

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED
5-33 (LS)	Brant T. McCreadie	AN ACT TO CREATE A NEW ARTICLE 6 & 7 TO CHAPTER 90, AND TO AMEND §90.90OF ARTICLE 4, CHAPTER 90, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION AND RENOVATION OF THE DEPARTMENT OF CORRECTIONS ADULT CORRECTIONAL FACILITY TO ENSURE THE SAFETY OF THE PEOPLE OF GUAM; WHICH SHALL COLLECTIVELY BE CITED AS "THE DEPARTMENT OF CORRECTIONS CONSTRUCTION INITIATIVE ACT OF 2015".	01/05/15 11:55 a.m.	01/06/15	Committee on Appropriations and Adjudication		



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

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January 6, 2015

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio** 
Chairperson, Committee on Rules

Subject: Referral of Bill No. 5-33(LS)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 5-33(LS)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 5-33(LB)

Introduced by:


Brant T. McCreadie

2015 JAN -5 AM 11:55

AN ACT TO CREATE A NEW ARTICLE 6 & 7 TO CHAPTER 90, AND TO AMEND §90.90 OF ARTICLE 4, CHAPTER 90, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION AND RENOVATION OF THE DEPARTMENT OF CORRECTIONS ADULT CORRECTIONAL FACILITY TO ENSURE THE SAFETY OF THE PEOPLE OF GUAM; WHICH SHALL COLLECTIVELY BE CITED AS "THE DEPARTMENT OF CORRECTIONS CONSTRUCTION INITIATIVE ACT OF 2015".

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

2 **Section 1. Short Title.** This act shall be cited as the "*Department of Corrections*
3 *Construction Initiative Act of 2015.*"

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the
5 construction of a new Department of Corrections facility will correct the following key areas of
6 deficiency:

7 A) Capacity: The growth in the prisoner and detainee population has outpaced the
8 government of Guam's ability to safely house them. DOC houses local inmates and detainees along
9 with federal detainees in sixteen (16) different housing units. These housing units are antiquated and
10 dilapidated and regularly are occupied at 200% over rated capacity.

11 B) Lack of Rehabilitative, Educational and Medical Facilities: The structural limitations and
12 overcrowding hamper the Department's mission to protect the community and rehabilitate inmates.
13 Inmates and detainees must be confined in a controlled environment that is safe and humane with
14 proper medical facilities. Furthermore, DOC lacks the facilities to provide prisoners with work, self-
15 improvement and rehabilitative programs that will help reduce recidivism and promote the adoption
16 of a crime-free lifestyle upon reintegration in our island community.

17 C) Noncompliance with Federal Court Order: DOC facilities have been found to be in
18 violation of inmates and detainees Constitutional rights. On February 13, 1991, the United States of

1 America brought an action against the Territory of Guam, for violations pursuant to the Civil Rights
2 of Institutionalized Persons Act, 42 U.S.C. §1997. This action is on record with the United States
3 District Court of Guam as CIV91-000020 and to this date the government of Guam remains in
4 **noncompliance status.**

5 Therefore, it is the intent of *I Liheslaturan Guåhan* to authorize the construction of a new
6 detention facility and the renovation of the Department of Corrections existing facilities as
7 appropriate and to identify dedicated funding sources needed to finance the project.

8 **Section 3.** A new Article 6 of Chapter 90, Title 9, Guam Code Annotated is hereby *added* to
9 read as follows:

10 **“ARTICLE 6**

11 **THE DEPARTMENT OF CORRECTIONS**

12 **CONSTRUCTION INITIATIVE ACT OF 2015**

13 **§90.200. Title.** This Act shall be known as the **“Department of Corrections**
14 **Construction Initiative Act of 2015”.**

15 **§90.201. Purpose.** *I Liheslaturan Guåhan*, recognizing the need to ensure the safety
16 of the people of Guam by constructing a modern, secure and safe correctional facility
17 authorizes the construction and renovation of the Department of Corrections (DOC). This
18 will benefit Guam's taxpayers by confining offenders in the controlled environment of prison
19 and community-based facilities that are safe, humane, cost-efficient, and appropriately
20 secure, and to provide prisoners with a range of work and other self-improvement programs
21 that will help them adopt a crime-free lifestyle upon their return to our community. To
22 establish, identify, and authorize revenue streams as a funding source to provide the needed
23 revenue to secure a loan or other forms of financing arrangements for the design,
24 construction, collateral equipment and maintenance of the new correctional facility.

