

I MINA'TRENTAI UNU LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

2012 APR 19 PM 4:18
Won

Bill No. 449,311 (cov)

Introduced by:

J. T. Won Pat, Ed.D.
T. R. Muna Barnes

**AN ACT TO ADD A NEW CHAPTER 58C TO
TITLE 5 GUAM CODE ANNOTATED RELATIVE
TO THE REHABILITATION, RENOVATION,
AND CONSTRUCTION OF PUBLIC SCHOOLS.**

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

2 **Section 1.** A new Chapter 58C is hereby *added* to Title 5 Guam Code
3 Annotated to read as follows:

4 **“Chapter 58C**

5 **Rehabilitation, Renovation, and Building of Public Schools**

6 § 58C100. Legislative Findings and Intent.

7 § 58C101. Definitions.

8 § 58C102. Authorization to Enter into Long-Term Leases.

9 § 58C103. Responsibilities of Contractor.

10 § 58C104. Contractual Safeguards.

11 § 58C105. Assignments.

12 § 58C106. Pledge of Revenues.

13 § 58C107. Use of Tax-Exempt Bond and Other Financing Instruments
14 for Financing.

15 § 58C108. Utilities and Routine Maintenance and Repair.

16 § 58C109. Maintenance Fund.

1 § 58C110. Procedures for Contractors and Developers.

2 § 58C111. Severability.

3 **§58C100. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
4 finds that Guam public schools are in a deplorable condition which creates a
5 non conducive environment that hinders learning and the work and production
6 of teachers and students.

7 *I Liheslaturan Guahan* finds that the U.S. Department of Education
8 (USDOE) approved the Guam Department of Education (GDOE) State Fiscal
9 Stabilization Fund (SFSF) Phase I and Phase II application which budgets Forty
10 One Million Seventy Three Thousand Three Hundred Seventy Dollars
11 (\$41,073,370) for the modernization, renovation and repair of public
12 educational facilities used primarily for classroom instruction.

13 The Department of Education estimates that the cost of the renovation,
14 rebuilding, and rehabilitation of the Guam public schools to be about
15 \$139,000,000.00. The government is unlikely to afford payments for the full
16 renovation and rehabilitation of the schools as mentioned above. It is therefore
17 the intent of *I Liheslaturan Guahan* that the government of Guam provides the
18 financial information of the Government of Guam so the Contractor can look
19 within the government of Guam's financial resources to identify within its
20 proposal the best lease payment structure to provide financial support for the
21 rehabilitation, renovation and construction work on the schools.

22 In addition to meeting the challenges of the limited funding, the
23 arrangement with the contractor or developer must adhere to three simple
24 financial principles; first, that the arrangement not run afoul the government of
25 Guam's debt ceiling, second, that the arrangement does not raise taxes or fees

1 or create new taxes or fees, and third, that the financial impact on the
2 government of Guam is minimal.

3 Further, *I Liheslaturan Guahan* envisions a process in which a contractor
4 or developer submits a plan that meets the requirements stated in this act,
5 including the best use of the funding sources available in this act. The plan will
6 have to be approved by Guam Economic Development Authority, with the final
7 approval by *I Liheslaturan Guahan*.

8 **§58C101. Definitions.** For purposes of this Chapter and *unless*
9 otherwise specified, the following words and phrases are defined to mean:

10 (a) “Contract” *shall* mean the design, renovation, rehabilitation,
11 construction, and financing contract entered into by and between the
12 Education Agency and the Contractor chosen by the Guam Economic
13 Development Agency and approved by *I Liheslaturan Guahan*.

14 (b) “Contractor” *shall* mean the authorized entity which *shall* be
15 the signatory on the Contract and *shall* be fully responsible for carrying
16 out the design, renovation, rehabilitation, construction, financing, and
17 maintenance of the Education Facility. The Contractor may cooperate
18 with another entity *or* entities in any manner the Contractor deems
19 appropriate to provide for the financing, design, construction *or*
20 maintenance of the public school facilities envisioned by this Act.

21 (c) “Education Agency” *shall* mean the Guam Department of
22 Education.

23 (d) “Education Facility” as used in this Act *shall* mean public
24 elementary and secondary schools on Guam.

25 (e) “Lease” *shall* mean a lease from an Education Agency to the
26 Contractor entered into at the time of the Contract for the Property.

1 (f) "Lease-Back" shall mean the lease from the Contractor to
2 the Education Agency of the rehabilitated, renovated or newly
3 constructed Education Facility.

4 (g) "Lease-Back Period" shall mean the term of the lease from
5 the Contractor to the Education Agency.

