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<td>Joe S. San Agustin, Tina Rose Muña Barnes</td>
<td>AN ACT TO ADD A NEW CHAPTER 83 TO TITLE 12, DIVISION 5, GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, CONSTRUCTION AND MAINTENANCE OF GOVERNMENT OF GUAM TWENTY-FIRST (21ST) CENTURY HEALTHCARE CENTER OF EXCELLENCE AND SHALL BE CALLED THE &quot;THE TWENTY-FIRST (21ST) CENTURY HEALTHCARE CENTER OF EXCELLENCE CONSTRUCTION ACT OF 2021.&quot;</td>
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IMINA'TRENTAISAIS NA LIHESLATURAN GUÁHAN
2021 (FIRST) Regular Session

Bill No. 121-36 (COR)

Introduced by: Joe S. San Agustin
Tina Rose Muña Barnes

AN ACT TO ADD A NEW CHAPTER 83 TO TITLE 12, DIVISION 5, GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, CONSTRUCTION AND MAINTENANCE OF GOVERNMENT OF GUAM TWENTY-FIRST (21ST) CENTURY HEALTHCARE CENTER OF EXCELLENCE AND SHALL BE CALLED THE "THE TWENTY-FIRST (21ST) CENTURY HEALTHCARE CENTER OF EXCELLENCE CONSTRUCTION ACT OF 2021."

BE IT ENACTED BY THE PEOPLE OF GUAM.

Section 1. A new Chapter 83 is hereby added to Title 12 of the Guam Code Annotated to read as follows:

"CHAPTER 83.

§83101. Legislative Findings and Policy.
§83102. Definitions.
§83103. Authorization to Enter into Long-Term Leases."
§83104. Hospital Project Supervision, Reuse Study and Appropriation.

§83105. Identification Projects and Procurement.

§83106. Responsibility of Developer/Contractor.

§83107. Contractual Safeguards.

§83108. Assignments.

§83109. Pledge of Revenues.

§83110. Use of Tax-Exempt Bond, Taxable Bond and Other Financing Instruments for Financing.

§83111. Hospital IT and Building Management System.

§83112. Utilities and Routine Maintenance and Repair.

§83113. Maintenance Fund.

§83114. Rules, Regulations, and Restrictions.


§83101. Legislative Findings and Policy. I Liheslaturan Guåhan finds that the Guam Memorial Hospital Authority (GMHA), the Department of Public Health and Social Services (DPHSS), Guam Behavioral Health and Wellness Center (GBHWC) are in dire need of new facilities. The facilities structure has been used for more than four decades and are showing stages of structural failure due to said facilities. The structures of the Healthcare facilities are also not meeting modern building codes, which creates a liability to the staff, patients, and visitors of the facilities.

The need of a new facilities is in demand as the Department of Interior, Office of Insular Affairs have funded an assessment for the U.S Army Corps of Engineers to investigate the failing structure and the long and short-term needs of the hospital. The failing structure is being stretched to continue operation, addressing the structural and environmental issues as outlined in the USACE Reports. GMHA
needs a new facility as it endangers the accreditation status of the hospital and standards and guidelines promulgated by Centers for Medicare and Medicaid Services (CMS) and applicable codes. *I Liheslaturan Guåhan* finds that the current infrastructure of the GMHA facility is in an overall state of failure due to age of more than 50 years, environmental exposure, lack of financial resources to support the pre-planned capital infrastructure replacements, and lack of the facilities design adherence to current building codes. According to the Army Corps of Engineers, the replacement of all GMHA facilities is required to ensure renewed compliance with hospital accreditation standards and to protect the life, health, and safety of staff, patients, and visitors.

*I Liheslaturan Guåhan* finds that the DPHSS has not been occupying its main building in Mangilao, Guam due to a electrical fire caused by aged electrical wires within the building. DPHSS services have been relocated to different commercial rentals and GovGuam buildings in order to provide services to the People of Guam. The main facility of DPHSS has been deemed unsafe by the Chief of Guam Fire Department as their investigation shows that multiple electrical wiring issues are present due to the age of the structure as it was built in 1973. *I Liheslaturan Guåhan* finds that DPHSS should have a central facility for the People of Guam to have better access to Public Health and Social Services. The old main building of DPHSS is deemed dangerous and hazardous, which rehabilitation is not possible. It is necessary for DPHSS to ensure that services are available for the people of Guam which they have been fulfilling, with services being scattered to different locations on island.