25 **§90.202. Definitions.** The following terms wherever used or referred to in this Act
26 shall have the following definitions, respectively, unless a different meaning appears from
27 the context:

28 (a) **“Act”** means the Department of Corrections Construction Initiative Act of 2015.

29 (b) **“Contractor”** means the authorized appropriate business or not for profit entity
30 which shall be the signatory on a lease and a lease-back arrangement and shall be fully

1 responsible for carrying out the financing, design, construction, collateral equipment and
2 maintenance of the DOC Correctional Facility.

3 (c) "Contract" shall mean the design, construction, maintenance, or financing
4 contract(s) entered into by and between the Department of Corrections and a Contractor(s) to
5 accomplish the purpose(s) of this act.

6 (d) "DOC" means Department of Corrections.

7 (e) "Director" means the Director, Department of Corrections.

8 (f) "Government" shall mean the government of Guam.

9 (g) "DOC Correctional Facility" shall mean the Department of Corrections building
10 structure or structures, together with all ancillary facilities, including parking facilities,
11 utilities, infrastructure and equipment associated with providing the services required by the
12 public safety agency.

13 (h) "DOC Building Fund" means Department of Corrections Building Fund by that
14 name established pursuant to this Act.

15 (i) "Lease" means a ground or site lease of property from DOC, or other government
16 entity, or private property, as applicable, to the Contractor.

17 (j) "Lease-back" means the facilities lease or other lease of the property from the
18 Contractor back to DOC, over the term of which the costs of the design, construction,
19 collateral equipment or maintenance of the corrections building facility are amortized,
20 according to the terms agreed to between DOC and the Contractor(s).

21 (k) "Pledged revenue" means any revenues identified within this Act pledged to
22 secure payments for the financing, lease or lease-back arrangement.

23 (l) "Property" means any property on which the correctional facility is located.

24 (m) "Revenue" of the project means all gross income and other amounts received by
25 or on behalf of DOC as revenues identified within this Act, including all adjusted rates, fees
26 and charges received by DOC and all proceeds of insurance or grants covering business
27 interruption loss (and related losses and expenses) relating to the project, and all other
28 income and revenue however derived by DOC from ownership, leasing, or operation of, or
29 arising from, the project, together with all interest, profits or other income derived from the

1 investment of amounts from revenues identified within this Act, to be deposited, directly into
2 the DOC Building Fund in accordance with this Act.

3 **§90.203. New DOC Correctional Facility.**

4 (a) *I Maga'lahaen Guåhan*, on behalf of the Department of Corrections, is hereby
5 authorized to enter into a financial arrangement with a Contractor(s) for the financing,
6 design, construction, collateral equipment and maintenance of the DOC Correctional Facility.
7 Such financing arrangement may be with the U.S. Department of Agriculture, or other
8 financing sources available, in an effort to identify necessary funds for the implementation of
9 the provisions contained in this Act.

10 (b) The design of the facility and any financial arrangement to provide for the design,
11 construction, collateral equipment and maintenance of the DOC Correctional Facility shall be
12 subject to consultation with the Director.

13 (c) The design of the facility shall include efficient use of space that will allow for the
14 Department of Corrections to enhance its rehabilitation programs to ensure that work
15 opportunities are provided for all inmates to be engaged in a productive, healthy manner
16 while they are incarcerated. Rehabilitation may include farming, gardening, art production,
17 license plate production, animal training, and any other light industry that are found to be
18 successful in preparing inmates for re-integration into community life.
19 The DOC Director shall conduct a review of proven and successful rehabilitation programs
20 across national penal systems. The DOC Director shall search for grant opportunities as a
21 way to fund the initiation of rehabilitation programs.

