


I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
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Bill No. 363 (EC)

Introduced by:

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AN ACT TO ADD A NEW CHAPTER 58A TO TITLE 5
OF THE GUAM CODE ANNOTATED, RELATIVE TO
THE CONSTRUCTION OF NEW SCHOOLS, THE
CONSTRUCTION OF FACILITIES FOR THE
UNIVERSITY OF GUAM AND THE GUAM
COMMUNITY COLLEGE, AND THE RENOVATION
OF EXISTING SCHOOLS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Title. This Act shall be cited and referred to as the
3 "*Manå'afte Act of 2008*".

4 Section 2. Chapter 58A is hereby *added* to Title 5 of the Guam Code
5 Annotated to read as follows:

6 "CHAPTER 58A.

7 "*Manå'afte Act of 2008.*"

1	Section 58A101.	Title.
2	Section 58A102.	Legislative Findings and Policies.
3	Section 58A103.	Definitions.
4	Section 58A104.	Authorization to Enter into Long-
5		term Leases.
6	Section 58A105.	Procurement.
7	Section 58A106.	Responsibilities of Contractor.
8	Section 58A107.	Assignments.
9	Section 58A108.	Use of Tax-Exempt Bonds for
10		Financing.
11	Section 58A109	Pledge of Section 30 Revenue
12	Section 58A110.	Utilities and Routine Maintenance
13		and Repair.
14	Section 58A111.	Maintenance Fund.
15	Section 58A112.	Rules, Regulations and Restrictions.
16	Section 58A113.	Severability.

17

18 **Section 58A101. Title.** This Act shall be known and

19 shall be cited as *“Manå’afte Act of 2008.”*

20 **Section 58A102. Legislative Findings and Policy.** *I Liheslatura*

21 finds that there is a critical shortage of public school facilities on Guam.

22 Many existing facilities are antiquated and are not fit for the purpose of

1 public education. The Guam Public School System (GPSS) is in need of
2 at least three (3) new public schools with all the related civil and
3 structural facilities and amenities customarily associated with a first rate
4 public education facility. Specifically, there is an immediate need to; (i)
5 replace the John F. Kennedy High School in Tumon, Guam and to build
6 a modern facility on the site of the existing school; (ii) construct a new
7 northern high school; (iii) to build a new middle school and; (iv) to
8 renovate and improve certain existing schools on Guam. Additionally,
9 the growing needs and student population of Guam's higher education
10 institutions necessitates the construction of a new facilities. The
11 government of Guam lacks funding for the design and construction of
12 these facilities and seeks to provide for the reliable long term
13 maintenance of its education facilities. In an effort to overcome these
14 financing hurdles and to provide for the educational needs of the
15 students of Guam, *I Liheslaturan Guahan* desire to authorize the
16 government of Guam to enter into contracts for the financing, design,
17 construction and long-term capital maintenance of up to three (3) new
18 public schools, and a student center building for the University of Guam
19 and the Guam Community College, with private sector contractors who
20 can provide long-term financing obtained through tax-exempt bonds or
21 other competitive alternative financing. These projects will constitute
22 the first phase of a capital improvement plan approved by *I Liheslaturan*

1 *Guahan* to address Guam's long term education, health, public safety
2 and governmental needs. To facilitate the financing, design,
3 construction and maintenance of the facilities envisioned by this Act, the
4 government of Guam will be authorized to lease for up to thirty (30)
5 years government of Guam property on which the facilities will be
6 constructed. The lease of the government property will be to the
7 contractor, who will design and construct the facilities and provide
8 funding for the design and construction through the use of tax-exempt
9 bonds or other competitive alternative funding sources. The facilities
10 and land will be leased back to the government of Guam for a period
11 not to exceed the initial ground lease to the contractor over which time
12 the government of Guam will amortize, as lease payments to the
13 contractor, the cost of the financing, design, construction and related
14 expenses of the facilities. The contractor will also be responsible for the
15 capital maintenance and repair of each of the public school facilities
16 constructed under this Act, which costs shall be paid by the government
17 of Guam as provided for under this Act. At the expiration of the lease-
18 back period, the government of Guam real property and the public
19 facilities constructed on the government of Guam real property will
20 revert to the government of Guam with no further obligations to the
21 contractor.

1 **Section 58A103. Definitions.** For purposes of this Chapter
2 and unless otherwise specified, the following words and phrases are
3 defined to mean:

4 (a) “Act” means Chapter 58A of Title 5 of the Guam Code
5 Annotated, known as the *“Manå’afte Act of 2008.”*

6 (b) “Contractor” shall mean the authorized entity which
7 shall be the signatory on the Contract and shall be fully
8 responsible for carrying out the design, construction, financing
9 and maintenance of the Education Facility. The Contractor may
10 cooperate with another entity or entities in any manner the
11 Contractor deems appropriate to provide for the financing, design
12 and construction of the public school facilities envisioned by this
13 Act.