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

8 **§58C102. Authorization to Enter into Long-term Leases.** For the
9 purpose of facilitating the financing of the rehabilitation, renovation and or
10 construction and maintenance of an Education Facility encompassed by this
11 Act, the government of Guam *or* an Education Agency, as the case may be, is
12 authorized to lease, if required, to the Contractor sufficient government of
13 Guam real property on which to construct, convert *or* rehabilitate an Education
14 Facility; provided, such property is in the inventory of the Education Agency *or*
15 the government of Guam. The property may be the site of an existing
16 Education Facility under the control of an Education Agency, which existing
17 facility may be converted, rehabilitated *or* demolished and rebuilt under the
18 provisions of this Act.

19 The Education Agency is also authorized to lease back from the
20 Contractor the property for a period mutually agreed upon between the
21 Education Agency and the Contractor as may be reasonably necessary to
22 amortize over the Lease-Back Period the costs associated with the financing,
23 design and construction of the Education Facility. In no event shall the end of
24 such Lease-Back Period be *later than* the date Thirty (30) years from the
25 scheduled date of completion of the Education Facility. The Lease-Back may
26 be structured as an annually renewable lease with provision for automatic

1 renewals to the extent that pledged revenue under Section 58C106 is available.
2 The Lease-Back *shall not* be construed as a debt under any applicable debt
3 limitation under the Guam Organic Act *or* Guam law.

4 **§58C103. Responsibilities of Developer / Contractor.** The Contract
5 *shall* require that the Contractor be responsible for all costs, expenses and fees
6 of any kind *or* nature, associated with the renovation, rehabilitation, design,
7 civil improvements, on-site and off-site infrastructure, construction, permits,
8 and financing associated with the completion of an Education Facility,
9 including the financing of furniture and equipment for the Education Facility, as
10 and to the extent provided by the Education Agency in the Request for
11 Proposals. The Contractor *shall* also be responsible for the capital maintenance
12 of the schools during the Lease-Back Period, but *shall not* be responsible for the
13 capital maintenance of the furniture and equipment. The Lease-Back may
14 provide that *if* sufficient funds are *not* appropriated *or* otherwise available for
15 the payment of amounts due under the lease and any maintenance agreement,
16 the Education Agency will have the obligation to vacate the Education Facility,
17 and the Contractor *shall* have the right of use and occupancy of the Education
18 Facility for the remainder of the term of the Lease, unless new mutually
19 satisfactory terms are entered into. For this purpose, the Lease may provide that
20 its term *shall* be extended for a period *not to exceed* the shorter of ten (10) years
21 beyond the original term of the Lease-Back *or* such period of time as is
22 necessary to repay in full any financing arranged pursuant to Section 58C105.
23 The capital maintenance costs *shall* be paid by the Education Agency on a
24 periodic basis as incurred by the Contractor on terms to be agreed to in the
25 Contract for each Education Facility.

1 **§58C104. Contractual Safeguards.** Prior to undertaking the work of
2 renovating, rehabilitating, or constructing educational facilities, the Guam
3 Economic Development Authority, The Department of Public Works, Guam
4 Department of Education and the Developer or Contractor shall negotiate and
5 enter into a binding construction contract to build or refurbish the educational
6 facility in accordance with Guam Building Code, (21 G.C.A. Ch. 67) and any
7 other applicable requirements. The Construction contract shall contain
8 contractual obligations typically found in Government of Guam construction
9 contracts, including but not limited to:

- 10 1. Warranties;
- 11 2. Liquidated damages;
- 12 3. Performance and payment bonds;
- 13 4. Indemnity;
- 14 5. Insurance;
- 15 6. Standard Specifications;
- 16 7. Technical Specifications;
- 17 8. Progress Schedule;
- 18 9. Maintenance;
- 19 10. Compliance with Guam Labor Regulations;
- 20 11. Compliance with Guam Prevailing Wage Rates for
21 Employment of Temporary Alien Workers (H2) on Guam;
- 22 12. Compliance with Public Law 29-98: Restriction Against
23 Contractors Employing Convicted Sex Offenders to Work at
24 Government of Guam Venues.

1 The contract must be submitted for review and approval to all entities
2 charged by law with the duty to review and approve government contracts,
3 including the Office of the Attorney General.

4 **§ 58C105. Assignments.** To facilitate the purpose of this Act and
5 provide security for the holders of any financing instruments issued pursuant to
6 this Act, the Contractor may assign, without the need of the consent of the
7 Education Agency, the Contract, the Lease and Lease-Back to any underwriter,
8 trustee or other party as appropriate to facilitate the Contractor financing.

