

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

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MW

Bill No. 413-30 *(COR)*

Introduced by:

J. T. Won Pat, Ed. *D*
T.R. Muna-Barnes
J.V. Espaldon *Paul*
R.J. Respicio
B.J. F. Cruz *g*

**AN ACT TO ADD A NEW CHAPTER 58B TO TITLE 5
GUAM CODE ANNOTATED RELATIVE TO THE
CONSTRUCTION OF A NEW NORTHERN HIGH
SCHOOL**

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

“Chapter 58B. Construction of Northern High School

§ 58B100. Legislative Findings and Intent.

§ 58B101. Definitions.

§ 58B102. Authorization to Enter into Long-Term Leases.

§ 58B103. Responsibilities of Contractor.

§ 58B104. Assignments.

§ 58B105. Use of Qualified School Construction Bonds.

§ 58B106. Pledge of Section 30 Revenue.

§ 58B107. Utilities and Routine Maintenance and Repair.

§ 58B108. Maintenance Fund.

§ 58B109. Rules, Regulations and Restrictions.

§ 58B110. Severability.

1 **§ 58B100. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
2 finds that there is a critical shortage of public school facilities on Guam. Many
3 existing facilities are antiquated, overcrowded, and are *not* fit for the purpose of
4 public education. In an effort to overcome these problems facing public
5 education on Guam, *I Liheslaturan Guåhan* desires to authorize the government
6 of Guam to enter into contracts for the financing, design, construction and long-
7 term capital maintenance of a new northern high school facility with private
8 sector contractors who can provide long-term financing obtained through the
9 use of Qualified School Construction Bonds (QSCB), a tax credit bond.

10 QSCBs are authorized by the federal government through the American
11 Recovery and Reinvestment Act (ARRA) of 2009. Issuers of QSCBs are
12 eligible to receive direct payments from the federal government which offset all
13 or a portion of the interest payments on the bonds. Because the federal
14 government will reimburse Guam for all or a portion of the “interest” payment,
15 the government of Guam will realize significant debt service savings over
16 traditional financing. The use of QSCBs will enable Guam to construct and
17 finance a new Northern High School with potential savings of more than
18 \$11,000,000. As an alternate, QSCBs may be issued as tax credit bonds under
19 which bond holders receive federal tax credits in lieu of interest as a means to
20 significantly reduce the issuer’s interest cost.

21 Under this new category of tax-credit bonds, the Treasury Department
22 authorized \$11 billion of QSCB bond allocation in both 2009 and 2010 among
23 the States and certain large local education agencies (LEAs). For Fiscal Year
24 2009, Guam was allocated a total of Ten Million Nine Hundred Eighty
25 Thousand (\$10,980,000). For Fiscal Year 2010 the allocation to Guam was Ten
26 Million Eight Hundred Thirty Eight Thousand (\$10,838,000). If an allocation to

1 a State is unused for calendar year 2009, the State may carry it forward to the
2 next calendar year. In other words, States have up until the end of calendar year
3 2010 to use their 2009 and 2010 allocation of QSCB bonds.

4 The tax credit on QSCBs or interest rate subsidy is calculated by
5 multiplying the face amount of the bonds by the Treasury Department Rate. The
6 "Treasury Department Rate" is a rate set by the Department of Treasury that
7 would permit issuance of the QSCBs without discount and interest cost to the
8 issuer. The Treasury Department Rate is determined as of the first day on which
9 there is a binding, written contract for the sale or exchange of the QSCB. The
10 tax credit accrues quarterly, is includible in the bond holder's gross income (as
11 if it were an interest payment on the bond), and can be offset against the bond
12 holder's regular income tax and alternative minimum tax.

13 *I Liheslaturan Guåhan* further finds that the use of QSCBs under ARRA
14 requires the identification of a shovel ready project in order to utilize the
15 twenty-one million eight hundred and eighteen dollars (\$21,818,000) that has
16 been allocated to Guam by the Federal Government for FY2009 and FY2010.
17 Because of the extremely short timeline before the December 31, 2010
18 expiration of Guam's FY 2009 and FY 2010 allocation of school construction
19 bonds, it is the intention of *I Liheslaturan Guåhan* to proceed with Project
20 Number 700-5-1019-L-YIGO, an RFP for the construction of the Marbo High
21 School. This legislation would simply transfer the site identified in the RFP to
22 Lot 10142 New R-4, located in Harmon Guam.

23 To facilitate the financing, design, construction and maintenance of the
24 facilities envisioned by this Act, the government of Guam will be authorized to
25 lease for up to thirty (30) years government of Guam property on which the
26 facilities will be constructed. The lease of the government property will be to

1 the contractor, who will design and construct the facilities in accordance with
2 specifications approved by Guam Public School System, and provide funding
3 for the design and construction through the use of QSCBs and other financing
4 facilities. The facilities and land will be leased back to the government of Guam
5 for a period *not to exceed* the initial ground lease to the contractor over which
6 time the government of Guam will amortize, as lease payments to the
7 contractor, the cost of the financing, design, construction and related expenses
8 of the facilities. The annual commitment of Section 30 Revenues authorized in
9 the Act is based on the sum of Section 30 Revenue available after the final
10 payment on the Government of Guam Limited Obligation (Section 30) Bonds,
11 Series 2001A.

