorial Hospital Authority,

(2) Loans made pursuant to Public Law No. 25-72, as amended, for the purpose of funding the voluntary separation programs, and

(3) The 1989 Government of Guam Water System Revenue Bonds, Series 1989.

(4) The Judicial Building Loan (Government of Guam Promissory Note to Farmers Home Administration Superior Court Note).

(b) '*Refunding bond*' means a bond authorized or approved pursuant to this Chapter for the purpose of providing moneys to

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redeem or otherwise retire prior bonds, funding any necessary bond reserves or paying expenses incurred in connection with the issuance of such refunding bonds.

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

(d) ‘*Debt service*’ means the scheduled principal of and interest on bonds plus fees to be paid (other than from bond proceeds) for credit enhancement of such bonds and the net amounts to be paid or received under any financial contract entered into under § 51105 of this Chapter. For purposes of this definition, any prior bonds bearing interest at a variable rate shall be assumed to bear interest at the then-current interest rate on such bonds.

(e) ‘*Debt service savings*’ means the percentage by which the present value of debt service on the refunding bonds is less than the present value of debt service on the prior bonds, taking into account any moneys transferred from the refunded bonds to the refunding bonds and taking into account any moneys contributed to either or both bond issues. Present value shall be calculated for this purpose using the yield on the refunding bonds as the discount rate.

(f) ‘*Bond*’ means any bond, note or other evidence of indebtedness.

(g) ‘*GEDA*’ means the Guam Economic Development Authority.

NOTE: Subsection (a)(4) added by P.L. 26-124:3.

§ 51102. Authorization and Approval of Issuance, Terms and Conditions of Bonds of the Government for the Sole Purpose of Achieving Debt Service Savings.

I Maga'lahaen Guåhan [Governor of Guam] is authorized to issue on behalf of the government of Guam one or more issues of bonds of the

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government consisting of refunding bonds, subject to the following requirements, limitations, terms and conditions, which shall apply separately to each such issue of refunding bonds:

(a) The issuance of the refunding bonds shall not cause a violation of the debt limitation provisions of 48 USC 1423a (§11 of the Organic Act of Guam).

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

(c) The debt service savings resulting from the issuance of the refunding bonds shall be not less than two percent (2%); provided that such requirement shall not apply to refunding bonds issued to refinance bonds issued pursuant to:

(i) Public Law No. 24-59, as amended, relating to a loan made by the Bank of Guam to the Guam Memorial Hospital Authority and

(ii) Public Law No. 25-72, as amended, relating to a loan made by the Bank of Hawaii to the government of Guam for the purpose of funding the voluntary separation program.

(d) The aggregate amount of scheduled debt service on the refunding bonds in each year to and including the final maturity of the refunding bonds shall be less than or equal to the maximum annual debt service on the prior bonds and the final scheduled maturity date of such refunding bonds shall be not more than five (5) years after the final scheduled maturity date of the prior bonds.

(e) The refunding bonds shall be payable from and secured by all or any portion of the same source, or sources, of revenues as the prior bonds refunded by the issue and the amounts to be received under any financial contract entered into under § 51105 of this Chapter, and shall *not* be payable from or secured by any other source, or sources, of revenues, *except* as may be authorized by statute. Any pledge or lien on revenues or other monies authorized to be granted with respect to the prior bonds refunded by the issue is hereby authorized to be granted with respect to the refunding bonds.

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If the prior bonds being refunded are general obligations of the government, the refunding bonds shall be general obligations of the government.

(f) If and to the extent that any refunding bonds are not payable from and secured by the revenues of any autonomous agency of the government that were pledged to secure the related prior bonds, but are payable from and secured by a pledge of revenues that would otherwise be deposited in the General Fund, such autonomous agency shall pay to the General Fund on the dates on which any moneys that would otherwise be deposited in the General Fund are applied to pay debt service on such refunding bonds an amount equal to the lesser of (a) the amount of such moneys so applied to pay debt service and (b) the amount of such autonomous agency revenues available for such purpose.

(g) The proceeds of the refunding bonds may be used to fund a bond reserve only:

(1) to the extent that moneys from any bond reserve for the prior issue are transferred to the escrow from which the prior bonds will be paid, and

(2) if the prior bonds had no bond reserve, in an amount not greater than maximum annual debt service on the related refunding bonds.

(h) The terms and conditions of the refunding bonds shall be as determined by I Maga'lahañ Guåhan [Governor of Guam] by the execution of a certificate or indenture authorizing the issuance of the bonds. The certificate or indenture shall contain terms and conditions that are consistent with this Chapter, and shall include substantially the same additional bond tests, rate covenants and other covenants as were applicable with respect to the prior bonds.

(i) Any refunding bonds authorized by this Chapter shall constitute valid and binding obligations of the government of Guam. All officers charged by law with any duty in the collection of any revenues from which debt service on the issue will be payable shall do every lawful thing necessary to collect the amount necessary for such purpose. The validity of any such bonds shall not be affected by the validity or regularity of any proceedings for the

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implementation of the capital improvement projects funded by the prior bonds.

(j) Any appropriation of revenues or other moneys made by the statute authorizing the issuance of the prior bonds is hereby continued as an appropriation with respect to the refunding bonds.

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

(l) The technical form and language of the refunding bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms, covenants or conditions not inconsistent with this Chapter, and including covenants relating to the collection of revenues, shall be as specified in the certificate or indenture executed by I Maga'lahañ Guåhan [Governor of Guam] authorizing the issuance of the refunding bonds. The certificate or indenture may appoint one (1) or more trustees, or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds and monies relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the certificate or indenture. Trustees having possession or custody prior to November 20, 2001 of the trust proceeds from the bond(s) being refunded shall remain as trustees on refunding bonds without going through a new procurement process. I Maga'lahañ Guåhan [Governor of Guam] is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds and the sale of the bonds.

