

I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
119-37 (COR)	Sabina Flores Perez Chris Barnett	AN ACT TO REPEAL ARTICLE 14 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO ADD A NEW PART G OF ARTICLE 2 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVITALIZING THE GUAM PROCUREMENT ADVISORY COUNCIL TO MODERNIZE PROCUREMENT IN ORDER TO PROMOTE PUBLIC CONFIDENCE AND ACHIEVE BEST VALUE IN SERVICE TO OUR COMMUNITY.	5/16/23 10:08 a.m.						

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 119-37 (COR)

Introduced by:

Sabina Flores Perez *SFP*
Chris Barnett *CB*

AN ACT TO *REPEAL* ARTICLE 14 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO *ADD* A NEW PART G OF ARTICLE 2 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVITALIZING THE GUAM PROCUREMENT ADVISORY COUNCIL TO MODERNIZE PROCUREMENT IN ORDER TO PROMOTE PUBLIC CONFIDENCE AND ACHIEVE BEST VALUE IN SERVICE TO OUR COMMUNITY.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that procurement is an essential function of government operations in order to
4 provide needed services to the community on a timely manner, to facilitate the
5 implementation of federal programs and maximize the use of federal funds, to
6 provide opportunities to private sector in fair manner, and promote public confidence
7 in proper and transparent use of public funds.

8 *I Liheslatura* further finds that the Guam Procurement Advisory Council,
9 which serves an essential role to evaluate and to make recommendations for
10 improvement of procurement on a continuous basis, is in need of focusing its
11 membership and updating initiatives to encourage and support the development and

1 implementation of or to institutionalize best practices, including supporting
2 ecological procurement choices, throughout our government.

3 *I Liheslatura* finds that it is recommended, for purposes of maintaining the
4 structure of the Procurement Act, consistent with the structure of the Model
5 Procurement Code, that Article 14 be included as a new Part G of Article 2 rather
6 than an additional Article in the Chapter.

7 *Liheslaturan Guåhan* intends to revitalize the Guam Advisory Council to
8 modernize and institutionalize best practices in procurement throughout the
9 government in order to promote public confidence and achieve best value in service
10 to our community.

11 **Section 2.** Article 14, of Chapter 5, Title 5, Guam Code Annotated is hereby
12 *repealed:*

13 **“ARTICLE 14**

14 **~~GUAM PROCUREMENT ADVISORY COUNCIL~~**

15 ~~§ 5900. — Guam Procurement Advisory Council.~~

16 ~~§ 5901. — Composition.~~

17 ~~§ 5902. — Duties.~~

18 ~~§ 5903. — Limitations.~~

19 ~~§ 5904. — Reports.~~

20 ~~§ 5905. — Administration.~~

21 ~~§ 5906. — Guam Procurement Advisory Council Support Fund.~~

22 ~~§ 5907. — Responsiveness — of — the — Government.~~

23 ~~§ 5908. — General Services Agency (GSA) Staff & Procurement Counsel —~~

24 ~~— Support~~

25 ~~**§ 5900. Guam Procurement Advisory Council.**~~

26 ~~There is hereby established within the government of Guam, the Guam~~
27 ~~Procurement Advisory Council (Council) to research, evaluate, analyze, review and~~

1 ~~make recommendations to improve, address and modernize government~~
2 ~~procurement and contracting.~~

3 **~~§ 5901. Composition.~~**

4 The Council shall be comprised of the following members:

5 (a) ~~a senior member of I Maga'lahi's (the Governor's) staff designated~~
6 ~~by I Maga'lahaen Guåhan (the Governor of Guam), who shall serve as an ex-~~
7 ~~officio member; and who shall serve as interim Chairperson and shall call for~~
8 ~~its first meeting within fifteen (15) days of enactment; such meeting for~~
9 ~~possible election of the Chairperson;~~

10 (b) ~~the Attorney General of Guam or his designee;~~

11 (c) ~~the Public Auditor or his designee;~~

12 (d) ~~the Compiler of Laws;~~

13 (e) ~~the Chief Procurement Officer;~~

14 (f) ~~the Director of Administration;~~

15 (g) ~~the Director of Public Works;~~

16 (h) ~~an attorney in private practice admitted to the Guam Bar with~~
17 ~~procurement experience, selected by the Guam Bar;~~