*I Liheslaturan Guåhan* finds that with the growing population of the Island of Guam, the GBHWC needs to expand their facilities as their services evolve to meet the needs of our community. The main facility of GBHWC has outgrown its main building as the staff and patient populations have increased. The growing population
of our island has caused the GBHWC to actively operate its services, but with the lack of facilities within their main building, different GBHWC services are scattered around the Island. It is deemed necessary for the Government of Guam to provide Behavioral Health and Wellness services to our people as social issues are present within our community.

Furthermore, *I Liheslaturan Guåhan* finds that the pandemic has reinforced the need for better Healthcare facilities such as the Guam Memorial Hospital Authority Facilities, the Department of Public Health and Social Services Main Building, and the Guam Behavioral Health and Social Services Facilities. *I Maga'Hògan Guahan* stated that she intends to allocate Three Hundred Million Dollars ($300,000,000) from the American Rescue Plan to construct a new hospital facility. The U.S Army Corps of Engineers have stated that the replacement of the GMHA facility would cost an estimated Seven Hundred Forty-Three Million Dollars ($743,000,000) including twenty-one million ($21,000,000) for rehabilitation of the current facility to receive reaccreditation. The American Rescue Plan also allows for Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars ($60,000,000) annually, which an estimate of no more than Thirty-Five Million Dollars ($35,000,000) would be allocated for the payments of the lease-back agreement annually.

It is the intent of *I Liheslaturan Guåhan* to provide the People of Guam, State-of-the-Art Healthcare Facilities which will be designed to include all Healthcare Agencies within the Twenty-First Century Healthcare Center of Excellence. The creation of the Twenty-First Century Healthcare Center of Excellence is to ensure that all Healthcare agencies have proper facilities that follows accreditation standards, guidelines promulgated by the Centers for Medicare and Medicaid Services and applicable Codes. It will also allow for Guam to become the Regional Healthcare hub of Micronesia as it will open up opportunities for Medical Training.
and Tourism to other Islands, while increasing in Medical Professional services and
capacity to be available within the entire region.

In an effort to overcome financing hurdles, and to provide for the healthcare
needs of the People of Guam, \emph{I Liheslaturan Guåhan} desires to authorize the
government of Guam to enter into contracts for financing, design, construction, and
long-term capital maintenance of a Twenty-First Century Healthcare Center of
Excellence with private sector contractors who can provide long-term financing.

To facilitate the financing, design, construction, and maintenance of the
Twenty-First Century Healthcare Center of Excellence envisioned by this Act, the
Government of Guam will be authorized to execute a lease agreement of existing
property under its inventory for up to Thirty (30) years on which the Twenty-First
Century Healthcare Center of Excellence will be constructed.

The lease of the Government of Guam’s property will be to the contractor,
who will design and construct the Twenty-First Century Healthcare Center of
Excellence and provide funding for the design and construction through
appropriation received from the reimbursement of the Earned Income Tax Credit for
Fiscal Year 2022 and prospective appropriation from the General Fund, annually.
Upon completion of the construction, the facilities and land will be leased back to
the Government of Guam for a period \emph{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 Twenty-First Century Healthcare Center of Excellence.

The contractor will also be responsible for the capital maintenance and repair
of the Twenty-First Century Healthcare Center of Excellence constructed under this
Act, which costs \emph{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’s
property and the Twenty-First Century Healthcare Center of Excellence constructed
on the government of Guam real property will revert to the Government of Guam
with no further obligations to the contractor.

§83102. Definitions. For purposes of this Chapter and unless otherwise
specified, the following words and phrases are defined to mean:

(a) ‘Act’ means Title 12, Chapter 83, Guam Code Annotated shall be
called “Twenty-First Century Healthcare Center of Excellence
Construction Act of 2021.”

(b) ‘Contract’ shall mean the design, construction and financing
contract entered into by and between the Government of Guam and
the Contractor following negotiations on the response to the Request
for Proposal.

(c) ‘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
Twenty-First Century Healthcare Center of Excellence. The
Contractor may cooperate with another entity or entities in any
manner the Contractor deems appropriate to provide for the
financing, design and construction of the Twenty-First Century
Healthcare Center of Excellence envisioned by this Chapter.

(d) ‘Twenty-First Century Healthcare Center of Excellence Committee’
shall be chaired by Administrator or Deputy Administrator of the
Guam Economic Development Authority, and include the
Administrator and Directors of all Healthcare Agencies, the Director
or Deputy Director of Department of Public Works, the Director or
Deputy Director of Department of Land Management, and the
Attorney General of Guam.
(e) 'Healthcare Agencies' shall mean the Guam Memorial Hospital Authority (GMHA), the Department of Public Health and Social Service (DPHSS), and the Guam Behavioral Health and Wellness Center (GBHWC).

