



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

20 JUN 2005

The Honorable Mark Forbes
Speaker
Mina' Bente Ocho Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 101 (EC), "AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING A MEANS FOR EDUCATION FACILITIES CONSTRUCTION" which I signed into law on June 10, 2005, as Public Law 28-47.

Sinseru yan Magåhet,

Handwritten signature of Felix P. Camacho

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Eddie Baza Calvo
Senator and Legislative Secretary

Office of the Speaker

MARK FORBES

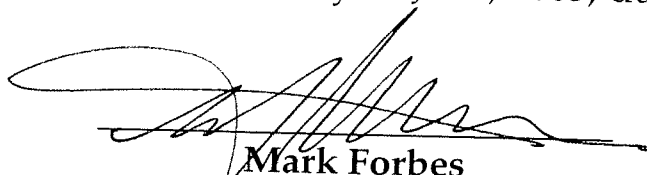
Date: 6/21/05
Time: 10:25am
Rec'd by: ESP
Print Name: ESP
28-05-0259

Form with fields: Senator Edward J.B. Calvo, SECRETARY OF THE LEGISLATURE, ACKNOWLEDGEMENT RECEIPT, Rcv'd by: [Signature], Print Name & Initial, Time: 4:35, Date: 6-22-05


I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

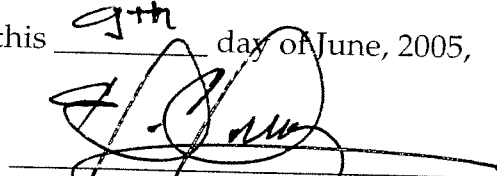
This is to certify that Substitute Bill No. 101 (EC), "AN ACT TO AMEND CHAPTER 58 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A MEANS FOR EDUCATION FACILITIES CONSTRUCTION," was on the 8th day of June, 2005, duly and regularly passed.


Mark Forbes
Speaker

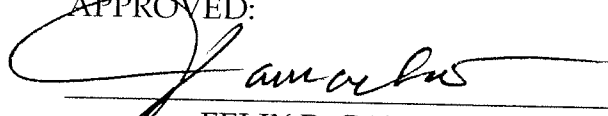
Attested:


Edward J.B. Calvo
Senator and Secretary of the Legislature

This Act was received by I Maga'lahaen Guåhan this 9th day of June, 2005,
at 4 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 6/10/05

Public Law No. PL 28-47

I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 101 (EC)

As substituted by the Committee on
General & Omnibus Matters, and as further
substituted by the author on the Floor, and amended
in the Committee of the Whole.

Introduced by:

L. F. Kasperbauer
A. R. Unpingco
Mark Forbes
F. B. Aguon, Jr.
J. M.S. Brown
Edward J.B. Calvo
B. J.F. Cruz
Mike Cruz
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
A. B. Palacios
R. J. Respicio
Ray Tenorio
J. T. Won Pat

**AN ACT TO AMEND CHAPTER 58 OF TITLE 5 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING A MEANS FOR EDUCATION FACILITIES
CONSTRUCTION.**

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

2 **Section 1. 5 GCA §58102 is hereby *repealed*.**

3 **Section 2. 5 GCA §58103 is hereby *amended* to read as follows:**

4 **“§58103. Definitions.** For purposes of this Chapter and unless
5 otherwise specified, the following words and phrases are defined to
6 mean:

1 (a) 'Act' means Chapter 58 of Title 5 of the Guam Code Annotated,
2 known as 'The Education Facilities Construction Initiative Act of
3 2001.'

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

12 (c) 'Contract' shall mean the design, construction, financing and
13 maintenance contract entered into by and between the Education
14 Agency and the Contractor, following negotiations on the
15 response to the Request for Proposal.

16 (d) 'Education Agency' shall mean the Guam Department of
17 Education, the University of Guam or the Guam Community
18 College.

19 (e) 'Education Facility' shall mean any structure or structures,
20 together with all ancillary facilities, including parking facilities,
21 utilities, infrastructure and equipment associated with providing
22 the educational or related services required by an Education
23 Agency. 'Education Facility' may include an existing facility being
24 converted or rehabilitated by the Contractor.

1 (f) 'Lease' shall mean a ground or site lease of the property from an
2 Education Agency, the Chamorro Land Trust Commission, or
3 other government land, as applicable, to the Contractor.

4 (g) 'Lease-Back' shall mean the period of the term of the facilities
5 lease between the Contractor and the Education Agency over the
6 term of which period the costs of the design, construction,
7 financing and maintenance of an Education Facility are amortized
8 according to the terms agreed to between the government of
9 Guam and the Contractor.

10 (h) 'Property' shall mean any property on which an Education
11 Facility is located."

12 **Section 3. 5 GCA §58104 is hereby amended to read as follows:**

13 **"§58104. Authorization to Enter into Long-Term Leases.** For the
14 purpose of facilitating the financing of the design, construction and
15 maintenance of an Education Facility encompassed by this Act, the
16 government of Guam or an Education Agency, as the case may be, is
17 authorized to lease, if required, to the Contractor, subject to legislative
18 approval, sufficient government of Guam real property, to include, *but*
19 *not be limited to*, Chamorro Land Trust Commission property and Guam
20 Ancestral Lands Commission property, on which to construct, convert
21 or rehabilitate an Education Facility; provided, such property is in the
22 inventory of the Education Agency. The location of the property may be
23 at the site of an existing Education Facility under the control of an
24 Education Agency, which may be converted, rehabilitated or
25 demolished and rebuilt under the provisions of this Act.

1 Any lease of property pursuant to this Act will be for a period
2 mutually agreed upon between the Education Agency and the
3 Contractor as may be reasonably necessary to amortize over the Lease-
4 Back period of the Contract, the costs associated with the financing,
5 design, construction and maintenance of the Education Facility, and in
6 no event shall such period be less than twenty (20) years, or exceed
7 thirty (30) years from the date of commencement of the Lease-Back
8 period.

9 The Contractor shall lease back to the Education Agency the
10 property for the Lease-Back period. Upon the expiration of the Lease
11 and the Lease-Back periods and the fulfillment of the terms and
12 conditions of the Lease-Back by the Education Agency, the property and
13 the Education Facility shall become the property of the Education
14 Agency, and the Contractor shall have no further right, title or interest
15 in the property or the Education Facility.”

16 **Section 4. 5 GCA §58105 is hereby amended to read as follows:**

17 “§58105. **Procurement.** Subject to the approval of *I Liheslaturan*
18 *Guåhan*, the government of Guam or an Education Agency may solicit
19 Requests for Proposals (‘RFP’) through the Department of Public Works,
20 in compliance with the Guam Procurement Law, for the financing,
21 design and construction of the Education Facility, together with
22 maintenance of the Education Facility over the term of the Lease-Back,
23 according to the needs of the Education Agency and consistent with this
24 Chapter.”

25 **Section 5. 5 GCA §58106 is hereby amended to read as follows:**

1 “§58106. Responsibilities of Contractor. The Contract shall
2 require that the Contractor be responsible for all costs, expenses and
3 fees of any kind or nature, associated with the design, civil
4 improvements, on-site infrastructure, construction, permits and
5 financing associated with the completion of an Education Facility.

6 The Contractor shall also be responsible for the capital
7 maintenance and upkeep of the schools during the Lease-Back term.
8 The costs of the design, construction and financing for an Education
9 Facility shall be paid in periodic installments over the term of the Lease-
10 Back period, which shall be mutually determined by the Education
11 Agency and the Contractor, but which will not exceed thirty (30) years.
12 The Lease and Lease-Back may provide that if sufficient funds are not
13 appropriated or otherwise available for the payment of such
14 installments, the Education Agency will have the obligation to vacate
15 the Education Facility, and the Contractor shall have the right of use
16 and occupancy of the Education Facility for the remainder of the term of
17 the Lease, unless new mutually satisfactory terms are entered into. For
18 this purpose, the Lease may provide that its term shall be extended for a
19 period not to exceed the shorter of ten (10) years beyond the original
20 term of the Lease-Back or such period of time as is necessary to repay in
21 full any financing arranged pursuant to Section 58108.

22 The capital maintenance, repair and upkeep costs shall be paid on
23 a periodic basis as incurred by the Contractor on terms to be agreed to
24 in the Contract for each Education Facility.”

25 Section 6. 5 GCA §58107 is hereby *amended* to read as follows:

1 “§58107. **Assignments.** To facilitate the purposes of this Chapter
2 and to provide security for the bondholders, the Contractor may assign,
3 without the need of the consent of the Education Agency, the Contract,
4 the Lease and the Lease-Back to any trustee, underwriter or other
5 appropriate party as may be necessary to facilitate the issuance of the
6 tax-exempt bonds or other financial instruments to provide the
7 financing for the Education Facility.”

8 **Section 7. 5 GCA §58108 is hereby amended to read as follows:**

9 “§58108. **Use of Tax-Exempt Bonds for Financing.** To minimize
10 the financing cost to the Education Agency, all financing utilized by the
11 Contractor to fund the design, construction and maintenance of an
12 Education Facility shall be through tax-exempt bonds or other financial
13 instruments, if a mechanism to do so is available. The purpose for this
14 requirement is to assure the Education Agency pays the lowest possible
15 interest rate so that the cost of financing the design, construction and
16 maintenance of an Education Facility to the Education Agency,
17 amortized through the Lease-Back payments from the Education
18 Agency to the Contractor, will be lower than regular commercial rates.

19 The Lease and the Lease-Back may include a pledge of compact
20 impact funds or other federal grant revenues that are legally available
21 for such purpose. Any such pledge made hereunder shall be valid and
22 binding from the time the pledge is made. The revenues pledged and
23 thereafter received by the government of Guam or by any trustee,
24 depository or custodian shall be deposited in a separate account and
25 shall be immediately subject to the lien of such pledge without any

1 physical delivery thereof or further act, and the lien of such pledge shall
2 be valid and binding against all parties having claims of any kind in
3 tort, contract or otherwise against the government of Guam or such
4 trustee, depository or custodian, irrespective of whether the parties have
5 notice thereof. The instrument by which such pledge is created need not
6 be recorded."

7 **Section 8.** 5 GCA §58109 is hereby *amended* to read as follows:

8 "§58109. **Utilities and Routine Maintenance and Repair.** The
9 Education Agency shall be responsible for the connection and payment
10 of all utilities, including, without limitation, power, water, sewer,
11 telephone and cable of the Education Facility. Capital maintenance and
12 repair shall be performed by the Contractor as provided for in 5 GCA
13 §58110. Routine maintenance, repair and upkeep shall be the
14 responsibility of the Education Agency and/or the Contractor, as
15 provided by the terms of the Contract."

16 **Section 9.** 5 GCA §58110 is hereby *amended* to read as follows:

17 "§58110. **Contractor Responsible for Capital Maintenance.** The
18 Contract with the Contractor, and the Lease-Back, shall provide that all
19 capital maintenance and repair of the Education Facility be performed
20 by the Contractor as a separate cost. The terms by which the Contractor
21 is to perform such capital maintenance shall be determined as a part of
22 the bid process and shall be part of the conditions of the Contract. The
23 Contract shall provide sufficient initial funding for the first five (5) years
24 after the completion of the Educational Facility."

I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN

2005 (FIRST) Regular Session

Date: 01/18/05
Wednesday

VOTING SHEET

Bill No. 101 (EC)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M.S.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J.F.	✓				
CRUZ, Michael (Dr.)	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
KLITZKIE, Robert	✓				
LEON GUERRERO, Lourdes A.					EA ✓
LUJAN, Jesse A.	✓				
PALACIOS, Adolpho B.	✓				
RESPICIO, Rory J.	✓				
TENORIO, Ray	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

14 0 0 0 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

P.L. 28-47

2nd *COW* *3rd*
6/7/05 *6/7/05* *6/7/05*

**MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session**

Bill No. 101 (EC)

As substituted by the Committee on General & Omnibus Matters,
and as further substituted by the author on the Floor,
and amended in the Committee of the Whole.

af

Introduced by:

L.F. Kasperbauer

ARU
M. Fisher

**AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE
GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING
A MEANS FOR EDUCATION FACILITIES CONSTRUCTION.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. 5 G.C.A. §58102 is hereby repealed. ~~amended~~ to read as follows:

~~“§58102. Legislative Findings and Policy. There is a critical shortage of public school facilities on Guam. Many existing facilities are antiquated and are not fit for the purpose of public education. The Department of Education (‘D.O.E.’) is in need of at least five (5) new public schools with all the related civil and structural facilities and amenities customarily associated with a first rate public education facility, and the University of Guam (‘U.O.G.’) and the Guam Community College (‘G.C.C.’) are also in need of additional education and related facilities.~~

~~The government of Guam lacks funding for the design and construction of new public school facilities. The government of Guam is also currently unable to seek financing, in its own name, through the bond market. In an effort to overcome these financing hurdles, and to provide for the educational needs of the students of Guam, I Liheslaturan Guåhan desires to authorize the government of Guam to enter into contracts for the financing, design, construction and long term capital maintenance~~

I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN

FLOOR AMENDMENTS/CHANGES

5 Bill No. 101

ARU

Senator Proposing Amendment

(Below for Senator to complete)

Please describe proposed amendment, including where change to occur:

Sponsor # 2 ARU
3 Member

(Below only for Clerk of Legislature's use and processing))

Date 6/7, 2005

Floor Amendment No. 3 of a total of _____ changes on above Bill.

