

FILED COPY

**I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2010 (SECOND) Regular Session**

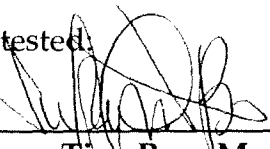
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that Substitute Bill No. 413-30 (COR), "AN ACT TO ADD A NEW CHAPTER 58b TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE FINANCING AND CONSTRUCTION OF ADDITIONAL FACILITIES FOR THE EXPANSION OF THE EXISTING OKKODO HIGH SCHOOL IN NORTHERN GUAM", was on the 13<sup>th</sup> day of August, 2010, duly and regularly passed.




Judith T. Won Pat, Ed. D.  
Speaker

Attested:



Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 13 day of Aug, 2010, at 5:30 o'clock P.M.



Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

FELIX P. CAMACHO  
*I Maga'lahen Guåhan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

***I MINA'TRENTA NA LIHESLATURAN GUÅHAN***  
**2010 (SECOND) Regular Session**

**Bill No. 413-30 (COR)**

As substituted by the Committee on Economic Development,  
Health & Human Services, and Judiciary,  
and amended on the Floor.

Introduced by:

J. T. Won Pat, Ed.D.  
T. R. Muña Barnes  
J. V. Espaldon  
R. J. Respicio  
B .J.F. Cruz  
F. F. Blas, Jr.  
T. C. Ada  
V. Anthony Ada  
F. B. Aguon, Jr.  
E. J.B. Calvo  
Judith P. Guthertz, DPA  
Adolpho B. Palacios, Sr.  
v. c. pangelinan  
Telo Taitague  
Ray Tenorio

**AN ACT TO *ADD* A NEW CHAPTER 58B TO TITLE 5  
OF THE GUAM CODE ANNOTATED, RELATIVE TO  
THE FINANCING AND CONSTRUCTION OF  
ADDITIONAL FACILITIES FOR THE EXPANSION OF  
THE EXISTING *OKKODO* HIGH SCHOOL IN  
NORTHERN GUAM.**

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

2        **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that pursuant to the Education Construction Initiative Act of 2005, the government  
4 of Guam executed a municipal lease to construct four (4) new schools.

1 Construction of the four (4) new schools is complete and the schools are now being  
2 leased to the Guam Department of Education by the Guam Education Financing  
3 Foundation.

4 *I Liheslaturan Guåhan* further finds that there remains a critical shortage of  
5 classrooms and public school facilities on Guam, and that many facilities are  
6 antiquated, overcrowded, and are not fit for the purpose of public education. In an  
7 effort to overcome these problems facing public education on Guam, *I*  
8 *Liheslaturan Guåhan* desires to authorize the government of Guam to enter into  
9 contracts for the financing, design, construction and long term capital maintenance  
10 of additions and improvements at *Okkodo* High School. This authorization is  
11 intended to substitute, in part, the facility needs of a new northern high school to  
12 existing land under lease to the Guam Department of Education (GDOE). The  
13 expansion and construction of additional educational facilities on the *Okkodo*  
14 school site will allow GDOE to take advantage of existing utilities, infrastructure  
15 and athletic facilities at considerable cost savings to the government of Guam.

16 In order for the government to utilize the *Okkodo* site for the construction of  
17 the additions and improvements, the current legislative authorization has to be  
18 amended to allow the Education Agency, through its Contractor, to undertake the  
19 financing, design, construction, and long term capital maintenance of the school  
20 improvements and to authorize the Education Agency to enter into amendments to  
21 the existing lease of real property at Tract No. 11406 in *Dededo*, Guam.

22 Additionally, pursuant to the American Recovery and Reinvestment Act of  
23 2009 (ARRA) the government of Guam was authorized to issue a total of Twenty-  
24 One Million Eight Hundred Eighteen Thousand Dollars (\$21,818,000) in Qualified  
25 School Construction Bonds (QSCBs) to finance the construction, rehabilitation, or  
26 repair of public school facilities. QSCBs are a new form of bonds authorized  
27 under § 54F(d) of the Internal Revenue Code. Issuers of QSCBs are eligible to

1 receive direct payments from the federal government, which offset a portion of the  
2 bond interest payments. Under current market conditions, the government of  
3 Guam can realize substantial net interest costs savings by issuing QSCBs over  
4 traditional tax exempt bonds. Based on these findings, *I Liheslaturan Guåhan*  
5 desires to designate the government of Guam's QSCB allocation to the Contractor  
6 to finance a portion of the *Okkodo* project costs.

7 To facilitate the financing, design, construction and maintenance of the  
8 facilities envisioned by this Act, the government of Guam will be authorized to  
9 lease for *up to* thirty (30) years from the scheduled date of delivery of the  
10 Education Facility government of Guam property on which the facilities will be  
11 constructed. The lease of the government property will be to the Contractor, who  
12 will design and construct the facilities in accordance with this Act and the  
13 specifications approved by Guam Department of Education, and who will provide  
14 funding for the design and construction through the use of QSCBs, tax exempt  
15 lease certificates and other financing facilities. The facilities and land will be  
16 leased back to the government of Guam for a period *not to exceed* the ground lease  
17 to the Contractor over which time the government of Guam will amortize, as lease  
18 payments to the Contractor, the cost of the financing, design, construction,  
19 equipping and related expenses of the facilities.