22 (d) Any monies reimbursed to the Government of Guam by the Contractor(s) for
23 expenses not actually incurred on the design and construction of the DOC Correctional
24 Facility shall revert to the Fund.

25 (e) In addition to the provisions contained in this Act, *I Maga'lahaen Guåhan* is hereby
26 authorized to identify and apply other funding sources, if necessary, to be designated and
27 deposited into the DOC Building Fund. The Contractor in conjunction with DOC shall
28 explore and identify any and all potential financing sources or grants, including, but not
29 limited to, any Federal government agencies or private financial lending sources, that may be
30 applied toward the financing of the construction of the DOC Correctional Facility. In

1 carrying out the provisions of this subsection, the Contractor shall work with the Guam
2 Economic Development Authority in the solicitation or acquisition of financing for the
3 project.

4 (f) Any revenue derived from a lease-back entered into, consistent with this Act, shall
5 be exempt from business privilege taxation by the government of Guam. -

6 (g) DOC Correctional Facility shall be built or acquired within its current location in
7 Mangilao. Alternatively, the Facility may be constructed on any other site that has been
8 deemed appropriate by the Department of Public Works, in consultation with DOC, with
9 prior approval of the Legislature..

10 (h) Valid and Binding General Obligations. Where appropriate, the financial
11 obligation(s) arising from or attendant to any lease of lease-back authorized by this Act shall
12 constitute valid and binding general obligations of the government of Guam. The
13 government of Guam pledges its full faith and credit for the timely payment of both principal
14 of and interest on the financial instrument authorized by this Act.

15 **§90.204. Authorization to Enter into Lease or Lease-Back Arrangements. /**
16 *Maga'lahaen Guåhan* may enter into a lease and lease-back on behalf of the Department for
17 the financing of the acquisition, design, construction, improvement, equipping, repair,
18 renewal, replacement, or reconstruction of any DOC building, to include the maintenance of
19 all or any portion of such facility over the term of the lease-back, according to the needs of
20 the Department and consistent with this Act. The costs of the financing, design, construction,
21 collateral equipment and maintenance of the facility pursuant to this Act shall be amortized
22 in periodic installments over the term of the lease-back period, which shall be mutually
23 negotiated and determined by the Department and the Contractor, provided such lease-back
24 does not exceed thirty (30) years from the date of construction completion. The lease and
25 lease-back arrangement may contain a provision that should insufficient funds be available to
26 meet the annualized payment obligation, the Department may be required to vacate the DOC
27 buildings, and the contractor shall have the right of use and occupancy of the DOC building
28 for the remainder of the term of the lease, unless new mutually satisfactory terms are entered
29 into. For this specific purpose, the term of the lease may be extended for a period not to
30 exceed the shorter of ten (10) years beyond the original term of the lease-back or such period

1 of time as is necessary to repay in full any financing arranged pursuant to this Act. Upon the
2 expiration of the lease-back period, and the fulfillment of the terms and conditions of the
3 lease-back by the Department, the facilities shall revert to the Government of Guam with no
4 further obligation to the Contractor.

5 The contractor, in an effort to effectively carry out its responsibilities in accordance
6 with any agreed upon contract and the provisions set forth herein, shall work with the Guam
7 Economic Development's Real Property Division to this end. The contractor may work with
8 another business entity or entities in any manner the contractor deems appropriate to provide
9 for the financing, design, construction, collateral equipment and maintenance of the DOC
10 Correctional Facility.

11 It is hereby declared that the DOC Correctional Facility shall be a public
12 improvement or undertaking as that term is used in Section 11 of the Organic Act (§ 1423a,
13 Title 48, U.S. Code). Obligations incurred by the government pursuant to this Act that are
14 payable only from funds in the DOC Building Fund and from any other revenues generated
15 by the headquarters building facility, and will not be and shall not be deemed to be public
16 indebtedness of Guam as that term is used in said Section 11.