18 (i) ~~a Guam resident experienced in procurement from the construction~~
19 ~~industry selected by I Maga'lahaen Guåhan;~~

20 (j) ~~a Guam resident experienced in procurement from the retail or~~
21 ~~service sector selected by I Maga'lahaen Guåhan;~~

22 (k) ~~the Chairman of the Board of Accountancy; and~~

23 (l) ~~the Dean of the School of Business and Public Administration of the~~
24 ~~University of Guam.~~

25 (m) ~~The Council shall elect its Chairperson.~~

26 **~~§ 5902. Duties.~~**

27 The Council is empanelled to perform the following duties:

1 ~~(a) to conduct studies, research and analysis on all matters relating to~~
2 ~~the effectiveness, responsiveness and timeliness of government procurement,~~
3 ~~including the review and comparison with model procurement code~~
4 ~~legislation and consultation with division heads, school principals and other~~
5 ~~mid-level managers, and end users of government procured goods and~~
6 ~~services;~~

7 ~~(b) to critically examine the substantive and procedural aspects of the~~
8 ~~Guam Procurement Act and existing administrative rules and regulations~~
9 ~~governing procurement, including the legal authorities, composition, and~~
10 ~~effectiveness of the Procurement Policy Office;~~

11 ~~(c) to review the legal infrastructure of the government procurement~~
12 ~~system to ensure the uniformity of law, regulation and practice;~~

13 ~~(d) to propose recommendations for the improvement and~~
14 ~~modernization and the use of “best value” and “performance based” methods~~
15 ~~as the basis for evaluation of government procurement activities;~~

16 ~~(e) to make recommendations and identify methods to address new~~
17 ~~industries and technologies and financial systems, while maintaining the~~
18 ~~general principles of procurement law;~~

19 ~~(f) to review, make recommendations and provide advice on any aspect~~
20 ~~of law, regulation or policy that affect procurement, including laws and~~
21 ~~processes not directly found in the Guam Procurement Act; and~~

22 ~~(g) to review the statutes and process for procurement appeals and~~
23 ~~recommend improvements, if any.~~

24 ~~**§ 5903. Limitations.**~~

25 ~~The Council shall not have any executive participation in the day-to-day~~
26 ~~implementation of the Guam Procurement Act. It shall not have any executive,~~
27 ~~legislative, or adjudicative review authority over procurement matters.~~

1 **~~§ 5904. Reports.~~**

2 ~~The Council shall provide reports to the Speaker of I Liheslaturan Guåhan and~~
3 ~~I Maga'lahaen Guåhan as follows:~~

4 ~~(a) First Report. The first report of the Council shall be made on~~
5 ~~December 1, 2011 indicating its progress. The report may include any~~
6 ~~recommendations for proposed legislation, revisions to administrative rules~~
7 ~~and regulations, or any relevant matter.~~

8 ~~(b) Second Report. The second report of the Council shall be made on~~
9 ~~April 1, 2012 indicating its progress. The~~
10 ~~report may include any recommendations for proposed legislation,~~
11 ~~revisions to administrative rules and regulations, or any relevant matter.~~

12 ~~(c) Final Report. The final report of the Council shall be made on~~
13 ~~August 1, 2012, and shall include draft legislation, revisions to administrative~~
14 ~~rules and regulations, or any relevant matter.~~

15 **~~§ 5905. Administration.~~**

16 ~~(a) The Council shall have the authority to retain professional and~~
17 ~~support staff to assist it with its duties, and shall designate an Administrative~~
18 ~~Director. However, the Director of Administration shall provide and~~
19 ~~coordinate administrative support services to the Council from the~~
20 ~~Department of Administration.~~

21 ~~(b) The Office of I Maga'laha (the Governor), the Office of the Attorney~~
22 ~~General, the Office of the Public Auditor, and other executive branch agencies~~
23 ~~may provide, loan or transfer resources to the Council to support its~~
24 ~~operations.~~

25 **~~§ 5906. Guam Procurement Advisory Council Support Fund.~~**

26 ~~There is hereby established a Guam Procurement Advisory Council Support~~
27 ~~Fund (Fund) to be maintained by the Director of Administration. I Maga'lahaen~~