Votes For Amendment: _____ Votes Against Amendment: _____

AMENDMENT PASSED: _____

Amendment Failed: _____

Amendment Withdrawn: _____

APPROVED AS TO FORM PASSED

[Signature]
AUTHOR OF AMENDMENT

Concur (initial)

[Signature]
Clerk of Legislature

Speaker

Ass't. Amend. Clerk

Engrossment Staff

1 of new public schools with private sector contractors who can provide long term
2 financing obtained through tax exempt bonds.

3 ~~To facilitate the financing, design, construction and maintenance of public~~
4 ~~school facilities envisioned by this Act, the government of Guam will be authorized~~
5 ~~to lease for up to thirty (30) years government of Guam property on which the public~~
6 ~~school facilities will be constructed.~~

7 ~~The lease of the government property will be to the contractor, who will~~
8 ~~design and construct the public school facilities and provide funding for the design~~
9 ~~and construction through the use of tax exempt bonds. Upon completion of the~~
10 ~~construction, the The facilities and land will be leased back to the government of~~
11 ~~Guam for a period not to exceed the initial ground lease to the contractor over which~~
12 ~~time the government of Guam will amortize, as lease payments to the contractor, the~~
13 ~~cost of the financing, design, construction and related expenses of the public school.~~

14 ~~The contractor will also be responsible for the capital maintenance and repair~~
15 ~~of each of the public school facilities constructed under this Act, which costs shall~~
16 ~~be paid by the government of Guam as provided for under this Act. At the~~
17 ~~expiration of the lease back period and fulfillment of the terms and conditions of the~~
18 ~~government of Guam under the leaseback, the government of Guam real property~~
19 ~~and the public school facilities constructed on the government of Guam real~~
20 ~~property will revert to the government of Guam with no further obligations to the~~
21 ~~contractor.”~~

22 **Section 2. 5 G.C.A. §58103** is hereby *amended* to read as follows:

23 “**§58103. Definitions.** For purposes of this Chapter and unless otherwise specified,
24 the following words and phrases are defined to mean:

25 ‘Act’ means Chapter 58 of Title 5 of the Guam Code Annotated, known as ‘The
26 Education Facilities Construction Initiative Act of 2001.’

1 ‘*Contractor*’ shall mean the authorized entity which shall be the signatory on the
2 Contract and shall be fully responsible for carrying out the design, construction,
3 financing and maintenance of the Education Facility. The Contractor may cooperate
4 with another entity or entities in any manner the Contractor deems appropriate to
5 provide for the financing, design~~and,~~ construction and maintenance of the public
6 school facilities envisioned by this Chapter.

7 ‘*Contract*’ shall mean the design, construction~~and,~~ financing and maintenance
8 contract entered into by and between the Education Agency and the Contractor
9 following negotiations on the response to the Request for Proposal.

10 ‘*Education Agency*’ shall mean the Guam Department of Education, the University
11 of Guam or the Guam Community College.

12 ‘*Education Facility*’ shall mean any structure or structures, together with all
13 ancillary facilities, including parking facilities, utilities~~and,~~ infrastructure and
14 equipment associated with providing the educational or related services required by
15 an Education Agency. ‘Education Facility’ may include an existing facility being
16 converted or rehabilitated by the Contractor.

17 ‘*Lease*’ shall mean a ground or site lease of the Property from an Education Agency,
18 the Chamorro Land Trust, or other government land, as applicable, to the
19 Contractor.

20 ‘*Lease-Back*’ shall mean the period of the term of the facilities lease between the
21 Contractor and the Education Agency over the term of which period the costs of the
22 design, construction, financing and maintenance of an Education Facility is are
23 amortized according to the terms agreed to between the government of Guam and
24 the Contractor. ~~The period of the Lease and the Lease-Back shall be identical.~~

1 'Property' shall mean any property on which an Education Facility is located."
2

3 **Section 3.** 5 G.C.A. §58104 is hereby *amended* to read as follows:

4 **“§58104. Authorization to Enter into Long-Term Leases.** For the purpose of
5 facilitating the financing of the design, construction and maintenance of an
6 Education Facility encompassed by this Act, the government of Guam or an
7 Education Agency, as the case may be, is authorized to lease, if required, to the
8 Contractor, subject to legislative approval, sufficient government of Guam real
9 property, to include but not limited to, Chamorro Land Trust Property and Ancestral
10 Land Trust Property, on which to construct, convert or rehabilitate an Education
11 Facility; provided, such property is in the inventory of the Education Agency. The
12 location of the Property may be at the site of an existing Education Facility under
13 the control of an Education Agency, which may be converted, rehabilitated or
14 demolished and rebuilt under the provisions of this Act.

15 Any lease of property pursuant to this Act will be for a period mutually agreed upon
16 between the Education Agency and the Contractor as may be reasonably necessary
17 to amortize over the Lease-Back period of the Contract, the costs associated with the
18 financing, design, construction and maintenance of the Education Facility, and in no
19 event shall such period be less than twenty (20) years, or exceed thirty (30) years
20 from the date of commencement of the Lease-Back period.

21 ~~Upon completion of the construction of the Education Facility, the~~ The Contractor
22 shall lease back to the Education Agency the Property for the ~~period of the Lease-~~
23 ~~Back period.~~ Upon the expiration of the Lease and the Lease-Back ~~of the Property,~~
24 periods and the fulfillment of the terms and conditions of the Lease-Back by the
25 Education Agency, the Property and the Education Facility shall become the

1 property of the Education Agency, and the Contractor shall have no further right,
2 title or interest in the Property or the Education Facility.

3 ~~The legislature has considered the Notice of Award issued by the Department~~
4 ~~of Public Works on February 2, 2005 for the Construction of New Schools Finance,~~
5 ~~Design, Build and Leaseback in various locations (collectively the “Initial~~
6 ~~Facilities”). The lease of government of Guam real property for the Initial Facilities,~~
7 ~~including such addition or substitution of property in the inventory of or under the~~
8 ~~administrative jurisdiction of the Department of Education to be used for the Initial~~
9 ~~Facilities as the Governor may have made or may subsequently make is hereby~~
10 ~~approved. The Conditional Use of all real property herein this paragraph to be used~~
11 ~~as schools and educational facilities is exempt from the Guam Land Use~~
12 ~~Commission Conditional Use Application process and is hereby approved.”~~

13
14 **Section 4.** 5 G.C.A. §58105 is hereby *amended* to read as follows:

15 “**§58105. Procurement.** ~~Upon identifying Property adequate for the~~
16 ~~placement of an Education Facility, Subject to the approval of the legislature, the~~
17 ~~government of Guam or an Education Agency shall~~may solicit Requests for
18 Proposals (‘RFP’), through the Department of Public Works, in compliance with the
19 Guam Procurement Law, for the financing, design and construction of the Education
20 Facility, together with maintenance of the Education Facility over the term of the
21 Lease-Back, according to the needs of the Education Agency and consistent with
22 this Chapter.”

23 **Section 5.** . 5 G.C.A. §58106 is hereby *amended* to read as follows:

24 “**§58106. Responsibilities of Contractor.** The Contract shall require that the
25 Contractor be responsible for all costs, expenses and fees of any kind or nature,
26 associated with the design, civil improvements, on-site infrastructure, construction,
27 permits and financing associated with the completion of an Education Facility.

1 The Contractor shall also be responsible for the capital maintenance and upkeep
2 of the schools during the ~~period of the Lease-Back~~ term. The costs of the design,
3 construction and financing for an Education Facility shall be paid in ~~substantially~~
4 ~~equal monthly~~ periodic installments over the term of the Lease-Back period, which
5 shall be mutually determined by the Education Agency and the Contractor, but
6 which will not exceed thirty (30) years. The Lease and Lease-Back may provide
7 that if sufficient funds are not appropriated or otherwise available for the payment of
8 such installments, the Education Agency will have the obligation to vacate the
9 Education Facility, and the Contractor shall have the right of use and occupancy of
10 the Education Facility for the remainder of the term of the Lease unless new
11 mutually satisfactory terms are entered into. For this purpose, the Lease may
12 provide that its term shall be extended for a period not to exceed the shorter of ten
13 years beyond the original term of the Lease-Back or such period of time as is
14 necessary to repay in full any financing arranged pursuant to Section 58108.

15 The capital maintenance, repair and upkeep costs shall be paid on a periodic
16 basis as incurred by the Contractor on terms to be agreed to in the Contract for each
17 Education Facility.

18 **Section 6.** 5 G.C.A. §58107 is hereby *amended* to read as follows:

19 “**§58107. Assignments.** To facilitate the purposes of this Chapter and to
20 provide security for the bondholders, the Contractor may assign, without the need of
21 the consent of the Education Agency, the Contract, the Lease and the Lease-Back to
22 any trustee, underwriter or other appropriate party that has facilitated as may be
23 necessary to facilitate the issuance of the tax-exempt bonds necessary or other
24 financial instruments to provide the financing for the Education Facility.”

25 **Section 7.** 5 G.C.A. §58108 is hereby *amended* to read as follows:

1 **“§58108. Use of Tax-Exempt Bonds for Financing.** To minimize the financing
2 cost to the Education Agency, all financing utilized by the Contractor to fund the
3 design, construction and maintenance of an Education Facility shall be through tax-
4 exempt bonds or other financial instruments, if a mechanism to do so is available.
5 The purpose for this requirement is to assure the Education Agency pays the lowest
6 possible interest rate so that the cost of financing the design, construction and
7 maintenance of an Education Facility to the Education Agency, amortized through
8 the Lease-Back payments from the Education Agency to the Contractor, will be
9 lower than regular commercial rates.

10 The Lease and the Lease-Back may contain terms acceptable to the
11 Education Agency and the Contractor and that are necessary or appropriate to
12 obtain tax-exempt financing at a reasonable cost. Such additional terms may
13 shall include, but are not limited to, a pledge of federal grant compact impact
14 funds or other federal grant revenues that are legally available for such
15 purpose. Any such pledge made hereunder shall be valid and binding from the
16 time the pledge is made. The revenues pledged and thereafter received by the
17 government of Guam or by any trustee, depository or custodian shall be
18 deposited in a separate account and shall be immediately subject to the lien of
19 such pledge without any physical delivery thereof or further act, and the lien of
20 such pledge shall be valid and binding against all parties having claims of any
21 kind in tort, contract or otherwise against the government of Guam or such
22 trustee, depository or custodian, irrespective of whether the parties have notice
23 thereof. The instrument by which such pledge is created need not be recorded.”

24 **Section 8.** 5 G.C.A. §58109 is hereby *amended* to read as follows:

25 **“§58109. Utilities and Routine Maintenance and Repair.** The Education
26 Agency shall be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone and cable ~~and all~~
2 ~~routine interior maintenance and repair and exterior grounds keeping and~~
3 ~~landscaping, and upkeep~~ of the Education Facility. Capital maintenance and repair
4 shall be performed by the Contractor as provided ~~in this Chapter~~ for in 5 G.C.A.
5 §58110. Routine maintenance, repair and upkeep shall be the responsibility of the
6 Education Agency and/or the Contractor, as may be provided by the terms of the
7 Contract.”

8 **Section 9.** . 5 G.C.A. §58110 is hereby *amended* to read as follows:

9 **“§58110. Contractor Responsible for Capital Maintenance Fund.** The
10 Contract with the Contractor, and the Lease-Back, shall provide that all capital
11 maintenance and repair of the Education Facility be performed by the Contractor as
12 a separate cost. The terms of by which, and the manner for establishing the amount
13 of payment, the Contractor is to perform such Capital Maintenance shall be
14 determined as a part of the bid process and shall be part of the conditions of the
15 Contract. The Contract shall provide sufficient initial funding, ~~a separate~~
16 ~~maintenance fund shall be maintained for this purpose with sufficient funds to pay~~
17 ~~the costs of capital maintenance and repair~~ for the first five (5) years after the
18 completion of the Education Facility. ~~The maintenance fund shall be used~~
19 ~~exclusively for the purpose of capital maintenance and repair, and shall be in an~~
20 ~~interest bearing account segregated from funds of the Education Agency.”~~



Chamorro Land Trust Commission

P.O. Box 2950 Hagåtña, Guam 96932

Phone: 475-4251 Fax: 477-8082

REFERENCE: Reviewing and Signing of Lease Agreement

RESOLUTION BY THE COMMISSION

Felix P. Camacho
Governor of Guam

Kaleo S. Moylan
Lieutenant Governor of Guam

Thomas A. Elliott
Administrative Director

Commission Members

Delfin R. Damian, Jr.
Chairman

Annie R. Perez
Commissioner

David J. Matanane
Commissioner

RECITALS:

Whereas, the Guam Education Financing Foundation, has submitted a proposal to lease and build a new school on Chamorro Land Trust Property located on lot;

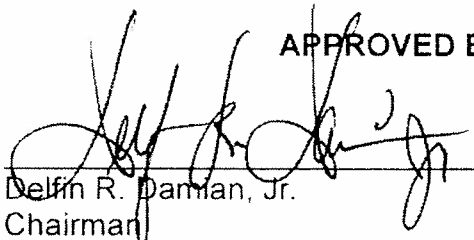
1) Liguán Terrace, Dededo Elementary School Site Parcel 1A, Tract 100, Dededo

Subject to final survey, Department of Land Management approval and recordation.

