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CH. 49 SCHOOL FINANCING

CHAPTER 49
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SOURCE: Chapter 49 added by P.L. 28-068:II:I:18 (Sept. 30, 2005).

§ 49001. 2005 Revenue School Improvement Bonds.

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(a) Authorization of Issuance of Revenue School Improvement Bonds. *I Maga'lahaen Guåhan* is authorized to issue new bonds of the government of Guam in an aggregate principal amount not to exceed Seventeen Million Dollars (\$17,000,000) to fund all or a portion of the capital outlay and capital improvement projects described herein, and paying expenses incurred in connection with the issuance of such new bonds; provided, however, that the issuance of the new bonds shall not violate the debt limitation provisions of 48 U.S.C. §1423a.

(b) Terms and Conditions Determined by Indenture. The terms and conditions of the bonds shall be as determined by *I Maga'laha* by the execution of an indenture securing the bonds upon or before the issuance of the bonds. The indenture shall contain such terms and conditions as are consistent with this Section.

(c) Valid and Binding Obligation. To the extent that the debt limitation provisions of 48 U.S.C. §1423a are not violated, any bonds authorized by this Section shall constitute the valid and legally binding limited obligations of the government of Guam payable solely from and secured by a pledge of the revenues pledged pursuant to Subsection (d) of this Section.

(d) Pledge of Revenues; Not a General Obligation. There is hereby established the School Improvement Fund, hereinafter known as the 'SIF'. Any and all revenues derived from the issuance of new and renewal licenses issued by the Business License Branch of the Department of Revenue and Taxation in Guam, and all fees and penalties collected by the Department of Education, except as restricted by federal law, shall be deposited in the SIF. All funds held in the SIF may be pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or administration of the bonds. Any pledge made to secure the bonds shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in a separate account and shall be

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immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, regardless of whether the parties have notice thereof. The indenture or agreement by which such pledge is created need not be recorded. All such fees and penalties, to the extent so pledged, are hereby continuously appropriated for such purpose. The bonds shall not be, and shall state on their face that they are not, general obligations of the government of Guam.

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

(f) Form of Bonds; Covenants; Appointment of Fiduciaries. 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 terms or conditions not inconsistent with this Section, including covenants relating to the maintenance of revenues, shall be as specified in the indenture approved by *I Maga'lahi* authorizing the issuance of the bonds. The indenture may appoint one or more trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds and revenues relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. *I Maga'lahi* is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds, the sale of the bonds and payment of the bonds being refunded. The indenture shall be subject to the approval of *I Liheslaturan Guåhan*.

(g) Authorization for Credit Enhancement. *I Maga'lahi* 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 the bonds issued under this Section. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal or interest on the bonds. Any such reimbursement obligation shall be payable solely from,

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and may be secured by a pledge of, the revenues described in Subsection (d) of this Section.

(h) Use of Proceeds from the Sale of the Bonds. Proceeds from the sale of the bonds shall be used solely to fund all or a portion of the projects enumerated in Subsection (j) of this Section, and to pay expenses relating to the authorization, sale and issuance of the bonds and the payment of the bonds being refunded, including, without limitation, printing costs, costs of reproducing documents, bond insurance premiums, underwriting, legal and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings, fees and charges for execution, transportation and safekeeping of bonds, escrow agent fees and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds and the payment of the bonds being refunded.

(i) No Personal Liability Except for Failure to Perform Ministerial Duty. 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 Section, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

(j) Proceeds. The proceeds shall be expended for the following school improvement projects:

(1) design, repair, renovation and reconstruction of facilities that are part of public schools in Guam, inclusive of restrooms, classrooms, cafeterias, labs and other such facilities as determined by the Superintendent of Education, provided that no such work may be performed on a facility that is not a school; and

(2) purchase and upgrading of school air conditioning systems, school fire alarm and safety systems and classroom computers, as determined by the Superintendent of Education.

(k) Alternative Financing. Should *I Maga'lahi* determine that an alternative method of financing, including, but not limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States Federal Government will better serve the needs of the school system and the people of Guam, *I Maga'lahi* is authorized to pursue such financing by pledging the revenues detailed in this Section, provided that the proceeds of such alternative financing shall

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be as authorized by this Section and provided further that any instrument of such financing shall be subject to the approval of *I Liheslaturan Guåhan* before execution.

(l) Assistance by GEDCA. The Guam Economic Development and Commerce Authority shall provide such assistance as *I Maga'lahi* requires or requests in fulfilling the purpose of this Section. Such assistance will be provided without fee or compensation of any kind.

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education. References to Guam Public School System have been changed to Department of Education pursuant to P.L. 30-050:3.
