

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) REGULAR SESSION

Bill No. 30- 175(COR)

Introduced by:

T.C. Ada
F.B. Aguon, Jr.
F.F. Blas, Jr.

2009 JUL 14 AM 9:19
[Handwritten signatures and initials]

TRMunoz Barnes

AN ACT TO ADD SUBSECTIONS (14) AND (15) TO SECTION 8104 OF CHAPTER 8 OF TITLE 12 OF THE GUAM CODE ANNOTATED AND TO ADD SUBSECTIONS (n) AND (o) TO SECTION 14104 OF CHAPTER 14 OF TITLE 12 OF THE GUAM CODE ANNOTATED, AND TO AMEND SUBSECTION (c) OF SECTION 14104.1, AND SECTION 14404 OF CHAPTER 12 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERMITTING THE GUAM POWER AUTHORITY, AND THE GUAM WATERWORKS AUTHORITY TO ENTER INTO LONG TERM CONTRACTS.

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

2 **SECTION 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds that it has
3 previously authorized the Consolidated Commission on Utilities, the Guam Power Authority, and the
4 Guam Waterworks Authority to enter into Performance Management Contracts, Contracts with
5 Independent Power Producers, and other Private-Public Partnerships which enabled private entities
6 to build, rehabilitate, operate, and manage various parts of the Islandwide Power System and
7 Guam's Drinking Water and Wastewater Systems at significant savings to ratepayers. Such
8 contracts have proven to be an invaluable tool which enabled the Consolidated Commission on
9 Utilities, the Guam Power Authority, and the Guam Waterworks Authority to end load shedding,
10 reduce the expensive use of fast track generators to save ratepayers over \$110 million in avoided fuel
11 costs since 2003, eliminate boil water notices, end the rationing of drinking water, stop the spillage
12 of wastewater into Guam's precious environment, and end the threats such conditions imposed on
13 the health and safety of the People of Guam and Guam's economic growth. The legislation which

1 the health and safety of the People of Guam and Guam's economic growth. The legislation which
2 enabled such Public-Private Partnership were made under emergency conditions, were for limited
3 time periods, and were temporary in nature. These Public-Private Partnerships have also helped
4 GWA avoid federal receivership after being sued in December 2002 by the U.S. Environmental
5 Protection by ensuring greater compliance with Guam and Federal environmental regulations. And,
6 these Public-Private Partnerships have helped existing Guam Power Authority and Guam
7 Waterworks employees by providing better training, focused management and faster procurement in
8 order to reach higher technical standards to accomplish their jobs in a more efficient and effective
9 manner.

10 Today, *I Liheslaturan Guahan* finds that the People of Guam are faced with new challenges
11 to the Islandwide Power System, and Guam's Drinking and Wastewater Systems arising from the
12 impending buildup of U.S. military forces on Guam and the ever-rising cost of fossil fuels which the
13 successful operation of Guam's infrastructure heavily depends upon.

14 *I Liheslaturan Guahan* finds that in order to keep costs for certain large infrastructure
15 projects as low as possible for ratepayers through the use of longer term partnerships, it is prudent to
16 allow appropriate use of Public-Private Partnerships, and to remove barriers inhibiting such private
17 entities from forming Public-Private Partnerships with the Guam Power Authority, and the Guam
18 Waterworks Authority. *I Liheslaturan Guahan* finds that allowing the Guam Power Authority and
19 the Guam Waterworks Authority to enter into appropriate long term contracts has proven to serve
20 ratepayers well through lower costs, improved management, and better reliability and because such
21 long term contracts allow such private entities to recoup their investment costs during the longer
22 contract period. Spreading the cost over a longer period will lessen the need for higher power,
23 water, and wastewater rates for the infrastructure upgrades these Public-Private Partnerships will
24 produce.

25
26 **SECTION 2. Subsection (14) of Section 8104 of Chapter 8 of Title 12,**
27 **Guam Code Annotated is hereby added to read:**

28 (14) Notwithstanding any other provision of law or regulation, the Guam
29 Power Authority may enter into long term contracts for a period up to and not exceeding
30 thirty (30) years for supplies, services, or construction contracts that cost thirty-million-

1 dollars (\$30,000,000) or more. Nothing herein shall repeal, limit, or otherwise prohibit any
2 law or regulation authorizing the Authority to enter into any contract for a longer period.

3
4 **SECTION 3. Subsection (15) of Section 8104 of Chapter 8 of Title 12, Guam**
5 **Code Annotated is hereby added to read:**

6 “(15) Notwithstanding any other provision of law or regulation, the Authority
7 may enter into Performance Management Contracts to manage or operate any part of the
8 Island Wide Power System for a period up to and not exceeding fifteen (15) years. Nothing
9 herein shall repeal, limit, or otherwise prohibit any law or regulation authorizing the
10 Authority to enter into any contract for a longer period.”

11 **SECTION 4. Subsection (n) of Section 14104 of Chapter 14 of Title 12, Guam Code**
12 **Annotated is hereby added to read:**

13 “(n) Notwithstanding any other provision of law or regulation, the Authority
14 may enter into long term contracts for a period up to and not exceeding thirty (30) years for
15 supplies, services, or construction contracts that cost thirty-million-dollars (\$30,000,000) or
16 more. Nothing herein shall repeal, limit, or otherwise prohibit any law or regulation
17 authorizing the Authority to enter into any contract for a longer period.”

18 **SECTION 5. Subsection (o) of Section 14104 of Chapter 14 of Title 12, Guam**
19 **Code Annotated is hereby added to read:**

20 “(o) Notwithstanding any other provision of law or regulation, the Authority
21 may enter into Performance Management Contracts to manage or operate any part of Guam’s
22 Drinking Water or Wastewater Systems for a period up to and not exceeding fifteen (15)
23 years. Nothing herein shall repeal, limit, or otherwise prohibit any law or regulation
24 authorizing the Authority to enter into any contract for a longer period.”

25 **SECTION 6. Subsection (c) of Section 14104.1 of Chapter 14 of Title 12, Guam**
26 **Code Annotated is hereby amended to read:**

27 “(c) ~~no~~ a contract for service awarded ~~shall be for a duration of more~~
28 ~~than two (2) years, and~~ must include provisions for periodic and timely

1 inspections of all facilities whose maintenance is contracted, with provisions for
2 the revocation of contracts, without penalty to the Authority, for any breach of
3 contract or failure to provide adequate service, as contracted.

4 ~~No other contract, beyond the maintenance contracts specifically detailed in this Section,~~
5 ~~may be entered into by the Authority for a duration in excess of one (1) year, except as~~
6 ~~permitted under the terms of the build, operate and transfer program ('BOT') specifically~~
7 ~~authorized in Guam law or as otherwise permitted herein."~~

8 **SECTION 7. Section 14404 of Chapter 14 of Title 12, Guam Code Annotated is**
9 **hereby amended to read:**

10 **"§ 14404. Contract Limits Performance Reviews.** ~~No contract awarded subject to the~~
11 ~~provisions of this Act may be awarded for a period of greater than five (5) years, except that a~~
12 ~~contract for the operation and maintenance of water wells may not be awarded for a period of greater~~
13 ~~than ten (10) years.~~ All contracts awarded subject to the provisions of this Act must contain
14 performance reviews at least annually, and provisions for contract termination or penalty based upon
15 such review. "

16 **SECTION 8. Severability.** If any provisions of this Act or its application to any person or
17 circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other
18 provisions or applications of this Act which can be given effect without the invalid provisions or
19 applications, and to this end the provisions of this Act are severable.