WE THEREFORE RESOLVE:

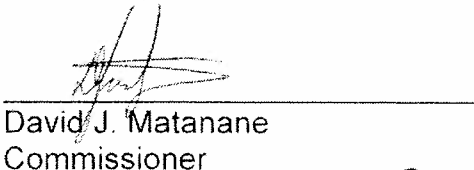
The Commission shall take all actions necessary to timely execute a lease with the Developer. The Commission, in conjunction with the Governor's office, shall forward the same to the Attorney General's office for his final approval.

APPROVED BY THE COMMISSION:



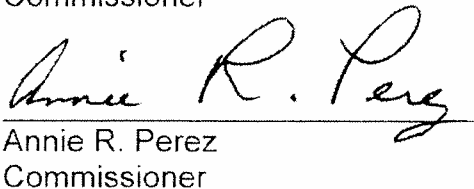
Delfin R. Damian, Jr.
Chairman

Date: 3-7-05



David J. Matanane
Commissioner

Date: 3-7-05



Annie R. Perez
Commissioner

Date: 3-7-05

cc: ^{COS} legal
PDF



Office of the Attorney General

Douglas B. Moylan

Attorney General of Guam

Guam Judicial Center, Suite 2-200E

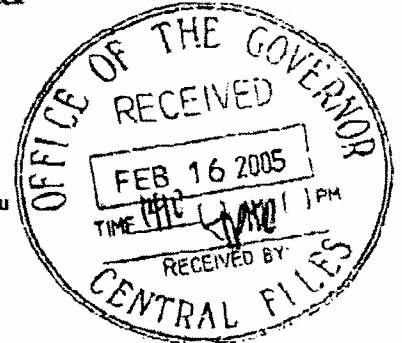
120 West O'Brien Drive

Hagåtña, Guam 96910 • USA

(671) 475-3324 • (671) 472-2493 (Fax)

www.guamattorneygeneral.com • law@mail.justice.gov.gu

February 16, 2005



Honorable Felix P. Camacho
Governor of Guam
Office of the Governor of Guam
P.O. Box 2950
Hagåtña, Guam 96910

SUBJECT: MUNICIPAL LEASE AGREEMENT

Dear Governor:

As part of the Guam Procurement Law process, this Office received a document entitled "Lease Agreement Dated as of February 2, 2005 Between Guam Education Financing Foundation, a Guam nonprofit corporation as Lessor and Government of Guam, acting through its Department of Public Works as Lessee" ("Municipal Lease"). We had not reviewed nor been requested to provide any legal direction prior to your press conference and its recent receipt. This Office, however, recognizes the importance of this issue to our Community and has preliminarily reviewed this legal document.

After preliminary review of the Municipal Lease by attorneys in this Office, we are compelled to return the document, which is enclosed, for several reasons which are identified in more detail herein. In sum, the agreement fails to contain the signature and approval of the elected Guam Education Policy Board ("GEPB"), the Chamorro Land Trust Commission ("CLTC") and contains numerous legal drafting problems which would negatively impact the public's interest and welfare. Moreover, several important and serious public policy decisions have yet to be made which Guam law vests not with your Office or the Department of Public Works, but in the elected GEPB and the CLTC.

The lease is also ambiguous in explaining the People's rights and duties in the event of a default in paying the annual lease payment. Your transmitting the document to our Office was premature in light of the public policy considerations which the GEPB and the CLTC are required to make.

CFI-0205-000742

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Honorable Felix P. Camacho

February 16, 2005

Problems.

(1) Elected & Independent Offices Approval.

The Municipal Lease fails to receive the review, consideration and approval of the elected Guam Education Policy Board. The Organic Act requires that education decisions be under the control of the Guam Legislature, not the Governor. The Guam Legislature vested responsibility over education in the hands of the Guam Education Policy Board. The Board is the proper entity under Guam law to consider whether additional schools are needed, who will attend the schools, how many schools are needed, what schools are most in need of "conversion" or refurbishing, and where they are to be located, in addition to many other education-related questions. The Guam Legislature has not abrogated nor limited the Guam Education Policy Board's duties in these respects.

In addition, considering the numerous design and construction problems which arose from Guam's last school construction project, namely Southern High School, the Guam Education Policy Board must be involved in the design and construction of these four (4) new schools and the conversion of the Harmon Loop Elementary School. The Municipal Lease in its current form does not include the School Board's involvement in any phase of this project.

Numerous important questions must be addressed by the proper officials within the Government of Guam. Although the Governor has given his approval, the GEPB must consider questions such as, how large the classroom sizes will be, how many students each school should house, and which villages the students will come from. The People have elected the GEPB to make these decisions, not the Governor, and in line with democratic principles, the GEPB must consider and approve the education decisions the Government is committing itself to on behalf of the People of Guam.

On April 23, 2004 DOE provided a letter to the Governor, attached, which prioritized their need for new schools, as identified in DOE's ten (10) year capital facilities plan. This project is not consistent with the GEPB priorities, such as their third and the fifth priorities. Any inconsistencies should be resolved by the GEPB, not the Governor.

The Municipal Lease fails to receive the review, consideration and approval of the Chamorro Land Trust Commission. The four (4) lots identified in appendix / page A-1 are lots which appear to be within the inventory of the CLTC. The CLTC must approve the lease of these parcels in their inventory for the use of the schools. This decision has not been made by the CLTC, nor has their approval as to the Municipal Lease been obtained. Moreover, 5 G.C.A. § 58104 requires the Guam Legislature's approval of the ground lease. Although the statute does not identify the land to be used, the Municipal Lease identifies property in the CLTC's land inventory.

The Department of Land Management and/or the Guam Legislature may also need to approve the zoning for school use if the properties are not currently zoned for said use.

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Honorable Felix P. Camacho
February 16, 2005

(2) Guam Public Law Number 26-61 Compliance.

Guam Public Law Number 26-61 sets forth the parameters in which the Municipal Lease can be entered into. The law requires that the contract be entered into between the contractor and an education agency, which is either DOE, UOG or GCC. In this case, it is intended for schools under DOE's jurisdiction, and hence the approval of the Guam Educational Policy Board is necessary. The Department of Public Works is not the proper contracting authority nor party in interest. The GEPB Chairman and Superintendent of DOE should be signatories to this Municipal Lease.

In addition, Public Law Number 26-61 requires payments be made in equal monthly installments, whilst the contract requires an annual payment.

(3) Default Provisions.

The Municipal Lease exposes the Government of Guam to a money judgment for monies due during the construction period. These funds are not limited to monies appropriated by the Department of Interior under Congress' Compact Impact law. The Municipal Lease should incorporate provisions which makes clear that no judgment can be gotten against the Government of Guam for monies other than funds which have been allocated by the Department of Interior to the Government of Guam for this project.

The fifth project identified in the Municipal Lease is for the "conversion" of the Harmon Loop Elementary School into a middle school. Inadequate provisions exist to explain the potential event of default in payment of how the contractor will recover relative to this Government of Guam property. The Municipal Lease generally seems to provide that if the Government of Guam fails to make a payment that the Contractor could sell the building and the leasehold interest. It may require that Harmon Loop School be sold, which would displace the students and the Government from its use altogether. Clearer provisions are needed to explain the Government's rights in this regard.

This Office recommends that no conversion work be done on Harmon Loop Elementary School until money has actually been paid to the contractor and that money is directly paid into the improvements to the government's school, so that in the event of a default that the Contractor would have no claim to Harmon Loop School since payments had been already made for the conversion. The Contractor will likely have to determine when the school's conversion will occur relative to his financing package. This will protect the government against any provisions or claims to take possession of the school or sue the government for non-payment. Currently, the Office of the Attorney General will not approve any agreement which violates the debt ceiling limitation imposed under the Organic Act of Guam (incurring additional debt).

Page 4
 Honorable Felix P. Camacho
 February 16, 2005

ADD DOE

(4) Arbitration.

The Municipal Lease provides a mandatory binding arbitration clause for the financing period. Public Law Number 26-61 did not waive the Government Claims Act in entering into this Municipal Lease. This provisions is unacceptable since the Government Claims Act provides that the Government has a right to a judicial decision in the event the Attorney General's office denies a claim. The Contractor must be held to filing a government claim, consistent with the Guam Legislature's mandate to preserve the Government's sovereign immunity. During that period this Office will have an opportunity to evaluate its merits. However, we are prepared to agree to non-binding arbitration, and if unsuccessful the Contractor would have the right to pursue a judicial lawsuit.

(5) Conflicts in Lease Provisions.

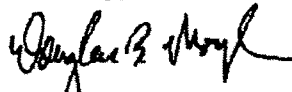
The lease provides that the Government is to provide the permits, however, in the RFP the contractor was to secure the necessary permits. Because the Government's solicitation was based upon the contractor securing the permits, then the contract should reflect this requirement, and cannot be changed absent re-soliciting another RFP.

Considering that the Administration requested a seven (7) day review of this Municipal Lease, we recommend that in order to avoid future delays that the Administration request the assistance of the Office of the Attorney General at its preliminary drafting stages, especially when obligating the People of Guam (Government of Guam) to such a lengthy, complex and expensive obligation. Moreover, we request that resources not be squandered on outside counsel but invested into this elected Office so as to increase our legal capabilities and turnaround times.

This Office continues to review the documents and will promptly inform you if we see any additional problems. We support this project and will work with you on this important matter for the betterment of the People of Guam.

Please do not hesitate to contact me if you have any questions or concerns. *Thank you.*

Sincerely,



Douglas B. Moylan

cc: Honorable Jose Q. Cruz, Ed D., Chairman, Guam Education Policy Board
 Honorable Mark Forbes, Speaker, Guam Legislature
 Honorable Lawrence F. Kasperbauer, Senator & Chairman Committee
 on Education and Community Development, Guam Legislature
 Mr. Juan P. Flores, Department of Education
 Mr. Tom Elliot, Executive Director, Chamorro Land Trust Commission

Attachments
 Enclosure



I Mina' Bente Ocho Na Liheslaturan Guahan
The 28th Guam Legislature

155 Hesler Place
Hagatna, Guam 96910
Office (671) 472-3409 • Fax (671) 472-3510

Speaker Mark Forbes

May 1, 2005

Speaker Mark Forbes
I Mina' Bente Ocho Na Liheslaturan Guahan
155 Hesler Place
Hagatna, Guam 96910

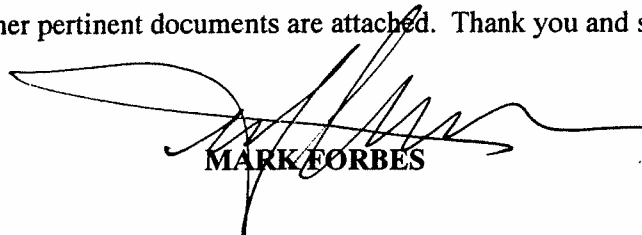
The Committee on General & Omnibus Matters to which Bill No. 101 was referred, wishes to report its findings and recommendations **TO DO PASS BILL No. 101 (EC) as substituted by the committee** : "An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction".

Transmitted herewith for your consideration and action is our committee report on the above subject matter.

The voting record is as follows:

5 TO PASS
 NOT TO PASS
 TO REPORT OUT ONLY
 ABSTAIN
 INACTIVE FILE

Copies of the Committee Report and other pertinent documents are attached. Thank you and si Yu'os ma'ase for your attention to this matter.


MARK FORBES

Attachments

MEMORANDUM

TO: Committee Members

FROM: Chairman 

SUBJECT: Committee Report- BILL No. 101 (EC) as substituted by the committee: "An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction".

Transmitted herewith for your information and action is the report on BILL No. 101 (EC) from the Committee on General and Omnibus Matters.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. BILL No. 101 (EC)
4. Public Hearing Sign-In Sheet
5. Fiscal Note/ Fiscal Note Waiver
6. Notice of Public Hearing

Please take the appropriate action on the voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

MARK FORBES

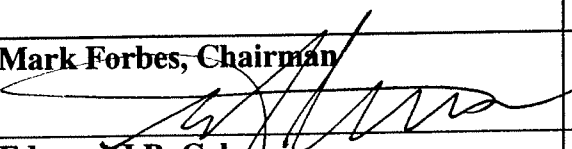
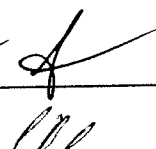

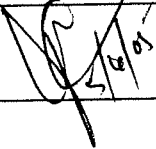
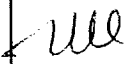
Attachments

COMMITTEE ON GENERAL AND OMNIBUS MATTERS

I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
155 HESLER PLACE, HAGÁTNA, GUAM 96910

An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction.

