









I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2024 (SECOND) Regular Session

Bill No. 319-37 (LS)

Introduced by:

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**AN ACT TO REPEAL AND RE-ENACT § 1203.1 OF
ARTICLE 2, CHAPTER 1, TITLE 12 OF THE GUAM
CODE ANNOTATED, RELATIVE TO PROVIDING
AUTHORITY TO THE ANTONIO B. WON PAT
INTERNATIONAL AIRPORT AUTHORITY, GUAM TO
PROMULGATE RULES AND REGULATIONS FOR THE
SOLICITATION, SELECTION, AND AWARD OF
CONCESSION AGREEMENTS PURSUANT TO THE
ADMINISTRATIVE ADJUDICATION LAW OR BY
ENACTMENT INTO LAW AND FOR CONTRACTS FOR
THE USE OF AIRPORT FACILITIES AND
PROPERTIES.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that
3 the A.B Won Pat International Airport Authority, Guam (the “GLAA”) is Guam’s
4 only commercial service airport and contributes substantially to the economic health

1 and welfare of Guam’s economy. The GIAA plays an important role in the local,
2 regional, and international air transportation system as the largest airport in
3 Micronesia and is vital for the continued recovery of the tourism industry on Guam.

4 *I Liheslaturan Guåhan* further finds that allowing the GIAA to expand and
5 diversify its revenue stream is fundamental to its ability to continue to operate a safe,
6 secure, and efficient commercial airport for Guam, its residents, and visitors. And
7 that one of the largest non-aeronautical revenue streams any airport generates is from
8 its concession agreements, which also provides vital business and customer focused
9 services for the traveling public.

10 *I Liheslaturan Guåhan* further finds that existing language in § 1203.1, Article
11 2, Chapter 1, Title 12 of the Guam Code Annotated requires that such concession
12 agreements be procured under a competitive proposal procedure, according to
13 General Services Administration rules and regulations under which such
14 procurement requirements are specific to the expenditure of government funds,
15 whereas concession agreements—or revenue generating contracts—are not meant
16 for spending government funds, rather producing government revenues. And that
17 although the GIAA has the authority to promulgate rules and regulations, such
18 cannot be contrary to Guam law.

19 *I Liheslaturan Guåhan* further finds that the same section of Guam law
20 discussed above has also been found to require only the use of the competitive bid
21 process—or the Invitation for Bid (“IFB”)—and which disallows the use of the
22 Request for Proposal (“RFP”) solicitation method which is the industry standard for
23 certain types of concession agreements throughout the airport concession industry.
24 And that such restriction may hinder the GIAA’s ability to solicit for the best
25 possible concession agreement arrangements for the people of Guam.

26 In consideration of the GIAA’s mandate to be self-sustaining, *I Liheslaturan*
27 *Guåhan* further finds that providing the GIAA the ability to establish rules and

1 regulations through the Administrative Adjudication Law or via enactment into law
2 with regard to the solicitation, selection and award of concession agreements—
3 otherwise known as revenue-generating contracts—will provide the best opportunity
4 to achieve continued financial growth and stability through revenue expansion and
5 diversification to further solidify the GIAA’s financial position to continue to
6 provide the vital commercial airport services to the traveling public.

7 **Section 2.** Section 1203.1, Article 2, Chapter 1, Title 12 of the Guam Code
8 Annotated is hereby *repealed* and *re-enacted* to read:

9 ~~“§ 1203.1. Agreements Between ABWPGIAA and Concessions, Other~~
10 ~~Businesses and Service Providers; Agreements Between ABWPGIAA and~~
11 ~~Airlines.~~

12 ~~(a) Any agreement between the ABWPGIAA and any other party~~
13 ~~concerning the operation of a concession, other business or a service~~
14 ~~provider at ABWPGIAA shall conform to the following:~~

15 ~~(1) allow for an exclusive right to sell certain goods or~~
16 ~~provide certain services only after a competitive proposal~~
17 ~~procedure, according to the General Services Administration rules~~
18 ~~and regulations, and for a duration of no longer than five (5) years~~
19 ~~(Any exclusive right for a duration of longer than five (5) years~~
20 ~~shall be given by the ABWPGIAA to any party only upon~~
21 ~~subsequent approval by *I Liheslaturan Guåhan* by statute.);~~

22 ~~(2) criteria established for the operation of a concession,~~
23 ~~other business or service provider at the ABWPGIAA, which~~
24 ~~criteria shall be reviewed at a public hearing held within ninety (90)~~
25 ~~days of the effective date of this Section, and held in accordance~~
26 ~~with the Administrative Adjudication Law; and~~

1 ~~(3) not be extended in duration or otherwise modified, unless~~
2 ~~the extension or other modification conforms to the requirements~~
3 ~~of this Section (Notwithstanding the forgoing sentence, the~~
4 ~~exclusive concessionaire agreement between the ABWPGIAA and~~
5 ~~DFS, in effect on the effective date of this Section, modified by a~~
6 ~~memorandum of understanding, shall be modified again, but not~~
7 ~~extended in duration of term, pursuant to the cooperative efforts of~~
8 ~~the parties to reach a mutual understanding in the best interests of~~
9 ~~the People of Guam.)~~

