

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

Bill No. 101 (Sec)

Introduced by:

L.F. Kasperbauer *LFK*  
Mark Forbes *MF*

**AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE  
GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING  
A MEANS FOR EDUCATION FACILITIES CONSTRUCTION.**

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

2        **Section 1.** 5 G.C.A. §58102 is hereby *amended* to read as follows:

3        “§58102. **Legislative Findings and Policy.** There is a critical shortage of public  
4        school facilities on Guam. Many existing facilities are antiquated and are not fit for  
5        the purpose of public education. The Department of Education (‘D.O.E.’) is in need  
6        of at least five (5) new public schools with all the related civil and structural  
7        facilities and amenities customarily associated with a first rate public education  
8        facility, and the University of Guam (‘U.O.G.’) and the Guam Community College  
9        (‘G.C.C.’) are also in need of additional education and related facilities.

10        The government of Guam lacks funding for the design and construction of new  
11        public school facilities. The government of Guam is also currently unable to seek  
12        financing, in its own name, through the bond market. In an effort to overcome these  
13        financing hurdles, and to provide for the educational needs of the students of Guam,  
14        *I Liheslaturan Guåhan* desires to authorize the government of Guam to enter into  
15        contracts for the financing, design, construction and long-term capital maintenance  
16        of new public schools with private sector contractors who can provide long-term  
17        financing obtained through tax-exempt bonds.

1 To facilitate the financing, design, construction and maintenance of public  
2 school facilities envisioned by this Act, the government of Guam will be authorized  
3 to lease for up to thirty (30) years government of Guam property on which the public  
4 school facilities will be constructed.

5 The lease of the government property will be to the contractor, who will  
6 design and construct the public school facilities and provide funding for the design  
7 and construction through the use of tax-exempt bonds. ~~Upon completion of the~~  
8 ~~construction, the~~ The facilities and land will be leased back to the government of  
9 Guam for a period not to exceed the initial ground lease to the contractor over which  
10 time the government of Guam will amortize, as lease payments to the contractor, the  
11 cost of the financing, design, construction and related expenses of the public school.

12 The contractor will also be responsible for the capital maintenance and repair  
13 of each of the public school facilities constructed under this Act, which costs shall  
14 be paid by the government of Guam as provided for under this Act. At the  
15 expiration of the lease-back period, the government of Guam real property and the  
16 public school facilities constructed on the government of Guam real property will  
17 revert to the government of Guam with no further obligations to the contractor.”

18 **Section 2.** 5 G.C.A. §58103 is hereby *amended* to read as follows:

19 **“§58103. Definitions.** For purposes of this Chapter and unless otherwise specified,  
20 the following words and phrases are defined to mean:

21 ‘Act’ means Chapter 58 of Title 5 of the Guam Code Annotated, known as ‘The  
22 Education Facilities Construction Initiative Act of 2001.’

23 ‘Contractor’ shall mean the authorized entity which shall be the signatory on the  
24 Contract and shall be fully responsible for carrying out the design, construction,  
25 financing and maintenance of the Education Facility. The Contractor may cooperate  
26 with another entity or entities in any manner the Contractor deems appropriate to

1 provide for the financing, design ~~and~~, construction and maintenance of the public  
2 school facilities envisioned by this Chapter.

3 '*Contract*' shall mean the design, construction ~~and~~, financing and maintenance  
4 contract entered into by and between the Education Agency and the Contractor  
5 following negotiations on the response to the Request for Proposal.

6 '*Education Agency*' shall mean the Guam Department of Education, the University  
7 of Guam or the Guam Community College.

8 '*Education Facility*' shall mean any structure or structures, together with all  
9 ancillary facilities, including parking facilities, utilities ~~and~~, infrastructure and  
10 equipment associated with providing the educational or related services required by  
11 an Education Agency. '*Education Facility*' may include an existing facility being  
12 converted or rehabilitated by the Contractor.

13 '*Lease*' shall mean a ground or site lease of the Property from an Education Agency,  
14 the Chamorro Land Trust, or other government land, as applicable, to the  
15 Contractor.

