

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (SECOND) Regular Session

Bill No. 50 (COR)

Introduced by:

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AN ACT TO *ADD* CHAPTER 88 TO TITLE 5 OF THE
GUAM CODE ANNOTATED, RELATIVE TO THE
CONSTRUCTION OF THE GUAM MUSEUM, AND
TO CITE THE ACT AS "*THE MUSEUM
CONSTRUCTION AND FACILITIES FUNDING ACT
OF 2009.*"

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

2 **Section 1. Title.** This Act *shall* be cited and referred to as the "*Museum*
3 *Construction and Facilities Funding Act of 2009.*"

4 **Section 2.** Chapter 88 is hereby *added* to Title 5 of the Guam Code Annotated
5 to read as follows:

6 **"CHAPTER 88.**

7 **Museum Construction and Facilities Funding.**

8 **§88101.**

Title.

9 **§88102.**

Legislative Findings and Policies.

10 **§88103.**

Definitions.

11 **§88104.**

**Authorization to Enter into Long-term
12 Leases.**

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Procurement.

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9	§88112.	Rules, Regulations and Restrictions.
10	§88113.	Severability.

11

12 **§88101. Title.** This Act *shall* be known and *shall* be cited as “*The*
13 *Museum Construction and Funding Act of 2009.*”

14 **§88102. Legislative Findings and Policies.** *I Liheslaturan Guåhan*
15 finds that it is the vision of the Guam Museum to build a world-class facility
16 that is a home for artifacts and historic documents; a dynamic cultural
17 destination that reflects a sense of Guam and Micronesia and the Chamorro and
18 Micronesian cultures while at the same time stimulating community ownership
19 and involvement.

20 Furthermore, it is the sense of *I Liheslaturan Guåhan* that once this
21 world-class facility is constructed, the Guam Museum will be in a better
22 position to promote increased education and understanding of Guam’s geology,
23 biota, prehistory, history and contemporary culture as a journey through time
24 and space using transportation as a interpretive narrative. It shall foster research
25 and convey the results of research to the public primarily through the medium
26 of public exhibits, demonstrations, lectures, public programs and publications.

1 More importantly, the purposes for which the Guam Museum Foundation
2 was organized and its process in connection therewith are as follows:

3 (a) To promote cultural and historical activities.

4 (b) To engage in any lawful act or activity for which non-profit
5 foundations may be organized under the laws of Guam.

6 (c) To have and exercise all rights and powers now or hereafter
7 granted to a non-profit foundation by law.

8 (d) To enter into contracts with individuals, organizations, or
9 institutions whether public or private, which are engaged in projects or
10 programs related to museum activities.

11 (e) To receive and administer grants in furtherance of the Guam
12 Museum Foundation.

13 (f) To accept loans of cultural or intellectual properties from
14 individuals, families, organizations, or institutions with terms and
15 conditions to be agreed upon.

16 (g) To adopt, amend, and appeal by-laws and other rules,
17 regulations, and directives governing the conduct of its business and the
18 performance of the powers and duties granted under the Corporation's
19 enabling law or imposed upon it by law according to the Administrative
20 Adjunction Law.

21 (h) To determine the character of and the necessity of its
22 obligations and expenditures and the manner in which they shall be
23 incurred, allowed, and paid.

24 (i) To execute all instruments necessary or appropriate in the
25 exercise of any of its functions.

26 (j) To accept monetary or in-kind gifts or donations of services
27 or of property, whether tangible or intangible, in aid of any of the

1 activities of the Guam Museum. All donations to the Foundation and any
2 of its programs shall be tax deductible to the donors in the same manner
3 and extent that the donations to charitable or educational non-profit
4 organizations are deductible as provide by law.

5 (k) To work closely with all government entities, educational,
6 and religious institutions on Guam, public and private organizations, both
7 on and off-island and other appropriate agencies to maximize the public
8 benefits and opportunities, which enhance the purposes of the
9 Foundation.

10 (l) To negotiate agreements for the construction of tourist
11 attractions depicting the historical and cultural development of the
12 Chamorro people.

13 In an effort to overcome these financing hurdles and to provide the
14 people of Guam with a world-class facility, *I Liheslaturan Guåhan* hereby
15 authorizes the Guam Museum together with the Guam Museum Foundation and
16 the government of Guam to enter into contracts for the financing, design,
17 construction and long-term capital maintenance of the Guam Museum with
18 private sector contractors who can provide long-term financing obtained
19 through tax-exempt obligations or other competitive alternative financing based
20 on long-term lease-backs to the government of Guam.

