

I Mina'trentai Sais Na Liheslaturan Guåhan  
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
153-36 (COR)	Joe S. San Agustin Jose "Pedo" Terlaje Tina Rose Muña Barnes Clynton E. Ridgell James C. Moylan Frank Blas Jr. Amanda L. Shelton V. Anthony Ada Mary Camacho Torres	AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 90, TITLE 9, GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, CONSTRUCTION AND MAINTENANCE OF THE GOVERNMENT OF GUAM DEPARTMENT OF CORRECTIONS WHICH THE ACT SHALL BE CALLED THE "DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021."	6/16/21 4:54 p.m.						

***I MINA 'TRENTAIS AIS NA LIHESLATURAN GUÅHAN***  
**2021 (FIRST) Regular Session**

Bill No. 153-36 (COR)

Introduced by:

Joe S. San Agustin  
Jose "Pedro" Terlaje  
Tina Rose Muña Barnes  
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**AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 90,  
TITLE 9, GUAM CODE ANNOTATED RELATIVE TO THE  
FINANCE, DESIGN, CONSTRUCTION AND MAINTENANCE  
OF THE GOVERNMENT OF GUAM DEPARTMENT OF  
CORRECTIONS WHICH THE ACT *SHALL* BE CALLED THE  
"DEPARTMENT OF CORRECTIONS MODERNIZATION  
ACT OF 2021"**

**BE IT ENACTED BY THE PEOPLE OF GUAM.**

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

**"Article 7."**

**THE FINANCE, DESIGN, CONSTRUCTION, AND MAINTENANCE OF THE  
DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021.**

**§90301. Legislative Findings and Policy.**

**§90302. Definitions.**

**§90303. Authorization to Enter into Long-Term Leases.**

1       §90304. Department of Corrections Project Supervision, Reuse Study  
2       and Appropriation.

3       §90305. Identification Projects and Procurement.

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9       Instruments for Financing.

10       §90311. Prison IT, Building and Security Management System.

11       §90312. Utilities and Routine Maintenance and Repair.

12       §90313. Maintenance Fund.

13       §90314. Rules, Regulations, and Restrictions.

14       §90315. Expedited Permitting Process.

15       §90301. Legislative Findings and Policy. I Liheslaturan Guåhan finds that the  
16       Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968  
17       within the Executive branch of the Government of Guam. Before the passing of Public  
18       Law 9-208, Department of Corrections was first known as the Guam Penitentiary and  
19       through Executive order 68-23, enacted by Governor Manuel F.L Guerrero, the  
20       Penitentiary was transferred to Department of Correction, which was effective November  
21       01, 1968.

22       The Department of Corrections is the only prison in Guam and provides services to  
23       local and federal agencies. DOC provides custodial care to individuals who are convicted  
24       of crimes and for those who are waiting judicial disposition. The environment of the  
25       prison must meet federal standards such as the National Prison Standards, Prison Rape  
26       Elimination Act (PREA), and the National Commission on Correctional Healthcare  
27       Standards (NCCHC), which ensures that the living conditions are decent and humane, but

1 with the issue of overcrowding and structural failures; DOC has been struggling to  
2 properly execute their mandates and comply with National standards. DOC is ensuring  
3 that they prevent any violations of the Federal Consent Decree, which is an agreement  
4 the government of Guam entered that it would improve the living conditions of the  
5 inmates following the Civil Rights of Institutionalized Persons Act.

6 The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to  
7 age and lack of modern technology, which is affecting the operations and personnel of  
8 the Correctional agency. ACF was built to hold a maximum three hundred (300) inmates  
9 and detainees. Currently, the population of Guam is growing as well as crime rates, which  
10 DOC has outgrown its ACF. Overtime other DOC buildings were added to address the  
11 overcrowding issues of the Correctional. Buildings used for rehabilitation and offices  
12 were re-designed to accommodate the rising population of prisoners. The Adult  
13 Correctional Facility is made of fifteen housing units, which holds not only local inmates  
14 and detainees, but also immigration and federal detainees. The lack of proper facilities  
15 prevents DOC to properly provide rehabilitation to the inmates.

