

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

Bill No. 535 - 31 *LCR*

Introduced by:

v.c. pangelinan
J.P. Guthertz, DPA
J.T. Won Pat, Ed.D.

AN ACT TO REPEAL AND RE-ENACT SECTION 18 OF
PUBLIC LAW 31-229 TO AUTHORIZE THE UNIVERSITY OF
GUAM TO PLEDGE CERTAIN REVENUES AND ENTER
INTO INSTALLMENT PURCHASE AND SALE
AGREEMENTS FOR THE PURPOSE OF REFINANCING THE
JESUS AND EUGENIA LEON GUERRERO SCHOOL OF
BUSINESS AND PUBLIC ADMINISTRATION BUILDING.

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

2 **Section 1. Legislative Findings and Intent.** Subsequent to the enactment of
3 Public Law 31-229, the University of Guam (University) and the United States
4 Department of Agriculture (USDA) have identified an Installment Purchase and
5 Sale as the most desirable structure for the refinancing of the Jesus and Eugenia
6 Leon Guerrero School of Business and Public Administration Building (JELG
7 Building). The University has also requested the flexibility to pledge certain
8 revenues to the payment of amounts owed under an Installment Sale Agreement in
9 connection with the refinancing of the JELG Building.

10 *I Liheslaturan Guåhan* finds that the University will best be able to realize
11 savings from the refinancing of the JELG Building with the ability to enter into an
12 Installment Purchase Agreement and an Installment Sale Agreement, and to secure
13 its payments under such documents by a pledge of certain appropriated revenues as

1 further described below, and hereby authorizes the University to enter into such
2 agreements and pledge such revenues.

3 **Section 2. Section 18 of Public Law 31-229 is hereby repealed and re-**
4 **enacted as follows:**

5 **“Section 18. University of Guam; Authorization to Enter Into Lease**
6 **Agreements and Installment Purchase and Sale Agreements.**

7 (a) Exclusively for the purpose of facilitating the refinancing of the
8 JELG Building, the University is hereby authorized to sell the JELG
9 Building to, and to simultaneously repurchase the JELG Building from, the
10 University of Guam Endowment Foundation (Foundation), by entering into
11 a purchase agreement and a sale agreement with the Foundation as further
12 provided in this section.

13 (b) Exclusively for the purpose of facilitating the financing of the
14 design, construction or renovation of the facilities described below, the
15 University is hereby authorized to lease the site of the University of Guam
16 Student Services Center and the site of the Engineering Annex facility onto
17 the existing Agriculture and Life Sciences Building to the Foundation, and,
18 in that connection, the University is hereby authorized to lease those
19 buildings and site, as improved, back from the Foundation, by entering into
20 one or more lease agreements and one or more lease-back agreements as
21 provided in this section.

22 (c) The proceeds of such financing or refinancing are to be applied
23 to the following purposes:

24 (1) Refinance existing USDA Community Facilities Loan for
25 the JELG Building – approximately Twelve Million Four Hundred
26 Eighty One Thousand Five Hundred Fifteen Dollars (**\$12,481,515**) as
27 of May 31, 2012;

1 (2) Expansion and renovation of the University of Guam
2 Student Services Center — approximately Eighteen Million Sixty
3 Five Thousand Six Hundred Twenty Five Dollars (**\$18,065,625**);

4 (3) Construction of an Engineering Annex facility onto the
5 existing Agriculture and Life Sciences Building at the University for
6 the School of Engineering — approximately Three Million Six
7 Hundred Four Thousand Three Hundred Seventy Five Dollars
8 (**\$3,604,375**);

9 (4) Funding of any appropriate or necessary debt service
10 reserve; and

11 (5) Payment of expenses incurred in connection with such
12 financing not already included in an existing appropriation for or the
13 regular budget of any Government agency or instrumentality or public
14 corporation providing any service in connection with the issuance of
15 such bonds.

16 To the extent the costs of completion of the project described in
17 Subsection (c)(2) above are less than the amount set forth in Subsection
18 (c)(2), any excess financing proceeds for such project can be applied toward
19 the costs of the project described in Subsection (c)(3) above. To the extent
20 the costs of completion of the project described in Subsection (c)(3) above
21 are less than the amount set forth in Subsection (c)(3) above, any excess
22 financing proceeds for such project can be applied toward the costs of the
23 project described in Subsection (c)(2) above.

24 (d) The lease and lease-back agreements shall have a term not to
25 exceed forty (40) years. The lease-back agreement may be structured as an
26 annually renewable lease with provision for automatic renewals to the extent
27 that liquid fuel tax revenues, funds from the Guam Highway Fund or other

1 available revenues in the amount of up to One Million Dollars (**\$1,000,000**)
2 per fiscal year beginning FY 2014 are appropriated to the University of
3 Guam Capital Improvements Fund for the purpose of paying rental
4 payments due under the lease-back agreement during such fiscal year. The
5 lease-back agreement, and any loan, bonds or other obligations secured
6 thereby, shall not be construed as a debt under any applicable debt limitation
7 contained in the Guam Organic Act or Guam law.

8 (e) The lease-back agreement shall require that the University be
9 responsible for the procurement and oversight of the design and construction
10 associated with the project or projects authorized to be financed pursuant to
11 this Section. The lease and lease-back agreements shall be valid and binding
12 obligations of the University and the Foundation enforceable in accordance
13 with their respective terms, and there shall be no power to terminate or
14 declare null and void any such agreement for procurement violations or any
15 other reason or reasons.