20 The Contractor will also be responsible for the capital maintenance of the  
21 public school facilities constructed under this Act, which costs *shall* be paid by the  
22 government of Guam, as provided for under this Act. At the expiration of the  
23 Lease-Back Period, the government of Guam real property and the public facilities  
24 constructed on the government of Guam real property will revert to the  
25 government of Guam with *no* further obligations to the Contractor.

26 **Section 2.** A new Chapter 58B is hereby *added* to Title 5, Guam Code  
27 Annotated, to read as follows:

1                                   **“Chapter 58B**

2                                   **Expansion of *Okkodo* High School**

3                   **§58B100. Definitions.**

4                   **§58B101. Authorization to Enter into Long-Term Leases.**

5                   **§58B102. Responsibilities of Contractor.**

6                   **§58B103. Assignments.**

7                   **§58B104. Use of Qualified School Construction Bonds.**

8                   **§58B105. Pledge of Section 30 Revenues.**

9                   **§58B106. Utilities and Routine Maintenance and Repair.**

10                  **§58B107. Maintenance Fund.**

11                  **§58B108. Severability.**

12                  **§58B100. Definitions.** For purposes of this Chapter and unless  
13 otherwise specified, the following words and phrases are defined to mean:

14                  (a) *Contract shall* mean the design, construction and financing  
15 contract entered into by and between the Education Agency and the  
16 Contractor.

17                  (b) *Contractor shall* mean the contractor to the government of  
18 Guam on *Okkodo* High School, or a separate non-profit affiliated entity of  
19 the Contractor, which *shall* be the signatory on the Contract and *shall* be  
20 fully responsible for carrying out the design, construction, financing and  
21 maintenance of the Education Facility. The Contractor may cooperate with  
22 another entity *or* entities in any manner the Contractor deems appropriate to  
23 provide for the financing, design, construction or maintenance of the public  
24 school facilities envisioned by this Act.

25                  (c) *Education Agency shall* mean the Guam Department of  
26 Education.

1 (d) *Education Facility* as used in this Act *shall* mean the additions  
2 and improvements to be located at *Okkodo* High School on Tract No. 11406  
3 as prescribed in Section 3 of Public Law 30-178, with the total cost of such  
4 project *not to exceed* Twenty-One Million Eight Hundred Eighteen  
5 Thousand Dollars (\$21,818,000).

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

8 (f) *Lease-Back shall* mean the lease from the Contractor to the  
9 Education Agency.

10 (g) *Lease-Back Period shall* mean the term of the lease from the  
11 Contractor to the Education Agency.

12 (h) *Property shall* mean any property on which an Education  
13 Facility is located.

14 **§58B101. Authorization to Enter into Long-Term Leases.** For  
15 the purpose of facilitating the financing of the design, construction and  
16 maintenance of an Education Facility encompassed by this Act, the  
17 government of Guam *or* an Education Agency, as the case may be, is  
18 authorized to lease, if required, to the Contractor sufficient government of  
19 Guam real property on which to construct, convert *or* rehabilitate an  
20 Education Facility and to extend an existing lease of real estate to the  
21 Contractor.

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

1 scheduled date of completion of the Education Facility. The Lease-Back  
2 may be structured as an annually renewable lease with a provision for  
3 automatic renewals to the extent that pledged revenue under §58B105 is  
4 available. The Lease-Back *shall not* be construed as a debt under any  
5 applicable debt limitation under the Guam Organic Act *or* Guam law.

6 The additions and improvements to *Okkodo* High School *shall* include  
7 the expansion of classrooms to accommodate the overcrowding, restroom  
8 facilities at all outdoor sports fields, additional restrooms required by public  
9 health due to the increase in student population, solar panels, the culinary  
10 arts building, signalization, the track and field track with proper turf,  
11 collateral equipment, and other projects needed to facilitate the expansion to  
12 accommodate the increase in student population.

13 **§58B102. Responsibilities of Contractor.** The Contract *shall*  
14 require that the Contractor be responsible for all costs, expenses and fees of  
15 any kind *or* nature, associated with the design, civil improvements, on-site  
16 and off-site infrastructure, construction, permits, and financing associated  
17 with the completion of an Education Facility, including the financing of  
18 furniture and equipment of the Education Facility, as and to the extent  
19 agreed to by the Education Agency. The Contractor *shall* also be  
20 responsible for the capital maintenance of the schools during the Lease-Back  
21 Period, but *shall not* be responsible for the capital maintenance of the  
22 furniture and equipment. The Lease-Back may provide that *if* sufficient  
23 funds are *not* appropriated *or* otherwise available for the payment of  
24 amounts due under the lease and any maintenance agreement, the Education  
25 Agency will have the obligation to vacate the Education Facility, and the  
26 Contractor *shall* have the right of use and occupancy of the Education  
27 Facility for the remainder of the term of the Lease, unless new mutually

1 satisfactory terms are entered into. For this purpose, the Lease may provide  
2 that its term *shall* be extended for a period *not to exceed* the shorter of ten  
3 (10) years beyond the original term of the Lease-Back or such period of time  
4 as is necessary to repay in full any financing arranged pursuant to §58B105.  
5 The capital maintenance costs *shall* be paid by the Education Agency on a  
6 periodic basis as incurred by the Contractor on terms to be agreed to in the  
7 Contract for the Education Facility.