16 The poor condition of the housing units of the prisons are not cost effective or  
17 adequate to handle the growing prisoner population. DOC recognized the difficulty to  
18 meet their mandates of providing security, health, rehabilitation and welfare to the  
19 inmates and detainees under their care without comprising the well-being of their  
20 personnel. The main goal of the Department of Corrections is to provide rehabilitation to  
21 individuals who have been convicted of crimes and ensure that they become useful  
22 members of the community and to themselves.

23 Furthermore, *I Liheslaturan Guåhan* finds that DOC has plans to build a new  
24 Department of Corrections with a bed capacity for one thousand (1,000) inmates to  
25 replace their current prison if funding was available. The new prison would provide the  
26 proper space to meet their mandates and the demands of their growing prisoner  
27 population. The Department of Corrections had started to draft an 80-year masterplan in



1 which will provide a phase-to-phase plan to construct a new Department of Corrections  
2 that will meet their construction goal of a bed capacity of one thousand (1,000) inmates.  
3 The Department of Corrections Master Plan's goal is to ensure that all the issues on  
4 structural, technology, and security of the inmates and personnel are covered. The  
5 Masterplan also ensures that all federal standards such as the National Prison Standards  
6 and PREA standards are met by Department of Corrections.

7 It is the intent of *I Liheslaturan Guåhan* to provide the Department of Corrections  
8 proper confinement of offenders in controlled environment prison and community-based  
9 facilities that are safe, humane, cost-efficient, and appropriately secure, which also  
10 promotes the safety of the people of Guam. *I Liheslaturan Guåhan* has identified funding  
11 to construct a new Department of Corrections Adult Correctional Facility through the  
12 Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million  
13 Dollars (\$60,000,000) annually, which an estimate of no more than Five Million Dollars  
14 (\$5,000,000) will be allocated for the payments of the lease-back agreement.

15 In an effort to overcome financing hurdles, and to provide DOC with the proper  
16 tools to meet their mandates, *I Liheslaturan Guåhan* desires to authorize the government  
17 of Guam to enter into contracts for financing, design, construction, and long-term capital  
18 maintenance of a new Department of Corrections Facility with private sector contractors  
19 who can provide long-term financing.

20 To facilitate the financing, design, construction, and maintenance of a new  
21 Department of Corrections Facility envisioned by this Act, the Government of Guam will  
22 be authorized to execute a lease agreement of existing property under its inventory for up  
23 to Thirty (30) years on which the new Department of Corrections will be constructed.

24 The lease of the Government of Guam's property will be to the contractor, who  
25 will design and construct the new *Department of Corrections Facility* and provide a  
26 funding for the design and construction through appropriation received from the  
27 reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective

1 appropriation from the General Fund, annually. Upon completion of the construction, the  
2 facilities and land will be leased back to the Government of Guam for a period *not to*  
3 *exceed* the initial ground lease to the contractor over which time the Government of Guam  
4 will amortize, as lease payments to the contractor, the cost of financing, design,  
5 construction, and related expenses of the new Department of Corrections.

6 The contractor will also be responsible for the capital maintenance and repair of  
7 the Department of Corrections constructed under this Act, which costs shall be paid by  
8 the Government of Guam as provided for under this Act. At the expiration of the lease-  
9 back period, the Government of Guam real property and the Department of Corrections  
10 constructed on the government of Guam real property will revert to the Government of  
11 Guam with no further obligations to the contractor.

12 **§90302. Definitions.** For purposes of this Chapter and unless otherwise specified,  
13 the following words and phrases are defined to mean:

14 (a) 'Act' means Article 7, Title 9, Chapter 90, Guam Code Annotated *shall*  
15 be called "The Department of Corrections Modernization Act of 2021."

16 (b) 'Contract' shall mean the design, construction and financing contract  
17 entered by and between the Government of Guam and the Contractor  
18 following negotiations on the response to the Request for Proposal.

19 (c) 'Contractor' shall mean the authorized entity which *shall* be the  
20 signatory on the Contract and *shall* be fully responsible for carrying out  
21 the design, construction, financing, and maintenance of the new  
22 Department of Corrections. The Contractor may cooperation with  
23 another entity or entities in any manner the Contractor deems appropriate  
24 to provide for the financing, design and construction of the new  
25 Department of Corrections envisioned by this Chapter.

