

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

2021 (FIRST) Regular Session

VOTING RECORD

| Bill No. 153-36 (COR) As amended by the Committee on General Government Operations, Appropriations, and Housing; and substituted and amended in the Committee of the Whole. | Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building October 4, 2021 | | | | | |
|---|---|-----|--------------------------|-------------------------|--------|---------|
| NAME | Aye | Nay | Not Voting/ Abstained | Out During Roll Call | Absent | Excused |
| Senator V. Anthony Ada | ✓ | | | | | |
| Senator Frank Blas Jr. | ✓ | | | | | |
| Senator Joanne Brown | ✓ | | | | | |
| Senator Christopher M. Dueñas | ✓ | | | | | |
| Senator James C. Moylan | ✓ | | | | | |
| Vice Speaker Tina Rose Muña Barnes | | | | | ✓ | ✓ |
| Senator Telen Cruz Nelson | ✓ | | | | | |
| Senator Sabina Flores Perez | ✓ | | | | | |
| Senator Clynton E. Ridgell | ✓ | | | | | |
| Senator Joe S. San Agustin | ✓ | | | | | |
| Senator Amanda L. Shelton | ✓ | | | | | |
| Senator Telo T. Taitague | ✓ | | | | | |
| Senator Jose "Pedro" Terlaje | ✓ | | | | | |
| Speaker Therese M. Terlaje | ✓ | | | | | |
| Senator Mary Camacho Torres | | | | | ✓ | ✓ |

TOTAL

13

0

2

2

Aye

Nay

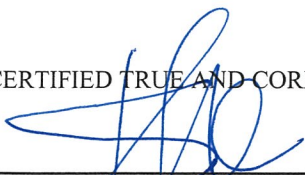
**Not
Voting/
Abstained**

**Out
During
Roll Call**

Absent

Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA'TRENTAIS AIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 153-36 (COR)

As amended by the Committee on General Government Operations,
Appropriations, and Housing; and substituted and amended
in the Committee of the Whole.

*

Introduced by:

Joe S. San Agustin
Jose “Pedo” Terlaje
Tina Rose Muña Barnes
Clynton E. Ridgell
James C. Moylan
Frank Blas Jr.
Amanda L. Shelton
V. Anthony Ada
Mary Camacho Torres
Joanne Brown
Christopher M. Dueñas
Telena Cruz Nelson
Sabina Flores Perez
Telo T. Taitague
Therese M. Terlaje

**AN ACT TO *ADD* A NEW ARTICLE 7 TO CHAPTER 90
OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE
TO THE FINANCE, DESIGN, CONSTRUCTION, AND
MAINTENANCE OF THE GOVERNMENT OF GUAM
DEPARTMENT OF CORRECTIONS, AND TO BE
KNOWN AS THE “DEPARTMENT OF CORRECTIONS
MODERNIZATION ACT OF 2021.”**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Article 7 is hereby *added* to Chapter 90 of Title 9, Guam Code

3 Annotated, to read as follows:

1 The Department of Corrections is the only prison on Guam and provides
2 services to local and federal agencies. DOC provides custodial care to individuals
3 who are convicted of crimes and for those who are waiting judicial disposition. The
4 environment of the prison must meet federal standards such as the National Prison
5 Standards, Prison Rape Elimination Act (PREA), and the National Commission on
6 Correctional Healthcare Standards (NCCHC), which ensures that the living
7 conditions are decent and humane; but, with the issue of overcrowding and structural
8 failures, DOC has been struggling to properly execute their mandates and comply
9 with national standards. DOC is ensuring that it prevents any violations of the
10 Federal Consent Decree, which requires the Government of Guam to improve the
11 living conditions of the inmates following the Civil Rights of Institutionalized
12 Persons Act.

13 The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure
14 due to age and lack of modern technology, which is affecting the operations and
15 personnel of the correctional agency. The ACF was built to hold a maximum of three
16 hundred (300) inmates and detainees; and currently, the population of Guam is
17 growing as well as its crime rates, while DOC has outgrown its ACF. Over time,
18 other DOC buildings were added to address the overcrowding issues of the ACF,
19 and buildings used for rehabilitation and offices were re-designed to accommodate
20 the rising population of prisoners. The Adult Correctional Facility is made of fifteen
21 (15) housing units, which holds not only local inmates and detainees, but also
22 immigration and federal detainees. The lack of proper facilities prevents DOC from
23 properly providing rehabilitation to the inmates.

