

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
121-36 (COR)	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 <i>SHALL</i> BE CALLED THE "THE TWENTY-FIRST (21ST) CENTURY HEALTHCARE CENTER OF EXCELLENCE CONSTRUCTION ACT OF 2021."	4/13/21 4:06 p.m.						

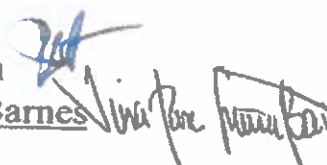
**IMINA 'TRENTAISAIS NA LIHESLATURAN GUÁHAN
2021 (FIRST) Regular Session**

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."

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

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

4 **"CHAPTER 83.**

5 **THE FINANCE, DESIGN, CONSTRUCTION AND MAINTENANCE OF**
6 **THE TWENTY-FIRST CENTURY HEALTHCARE CENTER OF**
7 **EXCELLENCE ACT OF 2021.**

8 **§83101. Legislative Findings and Policy.**

9 **§83102. Definitions.**

10 **§83103. Authorization to Enter into Long-Term Leases.**

1 **§83104. Hospital Project Supervision, Reuse Study and**
2 **Appropriation.**

3 **§83105. Identification Projects and Procurement.**

4 **§83106. Responsibility of Developer/Contractor.**

5 **§83107. Contractual Safeguards.**

6 **§83108. Assignments.**

7 **§83109. Pledge of Revenues.**

8 **§83110. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.**

10 **§83111. Hospital IT and Building Management System.**

11 **§83112. Utilities and Routine Maintenance and Repair.**

12 **§83113. Maintenance Fund.**

13 **§83114. Rules, Regulations, and Restrictions.**

14 **§83115. Expedited Permitting Process.**

15 **§83101. Legislative Findings and Policy.** *I Liheslaturan Guåhan* finds that
16 the Guam Memorial Hospital Authority (GMHA), the Department of Public Health
17 and Social Services (DPHSS), Guam Behavioral Health and Wellness Center
18 (GBHWC) are in dire need of new facilities. The facilities structure has been used
19 for more than four decades and are showing stages of structural failure due to said
20 facilities. The structures of the Healthcare facilities are also not meeting modern
21 building codes, which creates a liability to the staff, patients, and visitors of the
22 facilities.

23 The need of a new facilities is in demand as the Department of Interior, Office
24 of Insular Affairs have funded an assessment for the U.S Army Corps of Engineers
25 to investigate the failing structure and the long and short-term needs of the hospital.
26 The failing structure is being stretched to continue operation, addressing the
27 structural and environmental issues as outlined in the USACE Reports. GMHA

1 needs a new facility as it endangers the accreditation status of the hospital and
2 standards and guidelines promulgated by Centers for Medicare and Medicaid
3 Services (CMS) and applicable codes. *I Liheslaturan Guåhan* finds that the current
4 infrastructure of the GMHA facility is in an overall state of failure due to age of
5 more than 50 years, environmental exposure, lack of financial resources to support
6 the pre-planned capital infrastructure replacements, and lack of the facilities design
7 adherence to current building codes. According to the Army Corps of Engineers, the
8 replacement of all GMHA facilities is required to ensure renewed compliance with
9 hospital accreditation standards and to protect the life, health, and safety of staff,
10 patients, and visitors.

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

24 *I Liheslaturan Guåhan* finds that with the growing population of the Island of
25 Guam, the GBHWC needs to expand their facilities as their services evolve to meet
26 the needs of our community. The main facility of GBHWC has outgrown its main
27 building as the staff and patient populations have increased. The growing population

1 of our island has caused the GBHWC to actively operate its services, but with the
2 lack of facilities within their main building, different GBHWC services are scattered
3 around the Island. It is deemed necessary for the Government of Guam to provide
4 Behavioral Health and Wellness services to our people as social issues are present
5 within our community.

6 Furthermore, *I Liheslaturan Guåhan* finds that the pandemic has reinforced
7 the need for better Healthcare facilities such as the Guam Memorial Hospital
8 Authority Facilities, the Department of Public Health and Social Services Main
9 Building, and the Guam Behavioral Health and Social Services Facilities. *I*
10 *Maga'Hågan Guahan* stated that she intends to allocate Three Hundred Million
11 Dollars (\$300,000,000) from the American Rescue Plan to construct a new hospital
12 facility. The U.S Army Corps of Engineers have stated that the replacement of the
13 GMHA facility would cost an estimated Seven Hundred Forty-Three Million Dollars
14 (\$743,000,000) including twenty-one million (\$21,000,000) for rehabilitation of the
15 current facility to receive reaccreditation. The American Rescue Plan also allows for
16 Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million
17 Dollars (\$60,000,000) annually, which an estimate of no more than Thirty-Five
18 Million Dollars (\$35,000,000) would be allocated for the payments of the lease-back
19 agreement annually.

