

TITLE 1: GOVERNMENT
DIVISION 8: PUBLIC EMPLOYMENT

§ 8490. Short Title.

(a) This Act may be cited as the Pension Obligation Bond Authorization Act of 2013.

(b) Section 20 of Article III of the N.M.I. Constitution guarantees certain rights for members in a retirement system of the Commonwealth. The Northern Mariana Islands Retirement Fund has historically been the retirement system of the Commonwealth to which employer contributions were made and through which retirement benefits were paid. In the November 2012 election, the voters approved House Legislative Initiative No. 17-5 adding a new Section 10 to Article X of the N.M.I. Constitution: (i) to allow for the issuance of pension obligation bonds in an amount not exceeding the Commonwealth's actuarially determined unfunded accrued liability to the Retirement Fund; and (ii) to direct that the net proceeds of such bonds be deposited and invested along with other monies in a defined benefit plan trust fund administered by the Retirement Fund.

Beginning in 2009, a class action was filed in the Federal District Court for the Northern Mariana Islands, Case No. 09-00023, asserting claims arising from the Commonwealth's failure to pay annual contributions to the Retirement Fund. In 2013, the parties to this litigation entered into a Stipulation and Agreement of Settlement, and the United States District Court issued a Final Approval Order approving the Settlement Agreement and certifying the Settlement Class and further issued a Consent Judgment.

The Settlement Agreement together with the Consent Judgment provided that: (1) the Commonwealth is liable for money damages in the amount of \$779 million or the equivalent of the actuarial present value of benefits related to the Settlement Class Members, (2) a Settlement Fund be established for the benefit of the Settlement Class Members, (3) the Settlement Class Members were defined as "All persons who on August 6, 2013 are members of the Defined Benefit Plan of the Northern Mariana Islands Retirement Fund or persons who are entitled to survivor's benefits of such members; provided the person did not execute and deliver to the CNMI Fund a timely Election to Terminate," (4) the Retirement Fund was required to transfer to the Settlement Fund all assets of the Retirement Fund (except certain assets for the benefit of Non-Settlement Class Members who are members of the Defined Contribution Plan and certain other specified assets), (5) all liabilities of the Retirement Fund (with certain exceptions) were required to be transferred to the Commonwealth, and (6) the Commonwealth was required to make payments to the Settlement Fund in accordance with the Settlement Agreement.

The Legislature acknowledges that Article X, section 10, provides that the net proceeds of bonds shall be deposited and invested with other funds in a defined benefit plan trust fund administered by the Northern Mariana Islands Retirement Fund. The Legislature also acknowledges that CNMI Retirement Fund shall give priority to paying any money received for pension benefits from Pension Obligation Bond to the Settlement Fund to insure that the payment of the Settlement

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Class Members is not lower than the amount paid to those who opted out of the Settlement Agreement.

The legislature finds and determines that issuance of the bonds proposed in this act and use of the proceeds of those bonds to satisfy the liabilities of the Retirement Fund to its remaining non Settlement Class Members and the liabilities of the Commonwealth to the Settlement Class Members, with respect to the actuarially determined unfunded accrued liability to those persons, is consistent with the meaning and intent of Section 20 of Article III and Section 10 of Article X of the N.M.I. Constitution. Based on the GASB 67/68 Preview Valuation as of October 1, 2010, prepared by Buck Consultants LLC, January 2013, and on the Settlement Agreement, the amount of the Commonwealth's actuarially determined unfunded accrued liability for purposes of Section 10 of Article X of the N.M.I. Constitution is not less than three hundred million dollars.

The bond authorization proposed in this act serves a public purpose and does not create an additional liability on the part of the Commonwealth. The proposed authorization would only substitute a bond obligation for a judgment obligation.

Source: PL 18-12 § 1 (July 2, 2013); existing text redesignated as subsection (a) and former Findings and Purpose statement contained in the Commission Comment repealed and replaced by subsection (b), PL 18-45 § 2 (Apr. 11, 2014), modified.

Commission Comment: PL 18-12 (July 2, 2013) contained the following provisions in addition to severability and savings clauses.

Section 2. Findings and Purpose. The Commonwealth Government owes over \$300,000,000 in unpaid employer contributions to the Northern Mariana Islands Retirement Fund. This liability is in respect to Commonwealth Government departments, agencies and governmental units whose personnel costs are funded by annual appropriation acts. In addition to this amount, some autonomous agencies and governmental corporations also have unpaid employer obligations to the Northern Mariana Islands Retirement Fund.

In the November 2012 election, the voters approved House Legislative Initiative No. 17-5 amending Article X of the N.M.I. Constitution to allow the issuance of pension obligation bonds in an amount which does not exceed the Commonwealth's actuarially determined unfunded liability to the Northern Mariana Islands Retirement Fund. An actuarial determination of the Commonwealth government's unfunded liability to the Northern Mariana Islands Retirement fund will be necessary to determine that the proposed bond authorization is within the limits established by H.L.I. No. 17-5.

The bond authorization proposed by this act serves a public purpose and does not create an additional liability on the part of the Commonwealth. The proposed authorization would only substitute a bond obligation for a judgment obligation.

Section 6. Article X, Section 3 Certification. Upon passage of this bill by both houses of the Legislature, by a vote of at least two-thirds of the

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members in each house, the Speaker of the House of Representatives and the President of the Senate shall certify and the House Clerk and the Senate Legislative Secretary shall attest to the passage of this bill by such two-thirds vote, in accordance with Article X, Section 3 of the Commonwealth Constitution. Such certification and attestation shall form a part of the engrossed bill for transmission to the Governor, and shall serve as affirmation of the full faith and credit of the Commonwealth Government with respect to this bond issuance.

PL 18-45 (Apr. 11, 2014) contained, in addition to severability and savings clauses, the following Findings and Purpose section:

Section 1. Findings and Purpose. The Legislature finds that Public Law 18-12 needs to be amended to provide for the issuance of bonds other than general obligation bonds.

Section 2 of PL 18-45 repealed Section 2 of PL 18-12 (the Findings and Purpose section), which is located in the Commission Comment, and replaced it with the text located at subsection (b). The Commission does not ordinarily codify Findings and Purpose sections in the body of the Code. However, as PL 18-45's amendments to 1 CMC § 8491(b) make reference to the amended Findings and Purpose section, the Commission codified it as subsection (b) of this section.

The Commission struck the figure "\$300,000,000" from subsection (b) pursuant to 1 CMC § 3806(e). The Commission struck an extraneous occurrence of the word "and" and moved a comma inside a quotation mark in subsection (b) pursuant to 1 CMC § 3806(g).