17 No obligation undertaken by the government pursuant to this Act shall be or become
18 a lien, charge or liability against the government of Guam or against the Department or
19 against any property or funds of the government of Guam or the Department, except to the
20 extent of the pledge of revenue of the project provided by the lease-back. The lease-back
21 shall not be construed as a debt under any applicable debt limitation under Guam law.

22 **§90.205. Procurement Process for the DOC Correctional Facility.** The
23 Department of Corrections, Department of Public Works and the Guam Economic
24 Development Authority, acting collaboratively, shall facilitate the procurement process(es)
25 for those things necessary to accomplish the purposes of this act.

26 **§90.206. Authority of DOC.** Notwithstanding any provision of law or regulation,
27 DOC is authorized to exercise any or all of the powers granted to DOC by this Act.

28 **§90.207. Optional Assignment of Lease or Lease-Back.** To facilitate the purposes
29 of this Act and to provide security for the leaseholders, the contractor may assign, with the
30 consent of DOC and the Guam Economic Development Authority, the lease and the lease-

1 back to any trustee, underwriter or other appropriate party as may be necessary to facilitate
2 the issuance of certificates of participation in lease-back payments or other financial
3 instruments to provide the financing for the DOC Correctional Facility.

4 **§90.208. Use of Tax-Exempt Financing.** To minimize the financing cost to DOC,
5 financing utilized by the Contractor to fund the design, construction, collateral equipment
6 and maintenance of the DOC Correctional Facility shall be through tax-exempt obligations or
7 other financial instruments provided such financing is available at reasonable interest rates.
8 Alternatively, the Contractor may use an alternative method of financing, including, but not
9 limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an
10 instrumentality of the United States Federal Government if such financing will better serve
11 the needs of the people of Guam. Such alternative financing shall be approved by the Guam
12 Economic Development Authority before being entered into by DOC. The Contractor
13 financing shall have a final term that does not exceed thirty (30) years from the DOC Facility
14 occupancy date. The purpose for the requirements of this Section is to assure that DOC pays
15 the lowest possible interest rate so that the cost of financing the design, construction,
16 collateral equipment, and maintenance of the DOC Facility to the Department is minimized.

17 **§90.209. Use of DOC Building Fund Proceeds and Other Identified Revenues as**
18 **Secured Funding for Lease-Back Arrangement.** The Lease or Lease-Back arrangement
19 may be secured by a pledge of funding sources identified within Section 3 of this Act, and
20 any other revenue sources that *I Maga'lahen Guåhan* or the Legislature may identify. Any
21 such pledge shall not be construed to cause the lease-back obligation to be included as debt
22 for purposes of the Guam government debt limit.

23 **§90.210. Issuance of Bonds or Acquisition of Financing through the Guam**
24 **Economic Development Authority.** In the event financing is sought through the sale of
25 bonds, the Department of Corrections is hereby granted the authority to issue and sell bonds
26 to carry out the purposes mandated by this Act in accordance with §50103(k) of Title 12,
27 Guam Code annotated. , The Department of Corrections shall solicit and acquire the
28 assistance of the Guam Economic Development Authority in the issuance and sale of any
29 bonds, or the acquisition of financing necessary to carry out the provisions contained in this
30 Act.

1 **§90.211. Responsibility of Contractor.** The lease or lease-back arrangement shall
2 require that the contractor be responsible for financing all costs, expenses and fees of any
3 kind or nature, associated with the improvements, on-site infrastructure and off-site
4 infrastructure, construction, permits and financing associated with the completion of the
5 correctional facility, which may include the financing of furniture and equipment for the
6 facility, as to the extent provided by the Department in the RFP. The Contractor shall also be
7 responsible for the capital maintenance of the DOC Correctional Facility during the term of
8 the lease-back.