16 (f) The lease and lease-back agreements shall provide rental
17 provisions, term, payment, security, default, remedy, and other terms or
18 provisions as may be specified in such agreements and shall not permit the
19 substitution of other public buildings for the public buildings initially leased
20 by the University and the Foundation pursuant to this Section. The lease
21 agreement and lease-back agreement may provide that if sufficient funds are
22 not appropriated or otherwise available for the payment of amounts due
23 under the lease-back, the University will have the obligation to vacate the
24 leased facility or facilities, and the lender or its trustee, as applicable, shall
25 have the right of use and occupancy of the leased facility or facilities for the
26 remainder of the term of the lease and lease-back agreements, unless new
27 mutually satisfactory terms are entered into. For this purpose, the lease and

1 lease-back agreements may each provide that its respective term shall be
2 extended for a period not to exceed the shorter of ten (10) years beyond the
3 original term of the agreement or such period of time as is necessary to
4 repay in full any financing arranged pursuant to Subsection (f) of this
5 Section.

6 (g) To facilitate the purposes of this Act and to provide security for
7 the holders of any financing instruments issued pursuant to this Act, the
8 lease and lease-back agreements may provide that the Foundation may
9 assign, with the consent of the University, the lease and lease-back
10 agreements to any lender, trustee or other party as appropriate to facilitate
11 the financing and refinancing contemplated hereby.

12 (h) To facilitate the purposes of this Act and to provide security for
13 the USDA, the Foundation may assign, with the consent of the University,
14 the installment purchase and installment sale agreements to the USDA or
15 other party as appropriate to facilitate the refinancing contemplated hereby.

16 (i) To minimize the financing cost to the University, the
17 Foundation has applied to the USDA for a loan secured by the base rental
18 payments to be made by the University pursuant to the lease-back
19 agreement. Alternatively, in the event the Foundation is unable to secure
20 funding through a USDA loan prior to December 31, 2012, the University
21 and the Guam Economic Development Authority are hereby authorized to
22 enter into the lease agreement and lease-back agreement described above,
23 subject to the same terms, conditions and provisions set forth in this Section
24 (substituting the Authority for the Foundation). *I Liheslaturan Guåhan*,
25 pursuant to § 50103(k), Title 12 Guam Code Annotated, hereby approves
26 either the USDA loan or loans and/or the issuance and sale by the Guam
27 Economic Development Authority of Project Revenue Bonds pursuant to

1 Chapter 64 of Title 12 of the Guam Code Annotated for the purposes set
2 forth in Subsection (b) of this Section, such loans or such Project Revenue
3 Bonds to be secured by the base rental payments to be made by the
4 University pursuant to the lease-back agreement; provided, however, that
5 the terms and conditions of such loan or bonds, and the related lease and
6 lease-back agreements, shall be consistent with this Section, that any such
7 USDA loan shall bear interest at a rate that does not exceed five percent
8 (5%) per annum and with a term that does not exceed forty (40) years, and
9 that any such bonds shall mature not later than forty (40) years after their
10 date of issuance and shall bear interest at such rates and be sold for such
11 price or prices as shall result in a yield to the bondholders that does not
12 exceed eight and one half percent (8.5%) per annum.

13 (j) To minimize the refinancing cost to the University, the
14 Foundation has applied to the USDA for a loan secured by the sale payments
15 to be made by the University pursuant to the installment sale agreement. *I*
16 *Liheslaturan Guåhan*, pursuant to § 50103(k), Title 12 Guam Code
17 Annotated, hereby approves the USDA loan for the purpose set forth in
18 Subsection (a) of this Section, such loan to be secured by the sale payments
19 to be made by the University pursuant to the installment sale agreement;
20 provided, however, that the terms and conditions of such loan and the related
21 purchase and sale agreements, shall be consistent with this Section, that any
22 such USDA loan shall bear interest at a rate that does not exceed five
23 percent (5%) per annum and with a term that does not exceed the remaining
24 term of the existing USDA loan relating to the JELG Building. The
25 obligation of the University to make sale payments may be secured by a
26 pledge of the Five Hundred Thousand Dollar (**\$500,000**) appropriation from
27 the Guam Highway Fund to the University of Guam Capital Improvements

1 Fund authorized by Section 20 hereof. The revenues pledged and thereafter
2 received by the government, the University, or by any depository or
3 custodian shall be deposited in a separate account and shall be immediately
4 subject to the lien of such pledge without any physical delivery thereof or
5 further act, and the lien of such pledge shall be valid and binding against all
6 parties having claims of any kind in tort, contract or otherwise against the
7 government of Guam, the University or such depository or custodian,
8 irrespective of whether the parties have notice thereof. The instrument by
9 which such pledge is created need not be recorded.

10 (k) The obligation of the University to make lease payments may
11 be secured by a pledge or reservation of liquid fuel tax revenues, funds from
12 the Guam Highway Fund or other available revenues. Any pledge or
13 reservation pursuant to this Section shall be made on lease financing terms
14 that do not cause the lease obligation of the College to be public
15 indebtedness within the meaning of Section 11 of the Guam Organic Act or
16 to violate or breach any existing bond covenant. The tax revenues pledged or
17 reserved and thereafter received by the government, the University or by any
18 trustee, depository or custodian shall be deposited in a separate account and
19 shall be immediately subject to such reservation or the lien of such pledge
20 without any physical delivery thereof or further act, and such reservation or
21 the lien of such pledge shall be valid and binding against all parties having
22 claims of any kind in tort, contract or otherwise against the government of
23 Guam, the University or such trustee, depository or custodian, irrespective of
24 whether the parties have notice thereof. The instrument by which such
25 pledge or reservation is created need not be recorded. Any amounts pledged
26 as provided in this Section are hereby continuously appropriated for the
27 purpose of making lease payments, but any amounts only reserved as

1 provided in this Section and not pledged, shall be subject to annual
2 appropriation for the purpose of making lease payments. In the event
3 amounts are pledged as provided in this Section, any surplus tax revenues
4 shall be released to the government on a monthly basis.”

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