9 **§58C106. Pledge of Revenues.** Payments under the lease and the
10 lease-back shall be secured by a pledge or other reservation of revenues
11 collected by government of Guam, savings from any restructured operational
12 expenses and not limited to revenues by Government of Guam against the
13 “Business Privilege Tax Law” (namely, 11 GCA Chapter 25, which shall
14 include business privilege tax, alcoholic beverage tax, liquid fuel tax,
15 automotive surcharges and tobacco tax), the excise tax on transient lodging and
16 occupants as found in 11 GCA Chapter 30, and all real property Taxes.

17 Alternatively, the lease payments to be made by the Government of
18 Guam under the lease and lease back may be made from a subordinate pledge
19 or other reservation of revenues received by the Government of Guam.

20 Any amounts pledged as provided by this section are hereby continuously
21 appropriated for the purpose of making lease back payments, but any amounts
22 only reserved as provided in this section, and not pledged, shall be subject to
23 annual appropriation for the purpose of making lease back payments.

24 Any such pledge or reservation authorized hereunder shall be valid and
25 binding from time the pledge or reservation is made and shall be determined by
26 Guam Economic Development Authority and approved by *I Liheslaturan*

1 *Guåhan.* The Guam Economic Development Authority will submit the
2 proposed annual lease back payments to include building, rehabilitating,
3 renovating, and insurance and maintenance of public school facilities. The
4 revenues pledged or reserved and thereafter received by the government of
5 Guam or by any trustee, depository or custodian shall be deposited in a separate
6 account and shall be immediately subject to such reservation or the lien of such
7 pledge without physical delivery thereof or further act, and such reservation or
8 the lien of such pledge shall be binding against all parties having claim of any
9 in tort, contract or otherwise against the government of Guam or such trustee,
10 depository or custodian, irrespective of whether the parties have notice thereof.
11 The instrument by which such pledge or reservation is created need to be
12 recorded.

13 **§ 58C107. Use of Tax-Exempt Bond and Other Financing**
14 **Instruments for Financing.** To minimize the financing cost to the Education
15 Agency, financing utilized by the Contractor to fund the rehabilitation,
16 renovation and construction of an Education Facility shall be through Tax-
17 Exempt obligations or other financial instruments provided such financing is
18 available at an interest rate no more than eight and half percent (8.50%).
19 Alternatively, the Contractor may use alternative method of financing,
20 including, but not limited to, a grant, short term debt, mortgage, loan, federally
21 guaranteed loan or loan by an instrument of the United States of America if
22 such financing will better serve the needs of the people of Guam. The purpose
23 for this requirement of this Section is to assure the Education Agency pays the
24 lowest possible interest rate so that the cost to the Education Agency of
25 Financing the rehabilitation, renovation and construction of an Education

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

3 **§58C108. Utilities and Routine Maintenance and Repair.** The
4 Education Agency *shall* be responsible for the connection and payment of all
5 utilities, including without limitation, power, water, sewer, telephone and cable,
6 and all routine interior maintenance and repair and exterior grounds keeping
7 and landscaping and upkeep of the Education Facility.

8 **§58C109. Maintenance Fund.** The Contract *or* a separate
9 maintenance agreement with the Contractor, and the Lease-Back, *shall* provide
10 that all capital maintenance 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 request
13 for proposal process; provided, however, that said documents may, at the
14 discretion of the Education Agency, provide that capital maintenance with
15 respect to equipment (including collateral equipment), onsite utilities, offsite
16 utilities, access roads and other similar improvements need *not* be performed by
17 the Contractor. The Contract *or* agreement and the Lease-Back may provide for
18 a separate maintenance reserve fund for this purpose with sufficient funds to
19 pay the costs of capital maintenance for a reasonable period *not exceeding* five
20 (5) years. The maintenance reserve fund *shall* be used exclusively for the
21 purpose of capital maintenance and *shall* be an interest bearing account
22 segregated from other funds of the Education Agency.

23 **§58C110. Procedures for Contractors/Developers.** Contractors or
24 Developers wishing to participate in this project must submit a proposal that
25 meets the following condition, including but not limited to:

1 (a) The proposal must not affect the government of Guam's
2 debt ceiling;

3 (b) The proposal must not raise or plan to raise any existing
4 taxes or create new taxes; and

5 (c) The proposal must not raise or plan to raise any existing fees
6 or create new fees.

7 The proposal, as determined by the Guam Economic Development Authority,
8 must have a minimal financial impact on the government of Guam.

9 **§58C111. Severability.** *If any provision of this Act or its application*
10 *to any person or circumstance is found to be invalid or contrary to law, such*
11 *invalidity shall not affect other provisions or applications of this Act which can*
12 *be given effect without the invalid provisions or application, and to this end the*
13 *provisions of this Act are severable."*