16 '*Lease-Back*' shall mean the ~~period of the term of the~~ facilities lease between the  
17 Contractor and the Education Agency over the term of which ~~period~~ the costs of the  
18 design, construction, financing and maintenance of an Education Facility is are  
19 amortized according to the terms agreed to between the government of Guam and  
20 the Contractor. ~~The period of the Lease and the Lease-Back shall be identical.~~

21 '*Property*' shall mean any property on which an Education Facility is located."  
22

23 **Section 3.** 5 G.C.A. §58104 is hereby *amended* to read as follows:

1           “§58104. Authorization to Enter into Long-Term Leases. For the purpose of  
2 facilitating the financing of the design, construction and maintenance of an  
3 Education Facility encompassed by this Act, the government of Guam or an  
4 Education Agency, as the case may be, is authorized to lease, if required, to the  
5 Contractor, subject to legislative approval, sufficient government of Guam real  
6 property on which to construct, convert or rehabilitate an Education Facility;  
7 provided, such property is in the inventory of the Education Agency. The location  
8 of the Property may be at the site of an existing Education Facility under the control  
9 of an Education Agency, which may be converted, rehabilitated or demolished and  
10 rebuilt under the provisions of this Act.

11 Any lease of property pursuant to this Act will be for a period mutually agreed upon  
12 between the Education Agency and the Contractor as may be reasonably necessary  
13 to amortize over the Lease-Back period of the Contract, the costs associated with the  
14 financing, design, construction and maintenance of the Education Facility, and in no  
15 event shall such period be less than twenty (20) years, or exceed thirty (30) years  
16 from the date of commencement of the Lease-Back period.

17 ~~Upon completion of the construction of the Education Facility, the~~The Contractor  
18 shall lease back to the Education Agency the Property for the ~~period of the Lease-~~  
19 ~~Back period.~~ Upon the expiration of the Lease and the Lease-Back ~~of the~~  
20 ~~Property, periods~~ and the fulfillment of the terms and conditions of the Lease-Back  
21 by the Education Agency, the Property and the Education Facility shall become the  
22 property of the Education Agency, and the Contractor shall have no further right,  
23 title or interest in the Property or the Education Facility.

24           The legislature has considered the Notice of Award issued by the Department  
25 of Public Works on February 2, 2005 for the Construction of New Schools- Finance,  
26 Design, Build and Leaseback in various locations (collectively the “Initial

1 Facilities”). The lease of government of Guam real property for the Initial Facilities  
2 is hereby approved.”

3  
4 **Section 4.** 5 G.C.A. §58105 is hereby *amended* to read as follows:

5 **“§58105. Procurement.** ~~Upon identifying Property adequate for the~~  
6 ~~placement of an Education Facility,~~ The government of Guam or an Education  
7 Agency shall solicit Requests for Proposals (‘RFP’), through the Department of  
8 Public Works, in compliance with the Guam Procurement Law, for the financing,  
9 design and construction of the Education Facility, together with maintenance of the  
10 Education Facility over the term of the Lease-Back, according to the needs of the  
11 Education Agency and consistent with this Chapter.”

12 **Section 5.** . 5 G.C.A. §58106 is hereby *amended* to read as follows:

13 **“§58106. Responsibilities of Contractor.** The Contract shall require that the  
14 Contractor be responsible for all costs, expenses and fees of any kind or nature,  
15 associated with the design, civil improvements, on-site infrastructure, construction,  
16 permits and financing associated with the completion of an Education Facility.

17 The Contractor shall also be responsible for the capital maintenance and upkeep  
18 of the schools during the ~~period of the Lease-Back~~ term. The costs of the design,  
19 construction and financing for an Education Facility shall be paid in substantially  
20 equal monthly periodic installments over the term of the Lease-Back period, which  
21 shall be mutually determined by the Education Agency and the Contractor, but  
22 which will not exceed thirty (30) years. The Lease and Lease-Back may provide  
23 that if sufficient funds are not appropriated or otherwise available for the payment of  
24 such installments, the Education Agency will have the obligation to vacate the  
25 Education Facility, and the Contractor shall have the right of use and occupancy of  
26 the Education Facility for the remainder of the term of the Lease unless new  
27 mutually satisfactory terms are entered into. For this purpose, the Lease may

1 provide that its term shall be extended for a period not to exceed the shorter of ten  
2 years beyond the original term of the Lease-Back or such period of time as is  
3 necessary to repay in full any financing arranged pursuant to Section 58108.

