


**MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session**

Bill No. 46 (EC)

Introduced by:

Ray Tenorio 

**AN ACT TO ADD A NEW CHAPTER 59 TO TITLE
5 OF THE GUAM CODE ANNOTATED, RELATIVE
TO ESTABLISHING A MEANS FOR
CONSTRUCTION AND DEVELOPMENT OF
PUBLIC FACILITIES.**

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

2 **Section 1. Title.** This Act shall be cited and referred to as "*The*
3 *Public Facilities Construction and Development Initiative Act of 2005.*"

4 **Section 2.** Chapter 59 is hereby *added* to Division 5 of Title 5 of the
5 Guam Code Annotated to read as follows:

6 **"CHAPTER 59.**

7 **THE PUBLIC FACILITIES**

8 **CONSTRUCTION AND DEVELOPMENT INITIATIVE ACT OF 2005.**

9	Section 59101.	Title.
10	Section 59102.	Legislative Findings and Policy.
11	Section 59103.	Definitions.
12	Section 59104.	Authorization to Enter into Long-
13		Term Leases.
14	Section 59105.	Procurement.
15	Section 59106.	Responsibilities of Contractor.
16	Section 59107.	Assignments.

1 government will be authorized to lease, for *up to* thirty (30) years,
2 government of Guam property on which the public facilities will be
3 constructed, and to enter into long-term leases of privately held real
4 estate with or without improvements.

5 The lease of the government property will be to the contractor,
6 who will provide funding for the design and construction of public
7 facilities through the use of tax-exempt bonds. Upon completion of the
8 construction, the facilities and land will be leased back to the
9 government for a period *not to exceed* the initial ground lease to the
10 contractor over which time the government will amortize, as lease
11 payments to the contractor, the cost of the financing, design,
12 construction and related expenses of the public facilities. In the case of
13 acquisition of real property owned by parties other than the government
14 for the purpose of development and utilization for public use, the land
15 shall be similarly leased back to the government.

16 The contractor will also be responsible for the capital
17 maintenance and repair of each of the public facilities allowed for under
18 this Act, which costs shall be paid by the government as provided for
19 under this Act. At the expiration of the lease-back period, the real
20 property and the public facilities constructed on the real property will
21 revert to the government with no further obligations to the contractor.

22 **Section 59103. Definitions.** For purposes of this Chapter,
23 unless otherwise specified, the following words and phrases are defined
24 to mean:

- 25 (a) 'Act' means Chapter 59 of Title 5 of the Guam Code
26 Annotated, known as '*The Public Facilities*
27 *Construction and Development Initiative Act of 2005.*'

- 1 (b) *'Contractor'* shall mean the authorized entity which
2 shall be the signatory on the Contract and shall be
3 fully responsible for carrying out the design,
4 construction, financing and maintenance of the public
5 facility. The Contractor may cooperate with another
6 entity or entities in any manner the Contractor deems
7 appropriate to provide for the financing, design,
8 acquisition and construction of the public facilities
9 envisioned by this Chapter.
- 10 (c) *'Contract'* shall mean the design, construction,
11 development, acquisition and finance contract entered
12 into by and between the government of Guam and the
13 Contractor following negotiations on the response to
14 the Request for Proposal.
- 15 (d) *'Government'* shall mean the government of Guam.
- 16 (e) *'Public Facility'* shall mean any structure or structures,
17 together with all ancillary facilities, including parking
18 facilities, utilities and infrastructure associated with
19 providing the services required of the government.
- 20 (f) *'Lease'* shall mean a lease from a government agency
21 to pay funds to the Contractor for the use of the facility
22 for the public through an agreement entered into at the
23 time of the Contract for the real property and
24 commencing upon completion of the construction or
25 acquisition of the Public Facility.
- 26 (g) *'Lease-Back'* shall mean the period of the term of the
27 lease between the Contractor and the government

1 over which period the costs of the design, construction,
2 financing, acquisition and maintenance of a Public
3 Facility is amortized according to the terms agreed to
4 between the government and the Contractor. The
5 period of the Lease and the Lease-Back shall be
6 identical.

7 (h) 'Property' shall mean any property on which a Public
8 Facility is located.

9 **Section 59104. Authorization to Enter into Long-Term**
10 **Leases.**

11 For the purpose of facilitating the financing of the design, construction,
12 development and maintenance of a Public Facility encompassed by this
13 Act, the government is authorized to lease, *if* required, to the Contractor,
14 *subject* to legislative approval, sufficient government real property on
15 which to construct a Public Facility. The location of the Property may be
16 at the site of an existing Facility under the control of an Agency, which
17 may be demolished and rebuilt under the provisions of this Act.