9 The Contractor shall also be responsible for the installation of security equipment, to
10 include but not limited to, automated locking systems, surveillance cameras, fences, barriers
11 and other security technology both inside and around the perimeter of the property of the
12 DOC Correctional Facility. The Contractor will be responsible for the maintenance of all
13 security equipment during the term of the leaseback.

14 **§90.212. Responsibility of Costs for the initial Installation of Utility Services,**
15 **Telephone, Cable, and General Maintenance and Repair.** The Contractor shall be
16 responsible for the connection and payment of all utilities associated costs, including without
17 limitation, power, water, sewer, telephone and cable, and all routine interior maintenance and
18 repair and exterior grounds keeping and landscaping and upkeep of the headquarters Building
19 facility. General building maintenance and repair shall be performed by Contractor as
20 provided for in this Act.

21 **§90.213. Construction of Act.** This Act shall be liberally construed to carry out the
22 objects and purposes and the declared policy of the government of Guam as in this Article set
23 forth. Nothing contained in this Act shall be construed directly or by implication to be in any
24 way in derogation or limitation of powers conferred upon or existing in the Department, the
25 Director or *I Maga'lahañ Guåhan* by virtue of any provisions of the Organic Act or laws of
26 Guam.

27 **§90.214. Administration of DOC.** Nothing in this act shall remove the Director,
28 corrections officers and staff of the Department of Corrections from running the day-to-day
29 operations of DOC. In no way shall this Act privatize the operations at DOC, except as
30 explicitly indicated in this Act.

1 **Section 4.** A new Article 7 of Chapter 90 Title 9, Guam Code Annotated is hereby *added to*
2 read as follows:

3 **“ARTICLE 7.**

4 **Department of Corrections Building Fund**

5 **§90.300. Creation of the Department of Corrections Building Fund.** There is
6 hereby created, separate and apart from other funds of the government of Guam, a special
7 fund known as the "Department Of Corrections Building Fund ", hereinafter referred to as the
8 “fund”.

9 **§90.301. Separate Fund and Bank Account.** The DOC Building Fund shall not be
10 commingled with the General Fund or any other fund of the government of Guam, and shall
11 be maintained in a separate bank account. The Fund shall be exempted from the Governor’s
12 transfer authority and may not be borrowed against unless otherwise provided for in this Act,
13 and shall be exclusively used for the purposes set forth herein.

14 **§90.302. Authorized Expenditures of the Department of Corrections Building**
15 **Fund and Authorization to Construct.** Funds within the DOC Building Fund shall be
16 expended exclusively for financing the design, construction, collateral equipment and
17 maintenance of a new correctional facility, including, but not limited to, making lease
18 payments and paying costs related to the following: architectural and engineering design for
19 the proposed correctional facility; environmental concerns; archeological and historic site
20 survey and or assessment of the project site; site preparation and civil work for the building
21 foundation; construction cost for the structure of the building facility, to include project
22 associated costs incurred by the Department of Public Works.

23 **§90.303. Administration and Accountability of the Department of Corrections**
24 **Building Fund.** The Director shall account for and administer the DOC Building Fund and
25 shall keep all books, records, files and accounts relative to the respective DOC Building
26 Fund. The Director shall prepare quarterly reports relative to the DOC Building Fund
27 reflecting the transactions and the financial condition of the respective DOC Building Fund,
28 which shall be transmitted to the Speaker of *I Liheslaturan Guåhan* and *I Maga'lahren*
29 *Guåhan*.

1 **§90.304. Traffic Citation Surcharge.** Any and all traffic citations issued shall have
2 a 20% surcharge applied therein, which shall be directly deposited into the DOC Building
3 Fund and shall be subject to the provisions of this Act.

4 **§90.305. Special Assessment for Contempt of Court and Probation Violations.** A
5 special assessment in the amount of \$300.00 shall be levied against all individuals sentenced,
6 remanded, or held for any period of confinement with the DOC for violating probation, pre-
7 trial release conditions, or for being held in contempt of court. Payment of the special
8 assessment shall become a term of the violator's probation or release conditions or fine for
9 contempt as the case may be and shall not be convertible to community service. All monies
10 collected through this special assessment shall be directly deposited into the DOC Building
11 Fund and shall be subject to the provisions of this Act.