(m) I Maga'lahañ Guåhan [Governor of Guam] is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and marketability of any issue of bonds authorized by this Chapter. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions

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for advances used to pay principal of or interest on the issue. Any such reimbursement obligation shall be payable solely from the same sources as debt service on the issue is payable, and any such advance, if necessary, shall be treated as creating a reimbursement obligation issued to refund the issue.

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

(o) 5 GCA § 50103(k) provides that agencies and instrumentalities of the government of Guam shall issue bonds and other obligations only by means of and through the agency of the GEDA. No issue of bonds authorized by this Chapter shall be sold until the Board of Directors of GEDA has adopted a resolution approving the sale of such issue.

(p) 5 GCA § 50103(k) also provides that GEDA shall not sell any bonds without approval by I Liheslaturan Guåhan [Guam Legislature] of the terms and conditions of the issuance of the bonds. I Liheslaturan Guåhan [Guam Legislature] hereby approves the issuance, terms and conditions of the bonds authorized by this Chapter.

SOURCE: Subsection (e) amended by P.L. 26-59:1 to correct errors in the original. Subsection (l) amended by P.L. 26-59:2 to correct errors.

§ 51103. Approval of Issuance, Terms and Conditions of Bonds of Agencies, Authorities and Instrumentalities of the Government for the Sole Purpose of Achieving Debt Service Savings.

Section 50103(k) of Title 12 of the Guam Code Annotated, authorities and instrumentalities of the government of Guam shall issue bonds only by means of and through the agency of GEDA and that GEDA shall not sell any bond without approval by I Liheslaturan Guåhan [Guam Legislature] of the terms and conditions of the issuance of the bonds. I Liheslaturan Guåhan [Guam Legislature] hereby approves the issuance, terms and conditions of refunding bonds to be issued by any agency, authority and instrumentality of the government of

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Guam, subject to the following requirements, limitations, terms and conditions, which shall apply separately to each such issue of refunding bonds:

(a) The issuance of the refunding bonds shall not cause a violation of the debt limitation provisions of 48 USC 1423a (§11 of the Organic Act of Guam).

(b) All obligations of the agency, authority or instrumentality to pay debt service on, and the redemption price of, the prior bonds shall be discharged concurrently with the issuance of the refunding bonds. Thereafter, the prior bonds shall be payable solely from and secured solely by an escrow established for such purpose.

(c) The debt service savings resulting from the issuance of the refunding bonds shall be not less than two percent (2%).

(d) The aggregate amount of scheduled debt service on the refunding bonds in each year to and including the final maturity of the refunding bonds shall be less than or equal to the maximum annual debt service on the prior bonds, and the final scheduled maturity date of such refunding bonds shall be not more than five (5) years after the final scheduled maturity date of the prior bonds.

(e) The proceeds of the refunding bonds may be used to fund a bond reserve only if and to the extent that moneys from any bond reserve for the prior issue are transferred to the escrow from which the prior bonds will be paid.

(f) The terms and conditions of the refunding bonds shall be consistent with this Section, and shall include substantially the same additional bond tests, rate covenants and other covenants as were applicable with respect to the prior bonds.

(g) No issue of bonds approved by this 'shall be sold until the Board of Directors of GEDA has adopted a resolution approving the sale of such issue.

§ 51104. Permitted Investments.

The proceeds of bonds issued by the government or any agency, authority or instrumentality thereof under this Chapter, and any revenues relating to such bonds, may be invested in, but only in, the types of

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investments permitted by the certificate or indenture pursuant to which such bonds are issued.

§ 51105. Financial Contracts to Achieve Savings.

Any agency, authority or instrumentality of the government and I Maga'lāhen Guåhan [Governor of Guam] on behalf of the government of Guam, in connection with, or incidental to, the issuance of bonds under this Chapter, or the carrying of any investment or program of investment under this Chapter, may enter into any contracts which GEDA determines to be necessary or appropriate to place the obligation or investment of the agency, authority or instrumentality of the government, as represented by the bonds, investment or program of investment and the contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by GEDA in the furtherance of the purposes of this Chapter, including, without limitation, contracts commonly known as interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, put or call to hedge payment, currency, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by GEDA in connection with, or incidental to, entering into or maintaining any agreement which secures bonds. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by GEDA, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate.

§ 51106. Local Sale of Bonds.

GEDA shall undertake its best efforts to cause a portion of any bonds issued pursuant to this Chapter, to be offered for sale in Guam, as well as in other jurisdictions, if and to the extent that such offer and any sales resulting from such offer do not increase the cost to the government of Guam of issuing and repaying such bonds.

§ 51107. Education Facilities Fund.

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There is hereby created an Education Facilities Fund (the 'Fund'). The Fund shall be a special fund of the government of Guam and shall be used for the sole purpose of constructing or renovating education facilities. Expenditures from the Fund shall be by appropriation of I Liheslaturan Guåhan [Guam Legislature]. The Fund shall initially be funded in an amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) at the time or times and to the extent that amount constitutes revenues derived by the government under 48 U.S.C. §1421h (§30 of the Organic Act of Guam) and previously deposited in a debt service fund with respect to prior bonds are made available by the refunding of such prior bonds pursuant to this Chapter. Thereafter, the Fund shall be funded by appropriation of I Liheslaturan Guåhan [Guam Legislature]. The Fund shall be managed by the Guam Economic Development Authority. Investment income on the assets of the Fund shall be deposited in the Fund.
