
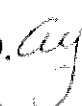



I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 226-32 (WP)

Introduced by:

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Aline A. Yamashita, Ph.D. 
Tina Rose Muña Barnes 

**AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5
GUAM CODE ANNOTATED RELATIVE TO THE
FINANCE, DESIGN, RENOVATION, REHABILITATION,
CONSTRUCTION OR MAINTENANCE OF PUBLIC
SCHOOLS.**

2013 JUN 20 14 56 PM EST

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

2 **Section 1.** A new Chapter 58D is hereby *added* to Title 5 Guam Code
3 Annotated to read as follows:

4 **“Chapter 58D** The finance, design, renovation, rehabilitation,
5 construction *or* maintenance of Public Schools.

6 § 58D100. Legislative Findings and Intent.

7 § 58D101. Definitions.

8 § 58D102. Authorization to Enter into Long-Term Leases.

9 § 58D103. Programming Study

10 § 58D104. Identification of Projects and Procurement

11 § 58D105. Responsibilities of Contractor.

12 § 58D106. Contractual Safeguards.

13 § 58D107. Assignments.

14 § 58D108. Pledge of Revenues.

15 § 58D109. Use of Tax-Exempt Bond and Other Financing Instruments
16 for Financing.

1 § 58D110. Utilities, Maintenance and Repair.

2 § 58D111. Severability.

3 §58D100. **Legislative Findings and Intent.** *I Liheslaturan Guåhan*
4 finds that Guam public schools facilities face deficiencies from roofing,
5 exterior, interiors, structural, mechanical, electrical, plumbing, and school
6 grounds which creates a non conducive environment that hinders learning and
7 the work and production of teachers and students.

8 *I Liheslaturan Guåhan* finds that the Guam Department of Education is
9 about \$90 Million behind on maintenance projects for the island's public
10 schools, according to a report commissioned by the Department of the Interior
11 in 2012, and recently submitted to the Guam Department of Education in
12 August 2013.

13 It is therefore the intent of *I Liheslaturan Guåhan* for the government of
14 Guam to use one quarter of the Business Privilege Tax to pay for the interest
15 payments of the lease and lease-back as a form of bridge financing until the
16 maturity of the Business Privilege Tax bond series 2013C.

17 Further, it is the intent of *I Liheslaturan Guåhan* that moneys allocated to
18 school maintenance and repair be spent most effectively to advance the mission
19 of the Guam Department of Education, and it is the intent herein to allocate
20 funding for and direct to the Guam Department of Education to commission a
21 programming and curriculum study based on the current Final Condition
22 Assessment Summary from U.S. Department of Interior (the “Condition
23 Assessment”) to generate a master plan and a prioritized list of the required
24 work to deliver the most productive educational facilities based on near term
25 and future needs using funds allocated by this legislation.

1 *I Liheslatura* finds that after reviewing the summary of outstanding
2 General and Limited Obligation debts as of March 1, 2013 that the debt ceiling
3 assess value is at One Billion One Hundred Thirty Nine Million Four Hundred
4 Sixty Four Thousand Eight hundred Fifty Three Dollars (\$1,139,464,853). It
5 also states that the General Obligation Debt is Four Hundred Forty Six Million
6 Four Hundred Seventy Three Thousand Eight Hundred Fifty Three Dollars
7 (\$446,473,853) and the Limited Obligation Debt is Six Hundred Sixty Three
8 Million Eight Hundred Ninety Six Thousand Eight Hundred Three Dollars
9 (\$663,896,803) with an accumulated total of One Billion One Hundred Ten
10 Million Three Hundred Seventy Thousand Six Hundred Fifty Six Dollars
11 (\$1,110,370,656). Subtracting the debt ceiling limit less the General and limited
12 Obligation Debts leaves the amount for future debt obligation at Twenty Nine
13 Million Ninety Four Thousand One Hundred Ninety Seven (\$29,094,197).

14 *I Liheslatura* further finds that the cost to fund the rehabilitation
15 of the public Schools will certainly exceed the debt ceiling obligation if a
16 General Obligation Bond is pursued. To circumvent Guam's debt ceiling cap, *I*
17 *Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo* Middle
18 School, *Liguan* Elementary School, *Adacao* Elementary School, John F.
19 Kennedy High School and the expansion of *Okkodo* High School has
20 demonstrated the fundamental soundness of using municipal lease as a vehicle
21 to build new educational facilities. By making the most of municipal leasing to
22 rehabilitate and construct Guam public schools, the remaining future debt
23 obligation may be used to fund other priorities of the government.