21 To facilitate the financing, design, construction and maintenance of the
22 project envisioned by this Act, the government of Guam will be authorized to
23 lease for up to thirty (30) years government of Guam property on which the
24 facilities will be constructed. The lease of the government property will be to
25 the contractor, who will design and construct the facilities in accordance with
26 specifications approved by Guam Museum and the Guam Museum Foundation,
27 and provide funding for the design and construction through the use of tax-

1 exempt obligations or other competitive alternative funding sources. The
2 facilities and land will be leased back to the government of Guam for a period
3 not to exceed the initial ground lease to the contractor over which time the
4 government of Guam will amortize, as lease payments to the contractor, the
5 cost of the financing, design, construction and related expenses of the facilities.

6 The contractor will also be responsible for the capital maintenance of the
7 museum facilities constructed under this Act, which costs shall be paid by the
8 government of Guam as provided for under this Act. At the expiration of the
9 Lease-Back Period, the government of Guam real property and the public
10 facilities constructed on the government of Guam real property will revert to the
11 government of Guam with no further obligations to the Contractor.

12 **§88103. Definitions.** For purposes of this Chapter and *unless*
13 otherwise specified, the following words and phrases are defined to mean:

14 (a) "Act" means Chapter 88 of Title of the Guam Code Annotated,
15 known as the *"Museum Construction and Funding Act of 2009."*

16 (b) "Contract" *shall* mean the design, construction and financing
17 contract entered into by and between the Museum Agency 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 the
21 design, construction, financing and maintenance of the Museum Facility. The
22 Contractor may cooperate with another entity or entities in any manner the
23 Contractor deems appropriate to provide for the financing, design, construction
24 or maintenance of the public school facilities envisioned by this Act.

25 (d) "Museum Agency" *shall* mean the Guam Museum.

26 (e) "Museum Facility" as used in this Act *shall* mean the Museum
27 facility to be constructed on Lot No. 2062 Part-1-R1, Agana Heights Guam.

1 (f) "Lease" *shall* mean a lease from the Museum Agency to the
2 Contractor entered into at the time of the Contract for the Property.

3 (g) "Lease-Back" *shall* mean the lease from the Contractor to the
4 Museum Agency.

5 (h) "Lease-Back Period" *shall* mean the term of the lease from the
6 Contractor to the Museum Agency.

7 (i) "Property" *shall* mean any property on which the Museum facility
8 is located such as Lot No. 2062 Part-1-R1, Agana Heights Guam, or the area
9 situated in and around the Plaza de España.

10 **§88104. Authorization to Enter into Long-term Leases.** For the
11 purpose of facilitating the financing of the design, construction and
12 maintenance of an Museum Facility encompassed by this Act, the government
13 of Guam *or* an Museum Agency as the case may be, is authorized to lease, if
14 required, to the Contractor sufficient government of Guam real property on
15 which to construct, convert *or* rehabilitate an Museum Facility; provided, such
16 property is in the inventory of the Museum Agency *or* the government of
17 Guam. The property may be the site of an existing Museum Facility under the
18 control of an Museum Agency, which existing facility may be converted,
19 rehabilitated *or* demolished and rebuilt under the provisions of this Act.

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

1 pledged revenue under Section 88109 is available. The Lease-Back *shall not* be
2 construed as a debt under any applicable debt limitation under the Guam
3 Organic Act *or* Guam law.

4 **§88105. Procurement.** Subject to the approval of *I Liheslaturan*
5 *Guåhan*, the government of Guam *or* an Museum Agency may solicit Requests
6 for Proposals ('RFP') through the Department of Public Works, in compliance
7 with the Guam Procurement Law, for the financing, design and construction of
8 the Museum Facility, together with maintenance of the Museum Facility over
9 the Lease-Back Period, according to the needs of the Museum Agency and
10 consistent with this Chapter. Notwithstanding the foregoing, in connection with
11 any amendments to an existing Lease *or* Lease-Back, the Contractor with
12 respect to such amendments *shall* be the Contractor with respect to the existing
13 Lease *or* Lease-Back.

14 **§88106. Responsibilities of Contractor.** The Contract *shall* require that
15 the Contractor be responsible for all costs, expenses and fees of any kind *or*
16 nature, associated with the design, civil improvements, on-site and off-site
17 infrastructure, construction, permits, and financing associated with the
18 completion of an Museum Facility, including the financing of furniture and
19 equipment for the Museum Facility, as and to the extent provided by the
20 Museum Agency in the Request for Proposals. The Contractor *shall* also be
21 responsible for the capital maintenance of the museum during the Lease-Back
22 Period, but *shall not* be responsible for the capital maintenance of the furniture
23 and equipment. The Lease-Back may provide that *if* sufficient funds are not
24 appropriated or otherwise available for the payment of amounts due under the
25 lease and any maintenance agreement, the Museum Agency will have the
26 obligation to vacate the Museum Facility, and the Contractor *shall* have the
27 right of use and occupancy of the Museum Facility for the remainder of the

1 term of the Lease, unless new mutually satisfactory terms are entered into. For
2 this purpose, the Lease may provide that its term *shall* be extended for a period
3 not to *exceed* the shorter of ten (10) years beyond the original term of the
4 Lease-Back or such period of time as is necessary to repay in full any financing
5 arranged pursuant to Section 88108. The capital maintenance costs *shall* be paid
6 by the Museum Agency on a periodic basis as incurred by the Contractor on
7 terms to be agreed to in the Contract for each Museum Facility.