VOTING SHEET

	SIGNATURE	TO PASS	NOT TO PASS	TO REPORT OUT OF COMMITTEE	ABSTAIN	INACTIVE FILE
Mark Forbes, Chairman		✓				
Edward J.B. Calvo		✓				
Lawrence F. Kasperbauer, Ph.D.		✗				
Jesse A. Lujan		✓				
Ray Tenorio						
Michael Cruz, M.D.		✓				
Lou A. Leon Guerrero						
Judith T. Won Pat						
Benjamin J.F. Cruz						

MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 101 (EC)
As substituted by the
Committee on General & Omnibus Matters

Introduced by:

L.F. Kasperbauer

**AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE
GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING
A MEANS FOR EDUCATION FACILITIES CONSTRUCTION.**

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

2 **Section 1.** 5 G.C.A. §58102 is hereby *amended* to read as follows:

3 “§58102. **Legislative Findings and Policy.** There is a critical shortage of public
4 school facilities on Guam. Many existing facilities are antiquated and are not fit for
5 the purpose of public education. The Department of Education (‘D.O.E.’) is in need
6 of at least five (5) new public schools with all the related civil and structural
7 facilities and amenities customarily associated with a first rate public education
8 facility, and the University of Guam (‘U.O.G.’) and the Guam Community College
9 (‘G.C.C.’) are also in need of additional education and related facilities.

10 The government of Guam lacks funding for the design and construction of new
11 public school facilities. The government of Guam is also currently unable to seek
12 financing, in its own name, through the bond market. In an effort to overcome these
13 financing hurdles, and to provide for the educational needs of the students of Guam,
14 *I Liheslaturan Guåhan* desires to authorize the government of Guam to enter into
15 contracts for the financing, design, construction and long-term capital maintenance
16 of new public schools with private sector contractors who can provide long-term
17 financing obtained through tax-exempt bonds.

1 To facilitate the financing, design, construction and maintenance of public
2 school facilities envisioned by this Act, the government of Guam will be authorized
3 to lease for up to thirty (30) years government of Guam property on which the public
4 school facilities will be constructed.

5 The lease of the government property will be to the contractor, who will
6 design and construct the public school facilities and provide funding for the design
7 and construction through the use of tax-exempt bonds. ~~Upon completion of the~~
8 ~~construction, the~~ The facilities and land will be leased back to the government of
9 Guam for a period not to exceed the initial ground lease to the contractor over which
10 time the government of Guam will amortize, as lease payments to the contractor, the
11 cost of the financing, design, construction and related expenses of the public school.

12 The contractor will also be responsible for the capital maintenance and repair
13 of each of the public school facilities constructed under this Act, which costs shall
14 be paid by the government of Guam as provided for under this Act. At the
15 expiration of the lease-back period and fulfillment of the terms and conditions of the
16 government of Guam under the leaseback, the government of Guam real property
17 and the public school facilities constructed on the government of Guam real
18 property will revert to the government of Guam with no further obligations to the
19 contractor.”

20 **Section 2.** 5 G.C.A. §58103 is hereby *amended* to read as follows:

21 “**§58103. Definitions.** For purposes of this Chapter and unless otherwise specified,
22 the following words and phrases are defined to mean:

23 ‘Act’ means Chapter 58 of Title 5 of the Guam Code Annotated, known as ‘The
24 Education Facilities Construction Initiative Act of 2001.’

25 ‘Contractor’ shall mean the authorized entity which shall be the signatory on the
26 Contract and shall be fully responsible for carrying out the design, construction,

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

5 '*Contract*' shall mean the design, construction~~and~~, financing and maintenance
6 contract entered into by and between the Education Agency and the Contractor
7 following negotiations on the response to the Request for Proposal.

8 '*Education Agency*' shall mean the Guam Department of Education, the University
9 of Guam or the Guam Community College.

10 '*Education Facility*' shall mean any structure or structures, together with all
11 ancillary facilities, including parking facilities, utilities~~and~~, infrastructure and
12 equipment associated with providing the educational or related services required by
13 an Education Agency. 'Education Facility' may include an existing facility being
14 converted or rehabilitated by the Contractor.

15 '*Lease*' shall mean a ground or site lease of the Property from an Education Agency,
16 the Chamorro Land Trust, or other government land, as applicable, to the
17 Contractor.

18 '*Lease-Back*' shall mean the period of the term of the facilities lease between the
19 Contractor and the Education Agency over the term of which period the costs of the
20 design, construction, financing and maintenance of an Education Facility is are
21 amortized according to the terms agreed to between the government of Guam and
22 the Contractor. ~~The period of the Lease and the Lease-Back shall be identical.~~

23 '*Property*' shall mean any property on which an Education Facility is located."
24

1 **Section 3.** 5 G.C.A. §58104 is hereby *amended* to read as follows:

2 “**§58104. Authorization to Enter into Long-Term Leases.** For the purpose of
3 facilitating the financing of the design, construction and maintenance of an
4 Education Facility encompassed by this Act, the government of Guam or an
5 Education Agency, as the case may be, is authorized to lease, if required, to the
6 Contractor, subject to legislative approval, sufficient government of Guam real
7 property on which to construct, convert or rehabilitate an Education Facility;
8 provided, such property is in the inventory of the Education Agency. The location
9 of the Property may be at the site of an existing Education Facility under the control
10 of an Education Agency, which may be converted, rehabilitated or demolished and
11 rebuilt under the provisions of this Act.

12 Any lease of property pursuant to this Act will be for a period mutually agreed upon
13 ~~between the Education Agency and the Contractor as may be reasonably necessary~~
14 ~~to amortize over the Lease-Back period of the Contract,~~ the costs associated with the
15 financing, design, construction and maintenance of the Education Facility, and in no
16 event shall such period be less than twenty (20) years, or exceed thirty (30) years
17 from the date of commencement of the Lease-Back period.

18 ~~Upon completion of the construction of the Education Facility, the~~ The Contractor
19 shall lease back to the Education Agency the Property for the ~~period of the Lease-~~
20 ~~Back period. Upon the expiration of the Lease and the Lease-Back of the Property,~~
21 periods and the fulfillment of the terms and conditions of the Lease-Back by the
22 Education Agency, the Property and the Education Facility shall become the
23 property of the Education Agency, and the Contractor shall have no further right,
24 title or interest in the Property or the Education Facility.

25 The legislature has considered the Notice of Award issued by the Department
26 of Public Works on February 2, 2005 for the Construction of New Schools- Finance,

1 Design, Build and Leaseback in various for the Initial Facilities is hereby approved.
2 For the purposes of this Act only, The Chamorro Land Trust Commission is hereby
3 authorized to grant licenses to the Education Agency for terms of not to exceed
4 thirty (30) years.”

5
6 **Section 4.** 5 G.C.A. §58105 is hereby *amended* to read as follows:

7 **“§58105. Procurement.** ~~Upon identifying Property adequate for the~~
8 ~~placement of an Education Facility,~~ The government of Guam or an Education
9 Agency shall solicit Requests for Proposals (‘RFP’), through the Department of
10 Public Works, in compliance with the Guam Procurement Law, for the financing,
11 design and construction of the Education Facility, together with maintenance of the
12 Education Facility over the term of the Lease-Back, according to the needs of the
13 Education Agency and consistent with this Chapter.”

14 **Section 5.** 5 G.C.A. §58106 is hereby *amended* to read as follows:

15 **“§58106. Responsibilities of Contractor.** The Contract shall require that the
16 Contractor be responsible for all costs, expenses and fees of any kind or nature,
17 associated with the design, civil improvements, on-site infrastructure, construction,
18 permits and financing associated with the completion of an Education Facility.

19 The Contractor shall also be responsible for the capital maintenance and upkeep
20 of the schools during the ~~period of the Lease-Back~~ term. The costs of the design,
21 construction and financing for an Education Facility shall be paid in substantially
22 equal monthly periodic installments over the term of the Lease-Back period, which
23 shall be mutually determined by the Education Agency and the Contractor, but
24 which will not exceed thirty (30) years. The Lease and Lease-Back may provide
25 that if sufficient funds are not appropriated or otherwise available for the payment of
26 such installments, the Education Agency will have the obligation to vacate the
27 Education Facility, and the Contractor shall have the right of use and occupancy of

1 the Education Facility for the remainder of the term of the Lease unless new
2 mutually satisfactory terms are entered into. For this purpose, the Lease may
3 provide that its term shall be extended for a period not to exceed the shorter of ten
4 years beyond the original term of the Lease-Back or such period of time as is
5 necessary to repay in full any financing arranged pursuant to Section 58108.

6 The capital maintenance, repair and upkeep costs shall be paid on a periodic
7 basis as incurred by the Contractor on terms to be agreed to in the Contract for each
8 Education Facility.

9 **Section 6.** 5 G.C.A. §58107 is hereby *amended* to read as follows:

10 ~~“§58107. Assignments. To facilitate the purposes of this Chapter and to~~
11 ~~provide security for the bondholders, the Contractor may assign, without the need of~~
12 ~~the consent of the Education Agency, the Contract, the Lease and the Lease-Back to~~
13 ~~any trustee, underwriter or other appropriate party that has facilitated as may be~~
14 ~~necessary to facilitate the issuance of the tax-exempt bonds necessary or other~~
15 ~~financial instruments to provide the financing for the Education Facility.”~~

16 **Section 7.** 5 G.C.A. §58108 is hereby *amended* to read as follows:

17 **“§58108. Use of Tax-Exempt Bonds for Financing.** To minimize the financing
18 cost to the Education Agency, all financing utilized by the Contractor to fund the
19 design, construction and maintenance of an Education Facility shall be through tax-
20 exempt bonds or other financial instruments, if a mechanism to do so is available.
21 The purpose for this requirement is to assure the Education Agency pays the lowest
22 possible interest rate so that the cost of financing the design, construction and
23 maintenance of an Education Facility to the Education Agency, amortized through
24 the Lease-Back payments from the Education Agency to the Contractor, will be
25 lower than regular commercial rates.

1 The Lease and the Lease-Back may contain terms acceptable to the Education
2 Agency and the Contractor and that are necessary or appropriate to obtain tax-
3 exempt financing at a reasonable cost. Such additional terms may include, but are
4 not limited to, a pledge of federal grant revenues that are legally available for such
5 purpose. Any such pledge made hereunder shall be valid and binding from the time
6 the pledge is made. The revenues pledged and thereafter received by the
7 government of Guam or by any trustee, depository or custodian shall be deposited in
8 a separate account and shall be immediately subject to the lien of such pledge
9 without any physical delivery thereof or further act, and the lien of such pledge shall
10 be valid and binding against all parties having claims of any kind in tort, contract or
11 otherwise against the government of Guam or such trustee, depository or custodian,
12 irrespective of whether the parties have notice thereof. The instrument by which
13 such pledge is created need not be recorded.”

14 **Section 8.** 5 G.C.A. §58109 is hereby *amended* to read as follows:

15 **“§58109. Utilities and Routine Maintenance and Repair.** The Education
16 Agency shall be responsible for the connection and payment of all utilities,
17 including without limitation, power, water, sewer, telephone and cable, and all
18 routine interior maintenance and repair and exterior grounds-keeping and
19 landscaping, and upkeep of the Education Facility. Capital maintenance and repair
20 shall be performed by the Contractor as provided ~~in this Chapter~~ for in 5 G.C.A.
21 §58110. Routine maintenance, repair and upkeep shall be the responsibility of the
22 Education Agency and/or the Contractor, as may be provided by the terms of the
23 Contract.”

24 **Section 9.** . 5 G.C.A. §58110 is hereby *amended* to read as follows:

25 **“§58110. Contractor Responsible for Capital Maintenance Fund.** The
26 Contract with the Contractor, and the Lease-Back, shall provide that all capital
27 maintenance and repair of the Education Facility be performed by the Contractor as

1 a separate cost. The terms of by which, and the manner for establishing the amount
2 of payment, the Contractor is to perform such Capital Maintenance shall be
3 determined as a part of the bid process and shall be part of the conditions of the
4 Contract. The Contract shall provide sufficient initial funding, ~~a separate~~
5 ~~maintenance fund shall be maintained for this purpose with sufficient funds to pay~~
6 ~~the costs of capital maintenance and repair~~ for the first five (5) years after the
7 completion of the Education Facility. ~~The maintenance fund shall be used~~
8 ~~exclusively for the purpose of capital maintenance and repair, and shall be in an~~
9 ~~interest bearing account segregated from funds of the Education Agency.”~~

MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 101 (EC)

Introduced by:

L.F. Kasperbauer

**AN ACT TO *AMEND* CHAPTER 58 TO TITLE 5 OF THE
GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING
A MEANS FOR EDUCATION FACILITIES CONSTRUCTION.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. 5 G.C.A. §58102 is hereby *amended* to read as
follows:

“§58102. Legislative Findings and Policy. There is a critical shortage of public school facilities on Guam. Many existing facilities are antiquated and are not fit for the purpose of public education. The Department of Education (‘D.O.E.’) is in need of at least five (5) new public schools with all the related civil and structural facilities and amenities customarily associated with a first rate public education facility, and the University of Guam (‘U.O.G.’) and the Guam Community College (‘G.C.C.’) are also in need of additional education and related facilities.