26 (d) 'Department of Corrections Construction Committee' shall be chaired  
27 by the Administrator or Deputy Administrator of the Guam Economic



1           Development Authority and include the Director and Deputy Director of  
2           the Department of Corrections, the Director or Deputy Director of  
3           Department of Public Works, the Director or Deputy Director of  
4           Department of Land Management, and the Attorney General of Guam.

5           (e) 'Correctional Agency' shall mean the Department of Corrections.

6           (f) 'Correctional Facility' shall mean the Department of Corrections Adult  
7           Correctional Facility.

8           (g) 'Department of Corrections Modernization Act of 2021' as used in this  
9           Act shall mean the construction of a new Department of Corrections.

10          (h) 'Lease' shall mean a lease from the Department of Corrections to the  
11          contractor entered at the time of the contract for the property.

12          (i) 'Lease-back' shall mean the lease from the contractor to the Department  
13          of Corrections of the newly constructed Department of Corrections.

14          (j) 'Property' shall mean any property on which a new Department of  
15          Corrections is located.

16          **§90303. Authorization to Enter into Long-Term Leases.**

17          For the purpose of facilitating the financing, design, construction and  
18          maintenance of the new Department of Corrections encompassed by this Act, the  
19          Government of Guam, through GEDA, is authorized to lease, as required, to the  
20          contractor sufficient Government of Guam real property; provided, such property is  
21          in the inventory of the Government of Guam.

22          The Government of Guam is also authorized to lease-back from the  
23          contractor the property for a period mutually agreed upon between the Government  
24          of Guam and the contractor as may be reasonably necessary to amortize the lease-  
25          back period of the cost associated with the design, construction, and maintenance of  
26          the new Department of Corrections. In no event shall the end of such lease-back  
27          period be structured as an annually renewable lease with a provision for automatic

1 renewals to the extent that pledged revenue under §90309 is available. The lease-back  
2 shall not be construed as a debt under any applicable debt limitation under the Organic  
3 Act of Guam or Guam law.

4 **§90304. Department of Corrections Project Supervision, Reuse Study and**  
5 **Appropriation.**

- 6 (a) The project undertaken under the provisions of this Act shall be in accordance  
7 with the plans, specifications, standards and costs approved by GEDA and shall  
8 be under the supervision of GEDA. There is hereby appropriated to GEDA an  
9 amount not to exceed more than 5% of the total cost of the overall contact for  
10 the project supervision which includes covering the cost of a prison  
11 development consultant or consultants. The scope of work of said consultant or  
12 consultants shall include, but not be limited to, the preparation of procurement-  
13 related documents including the Request for Proposal.
- 14 (b) Additionally, there is hereby appropriated to GEDA One Million Dollars  
15 (\$1,000,000) from the General Fund, for the purpose of commissioning a  
16 detailed study which compares the feasibility of either converting the existing  
17 Department of Correction to a Government of Guam facility or developing a  
18 new Government of Guam facility. The study shall also include financing  
19 options for the purpose of funding the reuse or development of said new  
20 Government of Guam facility by utilizing the savings from annual rent realized  
21 by the Government of Guam by moving from commercial spaces to the new  
22 facility. Further, the study shall include the estimated costs associated with  
23 design, financing, renovation and/or new construction of the central  
24 government office complex as described herein.

25 **§90305. Identification Projects and Procurement.** Under the supervision of I  
26 Liheslaturan Guåhan, GEDA in consultation with the Director of Department of  
27 Corrections shall utilize the program study of the Correctional Agency to identify and



1 prioritize potential projects to be completed. The list of projects *shall* be included in a  
2 Requests for Proposals developed by the Guam Economic Development Authority.  
3 Upon receipt of the Program Study, the Guam Economic Development Authority in  
4 consultation with the Director of Department of Correction *shall* solicit Request for  
5 Proposal (RFP), in compliance with the Guam Procurement Law, for the financing,  
6 design, and construction of the Department of Corrections, according to the needs of  
7 the Correctional agency and consistent with this Chapter. The choice of the contractor  
8 *shall* be made by the Department of Corrections Construction Committee. The  
9 committee *shall* assess the prior performance of the contractor on similar projects, and  
10 *shall* be free to disqualify any contractor that does not have a successful record of  
11 project completion on Guam or any similar isolated locality.

12 The Committee *shall* also specifically consider the Contractors ability and  
13 performance with regards to financing, development and construction of a Correctional  
14 facility on Guam or any similarly isolated locality.

