

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
226-32 (COR) P.L. 32-121	Judith T. Won Pat, Ed.D. T.R. Muna Barnes Aline A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5 GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS.	11/22/2013 8:46 a.m.	11/22/13	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land	1/14/14 2:00 p.m.	1/27/14 4:24 p.m.	Fiscal Note Requested 11/25/13
	DATE PASSED	TITLE	TRANSMITTED		DUE DATE	DATE SIGNED BY I MAGA'LAHEN GUAHAN	PUBLIC LAW NO.	NOTES
	2/1/2014	AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS.	2/1/14	10:50 p.m.	2/13/2014	2/10/2014	32-121	As amended by the Author; and further amended on the Floor.



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1302
Office of the speaker
Judith T. Won Pat, Ed.D.
Date: 2/14/14
Time: 4:09 PM
Received by:

Dear Madame Speaker:

Transmitted herewith is Bill No. 226-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS" which I signed into law on February 10, 2014 as Public Law 32-121.

Senseramente,

EDDIE BAZA CALVO

2014 FEB 14 PM 4: 49 W

1302



I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Bill No. 226-32 (COR)**, "AN ACT TO *ADD* A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS," was on the 1st day of February, 2014, duly and regularly passed.

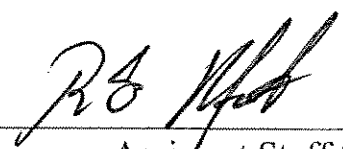


Judith T. Won Pat, Ed.D.
Speaker

Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: FEB 10 2014

Public Law No. 32-121

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

Bill No. 226-32 (COR)

As amended by the Author;
and further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
Aline A. Yamashita, Ph.D.
T. R. Muña Barnes
Brant T. McCreddie
Dennis G. Rodriguez, Jr.
Tommy Morrison
Chris M. Dueñas
Michael T. Limtiaco
FRANK B. AGUON, JR.
R. J. Respicio
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
Vicente (ben) C. Pangelinan
Michael F. Q. San Nicolas

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

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

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

4 **“CHAPTER 58E**

1 **THE FINANCE, DESIGN, RENOVATION,**
2 **REHABILITATION, CONSTRUCTION OR MAINTENANCE OF**
3 **PUBLIC SCHOOLS**

4 § 58E100. Legislative Findings and Intent.

5 § 58E101. Definitions.

6 § 58E102. Authorization to Enter into Long-Term Leases.

7 § 58E103. Identification of Projects and Procurement.

8 § 58E104. Responsibilities of Developer/Contractor.

9 § 58E105. Contractual Safeguards.

10 § 58E106. Assignments.

11 § 58E107. Pledge of Revenues.

12 § 58E108. Use of Tax-Exempt Bond and Other Financing
13 Instruments for Financing.

14 § 58E109. Utilities, Maintenance and Repair.

15 § 58E110. Severability.

16 **§ 58E100. Legislative Findings and Intent.** *I Liheslaturan*
17 *Guåhan* finds that Guam public school facilities face deficiencies in its
18 roofing, exterior, interior, structural, mechanical, electrical, plumbing, and
19 school grounds, which create a non-conducive environment that hinders
20 learning and the work and production of teachers and students.

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

26 It is, therefore, the intent of *I Liheslaturan Guåhan* for the
27 government of Guam to use one quarter of the business privilege tax to pay

1 for the interest payments of the lease and lease-back as a form of bridge
2 financing until the maturity of the Business Privilege Tax bond series
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4 *I Liheslatura* finds that after reviewing the summary of outstanding
5 General and Limited Obligation debts as of March 1, 2013, that the debt
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7 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
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15 Subtracting the debt ceiling limit less the General and Limited Obligation
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18 *I Liheslatura* further finds that the cost to fund the rehabilitation of
19 the public schools will certainly exceed the debt ceiling obligation if a
20 general obligation bond is pursued. To circumvent Guam's debt ceiling cap,
21 *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo*
22 Middle School, *Liguan* Elementary School, *Adacao* Elementary School,
23 John F. Kennedy High School, and the expansion of *Okkodo* High School,
24 has demonstrated the fundamental soundness of using municipal lease as a
25 vehicle to build new educational facilities. By making the most of municipal
26 leasing to rehabilitate and construct Guam public schools, the remaining

1 future debt obligation may be used to fund other priorities of the
2 government.

