



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	1:20pm
Date	12/22/19

DEC 22 2001

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Sais na Liheslaturan Guåhan  
Twenty-Sixth Guam Legislature  
Suite 200  
130 Aspal Street  
Hagåtña, Guam 96910

Dear Legislative Secretary Brown:

Enclosed please find Bill No. 161 (COR) "AN ACT TO ADD CHAPTER 58 TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A MEANS FOR EDUCATION FACILITIES CONSTRUCTION" which was I have signed into law as Public Law No. 26-61.

This legislation allows the government of Guam to use an additional manner of financing the construction of new schools. The mechanism would be to allow government property to be leased to a contractor who would then obtain tax exempt bonds to finance the construction. After the construction, the finished school would be leased back to the government.

While there may be some deficiencies in the language of this legislation, especially concerning the terms "capital maintenance", "if a mechanism to do so [issue tax exempt bonds]", and other terms, the concept is worth exploring and may offer some alternatives in the future.

At this time, there are no current plans to build schools utilizing this type of method.

Very truly yours,

Carl T. C. Gutierrez  
I Maga'Lahen Guåhan  
Governor of Guam

Attachments: original bill for vetoed legislation or  
copy of bill for signed or overridden legislation  
and legislation enacted without signature


cc: The Honorable Antonio R. Unpingco  
Speaker

0613

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN  
2001 (FIRST) Regular Session

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

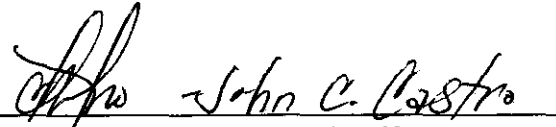
This is to certify that Bill No. 161 (COR) "AN ACT TO ADD CHAPTER 58 TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A MEANS FOR EDUCATION FACILITIES CONSTRUCTION," was on the 7<sup>th</sup> day of December, 2001, duly and regularly passed.

  
\_\_\_\_\_  
ANTONIO R. UNPINGCO  
Speaker

Attested:

  
\_\_\_\_\_  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by *I Maga'lahen Guåhan* this 1<sup>th</sup> day of December, 2001,  
at 5:10 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

  
\_\_\_\_\_  
CARL T. C. GUTIERREZ  
*I Maga'lahen Guåhan*

Date: 12-22-01

Public Law No. 26-61



1                   **CONSTRUCTION INITIATIVE ACT OF 2001.**

- 2           **Section 58101.                   Title.**
- 3           **Section 58102.                   Legislative Findings and Policy.**
- 4           **Section 58103.                   Definitions.**
- 5           **Section 58104.                   Authorization to Enter into Long-**
- 6   **Term Leases.**
- 7           **Section 58105.                   Procurement.**
- 8           **Section 58106.                   Responsibilities of Contractor.**
- 9           **Section 58107.                   Assignments.**
- 10          **Section 58108.                   Use of Tax-Exempt Bonds for**
- 11   **Financing.**
- 12          **Section 58109.                   Utilities and Routine Maintenance**
- 13   **and Repair.**
- 14          **Section 58110.                   Maintenance Fund.**
- 15          **Section 58111.                   Rules, Regulations and Restrictions.**
- 16          **Section 58112.                   Severability.**

17

18           **Section 58101.   Title.**       This Act shall be known and shall be

19   cited as '*The Education Facilities Construction Initiative Act of 2001.*'

20           **Section 58102.   Legislative Findings and Policy.** There is a

21   critical shortage of public school facilities on Guam. Many existing

22   facilities are antiquated and are *not* fit for the purpose of public

23   education. The Department of Education ('D.O.E.') is in need of *at least*

24   five (5) new public schools with all the related civil and structural

1 facilities and amenities customarily associated with a first rate public  
2 education facility, and the University of Guam ('U.O.G.') and the Guam  
3 Community College ('G.C.C.') are also in need of additional education  
4 and related facilities.