12 The contractor will also be responsible for the capital maintenance of the
13 public school facilities constructed under this Act, which costs *shall* be paid by
14 the government of Guam as provided for under this Act. At the expiration of
15 the Lease-Back Period, the government of Guam real property and the public
16 facilities constructed on the government of Guam real property will revert to the
17 government of Guam with *no* further obligations to the Contractor.

18 **§58B101. Definitions.** For purposes of this Chapter and *unless*
19 otherwise specified, the following words and phrases are defined to mean:

20 (a) “Contract” *shall* mean the design, construction and financing
21 contract entered into by and between the Education Agency and the
22 Contractor following negotiations on the response to the Request for
23 Proposal for Project Number 700-5-1019-L-YIGO.

24 (b) “Contractor” *shall* mean the authorized entity which *shall* be the
25 signatory on the Contract and *shall* be fully responsible for carrying out
26 the design, construction, financing and maintenance of the Education

1 Facility. The Contractor may cooperate with another entity *or* entities in
2 any manner the Contractor deems appropriate to provide for the
3 financing, design, construction *or* maintenance of the public school
4 facilities envisioned by this Act.

5 (c) “Education Agency” *shall* mean the Guam Public School System.

6 (d) “Education Facility” as used in this Act *shall* mean a new high
7 school to be located in Harmon on Lot 10142 New R-4.

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

10 (f) “Lease-Back” *shall* mean the lease from the Contractor to the
11 Education Agency.

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

14 (h) “Property” *shall* mean any property on which an Education
15 Facility is located.

16 **§58A102. Authorization to Enter into Long-term Leases.** For the
17 purpose of facilitating the financing of the design, construction and
18 maintenance of an Education Facility encompassed by this Act, the government
19 of Guam *or* an Education Agency, as the case may be, is authorized to lease, if
20 required, to the Contractor sufficient government of Guam real property on
21 which to construct, convert *or* rehabilitate an Education Facility; provided, such
22 property is in the inventory of the Education Agency *or* the government of
23 Guam. The property may be the site of an existing Education Facility under the
24 control of an Education Agency, which existing facility may be converted,
25 rehabilitated *or* demolished and rebuilt under the provisions of this Act.

1 The Education Agency is also authorized to lease back from the
2 Contractor the property for a period mutually agreed upon between the
3 Education Agency and the Contractor as may be reasonably necessary to
4 amortize over the Lease-Back Period the costs associated with the financing,
5 design and construction of the Education Facility. In no event *shall* the end of
6 such Lease-Back Period be *later than* the date thirty (30) years from the
7 scheduled date of completion of the Education Facility. The Lease-Back may
8 be structured as an annually renewable lease with provision for automatic
9 renewals to the extent that pledged revenue under Section 58B106 is available.
10 The Lease-Back *shall not* be construed as a debt under any applicable debt
11 limitation under the Guam Organic Act *or* Guam law.

12 **§58B103 Responsibilities of Contractor.** The Contract *shall* require
13 that the Contractor be responsible for all costs, expenses and fees of any kind *or*
14 nature, associated with the design, civil improvements, on-site and off-site
15 infrastructure, construction, permits, and financing associated with the
16 completion of an Education Facility, including the financing of furniture and
17 equipment for the Education Facility, as and to the extent provided by the
18 Education Agency in the Request for Proposals. The Contractor *shall* also be
19 responsible for the capital maintenance of the schools during the Lease-Back
20 Period, but *shall not* be responsible for the capital maintenance of the furniture
21 and equipment. The Lease-Back may provide that *if* sufficient funds are *not*
22 appropriated *or* otherwise available for the payment of amounts due under the
23 lease and any maintenance agreement, the Education Agency will have the
24 obligation to vacate the Education Facility, and the Contractor *shall* have the
25 right of use and occupancy of the Education Facility for the remainder of the
26 term of the Lease, unless new mutually satisfactory terms are entered into. For

1 this purpose, the Lease may provide that its term *shall* be extended for a period
2 *not to exceed* the shorter of ten (10) years beyond the original term of the
3 Lease-Back *or* such period of time as is necessary to repay in full any financing
4 arranged pursuant to Section 58B105. The capital maintenance costs *shall* be
5 paid by the Education Agency on a periodic basis as incurred by the Contractor
6 on terms to be agreed to in the Contract for each Education Facility.

7 **§58B104. Assignments.** To facilitate the purposes of this Act and to
8 provide security for the holders of any financing instruments issued pursuant to
9 this Act, the Contractor may assign, without the need of the consent of the
10 Education Agency, the Contract, the Lease and the Lease-Back to any
11 underwriter, trustee *or* other party as appropriate to facilitate the issuance of the
12 Qualified School Construction Bond.