20 It is the intent of *I Liheslaturan Guåhan* to provide the People of Guam, State-
21 of-the-Art Healthcare Facilities which will be designed to include all Healthcare
22 Agencies within the Twenty-First Century Healthcare Center of Excellence. The
23 creation of the Twenty-First Century Healthcare Center of Excellence is to ensure
24 that all Healthcare agencies have proper facilities that follows accreditation
25 standards, guidelines promulgated by the Centers for Medicare and Medicaid
26 Services and applicable Codes. It will also allow for Guam to become the Regional
27 Healthcare hub of Micronesia as it will open up opportunities for Medical Training

1 and Tourism to other Islands, while increasing in Medical Professional services and
2 capacity to be available within the entire region.

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

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

13 The lease of the Government of Guam's property will be to the contractor,
14 who will design and construct the Twenty-First Century Healthcare Center of
15 Excellence and provide funding for the design and construction through
16 appropriation received from the reimbursement of the Earned Income Tax Credit for
17 Fiscal Year 2022 and prospective appropriation from the General Fund, annually.
18 Upon completion of the construction, the facilities and land will be leased back to
19 the Government of Guam for a period *not to exceed* the initial ground lease to the
20 contractor over which time the Government of Guam will amortize, as lease
21 payments to the contractor, the cost of the financing, design, construction, and
22 related expenses of the Twenty-First Century Healthcare Center of Excellence.

23 The contractor will also be responsible for the capital maintenance and repair
24 of the Twenty-First Century Healthcare Center of Excellence constructed under this
25 Act, which costs *shall* be paid by the Government of Guam as provided for under
26 this Act. At the expiration of the lease-back period, the Government of Guam real's
27 property and the Twenty-First Century Healthcare Center of Excellence constructed

1 on the government of Guam real property will revert to the Government of Guam
2 with no further obligations to the contractor.

3 **§83102. Definitions.** For purposes of this Chapter and unless otherwise
4 specified, the following words and phrases are defined to mean:

5 (a) 'Act' means Title 12, Chapter 83, Guam Code Annotated shall be
6 called "Twenty-First Century Healthcare Center of Excellence
7 Construction Act of 2021."

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

12 (c) 'Contractor' shall mean the authorized entity which shall be the
13 signatory on the Contract and shall be fully responsible for carrying
14 out the design, construction, financing and maintenance of the
15 Twenty-First Century Healthcare Center of Excellence. The
16 Contractor may cooperate with another entity or entities in any
17 manner the Contractor deems appropriate to provide for the
18 financing, design and construction of the Twenty-First Century
19 Healthcare Center of Excellence envisioned by this Chapter.

20 (d) 'Twenty-First Century Healthcare Center of Excellence Committee'
21 shall be chaired by Administrator or Deputy Administrator of the
22 Guam Economic Development Authority, and include the
23 Administrator and Directors of all Healthcare Agencies, the Director
24 or Deputy Director of Department of Public Works, the Director or
25 Deputy Director of Department of Land Management, and the
26 Attorney General of Guam.

1 (e) 'Healthcare Agencies' shall mean the Guam Memorial Hospital
2 Authority (GMHA), the Department of Public Health and Social
3 Service (DPHSS), and the Guam Behavioral Health and Wellness
4 Center (GBHWC).

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

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

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

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

17 **§83103. Authorization to Enter into Long-Term Leases.** For the purpose
18 of facilitating the financing, design, construction and maintenance of the Twenty-
19 First Century Healthcare Center of Excellence encompassed by this Act, the
20 Government of Guam, through GEDA, is authorized to lease, as required, to the
21 contractor sufficient Government of Guam real property; provided, such property is
22 in the inventory of the Government of Guam.

23 The Government of Guam is also authorized to lease-back from the contractor
24 the property for a period mutually agreed upon between the Government of Guam
25 and the contractor as may be reasonably necessary to amortize the lease-back period
26 of the cost associated with the design, construction and maintenance of the Twenty-
27 First Century Healthcare Center of Excellence. In no event shall the end of such

1 lease-back period be structured as an annually renewable lease with a provision for
2 automatic renewals to the extent that pledged revenue under §83109 is available.
3 The lease-back shall not be construed as a debt under any applicable debt limitation
4 under the Organic Act of Guam or Guam law.