1 ~~Guahan and the Director of Administration are authorized to transfer amounts into~~
2 ~~the Fund to support the operations of the Council. Any legislative appropriations to~~
3 ~~support the operations of the Council shall be deposited into the Guam Procurement~~
4 ~~Advisory Council Support Fund. The Chief Procurement Officer is authorized to~~
5 ~~transfer funds from the Special Surplus Property Fund to support the operations of~~
6 ~~the Guam Procurement Advisory Council.~~

7 ~~§ 5907. Responsiveness of the Government.~~

8 ~~The Guam Procurement Advisory Council may compel department and~~
9 ~~agency heads to provide or compile any information relative to the procurement of~~
10 ~~goods and services. Department and agency heads shall facilitate compliance with~~
11 ~~any requests from the Council.~~

12 ~~§ 5908. General Services Agency (GSA) Staff & Procurement Counsel~~
13 ~~Support.~~

14 ~~The Chief Procurement Officer, Procurement Counsel, and GSA staff shall~~
15 ~~provide administrative and technical assistance to the Council. Such assistance shall~~
16 ~~be at the discretion of the Chief Procurement Officer. However, the Procurement~~
17 ~~Counsel shall assist with the preparation of any legislation, rules or regulations.”~~

18 **Section 3.** Article 2, Chapter 5, Title 5 Guam Code Annotated is hereby
19 *amended* to read:

20 **“ARTICLE 2**

21 **PROCUREMENT ORGANIZATION**

- 22 Subarticle A. Procurement Policy Office.
- 23 Subarticle B. General Services Agency.
- 24 Subarticle C. Organization of Public Procurement.
- 25 Subarticle D. Guam Procurement Regulations.
- 26 Subarticle E. Coordination, Training and Education.
- 27 Subarticle F. Duties of the Attorney General.

1 Subarticle G. Guam Procurement Advisory Council.

2 **Section 4.** A new Subarticle G of Article 2, Chapter 5, Title 5 Guam Code
3 Annotated is hereby *added* to read:

4 **“SUBARTICLE G**

5 **GUAM PROCUREMENT ADVISORY COUNCIL**

6 § 5900. Guam Procurement Advisory Council.

7 § 5901. Composition.

8 § 5902. Duties.

9 § 5903. Limitations.

10 § 5904. Reports.

11 § 5905. Administration.

12 § 5906. Guam Procurement Advisory Council Support Fund.

13 § 5907. Responsiveness of the Government.

14 § 5908. General Services Agency (GSA) Staff & Procurement Counsel

15 Support

16 **§ 5900. Guam Procurement Advisory Council.**

17 There is hereby established within the government of Guam, the Guam
18 Procurement Advisory Council (Council) to research, evaluate, analyze, review
19 and make recommendations to improve, address and modernize government
20 procurement and contracting.

21 **§ 5901. Composition.**

22 The Council shall be comprised of the following members:

23 (a) Chief Procurement Officer or his/her designee;

24 (b) Director of Public Works or his/her designee;

25 (c) Attorney General of Guam or his/her designee;

26 (d) Public Auditor or his/her designee;

27 (e) Director of Administration or his/her designee;

1 (f) President of the Guam Community of College or his/her
2 designee;

3 (g) Three members appointed by *I Maga'hagan Guåhan*, which
4 includes the following:

5 1) procurement officer from an agency with decentralized
6 procurement or from an autonomous agency;

7 2) member of the general public with experience in federal
8 procurement;

9 3) one member of the general public in the private sector or
10 nonprofit.

11 **§ 5902. Duties.**

12 The Council is authorized to perform the following duties:

13 (a) to conduct studies, research and analysis on all matters relating
14 to the effectiveness, responsiveness and timeliness of government
15 procurement, including the review and comparison with model procurement
16 code legislation and consultation with division heads, school principals and
17 other mid-level managers, and end users of government procured goods and
18 services;

19 (b) to critically examine the substantive and procedural aspects of
20 the Guam Procurement Act and existing administrative rules and regulations
21 governing procurement, including the legal authorities, composition, and
22 effectiveness of the Procurement Policy Office;

23 (c) to review the legal infrastructure of the government
24 procurement system to ensure the uniformity of law, regulation and practice;