14 (c) “Contract” shall mean the design, construction and
15 financing contract entered into by and between the Education
16 Agency and the Contractor following negotiations on the response
17 to the Request for Proposal.

18 (d) “Education Agency” shall mean the Guam Public
19 School System, the University of Guam or the Guam Community
20 College.

21 (e) “Education Facility” as used in this act shall mean; (i) a
22 replacement high school to be located on the existing site of John

1 F. Kennedy High School in Tumon, Guam; (ii) a high school to be
2 located on the Northern side of Guam; (iii) a new middle school;
3 (iv) a student center building for the University of Guam; (v) a
4 student center for the Guam Community College; and (vi) any
5 structure or structures, together with ancillary facilities, (including
6 parking facilities), utilities, infrastructure, furniture, fixtures and
7 equipment associated with providing the educational or related
8 services required by an Education Agency.

9 (f) "Lease" shall mean a lease from an Education Agency
10 to the Contractor entered into at the time of the Contract for the
11 Property and commencing upon completion of the Education
12 Facility.

13 (g) "Lease-Back" shall mean the period of the term of the
14 lease between the Contractor and the Education Agency over
15 which period the costs of the design, construction, financing and
16 maintenance of an Education Facility is amortized according to the
17 terms agreed to between the government of Guam and the
18 Contractor. The period of the Lease and the Lease-Back shall be
19 identical.

20 (h) "Property" shall mean any property on which an
21 Education Facility is located.

1 **Section 58A104. Authorization to Enter into Long-term Leases.**

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

12 Any lease of property pursuant to this Act will be for a period
13 mutually agreed upon between the Education Agency and the
14 Contractor as may be reasonably necessary to amortize over the Lease-
15 Back period of the Contract, the costs associated with the financing,
16 design, construction and maintenance of the Education Facility, and in
17 no event shall such period exceed thirty (30) years from the date of
18 commencement of the Lease-Back period. The Lease-Back may be
19 structured as an annually renewable lease with provision for automatic
20 renewals to the extent that pledged revenue under Section 58A109 is
21 available. The Lease-Back shall not be construed as a debt under any
22 applicable debt limitation under Guam law. The Contractor shall lease

1 back to the Education Agency the property for the Lease-Back period.
2 Upon the expiration of the Lease and the Lease-Back periods and the
3 fulfillment of the terms and conditions of the Lease-Back by the
4 Education Agency, the property and the Education Facility shall become
5 the property of the Education Agency, and the Contractor shall have no
6 further right, title or interest in the property or the Education Facility.

7 **Section 58A105. Procurement.** Subject to the approval of *I*
8 *Liheslaturan Guåhan*, the government of Guam or an Education Agency
9 may solicit Requests for Proposals ('RFP') through the Department of
10 Public Works, in compliance with the Guam Procurement Law, for the
11 financing, design and construction of the Education Facility, together
12 with maintenance of the Education Facility over the term of the Lease-
13 Back, according to the needs of the Education Agency and consistent
14 with this Chapter. Notwithstanding the foregoing, in connection with
15 any amendments to an existing Lease or Lease-Back, the Contractor
16 with respect to such amendments shall be the Contractor with respect to
17 the existing Lease or Lease-Back.

18 **Section 58A106. Responsibilities of Contractor.** The Contract
19 shall require that the Contractor be responsible for all costs, expenses
20 and fees of any kind or nature, associated with the design, civil
21 improvements, on-site and off-site infrastructure, construction, permits,
22 and financing associated with the completion of an Education Facility,

1 including the financing of furniture and equipment for the Education
2 Facility. The Contractor shall also be responsible for the capital
3 maintenance and upkeep of the schools during the Lease-Back term but
4 will not be responsible for the capital maintenance and upkeep of the
5 furniture and equipment. The costs of the design, construction and
6 financing for an Education Facility shall be paid in periodic installments
7 over the term of the Lease-Back period, which shall be mutually
8 determined by the Education Agency and the Contractor, but which will
9 not exceed thirty (30) years. The Lease and Lease-Back may provide that
10 if sufficient funds are not appropriated or otherwise available for the
11 payment of such installments, the Education Agency will have the
12 obligation to vacate the Education Facility, and the Contractor shall
13 have the right of use and occupancy of the Education Facility for the
14 remainder of the term of the Lease, unless new mutually satisfactory
15 terms are entered into. For this purpose, the Lease may provide that its
16 term shall be extended for a period not to exceed the shorter of ten (10)
17 years beyond the original term of the Lease-Back or such period of time
18 as is necessary to repay in full any financing arranged pursuant to
19 Section 58A108. The capital maintenance, repair and upkeep costs shall
20 be paid on a periodic basis as incurred by the Contractor on terms to be
21 agreed to in the Contract for each Education Facility.