(f) 'Twenty-First Century Healthcare Center of Excellence' as used in this Act shall mean the Guam Memorial Hospital Authority, the Department of Public Health and Social Services, and the Guam Behavioral Health and Wellness Center located as a whole in one property of the Government of Guam.

(g) 'Lease' shall mean a lease from the Healthcare Agencies to the contractor entered at the time of the contract for the property.

(h) 'Lease-back' shall mean the lease from the contractor to the Healthcare agencies of the newly constructed Twenty-First Century Healthcare Center of Excellence.

(i) 'Property' shall mean any property on which a Twenty-First Century Healthcare Center of Excellence is located.

§83103. Authorization to Enter into Long-Term Leases. For the purpose of facilitating the financing, design, construction and maintenance of the Twenty-First Century Healthcare Center of Excellence encompassed by this Act, the Government of Guam, through GEDA, is authorized to lease, as required, to the contractor sufficient Government of Guam real property; provided, such property is in the inventory of the Government of Guam.

The Government of Guam is also authorized to lease-back from the contractor the property for a period mutually agreed upon between the Government of Guam and the contractor as may be reasonably necessary to amortize the lease-back period of the cost associated with the design, construction and maintenance of the Twenty-First Century Healthcare Center of Excellence. In no event shall the end of such
lease-back period be structured as an annually renewable lease with a provision for
automatic renewals to the extent that pledged revenue under §83109 is available.
The lease-back shall not be construed as a debt under any applicable debt limitation
under the Organic Act of Guam or Guam law.

§83104. Hospital Project Supervision, Reuse Study and Appropriation.
(a) The project undertaken under the provisions of this Act shall be in
accordance with the plans, specifications, standards and costs approved by
GEDA and shall be under the supervision of GEDA. There is hereby
appropriated to GEDA an amount not to exceed more than 5% of the total
cost of the overall contact for the project supervision which includes
covering the cost of a hospital development consultant or consultants. The
scope of work of said consultant or consultants shall include, but not be
limited to, the preparation of procurement-related documents including the
Request for Proposal.
(b) Additionally, there is hereby appropriated to GEDA One Million Dollars
($1,000,000) from the General Fund, for the purpose of commissioning a
detailed study which compares the feasibility of either converting the
existing GMH inpatient hospital to a Government of Guam facility or
developing a new Government of Guam facility. The study shall also
include financing options for the purpose of funding the reuse or
development of said new Government of Guam facility by utilizing the
savings from annual rent realized by the Government of Guam by moving
from commercial spaces to the new facility. Further, the study shall include
the estimated costs associated with design, financing, renovation and/or
new construction of the central government office complex as described
herein.
§83105. Identification Projects and Procurement. Under the supervision of I Liheslaturan Guåhan, GEDA in consultation with the Healthcare Agencies of Guam Administrators and Directors shall utilize the program study of all Healthcare Agencies and the report generated by the Department of Interior funded assessment report by the Army Corps of Engineers and Guam Fire Department to identify and prioritize potential projects to be completed. The list of projects shall be included in a Requests for Proposals developed by the Guam Economic Development Authority. Upon receipt of the Program Study, the Guam Economic Development Authority in consultation with the Administrators and Directors of all the Healthcare Agencies shall solicit Request for Proposal (RFP), in compliance with the Guam Procurement Law, for the financing, design, and construction of the Twenty-First Century Healthcare Center of Excellence, according to the needs of all the Healthcare agencies and consistent with this Chapter. The choice of the contractor shall be made by the Twenty-First Century Healthcare Center of Excellence Committee. The committee shall assess the prior performance of the contractor on similar projects, and shall be free to disqualify any contractor that does not have a successful record of project completion on Guam or any similar locality.

The Committee shall also specifically consider the Contractors ability and performance with regards to financing, development and construction of Healthcare facilitates on Guam or any similarly isolated locality.

The selection of a contractor shall be based upon the proposal that delivers the best value for Guam in meeting the objectives of all Healthcare agencies.

GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program study in consultation with all the Healthcare Agencies on Guam for the design, renovation, construction, and maintenance of all Healthcare Facilities.

§83106. Responsibility of Developer/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 and off-site infrastructure, construction, permits, and financing associated with the completion of the Twenty-First Century Healthcare Center of Excellence, to the extent provided by GEDA in consultation with all the Healthcare Agencies in the Request for Proposals. The lease may, for the purposes, provide that its term shall be extended for a period not to exceed the shorter of ten (10) 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 §83109 of this Chapter. The capital maintenance costs shall be paid by the contractor.