The government of Guam lacks funding for the design and construction of new public school facilities. The government of Guam is also currently unable to seek financing, in its own name, through the bond market. In an effort to overcome these financing hurdles, and to provide for the educational needs of the students of Guam, *I Liheslaturan Guåhan* desires to authorize the government of Guam to enter into contracts for the financing, design, construction and long-term capital

maintenance of new public schools with private sector contractors who can provide long-term financing obtained through tax-exempt bonds.

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

The lease of the government property will be to the contractor, who will design and construct the public school facilities and provide funding for the design and construction through the use of tax-exempt bonds. ~~Upon completion of the construction, the~~ The facilities and land will be leased back to the government of Guam for a period not to exceed the initial ground lease to the contractor over which time the government of Guam will amortize, as lease payments to the contractor, the cost of the financing, design, construction and related expenses of the public school.

The contractor will also be responsible for the capital maintenance and repair of each of the public school facilities constructed under this Act, which costs shall be paid by the government of Guam as provided for under this Act. At the expiration of the lease-back period, the government of Guam real property and the public school facilities constructed on the government of Guam real property will revert to the government of Guam with no further obligations to the contractor.”

Section 2.5 G.C.A. §58103 is hereby *amended* to read as follows:

“§58103. Definitions. For purposes of this Chapter and unless otherwise specified, the following words and phrases are defined to mean:

'Act' means Chapter 58 of Title 5 of the Guam Code Annotated, known as 'The Education Facilities Construction Initiative Act of 2001.'

'Contractor' shall mean the authorized entity which shall be the signatory on the Contract and shall be fully responsible for carrying out the design, construction, financing and maintenance of the Education Facility. The Contractor may cooperate with another entity or entities in any manner the Contractor deems appropriate to provide for the financing, design ~~and,~~ construction and maintenance of the public school facilities envisioned by this Chapter.

'Contract' shall mean the design, construction ~~and,~~ financing and maintenance contract entered into by and between the Education Agency and the Contractor following negotiations on the response to the Request for Proposal.

'Education Agency' shall mean the Guam Department of Education, the University of Guam or the Guam Community College.

'Education Facility' shall mean any structure or structures, together with all ancillary facilities, including parking facilities, utilities ~~and,~~ infrastructure and equipment associated with providing the educational or related services required by an Education Agency. 'Education Facility' may include an existing facility being converted or rehabilitated by the Contractor.

'Lease' shall mean a ground or site lease of the Property from an Education Agency, the Chamorro Land Trust, or other government land, as applicable, to the Contractor.

'Lease-Back' shall mean the ~~period of the term of the~~ facilities lease between the Contractor and the Education Agency over the term of which ~~period~~ the costs of the design, construction, financing and maintenance of an Education Facility ~~is~~ are amortized according to the terms agreed to between the government of Guam and the Contractor. ~~The period of the Lease and the Lease-Back shall be identical.~~

'Property' shall mean any property on which an Education Facility is located.”

Section 3. 5 G.C.A. §58104 is hereby *amended* to read as follows:

“§58104. Authorization to Enter into Long-Term Leases. For the purpose of facilitating the financing of the design, construction and maintenance of an Education Facility encompassed by this Act, the government of Guam or an Education Agency, as the case may be, is authorized to lease, if required, to the Contractor, subject to legislative approval, sufficient government of Guam real property on which to construct, convert or rehabilitate an Education Facility; provided, such property is in the inventory of the Education Agency. The location of the Property may be at the site of an existing Education Facility under the control of an Education Agency, which may be converted, rehabilitated or demolished and rebuilt under the provisions of this Act.

Any lease of property pursuant to this Act will be for a period mutually agreed upon between the Education Agency and the Contractor as may be reasonably necessary to amortize over the Lease-Back period of the Contract, the costs associated with the financing, design, construction and maintenance of the Education Facility, and in no event shall such period

be less than twenty (20) years, or exceed thirty (30) years from the date of commencement of the Lease-Back period.

~~Upon completion of the construction of the Education Facility, the~~The Contractor shall lease back to the Education Agency the Property for the ~~period of the~~ Lease-Back period. Upon the expiration of the Lease and the Lease-Back ~~of the Property,~~periods and the fulfillment of the terms and conditions of the Lease-Back by the Education Agency, the Property and the Education Facility shall become the property of the Education Agency, and the Contractor shall have no further right, title or interest in the Property or the Education Facility.

The legislature has considered the Notice of Award issued by the Department of Public Works on February 2, 2005 for the Construction of New Schools- Finance, Design, Build and Leaseback in various locations (collectively the “Initial Facilities”). The lease of government of Guam real property for the Initial Facilities is hereby approved.”

Section 4. 5 G.C.A. §58105 is hereby *amended* to read as follows:

~~“§58105. Procurement. Upon identifying Property adequate for the placement of an Education Facility, The government of Guam or an~~ Education Agency shall solicit Requests for Proposals (“RFP”), through the Department of Public Works, in compliance with the Guam Procurement Law, for the financing, design and construction of the Education Facility, together with maintenance of the Education Facility over the term of the Lease-Back, according to the needs of the Education Agency and consistent with this Chapter.”

Section 5. . 5 G.C.A. §58106 is hereby *amended* to read as follows:

“§58106. Responsibilities of Contractor. The Contract shall require that the Contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the design, civil improvements, on-site infrastructure, construction, permits and financing associated with the completion of an Education Facility.

The Contractor shall also be responsible for the capital maintenance and upkeep of the schools during the ~~period of the Lease-Back~~ term. The costs of the design, construction and financing for an Education Facility shall be paid in ~~substantially equal monthly~~ periodic installments over the term of the Lease-Back period, which shall be mutually determined by the Education Agency and the Contractor, but which will not exceed thirty (30) years. The Lease and Lease-Back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the Education Agency will have the obligation to vacate the Education Facility, and the Contractor shall have the right of use and occupancy of the Education Facility for the remainder of the term of the Lease unless new mutually satisfactory terms are entered into. For this purpose, the Lease may provide that its term shall be extended for a period not to exceed the shorter of ten years beyond the original term of the Lease-Back or such period of time as is necessary to repay in full any financing arranged pursuant to Section 58108.

The capital maintenance, repair and upkeep costs shall be paid on a periodic basis as incurred by the Contractor on terms to be agreed to in the Contract for each Education Facility.

Section 6. 5 G.C.A. §58107 is hereby *amended* to read as follows:

“**§58107. Assignments.** To facilitate the purposes of this Chapter and to provide security for the bondholders, the Contractor may assign, without the need of the consent of the Education Agency, the Contract, the Lease and the Lease-Back to any trustee, underwriter or other appropriate party that has facilitated as may be necessary to facilitate the issuance of the tax-exempt bonds ~~necessary~~ or other financial instruments to provide the financing for the Education Facility.”

Section 7. 5 G.C.A. §58108 is hereby *amended* to read as follows:

“**§58108. Use of Tax-Exempt Bonds for Financing.** To minimize the financing cost to the Education Agency, all financing utilized by the Contractor to fund the design, construction and maintenance of an Education Facility shall be through tax-exempt bonds or other financial instruments, if a mechanism to do so is available. The purpose for this requirement is to assure the Education Agency pays the lowest possible interest rate so that the cost of financing the design, construction and maintenance of an Education Facility to the Education Agency, amortized through the Lease-Back payments from the Education Agency to the Contractor, will be lower than regular commercial rates.

The Lease and the Lease-Back may contain terms acceptable to the Education Agency and the Contractor and that are necessary or appropriate to obtain tax-exempt financing at a reasonable cost. Such additional terms may include, but are not limited to, a pledge of federal grant revenues that are legally available for such purpose. Any such pledge made hereunder shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the

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

Section 8. 5 G.C.A. §58109 is hereby *amended* to read as follows:

“§58109. Utilities and Routine Maintenance and Repair. The Education Agency shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone and cable, ~~and all routine interior maintenance and repair and exterior grounds keeping and landscaping, and upkeep of the Education Facility.~~ Capital maintenance and repair shall be performed by the Contractor as provided ~~in this Chapter~~ for in 5 G.C.A. §58110. Routine maintenance, repair and upkeep shall be the responsibility of the Education Agency and/or the Contractor, as may be provided by the terms of the Contract.”

Section 9. . 5 G.C.A. §58110 is hereby *amended* to read as follows:

“§58110. Contractor Responsible for Capital Maintenance Fund. The Contract with the Contractor, and the Lease-Back, shall provide that all capital maintenance and repair of the Education Facility be performed by the Contractor as a separate cost. The terms ~~of~~ by which, ~~and the manner for establishing the amount of payment,~~ the Contractor is to perform such Capital Maintenance shall be determined as a part of the bid process and shall be part of the conditions of the Contract. ~~The Contract shall provide sufficient initial funding, a separate maintenance~~

~~fund shall be maintained for this purpose with sufficient funds to pay the costs of capital maintenance and repair for the first five (5) years after the completion of the Education Facility. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair, and shall be in an interest bearing account segregated from funds of the Education Agency.”~~

**I MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
COMMITTEE ON GENERAL & OMNIBUS MATTERS
SPEAKER MARK FORBES, CHAIRMAN**

COMMITTEE REPORT

ON

BILL NO. 101 (EC)

**AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE GUAM
CODE ANNOTATED; RELATIVE TO ESTABLISHING A MEANS
FOR EDUCATION FACILITIES CONSTRUCTION.**

I. OVERVIEW

The Committee on General and Omnibus Matters held a public hearing at 2:00 p.m.. on April 27, 2005 in the Public Hearing Room, I Liheslaturan Guåhan. Public notice was given to all media (see facsimile confirmation page) on April 20 and April 25, 2005 and posted in the Government Meetings Section in the April 26, 2005 edition of the PDN.

Senators present at the public hearing were:

Speaker Mark Forbes, Chairman
Senator Lawrence F. Kasperbauer, Ph.D., Member
Senator Adolpho B. Palacios, Sr.

II. SUMMARY OF TESTIMONY

Individuals that appeared before the Committee to present oral and written testimony on the bill were as follows:

George Bamba, Office of the Governor, oral testimony in support of Bill No. 101

Carlos Camacho, Office of the Lt. Governor, oral testimony in support of Bill No. 101

David O'Brien, University of Guam, Vice President of Administration and Finance, oral and written testimony in support of Bill No. 101

Gerald Perez, Guam Economic Development and Commerce Authority, Administrator, written testimony in support of Bill No. 101

Thomas Elliott, Chamorro Land Trust Commission, Administrative Director, written testimony in support of Bill No. 101

Kia-marie Meno, student of St. Francis School, written testimony against Bill 101

III. FINDINGS AND RECOMMENDATION

The Committee on General and Omnibus Matters finds that the intent of Bill No. 101

Accordingly, the Committee on General and Omnibus Matters to which BILL No. 101 (EC) was referred does hereby submit its findings and recommendations to I Mina' Bente Ocho Na Liheslaturan Guåhan **TO DO PASS BILL No. 101 (EC)**, "An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction."

Summary of Testimony

Tom Elliott, Director, CLTC:

Mr. Elliott, Administrative Director of the Chamorro Land Trust Commission, testified that the Commission supports the bill. He asserted that the Commission has resolved to do all that is necessary on their part facilitate the intended purposes of the municipal lease program.

David O'Brien, Vice President, UOG:

Mr. O'Brien, Vice President of Administration and Finance of the University of Guam (along with Roy J. Chung, Leadership Day Student Counterpart), testifies on behalf of the University in favor of passing the bill. He notes that there are some amendments they would like to propose: (1) recognize that the long-term value of physical assets depends on adequate maintenance over their life time; (2) provide for financing, not only of facilities, utilities and infrastructure, but also capital equipment, facility conversions and renovations; and (3) allow flexibility in negotiating the terms of the contract as regards routine maintenance, repair and upkeep.

Kia-Maria Meno, Student:

Ms. Meno, a student at St. Francis Catholic School attending the public hearing for Island Leadership Day, testified against the bill. She has concerns about building new schools when the current conditions of the existing schools are deteriorating. She believes funds are currently unavailable and our government cannot afford to build new schools because funding for the necessary functions of a school is unavailable.

Gerald S.A. Perez, GEDCA Administrator:

Mr. Perez submitted written testimony in support of the Bill. He offered suggestions for amendments that were recommended by GEDCA's bond counsel.

George Bamba, Special Assistant to the Governor:

Mr. Bamba offered oral testimony in support of the Bill. He noted that the amendments proposed in the Bill were due largely in part to concerns raised by the Attorney General. He also suggested that a provision that allows for the 30-year Chamorro Land Trust Licenses for education facilities only be included

Dr. Jose Q. Cruz, Chairman GEPB:

Dr. Cruz submitted written testimony and a GEPB resolution in support of the Bill. The Resolution Number 2005-008 is "Relative to approving Governor Felix P. Camacho's proposal to finance, design, build, maintain and leaseback schools also known as the Governor's Municipal Lease Plan to build new schools." Is appended hereto Dr. Cruz's testimony.

Carlos Camacho, Assistant to the Lt. Governor:

Mr. Camacho testified in favor of the bill and urged its swift passage. He noted that the climate of rising interest rates increased the cost of the project.