24 **§58D101. Definitions.** For purposes of this Chapter and *unless* otherwise
25 specified, the following words and phrases are defined to mean:

1 (a) “Contract” *shall* mean the design, renovation, rehabilitation,
2 construction, and financing contract entered into by and between the
3 Education Agency and the Contractor chosen by the Guam Economic
4 Development Agency and approved by *I Liheslaturan Guåhan*.

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

13 (c) “Education Agency” *shall* mean the Guam Department of
14 Education.

15 (d) “Education Facility” as used in this Act *shall* mean public
16 elementary and secondary schools on Guam to include its athletic fields
17 and playgrounds, excluding the five leased schools under the Education
18 Agency.

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

21 (f) “Lease-Back” *shall* mean the lease from the Contractor to
22 the Education Agency of the rehabilitated, renovated or newly
23 constructed Education Facility.

24 (g) “Lease-Back Period” *shall* mean the term of the lease from
25 the Contractor to the Education Agency.

1 (h) "Programming Study" shall mean that certain study
2 commissioned by GDOE to assist it in prioritizing the work scope for the
3 existing Education Facilities base on the department's mission and
4 Curriculum.

5 (i) "Property" shall mean any property on which an Education
6 Facility is located.

7 **§58D102. Authorization to Enter into Long-term Leases.** For the
8 purpose of facilitating the financing, design, construction and rehabilitation and
9 maintenance of an Education Facility encompassed by this Act, the government
10 of Guam *or* an Education Agency, as the case may be, is authorized to lease, if
11 required, to the Contractor sufficient government of Guam real property on
12 which to rehabilitate an Education Facility; provided, such property is in the
13 inventory of the Education Agency *or* the government of Guam. The property
14 may be the site of an existing Education Facility under the control of an
15 Education Agency, which existing facility may be rehabilitated under the
16 provisions of this Act.

17 The Education Agency is also authorized to lease back from the
18 Contractor the property for a period mutually agreed upon between the
19 Education Agency and the Contractor as may be reasonably necessary to
20 amortize over the Lease-Back Period the costs associated with the design,
21 renovation, rehabilitation, construction *or* maintenance of the Education
22 Facility. In no event shall the end of such Lease-Back Period be *later than* the
23 date Thirty (30) years from the scheduled date of completion of the Education
24 Facility. The Lease-Back may be structured as an annually renewable lease
25 with provision for automatic renewals to the extent that pledged revenue under

1 Section 58D109 is available. The Lease-Back *shall not* be construed as a debt
2 under any applicable debt limitation under the Guam Organic Act *or* Guam law.

3 **§58D103. Programming Study.** Under the Superintendent of
4 Education's direction, the Education agency shall develop and prepare a
5 Programming Study that shall be completed no later than September 1, 2014. If
6 necessary, the Superintendent of Education may hire consultant(s) to conduct
7 the Programming Study. The study shall consider the Final Condition
8 Assessment dated August 2013 by the Department of Interior in terms of
9 identified issues with facilities, and study the broader Education systems needs
10 and priorities taking into account:

- 11 1) desired curriculum and programs offered or to be offered in addition
12 to basic education, such as S.T.E.M. (science, technology
13 engineering and math) facilities, vocational training, etc;
- 14 2) population densities, student count and population projections
15 relative to location of existing facilities;
- 16 3) transportation, traffic and bussing logistics and associated costs;
17 and
- 18 4) estimated cost of repair based on the Condition Assessment.

19 The Programming Study will provide the Education Agency a master
20 plan for the highest and best use of the existing facilities given the
21 educational priorities. Based on this master plan, the study will then
22 provide a list in order of priority for repairs improvements detailed in the
23 Condition Assessment, based on the master plan for the school system.
24 Five Hundred Thousand Dollars (\$500,000) shall be allocated to conduct
25 the Programming Study, and any monies unexpended shall be spent on
26 school repairs and maintenance as provided herein. The scope of the

1 study shall not include work already completed in the Condition
2 Assessment, but shall rely on the findings of the Condition Assessment to
3 develop the master plan and list of priorities.

4 **§58D104. Programming Study Appropriation.** The sum of Five
5 Hundred Thousand Dollars (\$500,000) is hereby is appropriated from the
6 “Business Privilege Tax” (namely, 11 GCA Chapter 25, excluding the alcoholic
7 beverage taxes, liquid fuel taxes, automotive surcharges, tobacco taxes and real
8 property taxes) The Business Privilege Tax pledged or reserved shall only apply
9 to the unpledged portion of the business privilege tax (currently one percentage
10 point of the current four percent Business Privilege Tax rate) so as not to violate
11 the government’s covenants to bondholders of the Series A, Series B and Series
12 C Limited Obligation bonds authorized through Public Law 31-76, Public Law
13 31-196 and Public Law 31-276. The sum of Five Hundred Thousand Dollars
14 (\$500,000) will be used in fiscal year 2014 to fund the Programming Study.