5 The government of Guam lacks funding for the design and  
6 construction of new public school facilities. The government of Guam is  
7 also currently unable to seek financing, in its own name, through the  
8 bond market. In an effort to overcome these financing hurdles, and to  
9 provide for the educational needs of the students of Guam, *I Liheslaturan*  
10 *Guåhan* desires to authorize the government of Guam to enter into  
11 contracts for the financing, design, construction and long-term capital  
12 maintenance of new public schools with private sector contractors who  
13 can provide long-term financing obtained through tax-exempt bonds.

14 To facilitate the financing, design, construction and maintenance  
15 of public school facilities envisioned by this Act, the government of  
16 Guam will be authorized to lease for *up to* thirty (30) years government  
17 of Guam property on which the public school facilities will be  
18 constructed.

19 The lease of the government property will be to the contractor,  
20 who will design and construct the public school facilities and provide  
21 funding for the design and construction through the use of tax-exempt  
22 bonds. Upon completion of the construction, the facilities and land will  
23 be leased back to the government of Guam for a period *not to exceed* the  
24 initial ground lease to the contractor over which time the government of  
25 Guam will amortize, as lease payments to the contractor, the cost of the

1 financing, design, construction and related expenses of the public  
2 school.

3 The contractor will also be responsible for the capital maintenance  
4 and repair of each of the public school facilities constructed under this  
5 Act, which costs shall be paid by the government of Guam as provided  
6 for under this Act. At the expiration of the lease-back period, the  
7 government of Guam real property and the public school facilities  
8 constructed on the government of Guam real property will revert to the  
9 government of Guam with no further obligations to the contractor.

10 **Section 58103. Definitions.** For purposes of this Chapter  
11 and unless otherwise specified, the following words and phrases are  
12 defined to mean:

13 (a) 'Act' means Chapter 58 of Title 5 of the Guam Code  
14 Annotated, known as '*The Education Facilities Construction Initiative*  
15 *Act of 2001.*'

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

1           (c) '*Contract*' shall mean the design, construction and  
2 financing contract entered into by and between the Education  
3 Agency and the Contractor following negotiations on the response  
4 to the Request for Proposal.

5           (d) '*Education Agency*' shall mean the Guam Department  
6 of Education, the University of Guam or the Guam Community  
7 College.

8           (e) '*Education Facility*' shall mean any structure or  
9 structures, together with all ancillary facilities, including parking  
10 facilities, utilities and infrastructure associated with providing the  
11 educational or related services required by an Education Agency.

12           (f) '*Lease*' shall mean a lease from an Education Agency to  
13 the Contractor entered into at the time of the Contract for the  
14 Property and commencing upon completion of the Education  
15 Facility.

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

23           (h) '*Property*' shall mean any property on which an  
24 Education Facility is located.

1           **Section 58104. Authorization to Enter into Long-Term Leases.**

2           For the purpose of facilitating the financing of the design, construction  
3           and maintenance of an Education Facility encompassed by this Act, the  
4           government of Guam or an Education Agency, as the case may be, is  
5           authorized to lease, *if required*, to the Contractor, *subject* to legislative  
6           approval, sufficient government of Guam real property on which to  
7           construct 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 demolished and rebuilt under the  
11          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, the costs associated with the financing, design, construction and  
16          maintenance of the Education Facility, and in no event shall such period  
17          be *less than* twenty (20) years, or *exceed* thirty (30) years.

18          Upon completion of the construction of the Education Facility, the  
19          Contractor shall lease back to the Education Agency the Property for the  
20          period of the Lease-Back period. Upon the expiration of the Lease and  
21          the Lease-Back of the Property, and the fulfillment of the terms and  
22          conditions of the Lease-Back by the Education Agency, the Property and  
23          the Education Facility shall become the property of the Education  
24          Agency, and the Contractor shall have no further right, title or interest  
25          in the Property or the Education Facility.



1           **Section 58105. Procurement.** Upon identifying Property  
2 adequate for the placement of an Education Facility, an Education  
3 Agency shall solicit Requests for Proposals ('RFP'), through the  
4 Department of Public Works, in compliance with the Guam  
5 Procurement Law, for the financing, design and construction of the  
6 Education Facility, together with maintenance of the Education Facility  
7 over the term of the Lease-Back, according to the needs of the Education  
8 Agency and consistent with this Chapter.