8 **§58B103. Assignments.** To facilitate the purposes of this Act and  
9 to provide security for the holders of any financing instruments issued  
10 pursuant to this Act, the Contractor may assign, without the need of the  
11 consent of the Education Agency, the Contract, the Lease and the Lease-  
12 Back to any underwriter, trustee or other party as appropriate to facilitate the  
13 Contractor financing.

14 **§58B104. Use of Qualified School Construction Bonds.** To  
15 minimize the financing cost to the Education Agency, financing utilized by  
16 the Contractor to fund the design and construction of the Education Facility  
17 *shall* be through the use of Qualified School Construction Bonds in an  
18 amount *not to exceed* Twenty-One Million Eight Hundred Eighteen  
19 Thousand Dollars (\$21,818,000) as authorized under Section 1521 of P.L.  
20 111-5 (The American Recovery and Reinvestment Act of 2009) and the  
21 issuance of tax exempt bonds or lease certificates, *provided* such financing is  
22 available at an interest rate of *no more than* eight and a half percent (8.5%).  
23 Alternatively, the Contractor may use an alternative method of financing,  
24 including, but *not limited to*, a short term debt, mortgage, loan, federally  
25 guaranteed loan or loan by an instrumentality of the United States of  
26 America, *if* such financing will better serve the needs of the people of Guam.  
27 Such alternative financing *shall* be approved by *I Liheslaturan* Guåhan. The



1 purpose for the requirements of this Section is to assure the Education  
2 Agency pays the lowest possible net interest rate so that the cost to the  
3 Education Agency of financing the design and construction of an Education  
4 Facility, amortized through the Lease-Back payments from the Education  
5 Agency to the Contractor, will be lower than regular commercial rates.

6 **§58B105. Pledge of Section 30 Revenues.** Rental payments under  
7 the Lease and the Lease-Back may be secured by a pledge *or* other  
8 reservation of revenues received by *or* on behalf of the government of Guam  
9 from the United States of America pursuant to Section 30 of the Guam  
10 Organic Act (48 U.S.C.A. Section 1421h). Any pledge *or* reservation of  
11 Section 30 revenues authorized by the Act *shall* be subordinate *only* to the  
12 existing lien securing the Government of Guam Limited Obligation (Section  
13 30) Bonds, Series 2001A.

14 Any such pledge or reservation authorized hereunder *shall* be valid  
15 and binding from the time the pledge *or* reservation is made and *shall be*  
16 *limited* to Two Million Nine Hundred Thousand Dollars (\$2,900,000) per  
17 year during the Lease-Back Period, as prescribed in Section 3 of Public Law  
18 30-178. The Section 30 revenues pledged or reserved and thereafter  
19 received by the government of Guam *or* by any trustee, depository *or*  
20 custodian *shall* be deposited in a separate account and *shall* be immediately  
21 subject to such reservation *or* the lien of such pledge without any physical  
22 delivery thereof *or* further act, and such reservation *or* the lien of such  
23 pledge *shall* be valid and binding against all parties having claims of any  
24 kind in tort, contract *or* otherwise against the government of Guam or such  
25 trustee, depository *or* custodian, irrespective of whether the parties have  
26 notice thereof. The instrument by which such pledge *or* reservation is  
27 created need *not* be recorded. The remainder of the funds from the existing

1       lien, *supra*, not utilized for this project *shall* be subject to legislative  
2       appropriation.

3               **§58B106. 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  
6       cable, and all routine interior maintenance and repair and exterior grounds  
7       keeping and landscaping and upkeep of the Education Facility.

8               **§58B107. Maintenance Fund.** The Contract *or* a separate  
9       maintenance agreement with the Contractor, and the Lease-Back, *shall*  
10      provide that all capital maintenance of the Education Facility be performed  
11      by the 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      Contract; provided, however, that said documents may, at the discretion of  
14      the Education Agency, provide that capital maintenance with respect to  
15      equipment (including collateral equipment), onsite utilities, offsite utilities,  
16      access roads and other similar improvements need *not* be performed by the  
17      Contractor.

18              **§58B108. Severability.** *If* any provision of this Chapter *or* its  
19      application to any person *or* circumstance is found to be invalid *or* contrary  
20      to law, such invalidity *shall not* affect other provisions *or* applications of this  
21      Chapter which can be given effect without the invalid provisions *or*  
22      application, and to this end the provisions of this Chapter are severable.”

23              **Section 3. School Capacity Level Exception for Okkodo High School.**

24      The expanded Okkodo High School *shall* be exempt from the capacity levels set  
25      forth by Title 17 GCA §7113(c), but *shall not* exceed a total capacity of two-  
26      thousand two hundred (2,200) students.

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