1 **Section 58A107. Assignments.** To facilitate the purposes of
2 this Act and to provide security for the bond holders, the Contractor
3 may assign, without the need of the consent of the Education Agency,
4 the Contract, the Lease and the Lease-Back to any underwriter or other
5 appropriate party that has facilitated the issuance of the tax exempt
6 bonds or other financial vehicles necessary to provide the financing for
7 the Education Facility.

8 **Section 58A108. Use of Tax-Exempt Bonds for Financing.** To
9 minimize the financing cost to the Education Agency, financing utilized
10 by the Contractor to fund the design, construction and maintenance of
11 an Education Facility shall be through tax-exempt obligations or other
12 financial instruments provided such financing is available at reasonable
13 interest rates. Alternatively, the Contractor may use an alternative
14 method of financing, including, but not limited to, a short term debt,
15 mortgage, loan, federally guaranteed loan or loan by an instrumentality
16 of the United States Federal Government if such financing will better
17 serve the needs of the people of Guam. Such alternative financing shall
18 be approved by the Guam Legislature. The Contractor financing shall
19 have a final term that does not exceed thirty (30) years from the
20 Education Facility occupancy date. The purpose for the requirements of
21 this section is to assure the Education Agency pays the lowest possible
22 interest rate so that the cost of financing the design, construction and

1 maintenance of an Education Facility to the Education Agency,
2 amortized through the Lease-Back payments from the Education
3 Agency to the Contractor, will be lower than regular commercial rates.

4 **Section 58A109. Pledge of Section 30 Revenue.** Rental payments
5 under the Lease and the Lease-Back may be secured by a pledge of U.S.
6 Government Section 30 Revenue. The pledge of Section 30 Revenue
7 authorized by the Act shall be subordinate only to the existing lien
8 securing the government of Guam's Series 2001A Bonds. Any such
9 pledge authorized hereunder shall be valid and binding from the time
10 the pledge is made and shall be limited to \$9,825,000 per year during the
11 Lease-Back term. The annual financial commitment is based on the sum
12 of Section 30 Revenue available after the final payment on the Series
13 2001 A Bonds. The revenues pledged and thereafter received by the
14 government of Guam or by any trustee, depository or custodian shall be
15 deposited in a separate account and shall be immediately subject to the
16 lien of such pledge without any physical delivery thereof or further act,
17 and the lien of such pledge shall be valid and binding against all parties
18 having claims of any kind in tort, contract or otherwise against the
19 government of Guam or such trustee, depository or custodian,
20 irrespective of whether the parties have notice thereof. The instrument
21 by which such pledge is created need not be recorded.

1 **Section 58A110. Utilities and Routine Maintenance and Repair.**

2 The Education Agency shall be responsible for the connection and
3 payment of all utilities, including without limitation, power, water,
4 sewer, telephone and cable, and all routine interior maintenance and
5 repair and exterior grounds keeping and landscaping and upkeep of the
6 Education Facility. Capital maintenance and repair shall be performed
7 by the Contractor as provided for in this Act.

8 **Section 58A111. Maintenance Fund.** The Contract with the
9 Contractor, and the Lease-Back, shall provide that all capital
10 maintenance and repair of the Education Facility be performed by the
11 Contractor as a separate cost, the terms of which, and the manner for
12 establishing the amount of payment, shall be determined as a part of the
13 bid process. The Contract shall provide sufficient initial funding of a
14 separate maintenance fund for this purpose with sufficient funds to pay
15 the costs of capital maintenance and repair for the first five (5) years
16 after the completion of the Education Facility. The maintenance fund
17 shall be used exclusively for the purpose of capital maintenance and
18 repair and shall be an interest bearing account segregated from other
19 funds of the Education Agency.

20 **Section 58A112. Rules, Regulations and Restrictions.** The
21 Department of Public Works may promulgate rules and regulations

1 pursuant to Guam law necessary to implement the provisions of this
2 Act."

3 **Section 58A113. Severability.** If any provision of this Law or
4 its application to any person or circumstance is found to be invalid or
5 contrary to law, such invalidity shall not affect other provisions or
6 applications of this Law which can be given effect without the invalid
7 provisions or application, and to this end the provisions of this Law are
8 severable.