3 § 58E101. **Definitions.** For purposes of this Chapter and *unless*
4 otherwise specified, the following words and phrases are defined to mean:

5 (a) *Comprehensive capital improvement plan* means a plan
6 that takes into consideration the physical condition of each school
7 along with attendance area population, enrollment patterns, and
8 bussing logistics. It *shall* also include how each school meets the
9 instructional needs of GDOE, and prioritizes repairs of existing
10 schools and renovation and construction of new school facilities in
11 order to deal with GDOE limited resources.

12 (b) *Contract shall* mean the design, renovation,
13 rehabilitation, construction, and financing contract entered into by and
14 between the education agency and the contractor chosen by the Guam
15 Economic Development Agency and approved by *I Liheslaturan*
16 *Guåhan*.

17 (c) *Contractor shall* mean the authorized entity which *shall*
18 be the signatory on the contract and *shall* be fully responsible for
19 carrying out the design, renovation, rehabilitation, construction,
20 financing, or maintenance of the education facility. The contractor
21 may cooperate with another entity or entities in any manner the
22 contractor deems appropriate to provide for the financing, design,
23 renovation, rehabilitation, construction or maintenance of the public
24 school facilities envisioned by this Act.

25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act shall mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease shall* mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back shall* mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period shall* mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property shall* mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

6 The RFP *shall* be issued within thirty (30) days after the receipt of the
7 Program Study for the design, renovation, rehabilitation, construction or
8 maintenance of the education facility.

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
- 13 (d) indemnity;
- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

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

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

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

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

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

8 **§ 58E108. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.** To minimize the financing cost to
10 the education agency, financing utilized by the contractor to fund the
11 design, renovation, rehabilitation, construction or maintenance of an
12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

26 **§ 58E109. Utilities, Maintenance and Repair.** The education
27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”



FILE COPY

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

February 1, 2014

The Honorable Edward J.B. Calvo
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 61-32(COR), 70-32(COR), 71-32(COR), 130-32(COR), 146-32(COR), 169-32(COR), 179-32(COR), 180-32(COR), 190-32(COR), 192-32(COR), 197-32(COR), 201-32(COR), 202-32(COR), 204-32(COR), 206-32(COR), 214-32(COR), 221-32(COR), 225-32(COR), 226-32(COR), 231-32(COR), 232-32(COR), 235-32(COR), 236-32(COR), 237-32(COR), 242-32(COR), 245-32(COR), 247-32(COR), 248-32(COR) and 268-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 1, 2014.

Sincerely,

TINA ROSE MUÑA BARNES
Legislative Secretary

FEB 1, 2014
10:50 p.m.
T.S. Muña

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

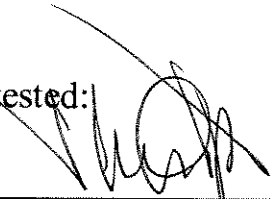
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Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P. M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

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As amended by the Author;
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25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act shall mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease* shall mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back* shall mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period* shall mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property* shall mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

6 The RFP *shall* be issued within thirty (30) days after the receipt of the
7 Program Study for the design, renovation, rehabilitation, construction or
8 maintenance of the education facility.

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
- 13 (d) indemnity;
- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

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

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

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

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

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

8 **§ 58E108. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.** To minimize the financing cost to
10 the education agency, financing utilized by the contractor to fund the
11 design, renovation, rehabilitation, construction or maintenance of an
12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

26 **§ 58E109. Utilities, Maintenance and Repair.** The education
27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2014 (SECOND) Regular Session

Voting Sheet

Speaker Antonio R. Unipingco Legislative Session Hall
February 1, 2014

Bill No. 226-32 (COR)
As amended by the Author; and further amended on
the Floor

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ		✓			
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN		✓			
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

13

2

Yea

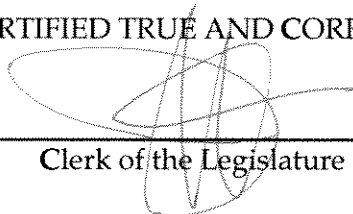
Nay

Not Voting/
Abstained

Out During
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:



Clerk of the Legislature

I = Pass



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

November 25, 2013

VIA E-MAIL
john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

RE: Request for Fiscal Notes– Bill Nos. 222-32 (COR) through 227-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Thomas C. Ada
Acting Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

2013 NOV 25 PM 5:29

Bill Nos.	Sponsor	Title
222-32 (COR)	Vicente (ben) C. Pangelinan	AN ACT TO AMEND §89.01(a)(2); TO AMEND §89.01(a)(2)(B); TO ADD A NEW SUBSECTION (C) TO §89.01(a)(2); TO AMEND §89.02(a)(2); TO AMEND §89.02(a)(3); TO AMEND §89.02(b)(2); TO AMEND §89.02(c)(1) AND TO ADD A NEW SUBSECTION (d) TO §89.02 ALL OF CHAPTER 89, 9 GUAM CODE ANNOTATED RELATIVE TO THE CRIMES AGAINST MINORS AND SEX OFFENDER REGISTRY.
223-32 (COR)	Vicente (ben) C. Pangelinan	AN ACT TO APPROPRIATE THE SUM OF FOUR HUNDRED THOUSAND DOLLARS (\$400,000) FOR THE COMPENSATION TO FARMERS FOR CROP DAMAGES PROGRAM ESTABLISHED PURSUANT TO CHAPTER 64A, TITLE 5 OF THE GUAM CODE ANNOTATED.
224-32 (COR)	T.C. Ada, R.J. Respicio	AN ACT TO AMEND §5425, §5426, §5427, §5450, §5452, §5480, §5481 AND §§5485 (a) and (b) OF ARTICLE 9, AND §5703, §5705, §5706(b), §5707(a), §5708 OF ARTICLE 12, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO CLARIFYING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.
225-32 (COR)	Judith T. Won Pat, Ed.D. T.R. Muna Barnes Aline A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §22425(q) ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §53101 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO EARLY CHILDHOOD PROGRAM FUND.
226-32 (COR)	Judith T. Won Pat, Ed.D. T.R. Muna Barnes Aline A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5 GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS.
227-32 (COR)	T.C. Ada R.J. Respicio	AN ACT TO AUTHORIZE THE CREATION OF THE GUAM STREETLIGHT AUTHORITY TO ISSUE BONDS TO FINANCE THE PURCHASE AND INSTALLATION OF NEW LED STREETLIGHTS.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

November 22, 2013

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

MEMORANDUM

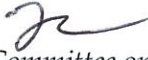
Senator
Vicente (Ben) C. Pangelinan
Member

To: Rennae Meno
Clerk of the Legislature

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Attorney Therese M. Terlaje
Legislative Legal Counsel

Senator
Dennis G. Rodriguez, Jr.
Member

From: Senator Thomas C. Ada 
Acting Chairperson of the Committee on Rules

Vice-Speaker
Benjamin J.F. Cruz
Member

Subject: Referral of Bill Nos. 225-32(COR) and 226-32(COR)

Legislative Secretary
Tina Rose Muña Barnes
Member

As the Acting Chairperson of the Committee on Rules, I am forwarding my referral of **Bill Nos. 225-32(COR) and 226-32(COR)**.

Senator
Frank Blas Aguon, Jr.
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator
Michael F.Q. San Nicolas
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Senator
V. Anthony Ada
Member
MINORITY LEADER




Attachment

Senator
Aline Yamashita
Member

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

Bill No. 226-32 (wp)

Introduced by:

J. T. Won Pat, Ed.D. 
Aline A. Yamashita, Ph.D. 
Tina Rose Muña Barnes 

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

2013 JUN 20 AM 10:16

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

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

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

6 § 58D100. Legislative Findings and Intent.

7 § 58D101. Definitions.

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

9 § 58D103. Programming Study

10 § 58D104. Identification of Projects and Procurement

11 § 58D105. Responsibilities of Contractor.

12 § 58D106. Contractual Safeguards.

13 § 58D107. Assignments.

14 § 58D108. Pledge of Revenues.

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

1 § 58D110. Utilities, Maintenance and Repair.

2 § 58D111. Severability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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