10 ~~(4) in order to maximize local participation in concession~~
11 ~~businesses at the ABWPGIAA, the ABWPGIAA shall abide by the~~
12 ~~competitive bid process, to the extent consistent with good business~~
13 ~~practice, and make available the maximum number of opportunities~~
14 ~~for local businesses to provide concession goods and services at the~~
15 ~~ABWPGIAA.~~

16 ~~(b) Any agreement between ABWPGIAA and any airline offering~~
17 ~~service to Guam shall charge the airline using the ABWPGIAA air~~
18 ~~terminal facilities rates sufficient to cover the operating expenses of the~~
19 ~~air terminal and debt service coverage of the bonds authorized to be issued~~
20 ~~by this Section, and be in compliance with the requirement that no one (1)~~
21 ~~or more airlines shall be unreasonably discriminated against in~~
22 ~~comparison with any other airline in these charges.~~

23 ~~(c) Notwithstanding any other provision of law, the ABWPGIAA~~
24 ~~is authorized to enter into individual leases or agreements with those~~
25 ~~tenants currently operating food and beverage concessions at the~~
26 ~~ABWPGIAA as of February 28, 2001, for a period or term not to exceed~~
27 ~~two (2) years from January 1, 2002 under terms and conditions agreed~~

1 upon between ABWPGIAA and the tenants; provided, however, this
2 Section does not authorize an extension or renewal of any existing Master
3 Food and Beverage Concession Agreement or lease.

4 (d) ~~Notwithstanding Subsection (a) of this Section, the~~
5 ~~ABWPGIAA is authorized to enter into an agreement to extend the~~
6 ~~current exclusive DFS Concession Agreement one (1) time only for a~~
7 ~~period or term not to exceed two (2) years from January 20, 2002. Any~~
8 ~~such agreement shall still be subject to approval by I Liheslaturan~~
9 ~~Guåhan, and shall provide that annual payment during the period of the~~
10 ~~extension shall be no less than the sum of Eight Million Dollars~~
11 ~~(\$8,000,000), or twenty percent (20%) of gross sales at the ABWPGIAA,~~
12 ~~whichever is greater, and ten percent (10%) of gross sales at non-~~
13 ~~ABWPGIAA owned facilities where passengers are checked in for~~
14 ~~outgoing airline flights from Guam.~~

15 ~~The extension of the DFS Concession Agreement shall be~~
16 ~~submitted to I Liheslaturan Guåhan [Guam Legislature] for approval no~~
17 ~~later than September 30, 2001. I Liheslaturan Guåhan [Guam Legislature]~~
18 ~~shall have forty five (45) days upon receipt of the proposal to act on the~~
19 ~~approval or disapproval of the concessionaire agreement. Inaction by I~~
20 ~~Liheslaturan Guåhan [Guam Legislature] within the designated~~
21 ~~timeframe shall constitute approval.~~

22 **§ 1203.1. Agreements Between the Authority and Other Parties;**

23 **Agreements Between the Authority and Airlines.**

24 (a) Any agreement between the Authority and any other party for
25 the use of airport facilities and properties for airport purposes and/or
26 visitor related activities shall conform to the following:

1 (1) with regard to concession agreements, shall be subject to
2 rules and regulations for the solicitation, selection and award of
3 concession agreements established in accordance with the
4 Administrative Adjudication Law or by enactment into law.
5 Concessions include, but are not limited to retail, specialty retail,
6 food & beverage, advertising, currency exchange, car rentals, and
7 parking; and

8 (2) with regard to all other contracts for the use of Airport
9 facilities and properties, notwithstanding any other provision of
10 law, shall be subject to applicable Federal Aviation Administration
11 (FAA) requirements for aeronautical and non-aeronautical uses to
12 include rates charged for non-aeronautical uses at fair market value
13 pursuant to FAA requirements and policies and procedures adopted
14 from time to time by the GIAA's Board of Directors.

15 (3) shall be subject to applicable federal laws and
16 regulations; and

17 (4) shall be subject to the Authority's bond covenants.

18 (b) Any agreement between the Authority and any airline offering
19 service to Guam shall charge the airline using the Antonio B. Won Pat
20 Guam International Air Terminal facilities rates sufficient to cover the
21 operating expenses of the air terminal and debt service coverage of the
22 bonds authorized to be issued by this Section, and be in compliance with
23 the requirement that no one (1) or more airlines shall be unreasonably
24 discriminated against in comparison with any other airline in these
25 charges.

26 (c) This section 1203.1 shall not apply to:

1 (1) Permits to operate or access GIAA facilities or properties
2 for the purpose of operating a commercial ground transportation
3 service. A separate ground transportation policy has been
4 established by GIAA for permits to operate or access GIAA
5 facilities or properties for the purpose of operating a commercial
6 ground transportation service; and

7 (2) Non-commercial activity leases, leases with non-profit
8 organizations and educational institutions, leases with the
9 government of Guam, its line agencies, autonomous agencies, and
10 public corporations, and leases with the United States of America.”

11 **Section 3. Effective Date.** This Act *shall* be effective from and after its
12 enactment.

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