

12 GCA AUTONOMOUS AGENCIES
CH. 81 GEDCA TOBACCO SETTLEMENT REVENUE BOND ACT

CHAPTER 81
GEDCA TOBACCO SETTLEMENT REVENUE BOND ACT

SOURCE: Entire Chapter added as Chapter 80 by P.L. 26-004:1, which was already occupied. Renumered by Compiler as Chapter 81.

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§ 81101. Short Title.

This Chapter may be cited as the *Guam Economic Development Authority Tobacco Settlement Revenue Bond Act*.

§ 81102. Legislative Statement and Intent.

I Liheslaturan Guåhan [The Guam Legislature] hereby incorporates by reference and reiterates the findings made in Public Law Number 25-187 concerning the sale and securitization of the tobacco settlement payments allocable to Guam under the Master Settlement Agreement between the major United States tobacco manufacturers and forty-six (46) states, Guam, the District of Columbia, the Commonwealth of

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Puerto Rico, the U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands.

It is the intent of *I Liheslaturan Guåhan* [the Legislature] to approve the terms of the sale and securitization as required by 12 GCA §24102.

§ 81103. Definitions.

As used in this Chapter, the following words and phrases are defined to mean:

(a) *Authority* means the Guam Economic Development and Commerce Authority, as established by Chapter 50 of this Division.

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

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

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

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

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

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

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

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

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

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(k) *Tobacco trust funds* means the funds specified in § 221303 of Title 5 of the Guam Code Annotated.

SOURCE: Subsection (k) amended by P.L. 29-019:IX:2 (Sept. 29, 2007).

§ 81104. Tobacco Receipts; Assignment to Authority.

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

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

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

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

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

§ 81105. Powers of the Board.

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

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

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

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

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

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

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

(7) arrange for insurance, guarantees, letters of credit, and other forms of collateral or security, or credit support from any public or private entity for the payment of any bonds, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security, or credit support; provided, however, that any reimbursement obligation of the Authority under such arrangement shall be payable solely from the same sources as debt service on the bonds is payable;

(8) enter into contracts and expend funds to obtain accounting, management, legal, financial consulting, trusteeship and

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other professional services necessary or convenient to the operations of the Authority;

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

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

(11) direct the Attorney General of the government to enforce in the name of the government or the Authority, and if permissible, to enforce directly through the Authority's own attorneys in the name of the government or the Authority, the Master Settlement Agreement, but the board may not give any approval of any amendment to the Master Settlement Agreement without the approval of *I Liheslaturan Guåhan* [Guam Legislature]; and

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

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

§ 81106. Authorization of Bonds.

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

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

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

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

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

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

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

(h) The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other tenets, covenants or conditions not inconsistent with this Chapter, shall be as specified in the indenture approved by the board. Regardless of their form or character, bonds issued under this Chapter shall be negotiable instruments for all purposes, subject only to the provisions of such bonds for registration. Such indenture may also appoint one (1) or more trustees or other fiduciaries authorized to receive and hold in trust the tobacco receipts, the proceeds of the bonds and other moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. Covenants of the Authority in the indenture may include, without limitation, the establishment and maintenance of reserve funds for the payment of debt service on bonds if the tobacco receipts are inadequate in any year, restrictions on the later issuance of additional bonds or making the later issuance subject to certain conditions relating to available debt service coverage or otherwise, conditions on the timing of the release of all or a portion of the tobacco receipts from the lien of the indenture, the enforcement of the Master Settlement Agreement, or any other matter that the board considers appropriate, subject to Subsections (d), (i) and (j) of this Section.

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

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

§ 81107. Accounts to be Maintained Separately.

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

§ 81108. Modification of Master Settlement Agreement.

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

§ 81109. Right of Authority to Fulfill Agreements with Bondholders Protected.

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

§ 81110. Protection of Tobacco Receipts.