15 The selection of a contractor *shall* be based upon the proposal that delivers the best  
16 value for Guam in meeting the objectives of the Correctional Agency.

17 GEDA *shall* issue an RFP within thirty (30) days after the conclusion of its  
18 Program study in consultation with the Department of Corrections for the design,  
19 construction, and maintenance of the Correctional Facilities.

20 **§90306. Responsibility of Developer/Contractor.** The contract *shall* require that  
21 the contractor be responsible for all costs, expenses and fees of any kind or nature,  
22 associated with the design, civil improvements, on-site and off-site infrastructure,  
23 construction, permits, and financing associated with the completion of the Department  
24 of Corrections, to the extent provided by GEDA in consultation with the Department of  
25 Corrections in the Request for Proposals. The lease *may*, for the purposes, provide that  
26 its term *shall* be extended for a period not to exceed the shorter of ten (10) years beyond  
27 the original term of the lease-back, or such period of time as is necessary to repay in full

1 any financing arranged pursuant to §84109 of this Chapter. The capital maintenance  
2 costs shall be paid by the contractor.

3 **§90307. Contractual Safeguards.** Prior to undertaking the work of finance,  
4 design, construction, and maintenance of the new Department of Corrections, the Guam  
5 Economic Development Authority in consultation with the Department of Corrections,  
6 and the developer or contractor, shall negotiate and enter into a binding construction  
7 contract to build the new Department of Corrections in accordance with Guam Building  
8 Code under 21 GCA, Chapter 67, Guam Fire Safety Codes and any other applicable  
9 requirements. The construction contract shall contain contractual obligations typically  
10 found in Government of Guam Construction contracts, including, but not limited to:

- 11 (a) Warranties;
- 12 (b) Liquidated damages;
- 13 (c) Performance and payments bonds;
- 14 (d) Indemnity;
- 15 (e) Insurance;
- 16 (f) Standard specifications;
- 17 (g) Technical specifications;
- 18 (h) Progress schedule;
- 19 (i) Maintenance;
- 20 (j) Compliance with Guam labor regulations;
- 21 (k) Compliance with Guam prevailing wage rates for employment of  
22 temporary alien workers (H2) on Guam;
- 23 (l) Compliance with Public Law 28-98: restriction against contractors  
24 employing convicted sex offenders to work at government of Guam  
25 venues.



1       The contract must be submitted for review and approval to all entities charged by  
2       law with the duty to review and approve government contracts, including the Office  
3       of the Attorney General.

4       **§90308. Assignments.** To facilitate the purpose of this Act and provide security  
5       for the holders of any financing instruments issued pursuant to this Act, the contractor  
6       may assign, without the need of the consent of the Guam Economic Development  
7       Authority, the contract, the lease and the lease-back to any underwriter, trustee or other  
8       party as appropriate to facilitate the contractor financing.

9       **§90309. Pledge of Revenues.**

10           (a) Rental Payments under the lease and the lease-back may be secured by a  
11           pledge or other reservation of revenues collected by the government of  
12           Guam from the following:

13                   (1) The sum of no more than Five Million Dollars (\$5,000,000) from  
14                   the revenues received pursuant to 11 GCA Chapter 42, Earned  
15                   Income Tax Credit will be available for Fiscal Year 2022 only.

16                   (2) The sum of no more than Five Million Dollars (\$5,000,000) from  
17                   General Fund shall be appropriated annually.

18           Any amounts pledged as provided in this Section are hereby continuously  
19           appropriated for the purpose of making lease-back payments, but any amounts only  
20           reserved as provided in this Section, and not pledged, shall be subject to annual  
21           appropriation for the purpose of making lease-back payments. The revenues  
22           pledged or reserved and thereafter received by the Government of Guam or by any  
23           trustee, depository or custodian shall be deposited in a separate account and shall  
24           be immediately subject to such reservation or the lien of such pledge without any  
25           physical delivery thereof or further action, and such reservation or the lien of such  
26           pledge shall be valid and binding against all parties having claims of any kind in  
27           tort, contract or otherwise against the Government of Guam or such trustee,



1 depository or custodian, irrespective of whether the parties have notice thereof. The  
2 instrument by which such pledge or reservation is created need be recorded.