15 **§58D105. Identification of Projects and Procurement.** Under the
16 Superintendent of Education’s direction, the Education Agency shall utilize the
17 Program Study and the report generated by the Department of Interior (DOI)-
18 funded assessment report by the Army Corps of Engineers to identify and
19 prioritize potential projects to be completed. The list of projects shall be
20 included in a Request for Proposals developed by the Education Agency. Upon
21 receipt of the Program Study than the Superintendent of Education shall solicit
22 Requests for Proposals ('RFP') through the Department of Public Works, in
23 compliance with the Guam Procurement Law, for the financing, design,
24 Construct and Rehabilitate of the Education Facility, according to the needs
25 of the Education Agency and consistent with this Chapter. The choice of the
26 Contractor shall be made by a selection committee comprised of the

1 Superintendent of the Department of Education serving as Chairman and
2 including the Director of the Department of Public Works or Deputy Director,
3 the Director of the Department of Land Management or Deputy Director, the
4 Administrator of Guam EPA or Deputy Administrator, and the Administrator of
5 the Guam Economic Development Authority or Deputy Administrator. The
6 committee shall access the prior performance of the Contractor on similar
7 projects and shall be free to disqualify any Contractor that does not have a
8 successful record of project completion on Guam.

9 The selection of a Contractor shall be based upon the proposal that
10 delivers the best value for Guam in meeting the objectives of the Education
11 Agency.

12 The RFP shall be issued within thirty (30) days after the receipt of the
13 "Program Study" for the design, renovation, rehabilitation, construction *or*
14 maintenance of the Education Facility.

15 **§58D106. Responsibilities of Developer / Contractor.** The Contract
16 *shall* require that the Contractor be responsible for all costs, expenses and fees
17 of any kind *or* nature, associated with the rehabilitation, design, civil
18 improvements, on-site and off-site infrastructure, construction, permits, and
19 financing associated with the completion of an Education Facility, including the
20 financing of furniture and equipment for the Education Facility, as and to the
21 extent provided by the Education Agency in the Request for Proposals. The
22 Lease-Back may provide that *if* sufficient funds are *not* appropriated *or*
23 otherwise available for the payment of amounts due under the lease, the
24 Education Agency will have the obligation to vacate the Education Facility, and
25 the Contractor *shall* have the right of use and occupancy of the Education
26 Facility for the remainder of the term of the Lease, unless new mutually

1 satisfactory terms are entered into. For this purpose, the Lease may provide that
2 its term *shall* be extended for a period *not to exceed* the shorter of ten (10) years
3 beyond the original term of the Lease-Back *or* such period of time as is
4 necessary to repay in full any financing arranged pursuant to Section 58D110 of
5 this Chapter. The capital maintenance costs *shall* be paid by the Education
6 Agency.

7 **§58D107. Contractual Safeguards.** Prior to undertaking the work of
8 rehabilitating educational facilities, the Guam Economic Development
9 Authority, The Department of Public Works, Guam Department of Education
10 and the Developer or Contractor shall negotiate and enter into a binding
11 construction contract to build or refurbish the educational facility in accordance
12 with Guam Building Code, (21 G.C.A. Ch. 67) and any other applicable
13 requirements. The Construction contract shall contain contractual obligations
14 typically found in Government of Guam construction contracts, including but
15 not limited to:

- 16 1. Warranties;
- 17 2. Liquidated damages;
- 18 3. Performance and payment bonds;
- 19 4. Indemnity;
- 20 5. Insurance;
- 21 6. Standard Specifications;
- 22 7. Technical Specifications;
- 23 8. Progress Schedule;
- 24 9. Maintenance;
- 25 10. Compliance with Guam Labor Regulations;

1 11. Compliance with Guam Prevailing Wage Rates for
2 Employment of Temporary Alien Workers (H2) on Guam;

3 12. Compliance with Public Law 29-98: Restriction Against
4 Contractors Employing Convicted Sex Offenders to Work at
5 Government of Guam Venues.

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

9 **§ 58D108. Assignments.** To facilitate the purpose of this Act and
10 provide security for the holders of any financing instruments issued pursuant to
11 this Act, the Contractor may assign, without the need of the consent of the
12 Education Agency, the Contract, the Lease and Lease-Back to any underwriter,
13 trustee or other party as appropriate to facilitate the Contractor financing.