No person acting under any provision of law or principle of equity shall be permitted in any way to impede, or in any manner interfere with:

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

(b) the pledge described in § 81106(e), and the full and timely application of the pledged property as provided in the indenture for bonds issued under this Chapter. None of the property described in the first sentence of § 81104(a) *shall* be subject to garnishment, execution, attachment *or* other process, writ *or* remedy in connection with the assertion *or* enforcement of any debt, claim, settlement *or* judgment against the government *or* the Authority, *except* as provided in the indenture for bonds issued under this Chapter.

SOURCE: Subsection (b) amended by P.L. 29-019:IX:3 (Sept. 29, 2007).

§ 81111. Master Settlement Agreement and Model Statute Valid and Enforceable.

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

§ 81112. Performance of Master Settlement Agreement.

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

§ 81113. Bond Proceeds to Refund the Guam Economic Development and Commerce Authority Tobacco Settlement Asset-Backed Bonds, Series 2001A and Series 2001B, and for other purposes.

(a) Notwithstanding any other Sections in this Chapter, including § 81104(b), *or* Article 13 of Chapter 22 of Division 2 of Title 5 of the Guam Code Annotated, the proceeds of bonds issued pursuant to this Chapter to refund the Authority's Tobacco Settlement Asset-Backed Bonds, Series 2001A and Series 2001B (the Prior Bonds) *shall* be used to: (1) refund the Prior Bonds; (2) pay costs arising from issuance of the bonds; (3) fund any required reserve or operating funds for the bonds; and (4) provide a minimum of Seven Million Dollars (\$7,000,000) for transfer from the Authority to the General Fund for the payment of the expenditures listed in subsection (b).

(b) (1) There is hereby created the Guam Cancer Assistance and Treatment (GCAT) Program, within the Guam Department of Public Health and Social Services (DPHSS). DPHSS *shall* use funds under this Program to supplement and/or cover direct cancer care services *not* covered in other local public assistance programs under their purview, such as the Medically Indigent Program (MIP) and Medicaid program. In addition, DPHSS *shall* have discretionary authority to utilize funds under this Program to provide direct cancer-related services and treatment for cancer patients under public assistance programs, and who are otherwise unable to meet their financial obligations for treatment.

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Two Million Dollars (\$2,000,000) from the bond proceeds to refund the Guam Economic Development Authority Tobacco Settlement Asset Backed Bonds, Series 2001A and Series 2001B held in an account by the Guam Economic Development Authority *shall* be made available for the sole use of the Guam Cancer Assistance and Treatment Program as established and authorized by this Subsection (b)(1). The Director of the Department of Public Health and Social Services *shall* be the certifying authority of these funds.

The Director of DPHSS *shall* transmit a report outlining the detailed expenditures of this Program to *I Maga'lahaen Guåhan* and to the Speaker of *I Liheslaturan Guåhan* on a monthly basis.

(2) Six Million Dollars (\$6,000,000) to the Department of Public Health and Social Services to fund the renovation and capital improvement needs of the Southern Regional Health Center.

(c) To the extent that the bond proceeds available for the purposes of subsection (a) are *more or less* than the sum of the amounts in subsection (b), the amounts in subsection (b) *shall* be increased *or* decreased, as applicable, *pro rata*.

SOURCE: Added by P.L. 29-019:IX:1 (Sept. 29, 2007). Subsection (b)(1) amended by P.L. 31-039:2 (May 9, 2011).

§ 81114. Chapter to be Liberally Construed.

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

NOTE: Formerly § 81113, renumbered by P.L. 29-019:IX:1 (Sept. 29, 2007) in order to add a new § 81113.

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§ 81115. Severability.

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

NOTE: Formerly § 81114, renumbered by P.L. 29-019:IX:1 (Sept. 29, 2007) in order to add a new § 81113.

As uncodified sections 2, 3 and 4, the Legislature enacted the following with respect to this Chapter:

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

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

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