24 The poor condition of the housing units of the prison is not cost effective or
25 adequate to handle the growing prisoner population, and DOC recognized the
26 difficulty in meeting its mandates of providing security, health, rehabilitation and
27 welfare to the inmates and detainees under its care without compromising the well-

1 being of its personnel. The main goal of the Department of Corrections is to provide
2 rehabilitation to individuals who have been convicted of crimes and ensure that they
3 become useful members of the community and to themselves.

4 Furthermore, *I Liheslaturan Guåhan* finds that DOC has plans to build a new
5 Department of Corrections facility with a bed capacity for one thousand (1,000)
6 inmates to replace its current prison if funding was available. The new prison would
7 provide the proper space to meet its mandates and the demands of its growing
8 prisoner population. The Department of Corrections had started to draft an eighty
9 (80)-year master plan, which will provide a phase-to-phase plan to construct a new
10 Department of Corrections facility that will meet its construction goal of a bed
11 capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to
12 ensure that all the issues on structural, technology, and security of the inmates and
13 personnel are covered. The master plan also ensures that DOC meets all federal
14 standards such as the National Prison Standards and PREA standards.

15 Therefore, it is the intent of *I Liheslaturan Guåhan* to provide the Department
16 of Corrections with the proper confinement of offenders in a controlled environment
17 prison and community-based facilities that are safe, humane, cost-efficient, and
18 appropriately secure, which also promotes the safety of the people of Guam. *I*
19 *Liheslaturan Guåhan* has identified funding to construct a new Department of
20 Corrections Adult Correctional Facility through the Earned Income Tax Credits to
21 be reimbursed to Guam at an estimated Sixty Million Dollars (\$60,000,000)
22 annually, of which an estimate of no more than Five Million Dollars (\$5,000,000)
23 will be allocated for the payments of the lease-back agreement.

24 In an effort to overcome financing hurdles, and to provide DOC with the
25 proper tools to meet its mandates, *I Liheslaturan Guåhan* desires to authorize the
26 Government of Guam to enter into contract for the financing, design, construction,

1 and long-term capital maintenance of a new Department of Corrections facility with
2 private sector contractors who can provide long-term financing.

3 To facilitate the financing, design, construction, and maintenance of a new
4 Department of Corrections facility envisioned by this Act, the Government of Guam
5 will be authorized to execute a lease agreement of existing property under its
6 inventory for up to thirty (30) years on which the new Department of Corrections
7 facility will be constructed.

8 The lease of the Government of Guam's property will be to the contractor
9 and/or the Guam Economic Development Authority, who will design and construct
10 the new Department of Corrections facility and provide a funding for the design and
11 construction through appropriations received from the reimbursement of the Earned
12 Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the
13 General Fund, thereafter annually. Upon completion of the construction, the
14 facilities and land will be leased back to the Government of Guam for a period not
15 to exceed the initial ground lease to the contractor over which time the Government
16 of Guam will amortize, as lease payments to the contractor, the cost of financing,
17 design, construction, and related expenses of the new Department of Corrections.

18 The contractor/developer will also be responsible for the capital maintenance
19 and repair of the Department of Corrections constructed under this Act, which costs
20 shall be paid by the Government of Guam as provided for under this Act. At the
21 expiration of the lease-back period, the Government of Guam real property and the
22 Department of Corrections constructed on the Government of Guam real property
23 will revert to the Government of Guam with no further obligations to the contractor.

24 **§ 90.302. Definitions.**

25 For the purposes of this Article and unless otherwise specified, the following
26 words and phrases are defined to mean:

1 (a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code
2 Annotated, which shall be known as “The Department of Corrections
3 Modernization Act of 2021.”

4 (b) *Contract* shall mean the design, construction, and financing
5 contract entered by and between the Government of Guam and the contractor
6 following negotiations on the response to the Request for Proposal.

7 (c) *Contractor/developer* shall mean the authorized entity which
8 shall be the signatory on the contract and shall be fully responsible for
9 carrying out the finance, design, construction, and maintenance of the new
10 Department of Corrections. The contractor/developer may cooperate with
11 another entity or entities in any manner the contractor/developer deems
12 appropriate to provide for the financing, design, and construction of the new
13 Department of Corrections envisioned by this Chapter.

14 (d) The *Department of Corrections Construction Committee* shall be
15 chaired by the Administrator or Deputy Administrator of the Guam Economic
16 Development Authority, and include the Director and Deputy Director of the
17 Department of Corrections, the Director or Deputy Director of the Department
18 of Public Works, the Director or Deputy Director of the Department of Land
19 Management, the Director or Deputy Director of the Bureau of Statistics and
20 Planning, the Director or Deputy Director of the Bureau of Budget and
21 Management Research, and the Director or Deputy Director of the
22 Department of Administration.

23 (e) *Correctional agency* shall mean the Department of Corrections.