14 **§58D109. Pledge of Revenues.** (a) Rental payments under the Lease
15 and the Lease-Back may be secured by a pledge or other reservation of
16 revenues collected by the government of Guam from the following:

17 (1) Taxes collected under the “Business Privilege Tax Law”
18 (namely, 11 GCA Chapter 25, excluding the alcoholic beverage taxes, liquid
19 fuel taxes, automotive surcharges, tobacco taxes and real property taxes) The
20 Business Privilege Tax pledged or reserved shall only apply to the unpledged
21 portion of the business privilege tax (currently one percentage point of the
22 current four percent Business Privilege Tax rate) so as not to violate the
23 government’s covenants to bondholders of the Series A, Series B and Series C
24 Limited Obligation bonds authorized through Public Law 31-76, Public Law
25 31-196 and Public Law 31-276. The sum of approximately One Million Eight
26 Hundred Eighty-Two Thousand and Eighty-Two Dollars (\$1,882,082) shall

1 fund interest in fiscal year 2015, and the sum of approximately Two Million
2 Five Hundred Sixty Four Thousand One Hundred Sixty-Five Dollars
3 (\$2,564,165) shall fund interest payment annually for fiscal years 2016 through
4 2018.

5 (2) The sum of One Million Two Hundred Thousand Dollars
6 (\$1,200,000) from the revenues received pursuant to §22425 (q)(5) of Article 4,
7 Chapter 22 Division 2, Title 5, Guam Code Annotated will be available
8 annually beginning in fiscal year 2016; and

9 (3) The sum of Four Million Eight Hundred Thousand Dollars
10 (\$4,800,000) from the maturity of Business Privilege Tax bond series 2013C
11 shall be available annually beginning in fiscal year 2019.

12 (b) Revenues pledged or reserved shall be remitted in the following
13 manner:

14 (1) The Business Privilege Tax shall only pay for the interest
15 payments of the Lease and the Lease-Back pending the maturity of the Business
16 Privilege Tax bond series 2013C in Fiscal Year 2019 and said interest payments
17 shall ceased.

18 (2) Revenues received pursuant to §22425 (q)(5) of Article 4,
19 Chapter 22 Division 2, Title 5, Guam Code upon availability; and

20 (3) Upon the maturity of the Business Privilege Tax bond series
21 2013C.

22 Any amounts pledged as provided in this Section are hereby continuously
23 appropriated for the purpose of making Lease-Back payments, but any amounts
24 only reserved as provided in this Section, and not pledged, shall be subject to
25 annual appropriation for the purpose of making Lease-Back payments. The
26 revenues pledged or reserved and thereafter received by the government of

1 Guam or by any trustee, depository or custodian shall be deposited in a separate
2 account and shall be immediately subject to such reservation or the lien of such
3 pledge without any physical delivery thereof or further act, and such reservation
4 or the lien of such pledge shall be valid and binding against all parties having
5 claims of any kind in tort, contract or otherwise against the government of
6 Guam or such trustee, depository or custodian, irrespective of whether the
7 parties have notice thereof. The instrument by which such pledge or reservation
8 is created need not be recorded.

9 **§ 58D110. Use of Tax-Exempt Bond, Taxable Bond and Other**
10 **Financing Instruments for Financing.** To minimize the financing cost to
11 the Education Agency, financing utilized by the Contractor to fund the design,
12 renovation, rehabilitation, construction *or* maintenance of an Education
13 Facility *shall* be through tax-exempt obligations, Taxable Bond Obligation *or*
14 other financial instruments provided such financing is available at interest rates
15 determined by the Education Agency to be reasonable and competitive.
16 Alternatively, the Contractor may use an alternative method of financing,
17 including, but *not limited to*, a short term debt, mortgage, loan, federally
18 guaranteed loan *or* loan by an instrumentality of the United States of America
19 *if* such financing will better serve the needs of the people of Guam. Such
20 alternative financing *shall* be approved by *I Liheslaturan Guåhan*. The
21 purpose for the requirements of this Section is to assure the Education
22 Agency pays the lowest possible interest rate so that the cost to the Education
23 Agency of financing the design and construction of an Education Facility,
24 amortized through the Lease-Back payments from the Education
25 Agency to the Contractor, will be lower than regular commercial rates.

26 **§58D111. Utilities, Maintenance and Repair.** The Education Agency

1 *shall* be responsible for the connection and payment of all utilities, including
2 without limitation, power, water, sewer, telephone and cable, and all
3 maintenance and repair and exterior grounds keeping and landscaping and
4 upkeep of the Education Facility.

5 **§58C112. Severability.** *If any provision of this Act or its application*
6 to any person *or* circumstance is found to be invalid *or* contrary to law, such
7 invalidity *shall not* affect other provisions *or* applications of this Act which can
8 be given effect without the invalid provisions *or* application, and to this end the
9 provisions of this Act are severable.”