9           **Section 58106. Responsibilities of Contractor.** The Contract  
10 shall require that the Contractor be responsible for all costs, expenses  
11 and fees of any kind or nature, associated with the design, civil  
12 improvements, infrastructure, construction, permits and financing  
13 associated with the completion of an Education Facility.

14           The Contractor shall also be responsible for the capital  
15 maintenance and upkeep of the schools during the period of the Lease-  
16 Back term. The costs of the design, construction and financing for an  
17 Education Facility shall be paid in *substantially* equal monthly  
18 installments over the term of the Lease-Back period, which shall be  
19 mutually determined by the Education Agency and the Contractor, but  
20 which will *not* exceed thirty (30) years.

21           The capital maintenance, repair and upkeep costs shall be paid on  
22 a periodic basis as incurred by the Contractor on terms to be agreed to  
23 in the Contract for each Education Facility.

1           **Section 58107. Assignments.** To facilitate the purposes of  
2 this Chapter and to provide security for the bondholders, 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 necessary to provide the financing for the Education Facility.

7           **Section 58108. Use of Tax-Exempt Bonds for Financing.** To  
8 minimize the financing cost to the Education Agency, all financing  
9 utilized by the Contractor to fund the design, construction and  
10 maintenance of an Education Facility shall be through tax-exempt bonds  
11 or other financial instruments, *if* a mechanism to do so is available. The  
12 purpose for this requirement is to assure the Education Agency pays the  
13 lowest possible interest rate so that the cost of financing the design,  
14 construction and maintenance of an Education Facility to the Education  
15 Agency, amortized through the Lease-Back payments from the  
16 Education Agency to the Contractor, will be lower than regular  
17 commercial rates.

18           **Section 58109. Utilities and Routine Maintenance and Repair.**  
19 The Education Agency shall be responsible for the connection and  
20 payment of all utilities, including without limitation, power, water,  
21 sewer, telephone and cable, and all routine interior maintenance and  
22 repair and exterior grounds-keeping and landscaping, and upkeep of  
23 the Education Facility. Capital maintenance and repair shall be  
24 performed by the Contractor as provided for in this Chapter.

6

# I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 12/7/01

## VOTING SHEET

Bill No. 161 (COR)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_ P.L. 61

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.					✓

TOTAL

14    0    0    0    1

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence

6  
12/7/01

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN  
2001 (FIRST) Regular Session**

**Bill No. 161 (COR)**  
As amended on the Floor.

\*

Introduced by:

- L. F. Kasperbauer
- K. S. Moylan
- T. C. Ada
- J. F. Ada
- F. B. Aguon, Jr.
- J. M.S. Brown
- E. B. Calvo
- F. P. Camacho
- M. C. Charfauros
- Mark Forbes
- L. A. Leon Guerrero
- V. C. Pangelinan
- A. L.G. Santos
- A. R. Unpingco
- J. T. Won Pat

**AN ACT TO ADD CHAPTER 58 TO TITLE 5 OF  
THE GUAM CODE ANNOTATED, RELATIVE TO  
ESTABLISHING A MEANS FOR EDUCATION  
FACILITIES CONSTRUCTION.**

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

2 **Section 1. Title.** This Act shall be cited and referred to as "*The*  
3 *Education Facilities Construction Initiative Act of 2001.*"

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

6 **"CHAPTER 58.**

7 **THE EDUCATION FACILITIES**

1                                   **CONSTRUCTION INITIATIVE ACT OF 2001.**

2	<b>Section 58101.</b>	<b>Title.</b>
3	<b>Section 58102.</b>	<b>Legislative Findings and Policy.</b>
4	<b>Section 58103.</b>	<b>Definitions.</b>
5	<b>Section 58104.</b>	<b>Authorization to Enter into Long-</b>
6		<b>Term Leases.</b>
7	<b>Section 58105.</b>	<b>Procurement.</b>
8	<b>Section 58106.</b>	<b>Responsibilities of Contractor.</b>
9	<b>Section 58107.</b>	<b>Assignments.</b>
10	<b>Section 58108.</b>	<b>Use of Tax-Exempt Bonds for</b>
11		<b>Financing.</b>
12	<b>Section 58109.</b>	<b>Utilities and Routine Maintenance</b>
13		<b>and Repair.</b>
14	<b>Section 58110.</b>	<b>Maintenance Fund.</b>
15	<b>Section 58111.</b>	<b>Rules, Regulations and Restrictions.</b>
16	<b>Section 58112.</b>	<b>Severability.</b>