5 **§83104. Hospital Project Supervision, Reuse Study and Appropriation.**

6 (a) The project undertaken under the provisions of this Act shall be in
7 accordance with the plans, specifications, standards and costs approved by
8 GEDA and shall be under the supervision of GEDA. There is hereby
9 appropriated to GEDA an amount not to exceed more than 5% of the total
10 cost of the overall contact for the project supervision which includes
11 covering the cost of a hospital development consultant or consultants. The
12 scope of work of said consultant or consultants shall include, but not be
13 limited to, the preparation of procurement-related documents including the
14 Request for Proposal.

15 (b) Additionally, there is hereby appropriated to GEDA One Million Dollars
16 (\$1,000,000) from the General Fund, for the purpose of commissioning a
17 detailed study which compares the feasibility of either converting the
18 existing GMH inpatient hospital to a Government of Guam facility or
19 developing a new Government of Guam facility. The study shall also
20 include financing options for the purpose of funding the reuse or
21 development of said new Government of Guam facility by utilizing the
22 savings from annual rent realized by the Government of Guam by moving
23 from commercial spaces to the new facility. Further, the study shall include
24 the estimated costs associated with design, financing, renovation and/or
25 new construction of the central government office complex as described
26 herein.

1 **§83105. Identification Projects and Procurement.** Under the supervision
2 of I Liheslaturan Guahan, GEDA in consultation with the Healthcare Agencies of
3 Guam Administrators and Directors shall utilize the program study of all Healthcare
4 Agencies and the report generated by the Department of Interior funded assessment
5 report by the Army Corps of Engineers and Guam Fire Department to identify and
6 prioritize potential projects to be completed. The list of projects shall be included in
7 a Requests for Proposals developed by the Guam Economic Development Authority.
8 Upon receipt of the Program Study, the Guam Economic Development Authority in
9 consultation with the Administrators and Directors of all the Healthcare Agencies
10 shall solicit Request for Proposal (RFP), in compliance with the Guam Procurement
11 Law, for the financing, design, and construction of the Twenty-First Century
12 Healthcare Center of Excellence, according to the needs of all the Healthcare
13 agencies and consistent with this Chapter. The choice of the contractor shall be made
14 by the Twenty-First Century Healthcare Center of Excellence Committee. The
15 committee shall assess the prior performance of the contractor on similar projects,
16 and shall be free to disqualify any contractor that does not have a successful record
17 of project completion on Guam or any similar locality.

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

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

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

26 **§83106. Responsibility of Developer/Contractor.** The contract shall require
27 that the contractor be responsible for all costs, expenses and fees of any kind or

1 nature, associated with the design, civil improvements, on-site and off-site
2 infrastructure, construction, permits, and financing associated with the completion
3 of the Twenty-First Century Healthcare Center of Excellence, to the extent provided
4 by GEDA in consultation with all the Healthcare Agencies in the Request for
5 Proposals. The lease *may*, for the purposes, provide that its term *shall* be extended
6 for a period not to exceed the shorter of ten (10) years beyond the original term of
7 the lease-back, or such period of time as is necessary to repay in full any financing
8 arranged pursuant to §83109 of this Chapter. The capital maintenance costs *shall* be
9 paid by the contractor.

10 **§83107. Contractual Safeguards.** Prior to undertaking the work of finance,
11 design, construction, and maintenance of Healthcare Facilities, the Guam Economic
12 Development Authority in consultation with the Healthcare Agencies, and the
13 developer or contractor, *shall* negotiate and enter into a binding construction contract
14 to build the Twenty-First Century Healthcare Center of Excellence in accordance
15 with Guam Building Code under 21 GCA, Chapter 67, and any other applicable
16 requirements. The construction contract *shall* contain contractual obligations
17 typically found in Government of Guam Construction contracts, including, but not
18 limited to:

- 19 (a) Warranties;
20 (b) Liquidated damages;
21 (c) Performance and payments bonds;
22 (d) Indemnity;
23 (e) Insurance;
24 (f) Standard specifications;
25 (g) Technical specifications;
26 (h) Progress schedule;
27 (i) Maintenance;

- 1 (j) Compliance with Guam labor regulations;
2 (k) Compliance with Guam prevailing wage rates for employment of
3 temporary alien workers (H2) on Guam;
4 (l) Compliance with Public Law 29-98: restriction against contractors
5 employing convicted sex offenders to work at government of Guam
6 venues.

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

10 **§83108. Assignments.** To facilitate the purpose of this Act and provide
11 security for the holders of any financing instruments issued pursuant to this Act, the
12 contractor may assign, without the need of the consent of the Guam Economic
13 Development Authority, the contract, the lease and the lease-back to any
14 underwriter, trustee or other party as appropriate to facilitate the contractor
15 financing.

16 **§83109.Pledge of Revenues.**

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

20 (1) The sum of no more than Thirty-Five Million Dollars
21 (\$35,000,000) from the revenues received pursuant to 11
22 GCA Chapter 42, Earned Income Tax Credit will be available
23 for Fiscal Year 2022 only.