Findings and Recommendations:

The Committee finds that there is an urgent need for new school facilities to accommodate the growing student population in the northern and central villages. The Municipal Lease Program enacted by Public Law 26-61 offers the Department of Education the opportunity to build new facilities without incurring long-term debt and ensures that the facilities will be maintained in proper condition. The Committee recognizes that the concurrence of the Attorney General is crucial to the success of the project and recognizes the importance of addressing the recommended changes to Public Law. The Committee agrees with the Mr. Bamba and GEDCA Administrator Perez on the amendments suggested in their testimony and have incorporated those suggestions in a Substitute Bill.

The Committee on Education therefore recommends that Substitute Bill No. 101 (EC) be reported out with the recommendation **To Do Pass**.

IV. PUBLIC HEARING AGENDA

AGENDA COMMITTEE ON GENERAL & OMNIBUS MATTERS, and EXECUTIVE COMMITTEE

Public Hearing
Wednesday, April 27, 2005, 2:00 p.m.

Governor's Appointment of Mr. Lawrence P. Perez to serve as the Director of the Department of Public Works.

Lai Priniponi. 58 (EC) - *Inentrodusi Nu As Mark Forbes*

Un Ákto Na U Ta Na'dañña' Nuebu Na Seksion 834.2. (Ocho Tres Kuattro Punto Dos) Para I '1GCA' Ni' Para U Ma Desikna I Chalan 'Route 4' Tåt Kumu Chalan Chamorro Ni' Para U Ta Onra I Manchamorro Espesiátmente Ayu Siha Na Taotåogues Ni' Manma Sâ'pet, Manmesngon Yan Manggai Ánimu Yan Espiritu Gi Durånten I Gera II.

(An Act To Add A New Section 834.2. To 1GCA To Designate Route 4 As "Chalan Chamorro" To Honor The Chamorro People Of Guam, Especially Those Who Suffered And Demonstrated Such Fortitude, Courage And Strength Of Spirit During The Second World War).

Bill No. 94 (EC) - *by L. A. Leon Guerrero*

An Act To Transfer The Barrigada Public Library Building From The Guam Public Library System To The Office Of The Mayor Of Barrigada For The Purpose Of A Barrigada Senior Citizen Center.

Bill No. 97 (EC) - *by Mark Forbes*

An Act To Repeal And Re-Enact Sections 10305. And 10306 Of Chapter 10, 5GCA To Require Each Government Department Or Agency To Post And Maintain An Internet Home Page Or Web-Site And Provide Information To The General Public, Otherwise To Be Known As The Transparency Act Of 2005.

Bill No. 101 (EC) - *by L. F. Kasperbauer*

An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction.

Bill No. 111 (EC) - *by J. A. Lujan*

An Act To Repeal Sections 2 And 3 Of Public Law 24-259, Relative To Leasing A Portion Of Lot No. 10142 New PTN Tract 100, Also Known As The Dededo Sports Complex, And To Authorize And Direct The Governor Of Guam To Lease A Portion Of Paseo De Susana For A Baseball/Softball Training Center

Bill No. 118 (EC) - *Mark Forbes*

An Act To Authorize Interest Only Payments And To Add A New Subsection 8137(h). To 4 GCA, All For The Purpose Of Permitting Employees Eligible To Retire From The Department Of Education And The Guam Memorial Hospital Authority To Retire In Fact.

**Committee on General & Omnibus Matters, and
Executive Committee**

Public Hearing
April 27, 2005
2:00 p.m.

I Liheslaturan Guahan, Hagåtña

Bill No. 101 (EC) - An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction.

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
David O'Brien	University of Guam	✓	✓	✓		735-2900
Roy Chung	University of Guam	✓	✓	✓		735-2900
GEORGE BRONDA	Gov's OFFICE	✓		✓		475-7891

**Committee on General & Omnibus Matters, and
Executive Committee**

Public Hearing
April 27, 2005
2:00 p.m.

I Liheslaturan Guahan, Hagåtña

Bill No. 101 (EC) - An Act To Amend Chapter 58 To Title 5 Of The Guam Code Annotated; Relative To Establishing A Means For Education Facilities Construction.

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
Carlos Camacho	Office of Lt. Gov	✓		✓		

IV. SIGN IN SHEET



I Mina' Bente Ocho Na Liheslaturan Guahan
The 28th Guam Legislature

155 Hesler Place
Hagatna, Guam 96910
Office (671) 472-3409 • Fax (671) 472-3510

Speaker Mark Forbes

WAIVER OF FISCAL NOTE

In accordance with §9105 Title 2 GCA, I hereby certify that prompt committee action on Bill 101 is necessary to the proper conduct of legislative business. Therefore, I am waiving requirement of a fiscal note on Bill 101.

A handwritten signature in black ink, appearing to read "Mark Forbes", is written over a horizontal line.

MARK FORBES
Speaker and Chairman,
Committee on General and Omnibus Matters

To All Media, Poll Report, April 20, 2005

Broadcast Report

Date/Time
Local ID
Local Name
Company Logo

4-20-05; 6:20PM
4723510
Guam Legislature

Document Size Letter-S



I Mina' Banta Ocho Na Liheseturan Guahan
The 25th Guam Legislature

105 Heater Place
Hagatna, Guam 96910
Office (871) 472-3408 • Fax: (871) 472-3640

Speaker Mark Forbes

April 20, 2005

MEMORANDUM

TO: All Media:
Pacfic Daily News; 677-3879 KJAM; 637-6670
Marlana Variety; 649-2807 K-372Power 96; 477-3882
K-Stereo; 477-6411 FM Radio 100; 472-1663
Chapman-On-Business 649-8883 Advertiser World Radio 565-2983
Harvest Family Radio 477-7136 KFRG 734-9936
KSH 477-6411

FROM: Speaker
Chairman, Committee on General & Oversight Matters, and
Executive Committee

SUBJECT: Notice of Public Hearing- April 27, 2005

Please be informed that I have scheduled a public hearing on Wednesday, April 27, 2005, 2:00 p.m., at the Public Hearing Room, Temporary Legislative Building, on the following appointments and bills.

Governor's Appointment of Mr. Lawrence P. Perez to serve as the Director of the Department of Public Works.

Let Principal 88 (EC) - *Amended No. 40 Mark Forbes*
On Also No U To *Proclamation No. 2005-03-03 (Onko Tim Kastiro Panto Daa) Pasa I*
"GCA" 37 Pasa U Ma *Decision 1 Chalan Banta 4 The Kasa Chalan Chamorro Ni Pasa U To*
Case 1 *Manhacorro Espantamento Ayo Sika Na Dantlogas Ni Manasa 30yrs, Manhacorro*
Yan *Mangal Ailasa Yan Baprita Gi Dantlogas I Case II.*

Bill No. 94 (EC) - *by L. A. Lora Guerrero*
An Act To Transfer The *Sanjuaquin Public Library Building From The Guam Public Library System To The*
Office Of The Mayor Of *Sanjuaquin For The Purpose Of A Sanjuaquin Senior Citizen Center.*

Bill No. 97 (EC) - *by Mark Forbes*
An Act To Report And *Re-Enact Section 1806, And 10206 Of Chapter 10, SOCA To Require Each*
Government Department Or *Agency To Post And Maintain An Internet Home Page Or Web-Site And*
Provide Information To *The General Public, Otherwise To Be Known As The Transparency Act Of 2005.*

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	636	pdn	4-20-05; 5:18PM	1'09"	2 / 2	EC	BC	CP 14.4
2	636	marlana variety	5:19PM	1'19"	2 / 2	EC	BC	CP 14.4
3	636	kuam	5:21PM	32'27"	- / 2	EC	BC	83A3 14.4
4	636	hit radio	5:54PM	1'02"	2 / 2	EC	BC	CP 26.4
5	636	kuam	5:59PM	56"	2 / 2	EC	RE	CP 14.4
6	636	power ninety eight	6:16PM	0"	- / 2	EC	BC	056B
7	636	guam business	6:17PM	0"	- / 2	EC	BC	056B

To All Media, Poll Report, April 25, 2005

Broadcast Report

Date/Time
Local ID
Local Name
Company Logo

4-25-05; 10:22AM
4723510
Guam Legislature

Document Size Letter-S



I Mina' Bente Ocho Na Lihesituran Guahan
The 25th Guam Legislature

155 Healer Place
Hagatna, Guam 96910
Office (671) 472-3408 • Fax (671) 472-3510

Speaker Mark Forbes

Facsimile

Date: April 25, 2005 Time:
To: ALL MEDIA:
Fax No.: Pacific Daily News; 477-3879 KLIAM; 671-6878
Marianas Variety; 648-2887 K-57Power 98; 477-3882
K-Shores; 477-6411 Hit Radio 100; 472-7663
Olapuec; 648-3883 Adventure World Radio; 262-3883
Parson Family Radio; 477-7136 KPRG; 734-2898
KSHI; 477-6411 Kimo Live; 477-7845
From: The Office of Speaker Mark Forbes
Re: Public Hearing Notice- April 27, 2005
Note: Attached is a public hearing notice for April 27, 2005 and for your
personal.
Should there be a problem with the transmittal of this fax please contact
our office at 472-3408.
Sender:
No. of Pages:

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	770	pdn	4-25-05: 9:51AM	1'43"	3/ 3	EC	BC	CP 14.4
2	770	marianes variety	9:53AM	2'55"	3/ 3	EC	BC	CP 14.4
3	770	kuam	9:56AM	2'29"	3/ 3	EC	BC	CP 12.0
4	770	hit radio	9:59AM	1'22"	3/ 3	EC	BC	CP 28.8
5	770	power ninety eight	10:18AM	0"	-/ 3		BC	056B
6	770	guam business	10:19AM	0"	-/ 3		BC	056B
7	770	k stereo/kish	10:19AM	0"	-/ 3		BC	056B

guampdn.com Pacific Daily News, Tuesday, April 26, 2005

LOCAL

GOVERNMENT MEETINGS

▲ Continued from Page 6

Commercial Complex, Route 10, Mangilao. Call Jane Diego, 735-7408/11.

▲ **GUAM MENTAL HEALTH PLANNING COUNCIL:** Noon, April 26, Guam Identified Families' Terrific Strength, or GIFTS, office (left side), Mangilao mayor's office. Call 482-2560.

▲ **SOUTHERN SOIL & WATER CONSERVATION DISTRICT:** 7 p.m. April 26, University of Guam Experiment Station, Inarajan. Call 735-2080.

April 27

▲ **ALCOHOL BEVERAGE CONTROL BOARD:** 5 p.m. April 27, Compliance Branch Office, second floor, Pacific News Building, Archbishop Flores St., Hagåtña. Call 475-1802.

▲ **CHAMORRO LAND TRUST COMMISSION:** Rescheduled meeting 4 p.m. April 27, Department of Land Management conference room, first floor, Anigua. Call 475-4251.

▲ **COMMITTEE ON GENERAL AND OMNIBUS MATTERS AND EXECUTIVE COMMITTEE:** Public hearing 2 p.m. April 27, Legislature's public hearing room, Hagåtña. Governor's appointment of Lawrence P. Perez to serve as director of the Department of Public Works. Bill 58, designating Route 4 as Chalan Chamorro honoring the Chamorro people of Guam, especially those who suffered and demonstrated such fortitude, courage and strength of spirit during World War II; Bill 94, transferring the Barrigada Public Library building from the Guam Public Library System to the Barrigada mayor's office for the purpose of a Barrigada Senior Citizens Center; Bill 97, requiring each government department or agency to post and maintain an Internet home page or Web site and provide information to the general public — the Transparency Act of 2005; Bill 101, establishing a means for education facilities construction; Bill 111, leasing a portion in Dededo, also known as the Dededo Sports Complex, and to authorize and direct the governor to lease a portion of Paseo de Susana for a baseball/softball training center; Bill 118, permitting employees eligible to retire from the Department of Education and Guam Memorial Hospital Authority to retire in fact.



UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN

Administration and Finance
Office of the Vice President

April 27, 2005

The Honorable Mark Forbes, Speaker
The Honorable Lawrence F. Kasperbauer, Chairman on Education & Community
Development
I Mina'Bente Ocho Na Liheslaturan Guáhan
155 Hesler Place
Hagátña, Guam 96910

**Re: An Act to Amend Chapter 58 to Title 5 of the Guam Code Annotated;
Relative to Establishing a Means for Education Facilities Construction
(Bill No. 101)**

Dear Speaker Forbes and Senator Kasperbauer:

The University has reviewed the proposed Bill 101 and supports its passage.

We believe that the changes better align existing law with the University's capital facility needs and provide additional flexibility in financing capital improvements. The University has seen that the allocation of locally appropriated resources, as they become more scarce, too often shortchanges preventative maintenance and renovation of the buildings. Also, locally appropriated resources are often unavailable to meet the need for renovation and conversions, as technology and academic programs change, and the need for high-priced equipment with a multi-year useful life, such as large air conditioning systems.

To address these issues, the amendments proposed in this bill:

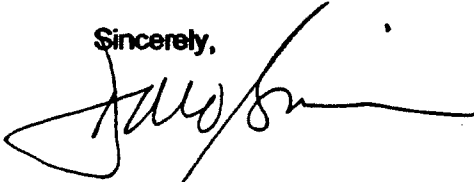
- Recognize the long-term value of physical assets depends on adequate maintenance over their life;
- Provide for financing, not only of facilities, utilities and infrastructure, but also capital equipment, facility conversions and renovations; and
- Allow flexibility in negotiating the terms of the contract as regards routine maintenance, repair and upkeep.