§83107. Contractual Safeguards. Prior to undertaking the work of finance, design, construction, and maintenance of Healthcare Facilities, the Guam Economic Development Authority in consultation with the Healthcare Agencies, and the developer or contractor, shall negotiate and enter into a binding construction contract to build the Twenty-First Century Healthcare Center of Excellence in accordance with Guam Building Code under 21 GCA, Chapter 67, and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam Construction contracts, including, but not limited to:

(a) Warranties;
(b) Liquidated damages;
(c) Performance and payments bonds;
(d) Indemnity;
(e) Insurance;
(f) Standard specifications;
(g) Technical specifications;
(h) Progress schedule;
(i) Maintenance;
(j) Compliance with Guam labor regulations;

(k) Compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(l) Compliance with Public Law 29-98: restriction against contractors employing convicted sex offenders to work at government of Guam venues.

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

§83108. Assignments. To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee or other party as appropriate to facilitate the contractor financing.

§83109. Pledge of Revenues.

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

1. The sum of no more than Thirty-Five Million Dollars ($35,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.

2. The sum of no more than Thirty-Five Million Dollars ($35,000,000) from General Fund shall be appropriated annually.
Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making lease-back payments, but any amounts only reserved as provided in this Section, and not pledged, shall be subject to annual appropriation for the purpose of making lease-back payments. The revenues pledged or reserved 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 such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or 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 or reservation is created need be recorded.

§83110. Use of Tax-Exempt Bond, Taxable Bond and Other Financing

Instruments for Financing. To minimize the financing cost to the Government of Guam, financing utilized by the contractor to fund the design construction, and maintenance of the Twenty-First Century Healthcare Center of Excellence shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America, if such financing will better serve the needs of the People of Guam. Such alternative financing shall be approved by I Liheslaturan Guåhan. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam’s financing of the design and
construction of the Twenty-First Century of Healthcare Center of Excellence, amortized through the lease-back payments from GEDA to the contractor, will be lower than regular commercial rates.

§83111. Hospital IT and Building Management System.

(a) For the purpose of extending the useful life of the Twenty-First Century of Healthcare Center of Excellence, GEDA shall include in the specifications for the new facilities, the requirement for a medical information management system, electronic medical records system and building management system. These systems identified must be done in consultation with the Healthcare Agencies and compliant with federal mandates related to medical records and to foster compliance with Centers for Medicare and Medicaid Services and the requirements of the Joint Commission.

(b) GEDA, in consultation with the Healthcare Agencies, shall determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States hospital industry in connection with the development for new healthcare facilities. The specifications shall require that all hospital systems are designed by the same software developer so as to ensure the delivery of the highest standard of care to patients.

(c) In order to ensure immediate response to system downtimes or failure, GEDA shall include in the specifications the requirement that the provider of these systems have a local Guam office and service technicians stationed on Guam.

§83112. Utilities and Routine Maintenance and Repair. The Contractor shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance
and repair and exterior groundskeeping and landscaping and upkeep of the Twenty-
First Century Healthcare Center of Excellence.

§83113. Maintenance Fund. The Contract with the Contractor, and the
Lease-Back, shall provide that all capital maintenance and repair of the Twenty-
First Century Healthcare Center of Excellence Facilities be performed by the
contractor as determined during the bid process, to be inclusive of the existing
Guam Memorial Hospital Authority facility throughout the duration of the
construction of the new Twenty-First Century Healthcare Center of Excellence.
The Contractor shall provide sufficient funding for a separate maintenance fund for
this purpose; sufficient funds for this purpose shall be defined as the cost of capital
maintenance and repair for the remaining period of the lease agreement with the
Government of Guam after the completion of the Twenty-First Century Healthcare
Center of Excellence. 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 other funds held in escrow.

§83114. Rules, Regulations, and Restrictions. The Administrator of Guam
Economic Development Authority with the approval of its Board, in consultation
with the Healthcare Agencies and the consent of the Attorney General of Guam, I
Liheslaturan Guahan and I Maga'Hagan Guahan may promulgate rules and
regulations pursuant to Guam law necessary to implement the provision of this
Chapter.

§83115. Expedited Permitting Process. Since time is of the essence relative
to the development of the new facility, notwithstanding any other provision of law,
I Maga' Hagan Guahan shall have the authority to take any and all steps necessary
to expedite the issuance of any and all permits required for the development, design
and construction of the new facility.

Section 2. Enactment. This act shall become effective upon enactment.
Section 3. Repealing Clause. All Laws or parts of any law that is inconsistent with provisions contained in the Twenty-First (21st) Century Healthcare Center of Excellence Construction Act of 2021 are hereby repealed or amended accordingly.

Section 4. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provision or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provision of this Act are severable."