4 The capital maintenance, repair and upkeep costs shall be paid on a periodic  
5 basis as incurred by the Contractor on terms to be agreed to in the Contract for each  
6 Education Facility.

7 **Section 6.** 5 G.C.A. §58107 is hereby *amended* to read as follows:

8 “**§58107. Assignments.** To facilitate the purposes of this Chapter and to  
9 provide security for the bondholders, the Contractor may assign, without the need of  
10 the consent of the Education Agency, the Contract, the Lease and the Lease-Back to  
11 any trustee, underwriter or other appropriate party that has facilitated as may be  
12 necessary to facilitate the issuance of the tax-exempt bonds ~~necessary or other~~  
13 financial instruments to provide the financing for the Education Facility.”

14 **Section 7.** 5 G.C.A. §58108 is hereby *amended* to read as follows:

15 “**§58108. Use of Tax-Exempt Bonds for Financing.** To minimize the financing  
16 cost to the Education Agency, all financing utilized by the Contractor to fund the  
17 design, construction and maintenance of an Education Facility shall be through tax-  
18 exempt bonds or other financial instruments, if a mechanism to do so is available.  
19 The purpose for this requirement is to assure the Education Agency pays the lowest  
20 possible interest rate so that the cost of financing the design, construction and  
21 maintenance of an Education Facility to the Education Agency, amortized through  
22 the Lease-Back payments from the Education Agency to the Contractor, will be  
23 lower than regular commercial rates.

24 The Lease and the Lease-Back may contain terms acceptable to the Education  
25 Agency and the Contractor and that are necessary or appropriate to obtain tax-  
26 exempt financing at a reasonable cost. Such additional terms may include, but are

1 not limited to, a pledge of federal grant revenues that are legally available for such  
2 purpose. Any such pledge made hereunder shall be valid and binding from the time  
3 the pledge is made. The revenues pledged and thereafter received by the  
4 government of Guam or by any trustee, depository or custodian shall be deposited in  
5 a separate account and shall be immediately subject to the lien of such pledge  
6 without any physical delivery thereof or further act, and the lien of such pledge shall  
7 be valid and binding against all parties having claims of any kind in tort, contract or  
8 otherwise against the government of Guam or such trustee, depository or custodian,  
9 irrespective of whether the parties have notice thereof. The instrument by which  
10 such pledge is created need not be recorded.”

11 **Section 8.** 5 G.C.A. §58109 is hereby *amended* to read as follows:

12 **“§58109. Utilities and Routine Maintenance and Repair.** The Education  
13 Agency shall be responsible for the connection and payment of all utilities,  
14 including without limitation, power, water, sewer, telephone and cable, ~~and all~~  
15 ~~routine interior maintenance and repair and exterior grounds keeping and~~  
16 ~~landscaping, and upkeep of the Education Facility.~~ Capital maintenance and repair  
17 shall be performed by the Contractor as provided ~~in this Chapter~~ for in 5 G.C.A.  
18 §58110. Routine maintenance, repair and upkeep shall be the responsibility of the  
19 Education Agency and/or the Contractor, as may be provided by the terms of the  
20 Contract.”

21 **Section 9.** . 5 G.C.A. §58110 is hereby *amended* to read as follows:

22 **“§58110. Contractor Responsible for Capital Maintenance Fund.** The  
23 Contract with the Contractor, and the Lease-Back, shall provide that all capital  
24 maintenance and repair of the Education Facility be performed by the Contractor as  
25 a separate cost. The terms of by which, ~~and the manner for establishing the amount~~  
26 ~~of payment,~~ the Contractor is to perform such Capital Maintenance shall be  
27 determined as a part of the bid process and shall be part of the conditions of the

1 Contract. ~~The Contract shall provide sufficient initial funding, a separate~~  
2 ~~maintenance fund shall be maintained for this purpose with sufficient funds to pay~~  
3 ~~the costs of capital maintenance and repair for the first five (5) years after the~~  
4 ~~completion of the Education Facility. The maintenance fund shall be used~~  
5 ~~exclusively for the purpose of capital maintenance and repair, and shall be in an~~  
6 ~~interest bearing account segregated from funds of the Education Agency.”~~