8 **§88107. Assignments.** To facilitate the purposes of this Act and to
9 provide security for the holders of any financing instruments issued pursuant to
10 this Act, the Contractor may assign, without the need of the consent of the
11 Museum Agency, the Contract, the Lease and the Lease-Back to any
12 underwriter, trustee or other party as appropriate to facilitate the issuance of the
13 tax-exempt obligations, other financial instruments or alternative financing for
14 the Museum Facility.

15 **§88108. Use of Tax-Exempt Bonds for Financing.** To minimize the
16 financing cost to the Museum Agency, financing utilized by the Contractor to
17 fund the design and construction of an Museum Facility *shall* be through tax-
18 exempt obligations or other financial instruments provided such financing is
19 available at interest rates determined by the Museum Agency to be reasonable
20 and competitive. Alternatively, the Contractor may use an alternative method of
21 financing, including, but not *limited* to, a short term debt, mortgage, loan,
22 federally guaranteed loan or loan by an instrumentality of the United States of
23 America *if* such financing will better serve the needs of the people of Guam.
24 The purpose for the requirements of this Section is to assure the Museum
25 Agency pays the lowest possible interest rate so that the cost to the Museum
26 Agency of financing the design and construction of a Museum Facility,

1 amortized through the Lease-Back payments from the Museum Agency to the
2 Contractor, will be lower than regular commercial rates.

3 **§88109. Pledge of Compact Impact Funds and Other Alternative**
4 **Sources.** Rental payments under the Lease and the Lease-Back may be secured
5 by a pledge or other reservation of revenues received by or on behalf of the
6 government of Guam from the United States of America pursuant to compact
7 impact funds in the amount of [annual amount to obligate]. Any pledge or
8 reservation of compact impact funds authorized by the Act shall be subordinate
9 only to the existing lien securing the Government of Guam Limited Obligation
10 Bonds, Series _____.

11 Any such pledge or reservation authorized hereunder shall be valid and
12 binding from the time the pledge or reservation is made. The compact impact
13 funds pledged or reserved and thereafter received by the government of Guam
14 or by any trustee, depository or custodian shall be deposited in a separate
15 account and shall be immediately subject to such reservation or the lien of such
16 pledge without any physical delivery thereof or further act, and such reservation
17 or the lien of such pledge shall be valid and binding against all parties having
18 claims of any kind in tort, contract or otherwise against the government of
19 Guam or such trustee, depository or custodian, irrespective of whether the
20 parties have notice thereof. The instrument by which such pledge or reservation
21 is created need not be recorded.

22 **§88110. Utilities and Routine Maintenance and Repair.** The
23 Museum Agency *shall* be responsible for the connection and payment of all
24 utilities, including without limitation, power, water, sewer, telephone and cable,
25 and all routine interior maintenance and repair and exterior grounds keeping
26 and landscaping and upkeep of the Museum Facility.

1 **§88111. Maintenance Fund.** The Contract or a separate
2 maintenance agreement with the Contractor, and the Lease-Back, *shall* provide
3 that all capital maintenance of the Museum Facility be performed by the
4 Contractor as a separate cost, the terms of which, and the manner for
5 establishing the amount of payment, *shall* be determined as a part of the request
6 for proposal process; provided, however, that said documents may, at the
7 discretion of the Museum Agency, provide that capital maintenance with
8 respect to equipment (including collateral equipment), onsite utilities, offsite
9 utilities, access roads and other similar improvements need not be performed by
10 the Contractor. The Contract or agreement and the Lease-Back may provide for
11 a separate maintenance reserve fund for this purpose with sufficient funds to
12 pay the costs of capital maintenance for a reasonable period not *exceeding* five
13 (5) years. The maintenance reserve fund *shall* be used exclusively for the
14 purpose of capital maintenance and *shall* be an interest bearing account
15 segregated from other funds of the Museum Agency.

16 **§88112. Rules, Regulations and Restrictions.** The Department of
17 Public Works together with the Guam Museum may promulgate rules and
18 regulations pursuant to Guam law necessary to implement the provisions of this
19 Act.

20 **§88113. Severability.** *If* any provision of this Act or its application
21 to any person or circumstance is found to be invalid or contrary to law, such
22 invalidity shall *not* affect other provisions or applications of this Act which can
23 be given effect without the invalid provisions or application, and to this end the
24 provisions of this Act are severable.”