17

18           **Section 58101. Title.**       This Act shall be known and shall be  
19           cited as *'The Education Facilities Construction Initiative Act of 2001.'*

20           **Section 58102. Legislative Findings and Policy.** There is a  
21           critical shortage of public school facilities on Guam. Many existing  
22           facilities are antiquated and are *not* fit for the purpose of public  
23           education. The Department of Education is in need of *at least five (5)*  
24           new public schools with all the related civil and structural facilities and

1 amenities customarily associated with a first rate public education  
2 facility, and the University of Guam and the Guam Community College  
3 are also in need of additional education and related facilities.

4 The government of Guam lacks funding for the design and  
5 construction of new public school facilities. The government of Guam is  
6 also currently unable to seek financing, in its own name, through the  
7 bond market. In an effort to overcome these financing hurdles, and to  
8 provide for the educational needs of the students of Guam, *I Liheslaturan*  
9 *Guåhan* desires to authorize the government of Guam to enter into  
10 contracts for the financing, design, construction and long-term capital  
11 maintenance of new public schools with private sector contractors who  
12 can provide long-term financing obtained through tax-exempt bonds.

13 To facilitate the financing, design, construction and maintenance  
14 of public school facilities envisioned by this Act, the government of  
15 Guam will be authorized to lease for *up to* thirty (30) years government  
16 of Guam property on which the public school facilities will be  
17 constructed.

18 The lease of the Government property will be to the contractor,  
19 who will design and construct the public school facilities and provide  
20 funding for the design and construction through the use of tax-exempt  
21 bonds. Upon completion of the construction, the facilities and land will  
22 be leased back to the government of Guam for a period *not to exceed* the  
23 initial ground lease to the contractor over which time the government of  
24 Guam will amortize, as lease payments to the contractor, the cost of the

1 financing, design, construction and related expenses of the public  
2 school.

3 The contractor will also be responsible for the capital maintenance  
4 and repair of each of the public school facilities constructed under this  
5 Act, which costs shall be paid by the government of Guam as provided  
6 for under this Act. At the expiration of the lease-back period, the  
7 government of Guam real property and the public school facilities  
8 constructed on the government of Guam real property will revert to the  
9 government of Guam with no further obligations to the contractor.

10 **Section 58103. Definitions.** For purposes of this Chapter  
11 and unless otherwise specified, the following words and phrases are  
12 defined to mean:

13 (a) 'Act' means Chapter 58 of Title 5 of the Guam Code  
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16 (b) 'Contractor' shall mean the authorized entity which  
17 shall be the signatory on the Contract and shall be fully  
18 responsible for carrying out the design, construction, financing  
19 and maintenance of the Education Facility. The Contractor may  
20 cooperate with another entity or entities in any manner the  
21 Contractor deems appropriate to provide for the financing, design  
22 and construction of the public school facilities envisioned by this  
23 Act.

1           (c) '*Contract*' shall mean the design, construction and  
2 financing contract entered into by and between the Education  
3 Agency and the Contractor following negotiations on the  
4 Response to the Request for Proposal.

5           (d) '*Education Agency*' shall mean the Guam Department  
6 of Education, the University of Guam or the Guam Community  
7 College.

8           (e) '*Education Facility*' shall mean any structure or  
9 structures, together with all ancillary facilities, including parking  
10 facilities, utilities and infrastructure associated with providing the  
11 educational or related services required by an Education Agency.

12           (f) '*Lease*' shall mean a lease from an Education Agency to  
13 the Contractor entered into at the time of the Contract for the  
14 Property and commencing upon completion of the Education  
15 Facility.