24 (f) *Correctional facility* shall mean the Department of Corrections
25 Adult Correctional Facility.

1 (g) *Lease* shall mean a lease from the Government of Guam itself or
2 through the Department of Corrections to the contractor/developer entered at
3 the time of the contract for the property.

4 (h) *Lease-back* shall mean the lease from the Guam Economic
5 Development Authority and/or the contractor/developer to the Government of
6 Guam itself or by and through the Department of Corrections of the newly
7 constructed Department of Corrections.

8 (i) *Property* shall mean any property on which a new Department of
9 Corrections is located.

10 **§ 90.303. Authorization to Enter into Long-Term Leases.**

11 For the purpose of facilitating the financing, design, construction, and
12 maintenance of the new Department of Corrections encompassed by this Act, the
13 Government of Guam is authorized to lease property that will be used for the new
14 Department of Corrections, as required, to the contractor/developer and/or the Guam
15 Economic Development Authority; provided, such property is in the inventory of the
16 Government of Guam.

17 The Government of Guam is also authorized to lease-back from the
18 contractor/developer and/or the Guam Economic Development Authority the
19 property for a period mutually agreed upon between the Government of Guam and
20 the contractor/developer and/or the Guam Economic Development Authority as may
21 be reasonably necessary to amortize the lease-back period of no more than thirty
22 (30) years the cost associated with the design, construction, and maintenance of the
23 new Department of Corrections. In no event shall the end of such lease-back period
24 be structured as an annually renewable lease with a provision for automatic renewals
25 to the extent that pledged revenue under § 90308 is available. The lease-back shall
26 not be construed as a debt under any applicable debt limitation under the Organic
27 Act of Guam or Guam law.

1 **§ 90.304. Identification Projects and Procurement.**

2 The Guam Economic Development Authority, in consultation with the
3 Director of the Department of Corrections, shall utilize the program study of the
4 correctional agency to identify and prioritize potential projects to be completed. The
5 list of projects identified by the Program Study of the correctional agency shall be
6 included in one (1) Request for Proposal developed by the Guam Economic
7 Development Authority. Upon receipt of the Program Study, the Guam Economic
8 Development Authority, in consultation with the Director of the Department of
9 Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in
10 compliance with the Guam Procurement Law, for the financing, design, and
11 construction of the Department of Corrections, according to the needs of the
12 correctional agency and consistent with this Article. GEDA is also hereby authorized
13 to solicit the services for a Program Management Office, which shall include, but
14 not be limited to, creating scopes of work, coordinating projects and performance
15 targets, conducting periodic quality control reviews, assuring timely product
16 generation and response, and managing the project to produce a quality product
17 within the budget and schedule. The choice of the contractor/developer shall be
18 made by the Department of Corrections Construction Committee. The committee
19 shall assess the prior performance of the contractor/developer on similar projects,
20 and shall be free to disqualify any contractor/developer that does not have a
21 successful record of project completion on Guam or any similar isolated locality.

22 The Committee shall also specifically consider the contractor/developer's
23 ability and performance with regards to the financing, development and construction
24 of a correctional facility on Guam or any similar isolated locality.

25 The selection of a contractor/developer shall be based upon the proposal that
26 delivers the lowest cost value for Guam in meeting the objectives of the correctional
27 agency.

1 GEDA shall issue an RFP within thirty (30) days after the conclusion of its
2 Program Study, in consultation with the Department of Corrections for the design,
3 construction, and maintenance of the correctional facilities.

4 **§ 90.305. Responsibility of Contractor/Developer.**

5 The contract shall require that the contractor/developer be responsible for all
6 costs, expenses, and fees of any kind or nature, associated with the design, civil
7 improvements, on-site and off-site infrastructure, construction, permits, and
8 financing associated with the completion of the Department of Corrections to the
9 extent provided by GEDA in consultation with the Department of Corrections in the
10 Request for Proposal. The lease may, for the purposes herein, provide that its term
11 shall be extended for a period not to exceed the shorter of ten (10) years beyond the
12 original term of the lease-back, or such period of time as is necessary to repay in full
13 any financing arranged pursuant to § 90.309 of this Article.

