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Felix P. Camacho
Governor

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Lieutenant Governor

30-10-0637

Office of the Speaker
Judith T. Won Pat, Ed. D.

Date 7/27/2010
Time 1:48 PM
Received by [Signature]

JUL 27 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Pursuant to §1423(h) of the Organic Act of Guam, I hereby call a Special Session of
Mina' Trenta Na Liheslaturan Guåhan for Wednesday July 28, 2010 at 10:00 a.m., for
the purpose of considering the attached legislation, "AN ACT TO REPEAL AND RE
ENACT §58A105 OF TITLE 5 G.C.A".

2010 JUL 27 PM 2:53 WWS

Nearly two years ago, the Camacho-Cruz administration and the Legislature made a
commitment. We pledged to rebuild JFK on its existing site, to find the JFK community
a temporary home until we could get it done, and to return the Islanders to their original
campus as soon as possible.

Together, we allowed the lease of a temporary campus, together we identified a funding
source to rebuild JFK without exceeding our debt ceiling, and together we worked with
DOE to issue a Request for Proposal that would meet the needs of our teachers and
students.

Hours before JFK's rebuild money could be raised on the bond market, a protest was
filed, a stay was ordered, and all progress on the JFK rebuild came to a stop.

Now after countless months of protests filed by a bidder who was not selected, two failed
procurement challenges to the Department of Public Works, two failed procurement
challenges to the former Attorney General, two failed procurement challenges to the
Office of Public Accountability, and a failed law suit to the Superior Court of Guam; the
procurement record regarding this project has been upheld.

And yet, JFK remains un-built and the process created to protect our people has caused
continual delay and the possibility of outright denial.

Today, on the recommendation of Bond Counsel as well as the Attorney General, I am
transmitting herewith legislation that will statutorily prevent additional procurement
protests to the validity of the rebuild JFK agreement.

After nearly three weeks of consultation with Bond Counsel and the Attorney General, I am compelled to believe that this legislation remains the only plausible alternative to build JFK under the existing RFP or procurement authority provided by law. Without passage of this measure, Bond Counsel has advised me that he will not be able to issue an unqualified opinion. As a consequence, financing the JFK rebuild project through the Certificate of Participation Bonds authorized by our laws will be fiscally implausible.

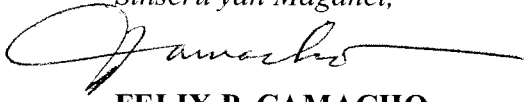
This will mean two things: first, new legislation to fund JFK must be introduced and signed into law. Second, when added to the two years in lease payments we have already paid for a temporary JFK campus, additional delays will cost our tax payers even more money.

Absent the issuance of an unqualified opinion needed by Bond Counsel and the financing which would follow it, this government will be forced to throw-out the existing JFK-RFP and begin again.

Instead, I am of the opinion that the Attorney General, Bond Counsel to the Government of Guam, our office, and the members of the Legislature can come together, recognize the extraordinary challenges we now face, and make this measure work.

Two years ago, the act that authorized the procurement requirements to rebuild JFK espoused the immediate need to rebuild JFK. Thereafter, requests to expedite procurement proceedings were advocated. The Government is now at a juncture where it cannot proceed under the current law without the proposed amendment. Consistent with the actions of *I Liheslaturan Guahan* and the immediate need to rebuild JFK, it is in the public interest that this legislation be considered in special session. Now is a time for choosing and I am asking *I Liheslaturan Guahan* to give this Government the tools we need to break soil on JFK.

Sinseru yan Magåhet,



FELIX P. CAMACHO

I Maga'låhen Guahan

Governor of Guahan

Attachment: proposed Legislation

I MINA'TRENTA NA LIHESLATURAN GUAHAN
2010 (SECOND) Special Session

Bill No. __ (___)

Introduced by:

By request of *I Maga'tahen*
Guahan in accordance with the
Organic Act of Guam

AN ACT TO REPEAL AND RE-ENACT §58A105 OF TITLE 5 G.C.A

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

3 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
4 that in order to purchase the tax-exempt obligations or other financial instruments
5 to be sold to finance the Education Facility (a replacement high school to be
6 located on the existing site of John F. Kennedy High School in Tumon) pursuant to
7 Chapter 58A of Title 5, Guam Code Annotated, investors require certainty that the
8 Lease, Lease-Back, Contract and other agreements relating to the design,
9 construction, maintenance and financing of the Education Facility will be valid and
10 binding obligations when executed and delivered. *I Liheslatura* hereby finds and
11 determines that providing such certainty is in the best interests of the Territory in
12 expeditiously providing safe and modern facilities for the education of its high
13 school population. *I Liheslatura* hereby declares pursuant to §702 of Title 1 Guam

1 Code Annotated, that if and to the extent that Section 2 of this Act must be given
2 retroactive effect to enable the procurement process existing as of the date of
3 enactment of this Act to proceed to completion, such retroactive effect is intended.

4 **Section 2.** §58A105 of Chapter 58A of Title 5, Guam Code Annotated, is
5 hereby repealed and re-enacted to read:

6 "§ 58A105. Procurement. (a) Subject to the approval of *I Liheslaturan Guåhan*,
7 the government of Guam or an Education Agency may solicit Requests for
8 Proposals ('RFP') through the Department of Public Works, in compliance with
9 the Guam Procurement Law, for the financing, design and construction of the
10 Education Facility, together with maintenance of the Education Facility over the
11 term of the Lease -Back, according to the needs of the Education Agency and
12 consistent with this Chapter. Notwithstanding the foregoing, in connection with
13 any amendments to an existing Lease or Lease-Back, the Contractor with respect to
14 such amendments *shall* be the Contractor with respect to the existing Lease or
15 Lease-Back. The RFP *shall* be issued within thirty (30) days of enactment of this
16 Act for replacement of the John F. Kennedy High School Facility on the existing
17 site; may include demolition of such portions of the existing facility as necessary;
18 and *shall* include a requirement that occupancy of the JFK facility take place *no*
19 *later than* nine (9) months after execution of the Contract.

20 (b) Upon the execution and delivery by the Education Agency of the

1 Contract, the Lease, the Lease-Back and any other agreements relating to the
2 design, construction, maintenance and financing of the Education Facility, the
3 Contract, Lease, Lease-Back and such other agreements shall be valid and binding
4 obligations of the Education Agency, enforceable in accordance with their
5 respective terms, notwithstanding any proceedings under Chapter 5 of Title 5 of
6 the Guam Code Annotated to the Contrary; and upon the execution and delivery of
7 the agreement for the purchase of the tax-exempt obligations or other financial
8 instruments that will finance the Education Facility, no proceeding under Chapter 5
9 of Title 5 of the Guam Code Annotated shall be permitted to challenge the validity
10 or enforceability of such agreement, the Contract, the Lease and the Lease-Back, or
11 any other agreements relating to the design, construction, maintenance and
12 financing of the Education Facility.”