12 **§90.306. Deposit of Monies into the DOC Building Fund.** 1) All monies generated
13 from traffic surcharges, special assessment, and other sources as identified shall be deposited
14 into the DOC Building Fund. *I Maga'lahañ Guåhan* is hereby authorized to utilize any other
15 funding source within his oversight to commit and deposit into the DOC Building Fund.
16 Such funds once committed and deposited therein shall be subject to the provisions and
17 restrictions of the Fund. All monies deposited into the Fund shall be solely for the purpose of
18 paying debt service for the financing of the DOC Correctional Facility, and as provided in
19 this Act.

20 2) The Director, without jeopardizing operational requirements, is authorized to use
21 no more than five percent (5%) of its approved budget, or other available funding sources, to
22 be deposited into the DOC Building Fund for the payment of loan or financing obligations.
23 The Director is authorized to apply the use of excess Fund revenues, only if such funds are in
24 excess of the annualized payment requirements and are approved by the financing entity
25 prior to any expenditures; which shall be subject to Legislative Approval.

26 3) Any revenues saved by the Department through the construction of a new
27 correctional facility, to include but not limited to, decreased personnel costs, overtime
28 payments and utility costs shall automatically be appropriated and deposited into the Fund. *I*
29 *Liheslatura* shall automatically appropriate each fiscal year thereafter a sum equal to those
30 savings into the Fund until such time that debt service is fully paid.

1 4) Any revenues earned by the establishment of any prison industry program, as
2 authorized by Article 4 of Chapter 90, Title 9 GCA, shall be automatically deposited into the
3 Fund.

4 5) Any revenues derived from the establishment of any other program, contract or
5 project at the Department of Corrections shall remain with DOC and deposited into the Fund.

6 6) All fines and surcharges generated under this Act shall be paid at the Superior
7 Court of Guam. Prior to any deposits required by this section, the Superior Court shall deduct
8 no more than ten percent (10%) of any such fine and surcharge and use such funds for the
9 increased demands and administrative costs associated with the implementation of this Act.”

10 **Section 5.** Item (c) of §90.90, Article 4, Chapter 90, Title 9 Guam Code Annotated is hereby
11 *amended* to read:

12 (c) Earnings Formula, established.

13 Each inmate participating in a prison industry shall have all wages earned subject to
14 this Earnings Formula:

15 (1) Thirty percent (30%) to the inmate for the following purposes:

16 i) ~~Ten Twenty-five percent (25-10%)~~ to the Criminal Injuries Compensation
17 Fund;

18 ~~(2) Twenty-five ii) Ten percent (25-10%)~~ to payment of court-ordered fines,
19 fees, and restitution. ~~When such court-ordered fines, fees and restitution have been~~
20 ~~satisfied, this percentage shall be applied to the Inmate’s Account. ; and~~

21 ~~(3) Twenty-five iii) Ten percent (25-10%)~~ to the ~~Prison Industries Revolving~~

22 Fund. ~~(4) Twenty-five percent (25%)~~ to the Inmate’s Account. Each participating
23 inmate may elect to provide up to one hundred percent (100%) of the ~~twenty-five ten~~
24 percent ~~(25)10%~~ for child and spousal support. ~~(5) In the event that the participating~~
25 inmate does not owe any sum listed above, ~~one hundred thirty percent (100-30%)~~ of
26 earned wages shall be placed in the Inmate’s Account.

27 (2) Seventy percent (70%) to the Department of Corrections Building Fund.

28 **Section 6. Effective Date.** The provisions contained in this Act shall be effective
29 immediately upon enactment. Any Rules and Regulations promulgated as a result of provisions
30 contained herein shall be effective upon the date specified per existing statutory mandates.

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