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

23           (h) '*Property*' shall mean any property on which an  
24 Education Facility is located.



1           **Section 58104. Authorization to Enter into Long-term Leases.**

2           For the purpose of facilitating the financing of the design, construction  
3           and maintenance of an Education Facility encompassed by this Act, the  
4           government of Guam or an Education Agency, as the case may be, is  
5           authorized to lease, if required, to the Contractor, *subject* to legislative  
6           approval, sufficient government of Guam real property on which to  
7           construct 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 existing education facility under the control of an  
10          Education Agency, which may be demolished and rebuilt under the  
11          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, the costs associated with the financing, design, construction and  
16          maintenance of the Education Facility, and in no event shall such period  
17          be *less* than twenty (20) years, or *exceed* thirty (30) years.

18          Upon completion of the construction of the Education Facility, the  
19          Contractor shall lease back to the Education Agency the Property for the  
20          period of the Lease-Back period. Upon the expiration of the Lease and  
21          the Lease-Back of the Property, and the fulfillment of the terms and  
22          conditions of the Lease-Back by the Education Agency, the Property and  
23          the Education Facility shall become the property of the Education  
24          Agency, and the Contractor shall have no further right, title or interest  
25          in the Property or the Education Facility.



# MINA ' PENTE SAIS NA LIHES' ATURAN GUÅHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

**28 NOV 2001**

Speaker Antonio R. Unpingco  
I Mina' Bente Sais Na Liheslaturan Guåhan  
155 Hesler Street  
Hagátña, Guam 96910

Dear Mr. Speaker:

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 161, was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 161**: "An Act To *Add* Chapter 51 To Title 5 Of The Guam Code Annotated, Relative To Establishing A Means For Education Facilities Construction."

The voting record is as follows:

TO PASS	<u>8</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>
TO REPORT OUT	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Thank you and si Yu'os ma'ase for your attention to this matter.

  
**MARK FORBES**

Attachments



# MINA ' PENTE SAIS NA LIHES' ATURAN GUAHAN

Kumitchan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senador Mark Forbes, Gehilu  
Kabisiyon Mayurát*

28 NOV 2001

## MEMORANDUM

TO: Committee Members

FROM: Chairman

SUBJECT: Committee Report- BILL NO. 161: "An Act To *Add* Chapter 51 To Title 5 Of The Guam Code Annotated, Relative To Establishing A Means For Education Facilities Construction."

Transmitted herewith for your information and action is the report on Bill No. 161 from the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill No. 161
4. Public Hearing Sign-in Sheet
5. Fiscal Note/Fiscal Note Waiver
6. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

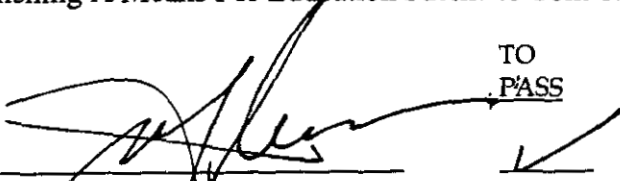
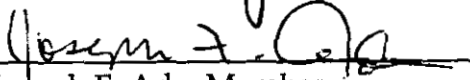
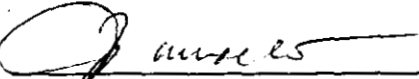
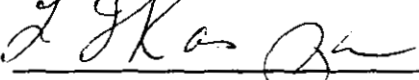