18 Any lease of property pursuant to this Act will be for a period
19 mutually agreed upon between the government and the Contractor as
20 may be reasonably necessary to amortize over the Lease-Back, the
21 costs associated with the financing, design, construction, development
22 and maintenance of the Public Facility, and in no event shall such period
23 be *less than* twenty (20) years, or *exceed* thirty (30) years.

24 Upon completion of the construction of the Public Facility, the
25 Contractor shall lease back to the government the Property for the
26 period of the Lease-Back period. Upon the expiration of the Lease and
27 the Lease-Back of the Property, and the fulfillment of the terms and

1 conditions of the Lease-Back by the government, the Property and the
2 Public Facility shall become the property of the government and the
3 Contractor shall have no further right, title or interest in the Property or
4 the Public Facility.

5 **Section 59105. Procurement.** Upon identifying property
6 adequate for the placement of a Public Facility, the Governor shall solicit
7 Requests for Proposals ('RFP'), through the Department of Public
8 Works, in compliance with the Guam Procurement Law, for the
9 financing, design and construction of the Public Facility, together with
10 maintenance of the Public Facility over the term of the Lease-Back,
11 according to the needs of the government and consistent with this
12 Chapter.

13 **Section 59106. Responsibilities of Contractor.** The Contract
14 shall require that the Contractor be responsible for all costs, expenses
15 and fees of any kind or nature, associated with the design, civil
16 improvements, infrastructure, construction, permits and financing
17 associated with the completion of a Public Facility.

18 The Contractor shall also be responsible for the capital
19 maintenance and upkeep of public facilities during the period of the
20 Lease-Back term. The costs of the design, construction and financing
21 for a public facility shall be paid in *substantially* equal monthly
22 installments over the term of the Lease-Back period, which shall be
23 mutually determined by the government and the Contractor, but which
24 shall *not* exceed thirty (30) years.

25 The capital maintenance, repair and upkeep costs shall be paid on
26 a periodic basis as incurred by the Contractor on terms to be agreed to
27 in the Contract for each Public Facility.

1 **Section 59107. Assignments.** To facilitate the purposes of this
2 Chapter and to provide security for the bondholders, the Contractor may
3 assign, without the need of the consent of the government, the Contract,
4 the Lease and the Lease-Back to any underwriter or other appropriate
5 party that has facilitated the issuance of the tax-exempt bonds
6 necessary to provide the financing for the Public Facility.

7 **Section 59108. Use of Tax-Exempt Bonds for Financing.** To
8 minimize the financing cost to the government, all financing utilized by
9 the Contractor to fund the design, construction, development and
10 maintenance of a Public Facility shall be through tax-exempt bonds or
11 other financial instruments, *if* a mechanism to do so is available. The
12 purpose for this requirement is to assure the government pays the
13 lowest possible interest rate so that the cost of financing the design,
14 construction, development and maintenance of a Public Facility to the
15 government amortized through the Lease-Back payments from the
16 government to the Contractor, will be lower than regular commercial
17 rates.

18 **Section 59109. Utilities and Routine Maintenance and Repair.**
19 The government shall be responsible for the connection and payment of
20 all utilities, including without limitation, power, water, sewer, telephone
21 and all routine interior maintenance and repair and exterior grounds-
22 keeping and landscaping, and upkeep of the Public Facility. Capital
23 maintenance and repair shall be performed by the Contractor as
24 provided for in this Chapter.

25 **Section 59110. Maintenance Fund.** The Contract with the
26 Contractor, and the Lease-Back, shall provide that *all* capital
27 maintenance and repair of the Public Facility be performed by the

1 Contractor as a separate cost, the terms of which, and the manner for
2 establishing the amount of payment, shall be determined as a part of the
3 bid process. The Contract shall provide sufficient initial funding of a
4 separate maintenance fund for this purpose with sufficient funds to pay
5 the costs of capital maintenance and repair for the first five (5) years
6 *after* the completion of the Public Facility. The maintenance fund shall
7 be used *exclusively* for the purpose of capital maintenance and repair,
8 and shall be in an interest bearing account segregated from other funds
9 of the government.

10 **Section 59111. Rules, Regulations and Restrictions.** The
11 Department of Public Works may promulgate rules and regulations
12 pursuant to Guam law necessary to implement the provisions of this
13 Chapter.

14 **Section 59112. Severability.** *If any provision of this Chapter*
15 *or its application to any person or circumstance is found to be invalid or*
16 *contrary to law, such invalidity shall not affect other provisions or*
17 *applications of this Chapter which can be given effect without the invalid*
18 *provisions or application, and to this end the provisions of this Chapter*
19 *are severable."*

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