Speaker Forbes and Senator Kasperbauer, Bill 101
April 27, 2005
Page 2

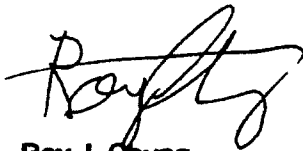
It is worth noting that the amended language of §58106, which allows for the Contractor's right of use and occupancy of the Education Facility should there be a default in the financing repayment, is not feasible at the University. Having a contractor occupying and using one of the University buildings in the middle of campus is not appropriate and is potentially disruptive to the academic learning environment. However, the University notes that the amended language is conditional and does not mandate the inclusion of such terms in any contract written under this law.

Thank you for this opportunity to testify. I can be reached at 735-2900 to answer any questions or concerns.

Sincerely,



David O'Brien
Vice-President, Administration and Finance



Roy J. Chung
Vice President, Administration and Finance (Student Leadership Counterpart)

Copy: President

Chamorro Land Trust Commission

P.O. Box 2950 Hagåtña, Guam 96932

Phone: 475-4251 Fax: 477-8082

**Testimony of
Tom Elliott
Administrative Director
Chamorro Land Trust Commission (CLTC)
April 27, 2005**

Bill 101 is intended to address the shortage of schools on Guam and proposes a solution that would allow financing the design, construction and maintenance of new facilities and an existing school.

Section 3 of the proposed Bill 101 authorizes long-term leases between the Government of Guam or an Education Agency and the Contractor. As you know, the areas proposed for the four facilities are within the Chamorro Land Trust inventory. The Commission has resolved to do all that is necessary on their part, to facilitate the intended purpose of the municipal lease initiative. The Commission stands by that resolve and is prepared to assist with this initiative when called upon by this legislature.



Felix P. Camacho
Governor of Guam

Kaleo S. Moylan
Lieutenant Governor of Guam

Thomas A. Elliott
Administrative Director

Commission Members

Delfin R. Damlan, Jr.
Chairman

Annie R. Perez
Commissioner

David J. Matanane
Commissioner

Oscar A. Calvo
Commissioner

Aturidad Inadilanton



Ikunumihan Guahan

Governor
Felix P. Camacho

Lieutenant Governor
Kaleo S. Moylan

BILL NO. 101 (EC)
AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE GUAM CODE ANNOTATED
RELATIVE TO ESTABLISHING A MEANS FOR EDUCATION FACILITIES
CONSTRUCTION

PUBLIC HEARING TESTIMONY OF GERALD S.A. PEREZ, ADMINISTRATOR
GUAM ECONOMIC DEVELOPMENT AND COMMERCE AUTHORITY (GEDCA)
APRIL 27, 2005

Good Afternoon Speaker Forbes, Senator Kasperbauer, and members of the Committee on General & Omnibus Matters, Ladies and Gentlemen. A date and time conflict with my GEDCA board meeting prevents me from personally attending this scheduled hearing. However, I am submitting herewith testimony on Bill No. 101 (EC) for the committee's consideration.

The lease financing vehicle is a tool used by many jurisdictions to build vitally needed facilities when traditional financing options are no longer available. This is the same financing vehicle being employed by this Administration to build four new schools and to rehabilitate an existing one. Tax-exempt leases are structured as a series of one-year renewable obligations that are subject to the government's ability to appropriate funds for the continuation of lease payments. Payments constitute a current expense of the government and, in the event that sufficient funds are not available for payment, the agreement is terminated and the facility is delivered to the lessor. Absent this early termination, however, the facility and the property revert back to the government of Guam upon conclusion of the lease term.

Municipal lease agreements include a non-appropriation clause which enables the lessee to terminate the lease agreement at the end of the current appropriation period without further obligation or penalty.

Guam USA ~ The Ultimate Destination

The following technical amendments are recommended by bond counsel to enhance the bill's intent and make it reflective of other lease legislation in other jurisdictions:

- Section 58103 Definition of 'Contractor', last sentence: ...The Contractor may cooperate with another entity or entities in any manner the Contractor deems appropriate to provide for the financing, design and, construction **and maintenance** of the public school facilities envisioned by this Chapter.
- Section 58103 Definitions: 'Contract' shall mean the design, construction and, financing **and maintenance** contract...
- Section 58103 Definitions: 'Education Facility' shall mean any structure or structures, together with all ancillary facilities, including parking facilities, utilities and, infrastructure and equipment associated with providing the services required of the government. **'Education Facility' may include an existing facility being converted or rehabilitated by the Contractor.**
 - *This will allow for the rehabilitation and maintenance of an existing building, with all costs covered by the Contractor.*
- Section 58103 Definitions: 'Lease' shall mean a **ground or site lease of the Property** from an Education Agency, **the Chamorro Land Trust, or other government land, as applicable,** to the Contractor.
 - *This will provide better flexibility in contract negotiations for current and future negotiations.*

- Section 58104, end paragraph 2, line 22: ...in no event shall such period be less than twenty (20) years, or exceed thirty (30) years from the date of commencement of the Lease-Back period.

- *This will clarify the intent of the government.*

- Section 58106 Responsibilities of the Contractor, paragraph 2, line 20: “The costs of the design, construction and financing for a Public Facility shall be paid in ~~substantially equal monthly~~ periodic installments over the term of the Lease-Back period,...

- *This will provide better flexibility in contract negotiations.*

- Section 58108, Use of Tax Exempt Bonds for Financing should be amended to add the following at the end of the existing section: The Lease and Lease-Back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the Education Agency will have the obligation to vacate the Education Facility, and the Contractor shall have the right of use and occupancy of the Education Facility for the remainder of the term of the Lease unless new mutually satisfactory terms are entered into. For this purpose, the Lease may provide that its term shall be extended for a period not to exceed the shorter of ten years beyond the original term of the Lease-Back or such period of time as is necessary to repay in full any financing arranged pursuant to Section 58108.

- *This will provide better flexibility in contract negotiations. The lease provision is standard language which will allow the Contractor time to find a new tenant and regain its investment should the government decide to vacate the building.*

- Section 58109, Utilities and Routine Maintenance and Repair: The government shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone and cable., ~~and all routine interior maintenance and repair and exterior grounds keeping and landscaping, and upkeep of the Public Facility.~~ Capital maintenance and repair shall be performed by the Contractor as provided for in this Chapter. Routine maintenance, repair and upkeep shall be the responsibility of the government or the Contractor, as provided by the Lease-Back.”

- *The contractor should be responsible for the routine maintenance and repairs of the facility as a means of protecting the investment made into the project.*

- §58110. Contractor Responsible for Capital Maintenance Fund. The Contract with the Contractor, and the Lease-Back, shall provide that all capital maintenance and repair of the Education Facility be performed by the Contractor as a separate cost. ~~The terms of by which, and the manner for establishing the amount of payment, the Contractor is to perform such Capital Maintenance shall be determined as a part of the bid process and shall be part of the conditions of the Contract.~~ The Contract shall provide sufficient initial funding, ~~a separate maintenance fund shall be maintained for this purpose with sufficient funds to pay the costs of capital maintenance and repair for the first five (5) years after the completion of the Education Facility. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair, and shall be in an interest bearing account segregated from funds of the Education Agency.”~~

- *It has been our understanding that the portion of the lease payment designated for capital reserves, insurance and maintenance will be held by the Trustee and used for these purposes. These funds will not be co-mingled with government accounts as they are bonded for these specific reasons.*

Thank you for the opportunity to comment on the financial aspect of the bill.

A handwritten signature in black ink, appearing to read "GSA" followed by a stylized flourish.

Gerald S.A. Perez
Administrator

COPY

Honorable Mark Forbes
Chairman- Committee on General & Omnibus Matters
324 W. Soledad Ave.
Hagatna, Guam 96910

April 27, 2005

Re: Testimony against Bill 101

Dear Mr. Speaker

My name is Kia-maria Meno. I currently attend St. Francis Catholic School, and I am in the eighth grade. Today I am here for island leadership day I just read Bill No.101, and I think, that having at least five(5) new schools is not such a good decision for our island at this time. The reason I think this is because right now our island doesn't have the funds to maintain its current schools, how could we afford to build new ones.

Additionally, if we have more schools we need more things. And what will happen to those schools, six (6) years from now? I know what will happen. We are going to be paying for repairs, teachers salary, and all the other necessary things a school needs to function. Speaking of teachers we will need to hire more teachers, because right now I know that our public schools are lacking teachers.

And that's all I have to say about Bill No.101, so thank you for your time and may God bless you and your families!!!

Sincerely,

Kia Meno

Kia-maria Meno

Student St. Francis catholic school



GUAM EDUCATION POLICY BOARD

P.O. Box DE

Hagåtña, Guam 96932

Telephone: (671) 475-0415 Fax: (671) 475-0597



JOSE Q. CRUZ, Ed. D
Chairman

April 28, 2005

IGNACIO TAINATONGO
Vice-Chairman

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Ronald Ayuyu
Kattan District

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GFT Representative

**EXECUTIVE
SECRETARY:**

Juan P. Flores
Superintendent

The Honorable Speaker Mark Forbes
Chairman, Committee on General and Omnibus Matters
Twenty-Eighth Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910

Dear Speaker Forbes:

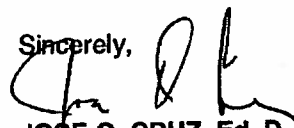
The Guam Education Policy Board in its Resolution 2005-008 endorsed the Governor's Proposed Plan for the construction of five new schools as iterated in Section 58104, Line 24 and following in Bill 101. By extension we fully support Bill 101, An Act relative to establishing a means for education facilities construction.

The concern that we have is the interchange of the word Government of Guam and Education Agency which permeates the language of the Bill. If the bill is basically to attest to and make whole the contract proposal of the Governor's Municipal Lease Agreement, then we will construe the language of the contract as very similar, if not the same, to the lease plan. In our Resolution, we did raise the issue of J. M. Guerrero School, which is owned by the Department of Education or Government of Guam as needing special or ancillary agreement. We do note Section 5, line 22 and following about default. A breathing room is provided which is very challenging to say the least. We will trust I Lehislatura's assistance and that of the Governor in not letting us get into a default situation.

We continue to work with the Governor's Office especially Ms. Taitano, former Senator George Bamba and former Senator Jim Underwood in letting the lease agreement become a reality.

Bill 101 is a major help in deterring any obstacle to accomplishing the goal of building needed schools for our children. For this we are most thankful of Senator Dr. Kasperbauer in his leadership altogether. We also thank your leadership and those of the Committee in pushing forth the approval of Bill 101.

Sincerely,


JOSE Q. CRUZ, Ed. D.
Chairman

Attachments

Cc: Honorable Governor Felix Camacho
Members, Committee on General and Omnibus Matters
GEPB Members
Superintendent of Education
File

Office of the Speaker
MARK FORBES

Date: 5/3/05
Time: 11:55 am
Rec'd by: NT
Print Name: _____

**GUAM EDUCATION POLICY BOARD
RESOLUTION NUMBER 2005-008**



Maple 18
4/20
R. Sanchez

Introduced by: **Guam Education Policy Board Members**

Relative to approving Governor Felix P. Camacho's proposal to finance, design, build, maintain and leaseback schools also known as the Governor's Municipal Lease Plan to build new schools.

WHEREAS, Public Law 26-26 defines the policy making authority of the Guam Education Policy Board; and

WHEREAS, in December 2004, the Board was sworn in and began the process of assessing the needs of the Department of Education; and

WHEREAS, the Organic Act of Guam through P.L. 26-26 empowers the Guam Education Policy Board to be responsible for providing an adequate educational system on Guam, with fundamental significance on students' and employees' health and safety;

WHEREAS, the Guam Department of Education is in urgent need of new public schools due to large student enrollment and overcrowded conditions in Guam's central and northern schools as a result of population growth that is anticipated to continue at a rate of 1.6045% within the next five (5) years, particularly in the central and northern part of the island; and

WHEREAS, twenty-seven (27) of the thirty-seven (37) public school facilities on Guam are over thirty (30) years old; and

WHEREAS, the last elementary public school built (Machananao Elementary School) was in 1999, the last middle school (F. B. Leon Guerrero Middle School) was built in 1974, and the last high school (Southern High School) was built in 1997; and

WHEREAS, Governor Felix P. Camacho has proposed to finance, design, build, maintain, and leaseback the following schools:

Elementary Schools:

- Liguán Terrace, Municipality of Dededo (Tract 100, Parcel 1A; Tract 100, block No. 4, Unit-2-A)
- Adacao, Municipality of Mangilao (Lot 5402-R5-NEW-R5)

Middle School:

- As'Tumbo, Municipality of Dededo (Lot 10125-11-2)

High School:

- Ukudo, Municipality of Dededo (Lot 10120-R20)

Conversion of Juan M. Guerrero Elementary School to a Middle School:

- Harmon Loop Road, Municipality of Dededo (Lot 10126)

GUAM EDUCATION POLICY BOARD**RESOLUTION NUMBER 2005-008**

Page 2 of 2



WHEREAS, the conditions for the Municipal Lease Plan set by Governor Camacho were presented to the Guam Education Policy Board on March 25, 2005 at the Governor's Conference Room; and

WHEREAS, the Board has requested that the department shall be afforded appropriate involvement in the Municipal Lease Plan for new schools to comply with Public Law 20-147 (Guam's Comprehensive Development Plan which consists of Guam DOE's 10-Year Capital Facilities Plan) and Public Law 27-43 (Student Enrollment Capacity Standards for New Schools); and


WHEREAS, in a letter dated February 16, 2005, from Attorney General Douglas B. Moylan to the Governor of Guam, the Attorney General advised the Governor of the need for a policy declaration by the Guam Education Policy Board supporting the Municipal Lease Agreement to build the new schools; and

WHEREAS, in the same letter by the Attorney General, he recommended that "*no conversion be done on Harmon Loop Elementary School until money has actually been paid to the contractor and that money is directly paid into the improvements to the government's school, so that in the event of a default that the Contractor would have no claim to Harmon Loop School...*"; and

WHEREAS, the Guam Education Policy Board supports the above provisions by the Attorney General; and now therefore be it

RESOLVED, that the Guam Education Policy Board hereby approves Governor Felix P. Camacho's proposed Municipal Lease Plan; and be it further

RESOLVED, THAT THE GUAM EDUCATION POLICY BOARD DULY AND REGULARLY ADOPTED RESOLUTION NUMBER 2005-008 ON THIS 30th DAY OF MARCH 2005.