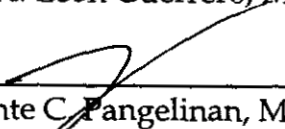
**MARK FORBES**

Attachments

**Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs**  
**I Mina' Bente Sais Na Liheslaturan Guåhan**

**Voting Record**

BILL NO. 161: "An Act To *Add* Chapter 51 To Title 5 Of The Guam Code Annotated, Relative To Establishing A Means For Education Facilities Construction."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>	<u>TO REPORT OUT</u>
 MARK FORBES, Chairman	✓	_____	_____	_____	_____
 Joseph F. Ada, Member	✓	_____	_____	_____	_____
Joanne M.S. Brown, Member	_____	_____	_____	_____	_____
Eddie B. Calvo, Member	_____	_____	_____	_____	_____
 Felix P. Camacho, Member	✓	_____	_____	_____	_____
 Lawrence F. Kasperbauer, Ph. D., Member	X	_____	_____	_____	_____
Kaleo S. Moylan, Member	_____	_____	_____	_____	_____
 Antonio R. Unpingco, Ex-Officio Member	✓	_____	_____	_____	_____
 Thomas C. Ada, Member	✓	_____	_____	_____	_____
 Lou A. Leon Guerrero, Member	✓	_____	_____	_____	_____
 Vicente C. Pangelinan, Member	✓	_____	_____	_____	_____

**I MINA' BENTE SAIŠ NA LIHESLATURAN GUÅHAN**  
**COMMITTEE ON RULES, GENERAL GOVERNMENTAL**  
**OPERATIONS, REORGANIZATION AND REFORM, AND**  
**FEDERAL, FOREIGN AND GENERAL AFFAIRS**

**SENATOR MARK FORBES, CHAIRMAN**

**COMMITTEE REPORT**  
**ON**  
**BILL NO. 161**

**“AN ACT TO *ADD* CHAPTER 51 TO TITLE 5 OF THE GUAM  
CODE ANNOTATED, RELATIVE TO ESTABLISHING A MEANS  
FOR EDUCATION FACILITIES CONSTRUCTION.”**

## **I. OVERVIEW**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs held a public hearing at 10 a.m. on November 1, 2001 in the Public Hearing Room, I Liheslaturan Guahan. Public notice was given in the October 27, 2001 edition of the Pacific Daily News.

Senators present at the public hearing were:

Senator Mark Forbes, Chairman  
Senator Larry Kasperbauer, Member  
Senator Lou Leon Guerrero, Member  
Senator Vicente "Ben" Pangelinan, Member  
Senator Frank Aguon, Jr.

## **II. SUMMARY OF TESTIMONY**

Individuals appearing before the Committee to present oral and written testimony on the bill are as follows:

Roy T. Tsuda, Ph.D., Acting President, University of Guam (Oral and written testimony)  
Alicia Pinaula, President, Parent Teacher Organization, Mt. Sta. Rosa Elem. School (Oral testimony)  
Juanita C.V. Blaz, Parent Representative, Mt. Sta. Rosa Elem. School (Oral testimony)  
Jesus Paras Cruz, Parent Representative, Mt. Sta. Rosa Elem. School (Oral testimony)  
Rose S. Nauta, Parent Representative, Mt. Sta. Rosa Elem. School (Oral testimony)  
Juanita Cushing, Parent Representative, Mt. Sta. Rosa Elem. School (Oral testimony)  
Lon Bottcher, Retired Educator (Oral testimony)  
Ike Santos, Chief Planner, Dept. of Education (Oral testimony)  
Carl Taitano, Member, Task Force on Educational Facilities (Oral Testimony)  
Ron Teehan, Administrative Director, Chamorro Land Trust Commission (Oral testimony)  
Steve DeBiasi, President, Guam Contactor's Association (Oral testimony)  
Rosie Tainatongo, Superintendent of Education (Written Testimony)  
Edward Untalan, Administrator, Guam Economic Development Authority (Written testimony)  
James A. Martinez, Executive Director, Guam Contractors' Association (Written testimony)

Dr. Roy T. Tsuda, Acting President of the University of Guam, testified before the Committee on Bill No. 161. He said the University is not opposed to the bill, but is unsure of whether it would take advantage of this type of partnership with contractors. He said that if it did, the University should be able to follow its usual procurement procedures, and not go through the Department of Public Works.

Alicia Pinaula, president of the Parent Teacher Organization of Mt. Santa Rosa Elementary School, testified before the Committee in favor of Bill No. 161. She said the bill will open the door for a new school to be opened in the Pagat area, and that the Department of Education is planning on closing Mt. Santa Rosa, leaving the Pagat children to be switched to another school that is already overcrowded. She said DOE has said the structure at Mt. Santa Rosa is still OK for a few years, and added that she thinks it doesn't make sense to close the school.