14 **§ 90.306. Contractual Safeguards.**

15 Prior to undertaking the work of finance, design, construction, and
16 maintenance of the new Department of Corrections, the Guam Economic
17 Development Authority, in consultation with the Department of Corrections and the
18 contractor/developer, shall negotiate and enter into a binding construction contract
19 to build the new Department of Corrections in accordance with Guam Building Code
20 under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable
21 requirements. The construction contract shall contain contractual obligations
22 typically found in Government of Guam construction contracts, including, but not
23 limited to:

- 24 (a) warranties;
- 25 (b) liquidated damages;
- 26 (c) performance and payments bonds;
- 27 (d) indemnity;

- 1 (e) insurance;
- 2 (f) standard specifications;
- 3 (g) technical specifications;
- 4 (h) progress schedule;
- 5 (i) maintenance;
- 6 (j) compliance with Guam labor regulations;
- 7 (k) compliance with Guam prevailing wage rates for employment of
- 8 temporary alien workers (H2) on Guam;
- 9 (l) compliance with Public Law 28-98: restriction against
- 10 contractors employing convicted sex offenders to work at Government of
- 11 Guam venues; and
- 12 (m) the 2017 Guam Tropical Energy Code.

13 The contract must be approved as to form and legality by the Attorney General
14 of Guam.

15 **§ 90.307. Assignments.**

16 To facilitate the purpose of this Act and provide security for the holders of
17 any financing instruments issued pursuant to this Act, the contractor/developer may
18 assign, without the need of the consent of the Guam Economic Development
19 Authority, the contract, the lease and the lease-back to any underwriter, trustee, or
20 other party as appropriate to facilitate the contractor/developer financing.

21 **§ 90.308. Pledge or Reservation of Revenues.**

22 (a) Rental payments under the lease and the lease-back may be secured by
23 a pledge or other reservation of revenues collected by the Government of Guam from
24 the following:

- 25 (1) The sum of no more than Five Million Dollars (\$5,000,000) from
- 26 the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax
- 27 Credit will be available for Fiscal Year 2022 only.

1 (2) The sum of no more than Five Million Dollars (\$5,000,000) from
2 the General Fund shall be appropriated annually thereafter.

3 (3) The Governor of Guam may use federal funds that are made
4 available to the Government of Guam by the United States Federal
5 Government for the financing, design, construction, and maintenance of the
6 new Department of Corrections facility.

7 (4) The use of other financing options is authorized for the purpose
8 of this Act, including, but not limited to, loans, grants, bond financing, and
9 other alternate funding options, subject to legislative approval.

10 Any amounts reserved or pledged as provided in this Section shall be subject
11 to annual appropriations for the purpose of making lease-back payments. The
12 revenues pledged or reserved and thereafter received by the Government of Guam
13 or by any trustee, depository, or custodian shall be deposited in a separate account
14 and shall be immediately subject to such reservation or the lien of such pledge
15 without any physical delivery thereof or further action, and such reservation or the
16 lien of such pledge shall be valid and binding against all parties having claims of any
17 kind in tort, contract or otherwise against the Government of Guam or such trustee,
18 depository or custodian, irrespective of whether the parties have notice thereof. The
19 instrument by which such pledge or reservation is created need be recorded.

20 **§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other**
21 **Financing Instruments for Financing.**

22 (a) To minimize the financing cost to the Government of Guam, financing
23 utilized by the contractor/developer to fund the design, construction, and
24 maintenance of the Department of Corrections shall be through tax-exempt
25 obligations, taxable bond obligation, or other financial instruments; provided, such
26 financing is available at interest rates determined by the Guam Economic
27 Development Authority to be reasonable and competitive. The Guam Economic

1 Development Authority shall be the issuer of any financial instruments or
2 obligations unless the Guam Economic Development Authority waives its right to
3 serve as the issuer of financial instruments or obligations. Alternatively, the
4 contractor may use an alternative method of financing, including, but not limited to,
5 a short-term debt, mortgage, loan, federally guaranteed loan or loan by an
6 instrumentality of the United States of America if such financing will better serve
7 the needs of the people of Guam. Such alternative financing shall be approved by *I*
8 *Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure
9 that the Government of Guam pays the lowest possible interest rate so that the cost
10 of the Government of Guam’s financing of the design and construction of the
11 Department of Corrections, amortized through the lease-back payments from the
12 Government of Guam to GEDA and or the contractor/developer, will be lower than
13 regular commercial rates.