24 (2) The sum of no more than Thirty-Five Million Dollars
25 (\$35,000,000) from General Fund shall be appropriated
26 annually.

1 Any amounts pledged as provided in this Section are hereby
2 continuously appropriated for the purpose of making lease-back payments, but any
3 amounts only reserved as provided in this Section, and not pledged, shall be subject
4 to annual appropriation for the purpose of making lease-back payments. The
5 revenues pledged or reserved and thereafter received by the Government of Guam
6 or by any trustee, depository or custodian shall be deposited in a separate account
7 and shall be immediately subject to such reservation or the lien of such pledge
8 without any physical delivery thereof or further action, and such reservation or the
9 lien of such pledge shall be valid and binding against all parties having claims of
10 any kind in tort, contract or otherwise against the Government of Guam or such
11 trustee, depository or custodian, irrespective of whether the parties have notice
12 thereof. The instrument by which such pledge or reservation is created need be
13 recorded.

14 **§83110. Use of Tax-Exempt Bond, Taxable Bond and Other Financing**
15 **Instruments for Financing.** To minimize the financing cost to the Government of
16 Guam, financing utilized by the contractor to fund the design construction, and
17 maintenance of the Twenty-First Century Healthcare Center of Excellence shall be
18 through tax-exempt obligations, taxable bond obligation, or other financial
19 instruments provided, such financing is available at interest rates determined by the
20 Guam Economic Development Authority to be reasonable and competitive.
21 Alternatively, the contractor may use an alternative method of financing, including,
22 but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or
23 loan by an instrumentality of the United States of America, if such financing will
24 better serve the needs of the People of Guam. Such alternative financing shall be
25 approved by I Liheslaturan Guåhan. The purpose for the requirements of this
26 Section is to assure that the Government of Guam pays the lowest possible interest
27 rate so that the cost of the Government of Guam's financing of the design and

1 construction of the Twenty-First Century of Healthcare Center of Excellence,
2 amortized through the lease-back payments from GEDA to the contractor, will be
3 lower than regular commercial rates.

4 **§83111. Hospital IT and Building Management System.**

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

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

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

25 **§83112. Utilities and Routine Maintenance and Repair.** The Contractor
26 shall be responsible for the connection and payment of all utilities, including
27 without limitation, power, water, sewer, telephone, and cable and all maintenance

1 and repair and exterior groundskeeping and landscaping and upkeep of the Twenty-
2 First Century Healthcare Center of Excellence.

3 **§83113. Maintenance Fund.** The Contract with the Contractor, and the
4 Lease-Back, shall provide that all capital maintenance and repair of the Twenty-
5 First Century Healthcare Center of Excellence Facilities be performed by the
6 contractor as determined during the bid process, to be inclusive of the existing
7 Guam Memorial Hospital Authority facility throughout the duration of the
8 construction of the new Twenty-First Century Healthcare Center of Excellence.
9 The Contractor shall provide sufficient funding for a separate maintenance fund for
10 this purpose; sufficient funds for this purpose shall be defined as the cost of capital
11 maintenance and repair for the remaining period of the lease agreement with the
12 Government of Guam after the completion of the Twenty-First Century Healthcare
13 Center of Excellence. The maintenance fund shall be used exclusively for the
14 purpose of capital maintenance and repair and shall be in an interest-bearing
15 account segregated from other funds held in escrow.

16 **§83114. Rules, Regulations, and Restrictions.** The Administrator of Guam
17 Economic Development Authority with the approval of its Board, in consultation
18 with the Healthcare Agencies and the consent of the Attorney General of Guam, I
19 Lihsaturan Guahan and I Maga'Hagan Guahan may promulgate rules and
20 regulations pursuant to Guam law necessary to implement the provision of this
21 Chapter.

22 **§83115. Expedited Permitting Process.** Since time is of the essence relative
23 to the development of the new facility, notwithstanding any other provision of law,
24 I Maga' Hagan Guahan shall have the authority to take any and all steps necessary
25 to expedite the issuance of any and all permits required for the development, design
26 and construction of the new facility.

27 **Section 2. Enactment.** This act shall become effective upon enactment.

1 **Section 3. Repealing Clause.** All Laws or parts of any law that is inconsistent with
2 provisions contained in the Twenty-First (21st) Century Healthcare Center of
3 Excellence Construction Act of 2021 are hereby repealed or amended accordingly.
4 **Section 4. Severability.** If any provision of this Act or its application to any person
5 or circumstance is found to be invalid or contrary to law, such invalidity *shall* not
6 affect other provision or applications of this Act which can be given effect without
7 the invalid provisions or application, and to this end the provision of this Act are
8 severable.”