Juanita Blas, representing her daughter, a student at Mt. Santa Rosa Elementary School, testified before the Committee in favor of Bill No. 161. She said she's been attending land meeting trying to get schools built, and said she's concerned with DOE shutting down Mt. Santa Rosa Elementary School. She said it will split up a good staff at the school. Funding is always a problem, but children deserve more than that. She would also prefer having children tolerate the conditions for a year or a year and a half while a new school is being built rather than the stress of switching to another school.

Jesus Cruz, a parent of a student at Mt. Santa Rosa Elementary School, testified before the Committee in favor of Bill No. 161. He said he would like a picture and the exact location in Pagat for a new school.

Rose Nauta, a parent of a student at Mt. Santa Rosa Elementary School, testified before the Committee in favor of Bill No. 161. She said her children go from Price to Upi to Mt. Santa Rosa. She hopes the schools stay open until God knows when.

Juanita Cushing, a grandparent of a student at Mt. Santa Rosa Elementary School, testified before the Committee in favor of Bill No. 161. She said she's close to the bonding of the school, which will go away if the school is closed.

Lon Bottcher, a retired educator, testified before the Committee in favor of Bill No. 161. He said he now builds small homes, which are steel, quick to put up, the size of a classroom, and easier to air-condition. He suggested that these could be used to build classrooms.

Ike Santos, chief planner at the Department of Education, representing the director, Rosie Tainatongo, read from Tainatongo's written testimony in favor of Bill No. 161 with amendments. The suggested amendments include clearly defining the term "capital maintenance", using the term "agreement" instead of lease so that there would be more flexibility in the agreement, and authorizing the education agency to enter general agreements concerning the underlying land. In addition, Santos said that Mt. Santa Rosa will stay open until a new school is built.

Carl Taitano, a member of the Task Force on Educational Facilities, testified before the Committee on Bill No. 161. He said the Legislature should look at how to deal with capital maintenance and regular maintenance, and should define the responsibilities of each party. He said regarding leases, which transfer ownership rights, the property rights of GovGuam should remain intact. He also has recommendations for tax-exempt debt that he will submit later.

Ron Teehan, administrator of the Chamorro Land Trust Commission, testified before the Committee on Bill No. 161. He said that it's not necessary to transfer the ownership of property to DOE, because the Land Trust Commission can license the use of land to DOE. He also cautioned that identifying lots for school sites should not displace families that have been there for years, as happened at Machanao. He also said that consideration should be taken into account for identifying lots for schools that have infrastructure already in place, because this means that subdivisions for families will have to have infrastructure built elsewhere, which will be an additional cost.

Steve DeBiasi, president of the Guam Contractors Association, testified before the Committee on Bill No. 161. He said the bill has merit, and asked that the Legislature consider adding language to the bill requiring that jobs used for building schools should use 100% local labor.

### **III. FINDINGS AND RECOMMENDATION**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs finds that Bill No. 161 would provide the Department of Education, the University of Guam, and the Guam Community College with an additional funding mechanism for building educational facilities, some of which are badly needed and overdue, as the parents of Mt. Santa Rosa Elementary School testified to.

Accordingly, the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 161 was referred does hereby submit its findings and recommendations to I Mina' Bente Sais Na Liheslaturan Guahan **TO DO PASS BILL NO. 161**, "An Act To *Add* Chapter 51 To Title 5 Of The Guam Code Annotated, Relative To Establishing A Means For Education Facilities Construction."