25 (d) to propose recommendations for the improvement,
26 streamlining, and modernization and the use of “best value” and

1 “performance based” methods as the basis for evaluation of government
2 procurement activities;

3 (e) to make recommendations and identify methods to address new
4 industries and technologies and financial systems, while maintaining the
5 general principles of procurement law;

6 (f) to review, make recommendations and provide advice on any
7 aspect of law, regulation or policy that affect procurement, including laws
8 and processes not directly found in the Guam Procurement Act;

9 (g) to review the statutes and process for procurement appeals and
10 recommend improvements;

11 (h) to assist in developing best practices and standard operating
12 procedures for planned procurement, writing specifications, market research,
13 solicitation, drafting and managing contracts, maintenance of procurement
14 records, and other aspects of the procurement process;

15 (i) to make recommendations for training and/or certification of
16 procurement professionals, including but not limited to developing and
17 updating curriculum, developing online and training the trainer programs, and
18 establishing a Guam Procurement Institute for the training and education of
19 public and private sector participants in government contracting;

20 (j) to make recommendations for implementing green procurement
21 within the Government of Guam under the advisement of the Guam Energy
22 Office, Guam Power Authority, Guam Environmental Protection Agency,
23 University of Guam Center for Island Sustainability, and/or other Government
24 of Guam entities;

25 (k) to make recommendations for maximizing federal funds in
26 accordance with Guam Procurement Law;

27 (l) to conduct hearings conducive to any such duty;

1 (m) to engage in such other activities as advance public confidence
2 in the Guam procurement system;

3 (n) to objectively review and assist with the construction of
4 procurement law and regulation as requested by *I Maga'hågan Guåhan*, *I*
5 *Liheslaturan Guåhan*, and/or the Procurement Policy Office.

6 **§ 5903. Limitations.**

7 The Council shall not have any executive participation in the day-to-day
8 implementation of the Guam Procurement Act. It shall not have any executive,
9 legislative, or adjudicative review authority over procurement matters.

10 **§ 5904. Reports.**

11 The Council shall provide annual reports to the Speaker of *I Liheslaturan*
12 *Guåhan* and *I Maga'hagan Guåhan*.

13 **§ 5905. Administration.**

14 (a) The Council shall have the authority to retain professional and
15 support staff to assist it with its duties, and shall designate an Administrative
16 Director. However, the Director of Administration shall provide and
17 coordinate administrative support services to the Council from the
18 Department of Administration.

19 (b) The Office of *I Maga'hagan Guåhan* (the Governor), the Office
20 of the Attorney General, the Office of the Public Accountability, and other
21 executive branch agencies may provide, loan or transfer resources to the
22 Council to support its operations.

23 **§ 5906. Guam Procurement Advisory Council Support Fund.**

24 There is hereby established a Guam Procurement Advisory Council Support
25 Fund (Fund) to be maintained by the Director of Administration. *I Maga'hagan*
26 *Guåhan* and the Director of Administration are authorized to transfer amounts into
27 the Fund to support the operations of the Council. Any legislative appropriations to

1 support the operations of the Council shall be deposited into the Guam
2 Procurement Advisory Council Support Fund. The Chief Procurement Officer is
3 authorized to transfer funds from the Special Surplus Property Fund to support the
4 operations of the Guam Procurement Advisory Council.

5 **§ 5907. Responsiveness of the Government.**

6 The Guam Procurement Advisory Council may compel department and
7 agency heads to provide or compile any information relative to the procurement of
8 goods and services. Department and agency heads shall facilitate compliance with
9 any requests from the Council.

10 **§ 5908. General Services Agency (GSA) Staff & Procurement Counsel**
11 **Support.**

12 The Chief Procurement Officer, Procurement Counsel, and GSA staff shall
13 provide administrative and technical assistance to the Council. Such assistance
14 shall be at the discretion of the Chief Procurement Officer. However, the
15 Procurement Counsel shall assist with the preparation of any legislation, rules or
16 regulations.”

17 **Section 4. Severability.** If any provision of this Act or its application to
18 any person or circumstance is found to be invalid or inorganic, such invalidity *shall*
19 *not* affect other provisions or applications of this Act that can be given effect without
20 the invalid provision or application, and to this end the provisions of this Act are
21 severable.