3 **§90310. Use of Tax-Exempt Bond, Taxable Bond and Other Financing**

4 **Instruments for Financing.** To minimize the financing cost to the Government of  
5 Guam, financing utilized by the contractor to fund the design, construction, and  
6 maintenance of the Department of Corrections *shall* be through tax-exempt obligations,  
7 taxable bond obligation, or other financial instruments provided, such financing is  
8 available at interest rates determined by the Guam Economic Development Authority to  
9 be reasonable and competitive. Alternatively, the contractor *may* use an alternative  
10 method of financing, including, but not limited to, a short-term debt, mortgage, loan,  
11 federally guaranteed loan or loan by an instrumentality of the United States of America,  
12 if such financing will better serve the needs of the People of Guam. Such alternative  
13 financing *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the requirements  
14 of this Section is to assure that the Government of Guam pays the lowest possible  
15 interest rate so that the cost of the Government of Guam's financing of the design and  
16 construction of the Department of Corrections, amortized through the lease-back  
17 payments from GEDA to the contractor, will be lower than regular commercial rates.

18 **§90311. Prison IT, Building and Security Management System.**

19 (a) For the purpose of ensuring the long serving duration of the  
20 Department of Corrections, GEDA shall include in the specifications  
21 for the new Correctional Facility, the requirement for a prison  
22 information management system, security and surveillance system,  
23 and a building management system. These systems identified must be  
24 done in consultation with the Department of Corrections and  
25 compliant with the federal mandates related to prison records and to  
26 foster compliance with the Federal Standards for Prisons and Jails.

1           (b) GEDA, in consultation with the Department of Corrections, shall  
2           determine the specifications for such systems based on  
3           comprehensive, state-of-the-art technology generally accepted within  
4           the United States Prison Industry in connection with the development  
5           for a new Department of Corrections. The specifications shall require  
6           that all system are designed by the same software developer so as to  
7           ensure the delivery of the rehabilitation to the inmates.

8           (c) In order to ensure immediate response to system downtimes or failure,  
9           GEDA shall include in the specifications the requirement that the  
10           provider of these systems have a local Guam Office and service  
11           technicians stationed on Guam.

12           **§90312. Utilities and Routine Maintenance and Repair.** The Contractor shall be  
13           responsible for the connection and payment of all utilities, including without limitation,  
14           power, water, sewer, telephone, and cable and all maintenance and repair and exterior  
15           groundskeeping and landscaping and upkeep of the Department of Corrections.

16           **§90312. Maintenance Fund.** The Contract with the Contractor, and the Lease-  
17           Back, shall provide that all capital maintenance and repair of the Department of  
18           Corrections be performed by the contractor as determined during the bid process, to be  
19           inclusive of the existing Department of Corrections throughout the duration of the  
20           construction of the new Department of Corrections. The Contractor shall provide  
21           sufficient funding for a separate maintenance fund for this purpose; sufficient funds for  
22           this purpose shall be defined as the cost of capital maintenance and repair for the  
23           remaining period of the lease agreement with the Government of Guam after the  
24           completion of the Department of Corrections. The maintenance fund shall be used  
25           exclusively for the purpose of capital maintenance and repair and shall be in an interest-  
26           bearing account segregated from other funds held in escrow.



1        **§90313. Rules, Regulations, and Restrictions.** The Administrator of Guam  
2        Economic Development Authority with the approval of its Board, in consultation with  
3        the Department of Corrections and the consent of the Attorney General of Guam, I  
4        Liheslaturan Guåhan and I Maga'Hågan Guåhan may promulgate rules and regulations  
5        pursuant to Guam law necessary to implement the provision of this Chapter.

6        **§90314. Expedited Permitting Process.** Since time is of the essence relative to  
7        the development of the new facilities, notwithstanding any other provision of law, I  
8        Maga' Hagan Guåhan shall have the authority to take any and all steps necessary to  
9        expedite the issuance of any and all permits required for the development, design and  
10       construction of the new facility.

11       **Section 2. Repealing Clause.** All Laws or parts of any law that is inconsistent with  
12       provisions contained in the Department of Corrections Modernization Act of 2021 are  
13       hereby repealed or amended accordingly.

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

18       **Section 4. Enactment.** This act shall become effective upon enactment.