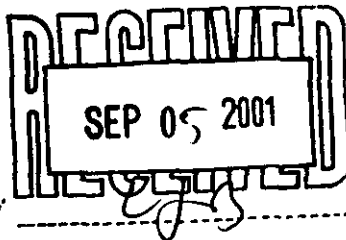




# MINA ' BENTE SAIS NA LIHESLATURAN GUAMAN

Kumansan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinucba,  
yan Asuntón Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*



05 SEP 2001

## MEMORANDUM

TO: Chairman  
Committee on Rules, General Governmental Operations, Reorganization  
and Reform, and Federal, Foreign and General Affairs

FROM: Chairman  
Committee on Rules, General Governmental Operations, Reorganization  
and Reform, and Federal, Foreign and General Affairs

SUBJECT: Principal Referral – Bill No. 161

The above bill is referred to your Committee as the Principal Committee, in accordance with Section 6.04.05.01. of the Standing Rules. Your Committee is the Committee authorized to perform the public hearing on this bill and to amend or substitute the bill, as well as report the bill out to the Body. It is recommended that you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

**MARK FORBES**

Attachment



1	<b>Section 51106.</b>	<b>Responsibilities of Contractor.</b>
2	<b>Section 51107.</b>	<b>Assignments.</b>
3	<b>Section 51108.</b>	<b>Use of Tax-Exempt Bonds for</b>
4		<b>Financing.</b>
5	<b>Section 51109.</b>	<b>Utilities and Routine Maintenance and</b>
6		<b>Repair.</b>
7	<b>Section 51110.</b>	<b>Maintenance Fund.</b>
8	<b>Section 51111.</b>	<b>Severability.</b>
9	<b>Section 51112.</b>	<b>Rules, Regulations and Restrictions.</b>

10

11           **Section 51101. Title.**       This Act shall be known and shall be  
12 cited as "*The Education Facilities Construction Initiative Act of 2001.*"

13           **Section 51102. Legislative Findings and Policy.**   There is a  
14 critical shortage of public school facilities in Guam. Many existing facilities  
15 are antiquated and are not fit for the purpose of public education. The  
16 Department of Education is in need of at least five (5) new public schools with  
17 all the related civil and structural facilities and amenities customarily  
18 associated with a first rate public education facility, and the University of  
19 Guam and the Guam Community College are also in need of additional  
20 education and related facilities.

21           The government of Guam lacks funding for the design and construction  
22 of new public school facilities. The government of Guam is also currently  
23 unable to seek financing, in its own name, through the bond market. In an  
24 effort to overcome these financing hurdles, and to provide for the educational  
25 needs of the students of Guam, *I Liheslaturan Guåhan* desires to authorize the

1 government of Guam to enter into contracts for the financing, design,  
2 construction and long term capital maintenance of new public schools with  
3 private sector contractors who can provide long term financing obtained  
4 through tax exempt bonds.'

5 To facilitate the financing, design, construction and maintenance of  
6 public school facilities envisioned by this Act, the government of Guam will be  
7 authorized to lease for up to thirty (30) years government of Guam property on  
8 which the public school facilities will be constructed.

9 The lease of the Government property will be to the contractor who will  
10 design and construct the public school facilities and provide funding for the  
11 design and construction through the use of tax-exempt bonds. Upon  
12 completion of the construction, the facilities and land will be leased back to the  
13 government of Guam for a period not to exceed the initial ground lease to the  
14 contractor over which time the government of Guam will amortize, as lease  
15 payments to the contractor, the cost of the financing, design, construction, and  
16 related expenses of the public school.

17 The contractor will also be responsible for the capital maintenance and  
18 repair of each of the public school facilities constructed under this Act, which  
19 costs shall be paid by the government of Guam as provided for under this Act.  
20 At the expiration of the lease-back period, the government of Guam real  
21 property and the public school facilities constructed on the government of  
22 Guam real property will revert to the government of Guam with no further  
23 obligations to the contractor.

1           **Section 51103. Definitions.**       For purposes of this Chapter and  
2 unless otherwise specified, the following words and phrases are defined to  
3 mean:

4           (a) "Act" means Chapter 51 of Title 5 of the Guam Code  
5 Annotated, known as "*The Education Facilities Construction Initiative*  
6 *Act of 2001.*"

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

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

18           (d) "Education Agency" shall mean the Guam Department of  
19 Education, the University of Guam or the Guam Community College.

20           (e) "Education Facility" shall mean any structure or structures,  
21 together with all ancillary facilities (including parking facilities), utilities  
22 and infrastructure associated with providing the educational or related  
23 services required by an Education Agency.