13 **§58B105. Use of Qualified School Construction Bonds.** To minimize
14 the financing cost to the Education Agency, financing utilized by the Contractor
15 to fund the design and construction of an Education Facility *shall* be through
16 the use of Qualified School Construction Bonds in an amount not to exceed
17 \$21,818,000 as authorized under Section 1521 of P.L. 111-5 (The American
18 Recovery and Reinvestment Act of 2009). Alternatively, the Contractor may
19 use an alternative method of financing, including, but *not limited to*, a short
20 term debt, mortgage, loan, federally guaranteed loan *or* loan by an
21 instrumentality of the United States of America *if* such financing will better
22 serve the needs of the people of Guam. Such alternative financing *shall* be
23 approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this
24 Section is to assure the Education Agency pays the lowest possible interest rate
25 so that the cost to the Education Agency of financing the design and
26 construction of an Education Facility, amortized through the Lease-Back

1 payments from the Education Agency to the Contractor, will be lower than
2 regular commercial rates.

3 **§58B106. Pledge of Section 30 Revenues.** Rental payments under the
4 Lease and the Lease-Back may be secured by a pledge *or* other reservation of
5 revenues received by *or* on behalf of the government of Guam from the United
6 States of America pursuant to Section 30 of the Guam *Organic Act* (48
7 U.S.C.A. Section 1421h). Any pledge *or* reservation of Section 30 revenues
8 authorized by the Act *shall* be subordinate *only* to the existing lien securing the
9 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A.

10 Any such pledge *or* reservation authorized hereunder *shall* be valid and
11 binding from the time the pledge *or* reservation is made and *shall be limited to*
12 Three Million Five Hundred Thousand Dollars (\$3,500,000) per year during the
13 Lease-Back Period. The Section 30 revenues pledged *or* reserved and thereafter
14 received by the government of Guam *or* by any trustee, depository *or* custodian
15 *shall* be deposited in a separate account and *shall* be immediately subject to
16 such reservation *or* the lien of such pledge without any physical delivery
17 thereof *or* further act, and such reservation *or* the lien of such pledge *shall* be
18 valid and binding against all parties having claims of any kind in tort, contract
19 *or* otherwise against the government of Guam *or* such trustee, depository *or*
20 custodian, irrespective of whether the parties have notice thereof. The
21 instrument by which such pledge *or* reservation is created need *not* be recorded.

22 **§58B107. Utilities and Routine Maintenance and Repair.** The
23 Education 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 Education Facility.

1 **§58B108. 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 Education 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 Education 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 Education Agency.

16 **§58B109. Rules, Regulations and Restrictions.** The Department of
17 Public Works may promulgate rules and regulations pursuant to Guam law
18 necessary to implement the provisions of this Act.

19 **§58A110. Severability.** *If any provision of this Act or its application*
20 *to any person or circumstance is found to be invalid or contrary to law, such*
21 *invalidity shall not affect other provisions or applications of this Act which can*
22 *be given effect without the invalid provisions or application, and to this end the*
23 *provisions of this Act are severable.”*

24 **Section 2. Section 58A109 of Chapter 58A of Title 5 Guam Code Annotated**
25 **is hereby amended to read as follows:**

1 “§ 58A109. Pledge of Section 30 Revenue. Rental payments under the
2 Lease and the Lease-Back may be secured by a pledge or other reservation of
3 revenues received by or on behalf of the government of Guam from the United
4 States of America pursuant to Section 30 of the Guam Organic Act (48
5 U.S.C.A. Section 1421h). Any pledge or reservation of Section 30 revenues
6 authorized by the Act shall be subordinate only to the existing lien securing the
7 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A.
8 Any such pledge or reservation authorized hereunder shall be valid and binding
9 from the time the pledge or reservation is made and shall be limited to ~~Nine~~
10 ~~Million Eight Hundred Twenty five Dollars (\$9,825,000)~~ Four Million Eight
11 Hundred Twenty-Five Thousand Dollars (\$4,825,000) per year during the
12 Lease-Back Period. The Section 30 revenues pledged or reserved and thereafter
13 received by the government of Guam or by any trustee, depository or custodian
14 shall be deposited in a separate account and shall be immediately subject to
15 such reservation or the lien of such pledge without any physical delivery thereof
16 or further act, and such reservation or the lien of such pledge shall be valid and
17 binding against all parties having claims of any kind in tort, contract or
18 otherwise against the government of Guam or such trustee, depository or
19 custodian, irrespective of whether the parties have notice thereof. The
20 instrument by which such pledge or reservation is created need not be
21 recorded.”

22 **Section 3. Transfer of Property.** Lot 10142 New R-4 shall be transferred
23 from the land inventory of the Department of Parks and Recreation to the Guam
24 Department of Education.

25 **Section 4. Zoning of Lot.** Lot 10142 New R-4, located in Harmon, Guam is
26 hereby zoned as S-1 (School Zone).