14 (b) *I Liheslaturan Guahan*, pursuant to § 50103(k) of Chapter 50, Title 12,
15 Guam Code Annotated, hereby authorizes the Guam Economic Development
16 Authority to issue one or more additional series of tax-exempt and/or taxable
17 obligations (in any case, the “bonds”) for the purpose of financing the Department
18 of Corrections Adult Correctional Facility, in an aggregate principal amount not to
19 exceed Eighty Million Dollars (\$80,000,000) for the following purposes: (1) to
20 finance the design, construction, and/or the maintenance of the Department of
21 Corrections Adult Correctional Facility; (2) to fund a deposit to a debt service
22 reserve fund; (3) to fund capitalized interest with respect to the bonds; and (4) to pay
23 expenses relating to the authorization, sale, and issuance of the bonds, including
24 without limitation, printing costs, costs of reproducing documents, credit
25 enhancement fees, underwriting, legal, feasibility, financial advisory and accounting
26 fees and charges, fees paid to banks, or other financial institutions providing credit
27 enhancement fees, costs of credit ratings and other costs, charges and fees in

1 connection with the issuance, sale, and delivery of the bonds, subject to the following
2 additional conditions:

3 (A) The terms and conditions of the bonds shall be as determined by
4 the Guam Economic Development Authority by the execution of a certificate,
5 trust agreement or indenture authorizing the issuance of the bonds; provided,
6 however, that such terms and conditions shall be consistent with this Section,
7 that the bonds shall have a final maturity not to exceed thirty (30) years; and
8 an interest rate not to exceed seven percent (7%).

9 (B) No bonds authorized by this Section shall be sold until the Board
10 of Directors of Guam Economic Development Authority has approved the
11 sale by resolution, as provided in Chapter 50 of Title 12, Guam Code
12 Annotated.

13 (C) The issuance of bonds pursuant to this Section shall not be
14 subject to the approval of the voters of Guam.

15 **§ 90.310. Prison IT, Building, and Security Management System.**

16 (a) For the purpose of ensuring the long-serving duration of the
17 Department of Corrections facility, GEDA may include in the specifications for the
18 new correctional facility, the requirement for a prison information management
19 system, a security and surveillance system, and a building management system.
20 These systems identified must be done in consultation with the Department of
21 Corrections and comply with the federal mandates related to prison records and to
22 foster compliance with the Federal Standards for Prisons and Jails.

23 (b) GEDA, in consultation with the Department of Corrections, may
24 determine the specifications for such systems based on comprehensive, state-of-the-
25 art technology generally accepted within the United States Prison Industry in
26 connection with the development for a new Department of Corrections facility. The

1 specifications shall require that all systems are designed by the same software
2 developer so as to ensure the delivery of the rehabilitation to the inmates.

3 (c) In order to ensure immediate response to system downtimes or failure,
4 GEDA may include in the specifications the requirement that the provider of these
5 systems have a local Guam Office and service technicians stationed on Guam.

6 **§ 90.311. Utilities and Routine Maintenance and Repair.**

7 The contractor/developer shall be responsible for the connection and payment
8 of all utilities, including without limitation, power, water, sewer, telephone, and
9 cable and all maintenance and repair and exterior groundskeeping and landscaping
10 and upkeep of the Department of Corrections.

11 **§ 90.312. Maintenance Fund.**

12 The contract with the contractor/developer, and the lease-back shall provide
13 that all capital maintenance and repair of the Department of Corrections facility be
14 performed by the contractor/developer. The contractor/developer shall provide
15 sufficient funding for a separate maintenance fund for this purpose; sufficient funds
16 for this purpose shall be defined as the cost of capital maintenance and repair for the
17 remaining period of the lease agreement with the Government of Guam after the
18 completion of the Department of Corrections. The maintenance fund shall be used
19 exclusively for the purpose of capital maintenance and repair and shall be in an
20 interest-bearing account segregated from other funds held in escrow.

21 **§ 90.313. Rules and Regulations.**

22 The Guam Economic Development Authority, in consultation with the
23 Department of Corrections, may promulgate rules and regulations pursuant to the
24 Administrative Adjudication Law as necessary to implement the provisions of this
25 Article.

26 **§ 90.314. Financial Plan Required.**

27 GEDA shall prepare a financial plan in accordance with the following:

1 (a) At a minimum, the financial plan shall include a comprehensive report
2 of the associated costs and sources of revenues required for the duration of the
3 Department of Corrections Modernization Act of 2021 (Project). The financial plan
4 should reflect the total Project cost and any phases that represent the Project
5 development priorities. All anticipated Project revenues shall be matched and
6 allocable to the anticipated Project costs and shall detail its impact on the overall
7 debt ceiling.

8 (b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and
9 transmitted to the Speaker of *I Liheslaturan Guåhan*. No solicitation of Request For
10 Proposal or invitation for bid authorized to effectuate the requirements of this Act
11 may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan*
12 *Guåhan.*”

13 **Section 2. Severability.** If any provision of this Act or its application to any
14 person or circumstance is found to be invalid or contrary to law, such invalidity shall
15 not affect other provisions or applications of this Act that can be given effect without
16 the invalid provision or application, and to this end the provisions of this Act are
17 severable.

18 **Section 3. Effective Date.** This Act shall be effective upon enactment.