JUAN P. FLORES
Executive Secretary


JOSE Q. CRUZ, Ed.D.
Chairperson

MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 101 (cc)

Introduced by:

L.F. Kasperbauer *LAK*
Mark Forbes *MF*

**AN ACT TO AMEND CHAPTER 58 TO TITLE 5 OF THE
GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING
A MEANS FOR EDUCATION FACILITIES CONSTRUCTION.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. 5 G.C.A. §58102 is hereby *amended* to read as follows:

“§58102. Legislative Findings and Policy. There is a critical shortage of public school facilities on Guam. Many existing facilities are antiquated and are not fit for the purpose of public education. The Department of Education (‘D.O.E.’) is in need of at least five (5) new public schools with all the related civil and structural facilities and amenities customarily associated with a first rate public education facility, and the University of Guam (‘U.O.G.’) and the Guam Community College (‘G.C.C.’) are also in need of additional education and related facilities.

The government of Guam lacks funding for the design and construction of new public school facilities. The government of Guam is also currently unable to seek financing, in its own name, through the bond market. In an effort to overcome these financing hurdles, and to provide for the educational needs of the students of Guam, *I Liheslaturan Guåhan* desires to authorize the government of Guam to enter into contracts for the financing, design, construction and long-term capital maintenance of new public schools with private sector contractors who can provide long-term financing obtained through tax-exempt bonds.

1 To facilitate the financing, design, construction and maintenance of public
2 school facilities envisioned by this Act, the government of Guam will be authorized
3 to lease for up to thirty (30) years government of Guam property on which the public
4 school facilities will be constructed.

5 The lease of the government property will be to the contractor, who will
6 design and construct the public school facilities and provide funding for the design
7 and construction through the use of tax-exempt bonds. ~~Upon completion of the~~
8 ~~construction, the~~ The facilities and land will be leased back to the government of
9 Guam for a period not to exceed the initial ground lease to the contractor over which
10 time the government of Guam will amortize, as lease payments to the contractor, the
11 cost of the financing, design, construction and related expenses of the public school.

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

18 **Section 2.** 5 G.C.A. §58103 is hereby *amended* to read as follows:

19 “**§58103. Definitions.** For purposes of this Chapter and unless otherwise specified,
20 the following words and phrases are defined to mean:

21 ‘Act’ means Chapter 58 of Title 5 of the Guam Code Annotated, known as ‘The
22 Education Facilities Construction Initiative Act of 2001.’

23 ‘Contractor’ shall mean the authorized entity which shall be the signatory on the
24 Contract and shall be fully responsible for carrying out the design, construction,
25 financing and maintenance of the Education Facility. The Contractor may cooperate
26 with another entity or entities in any manner the Contractor deems appropriate to

1 provide for the financing, design ~~and,~~ construction and maintenance of the public
2 school facilities envisioned by this Chapter.

3 '*Contract*' shall mean the design, construction ~~and,~~ financing and maintenance
4 contract entered into by and between the Education Agency and the Contractor
5 following negotiations on the response to the Request for Proposal.

6 '*Education Agency*' shall mean the Guam Department of Education, the University
7 of Guam or the Guam Community College.

8 '*Education Facility*' shall mean any structure or structures, together with all
9 ancillary facilities, including parking facilities, utilities ~~and,~~ infrastructure and
10 equipment associated with providing the educational or related services required by
11 an Education Agency. 'Education Facility' may include an existing facility being
12 converted or rehabilitated by the Contractor.

13 '*Lease*' shall mean a ground or site lease of the Property from an Education Agency,
14 the Chamorro Land Trust, or other government land, as applicable, to the
15 Contractor.

16 '*Lease-Back*' shall mean the ~~period of the term of the~~ facilities lease between the
17 Contractor and the Education Agency over the term of which ~~period~~ the costs of the
18 design, construction, financing and maintenance of an Education Facility is are
19 amortized according to the terms agreed to between the government of Guam and
20 the Contractor. ~~The period of the Lease and the Lease-Back shall be identical.~~

21 '*Property*' shall mean any property on which an Education Facility is located."
22

23 **Section 3.** 5 G.C.A. §58104 is hereby *amended* to read as follows:

1 “§58104. Authorization to Enter into Long-Term Leases. For the purpose of
2 facilitating the financing of the design, construction and maintenance of an
3 Education Facility encompassed by this Act, the government of Guam or an
4 Education Agency, as the case may be, is authorized to lease, if required, to the
5 Contractor, subject to legislative approval, sufficient government of Guam real
6 property on which to construct, convert or rehabilitate an Education Facility;
7 provided, such property is in the inventory of the Education Agency. The location
8 of the Property may be at the site of an existing Education Facility under the control
9 of an Education Agency, which may be converted, rehabilitated or demolished and
10 rebuilt under the provisions of this Act.

11 Any lease of property pursuant to this Act will be for a period mutually agreed upon
12 between the Education Agency and the Contractor as may be reasonably necessary
13 to amortize over the Lease-Back period of the Contract, the costs associated with the
14 financing, design, construction and maintenance of the Education Facility, and in no
15 event shall such period be less than twenty (20) years, or exceed thirty (30) years
16 from the date of commencement of the Lease-Back period.

17 ~~Upon completion of the construction of the Education Facility, the~~The Contractor
18 shall lease back to the Education Agency the Property for the ~~period of the Lease-~~
19 Back period. Upon the expiration of the Lease and the Lease-Back ~~of the~~
20 Property, periods and the fulfillment of the terms and conditions of the Lease-Back
21 by the Education Agency, the Property and the Education Facility shall become the
22 property of the Education Agency, and the Contractor shall have no further right,
23 title or interest in the Property or the Education Facility.

24 The legislature has considered the Notice of Award issued by the Department
25 of Public Works on February 2, 2005 for the Construction of New Schools- Finance,
26 Design, Build and Leaseback in various locations (collectively the “Initial

1 Facilities”). The lease of government of Guam real property for the Initial Facilities
2 is hereby approved.”
3

4 **Section 4.** 5 G.C.A. §58105 is hereby *amended* to read as follows:

5 **“§58105. Procurement.** ~~Upon identifying Property adequate for the~~
6 ~~placement of an Education Facility,~~ The government of Guam or an Education
7 Agency shall solicit Requests for Proposals (‘RFP’), through the Department of
8 Public Works, in compliance with the Guam Procurement Law, for the financing,
9 design and construction of the Education Facility, together with maintenance of the
10 Education Facility over the term of the Lease-Back, according to the needs of the
11 Education Agency and consistent with this Chapter.”

12 **Section 5.** . 5 G.C.A. §58106 is hereby *amended* to read as follows:

13 **“§58106. Responsibilities of Contractor.** The Contract shall require that the
14 Contractor be responsible for all costs, expenses and fees of any kind or nature,
15 associated with the design, civil improvements, on-site infrastructure, construction,
16 permits and financing associated with the completion of an Education Facility.

17 The Contractor shall also be responsible for the capital maintenance and upkeep
18 of the schools during the ~~period of the Lease-Back~~ term. The costs of the design,
19 construction and financing for an Education Facility shall be paid in ~~substantially~~
20 ~~equal monthly~~periodic installments over the term of the Lease-Back period, which
21 shall be mutually determined by the Education Agency and the Contractor, but
22 which will not exceed thirty (30) years. The Lease and Lease-Back may provide
23 that if sufficient funds are not appropriated or otherwise available for the payment of
24 such installments, the Education Agency will have the obligation to vacate the
25 Education Facility, and the Contractor shall have the right of use and occupancy of
26 the Education Facility for the remainder of the term of the Lease unless new
27 mutually satisfactory terms are entered into. For this purpose, the Lease may

1 provide that its term shall be extended for a period not to exceed the shorter of ten
2 years beyond the original term of the Lease-Back or such period of time as is
3 necessary to repay in full any financing arranged pursuant to Section 58108.

4 The capital maintenance, repair and upkeep costs shall be paid on a periodic
5 basis as incurred by the Contractor on terms to be agreed to in the Contract for each
6 Education Facility.

7 **Section 6.** 5 G.C.A. §58107 is hereby *amended* to read as follows:

8 “**§58107. Assignments.** To facilitate the purposes of this Chapter and to
9 provide security for the bondholders, the Contractor may assign, without the need of
10 the consent of the Education Agency, the Contract, the Lease and the Lease-Back to
11 any trustee, underwriter or other appropriate party that has facilitated as may be
12 necessary to facilitate the issuance of the tax-exempt bonds ~~necessary or other~~
13 financial instruments to provide the financing for the Education Facility.”

14 **Section 7.** 5 G.C.A. §58108 is hereby *amended* to read as follows:

15 “**§58108. Use of Tax-Exempt Bonds for Financing.** To minimize the financing
16 cost to the Education Agency, all financing utilized by the Contractor to fund the
17 design, construction and maintenance of an Education Facility shall be through tax-
18 exempt bonds or other financial instruments, if a mechanism to do so is available.
19 The purpose for this requirement is to assure the Education Agency pays the lowest
20 possible interest rate so that the cost of financing the design, construction and
21 maintenance of an Education Facility to the Education Agency, amortized through
22 the Lease-Back payments from the Education Agency to the Contractor, will be
23 lower than regular commercial rates.

24 The Lease and the Lease-Back may contain terms acceptable to the Education
25 Agency and the Contractor and that are necessary or appropriate to obtain tax-
26 exempt financing at a reasonable cost. Such additional terms may include, but are

1 not limited to, a pledge of federal grant revenues that are legally available for such
2 purpose. Any such pledge made hereunder shall be valid and binding from the time
3 the pledge is made. The revenues pledged and thereafter received by the
4 government of Guam or by any trustee, depository or custodian shall be deposited in
5 a separate account and shall be immediately subject to the lien of such pledge
6 without any physical delivery thereof or further act, and the lien of such pledge shall
7 be valid and binding against all parties having claims of any kind in tort, contract or
8 otherwise against the government of Guam or such trustee, depository or custodian,
9 irrespective of whether the parties have notice thereof. The instrument by which
10 such pledge is created need not be recorded.”

11 **Section 8.** 5 G.C.A. §58109 is hereby *amended* to read as follows:

12 **“§58109. Utilities and Routine Maintenance and Repair.** The Education
13 Agency shall be responsible for the connection and payment of all utilities,
14 including without limitation, power, water, sewer, telephone and cable, ~~and all~~
15 ~~routine interior maintenance and repair and exterior grounds keeping and~~
16 ~~landscaping, and upkeep of the Education Facility.~~ Capital maintenance and repair
17 shall be performed by the Contractor as provided ~~in this Chapter~~ for in 5 G.C.A.
18 §58110. Routine maintenance, repair and upkeep shall be the responsibility of the
19 Education Agency and/or the Contractor, as may be provided by the terms of the
20 Contract.”

21 **Section 9.** . 5 G.C.A. §58110 is hereby *amended* to read as follows:

22 **“§58110. Contractor Responsible for Capital Maintenance Fund.** The
23 Contract with the Contractor, and the Lease-Back, shall provide that all capital
24 maintenance and repair of the Education Facility be performed by the Contractor as
25 a separate cost. The terms of by which, and the manner for establishing the amount
26 of payment, the Contractor is to perform such Capital Maintenance shall be
27 determined as a part of the bid process and shall be part of the conditions of the

1 Contract. ~~The Contract shall provide sufficient initial funding, a separate~~
2 ~~maintenance fund shall be maintained for this purpose with sufficient funds to pay~~
3 ~~the costs of capital maintenance and repair for the first five (5) years after the~~
4 ~~completion of the Education Facility. The maintenance fund shall be used~~
5 ~~exclusively for the purpose of capital maintenance and repair, and shall be in an~~
6 ~~interest bearing account segregated from funds of the Education Agency.”~~