

**MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
**2013 (FIRST) Regular Session**

Bill No. 313-32(45)

Introduced by:

Brant T. McCreddie  
V. ANTHONY ADA CO  
C. M. DUEÑAS SA  
Mike Limbaco @.  
T. Morrison 2  
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AN ACT TO CREATE A NEW ARTICLE 6 TO CHAPTER 90  
TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE  
CONSTRUCTION AND RENOVATION OF THE  
DEPARTMENT OF CORRECTIONS ADULT  
CORRECTIONAL FACILITY TO ENSURE THE SAFETY OF  
THE PEOPLE OF GUAM; WHICH SHALL COLLECTIVELY  
BE CITED AS "THE DEPARTMENT OF CORRECTIONS  
CONSTRUCTION INITIATIVE ACT OF 2014".

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

2       **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the current  
3 Department of Corrections facility houses local inmates and detainees along with federal detainees  
4 in a compound that consists of sixteen (16) different housing units; among them the Adult  
5 Correctional Facility in Mangilao, the Women's Facility in Mangilao, Community Corrections  
6 Center in Mangilao, and the Hagåtña Detention Facility. These housing units are antiquated,  
7 dilapidated and house more than twice the number of prisoners for which they are designed. In  
8 recent years, growth in the prisoner and detainee population has far outpaced the Department of  
9 Corrections' ability to provide bed space.

10       *I Liheslaturan Guåhan* further finds that these structural limitations hamper the Department's  
11 mission to protect society by confining offenders in a controlled environment that is safe, humane,  
12 cost-efficient and secure. Furthermore, the Department is unable to provide prisoners with a range of  
13 work and other self-improvement and rehabilitative programs that will help reduce recidivism  
14 among inmates as well as help them adopt a crime-free lifestyle upon reintegration in our island  
15 community.

1 *I Liheslaturan Guåhan* further finds that on February 13, 1991, the United States of America  
2 brought an action against the Territory of Guam, for violations pursuant to the Civil Rights of  
3 Institutionalized Persons Act, 42 U.S.C. §1997 and the Constitutional rights of persons either  
4 confined or residing in the Adult Correctional Facility and Rosario Detention Facility. Both of these  
5 facilities cited are under the purview of the Department of Corrections. This action is on record with  
6 the United States District Court of Guam as CIV91-000020 and to this date the government of Guam  
7 remains in **noncompliance status**. The construction and renovation of facilities through this Act  
8 will adequately address all deficiencies and bring the Department into compliance and eliminate the  
9 possibility of federal receivership.

10 *I Liheslaturan Guåhan* further finds that recent statements made by both the Administration,  
11 as well as by our Delegate to the United States House of Representatives, has agreed with the need  
12 to finally solve the infrastructure and overcrowding issues at the Department of Corrections. During  
13 her address to *I Liheslatura*, Congresswoman Madeleine Bordallo stated that she would help seek  
14 out federal sources of funding to assist in the reconstruction of DOC. This heightened interest by  
15 both our local leaders and the people of Guam to replace and/or renovate DOC makes this the most  
16 appropriate time to pass this Act.

17 Therefore, it is the intent of *I Liheslaturan Guåhan* to authorize the Guam Economic  
18 Development Authority to plan for the construction of a new detention facility and the renovation of  
19 the Department of Corrections existing facilities or construction of new facilities as deemed  
20 appropriate.

21 **Section 2.** A new Article 6 of Chapter 90, Title 9, Guam Code Annotated is hereby *added to*  
22 read as follows:

23 **“ARTICLE 6**

24 **THE DEPARTMENT OF CORRECTIONS**

25 **CONSTRUCTION INITIATIVE ACT OF 2014**

26 **§90.200. Title.** This Act shall be known as the ***“Department of Corrections***  
27 ***Construction Initiative Act of 2014”***.

28 **§90.201. Purpose.** *I Liheslaturan Guåhan*, recognizing the need to ensure the safety  
29 of the people of Guam by constructing a modern, secure and safe correctional facility  
30 authorizes the construction and/or renovation of the Department of Corrections (DOC). This

1 will benefit Guam's residents by confining offenders in the controlled environment of prison  
2 and community-based facilities that are safe, humane, cost-efficient and appropriately secure,  
3 and to provide prisoners with a range of work and other self-improvement programs that will  
4 help them adopt a crime-free lifestyle upon their return to our community.

5 **§90.202. Definitions.** The following terms wherever used or referred to in this Act  
6 shall have the following definitions, respectively, unless a different meaning appears from  
7 the context:

8 (a) "Act" means the Department of Corrections Construction Initiative Act of 2013.

9 (b) "Contractor" means the authorized appropriate business or not for profit entity  
10 which shall be the signatory on an arrangement and shall be fully responsible for carrying out  
11 the financing, design, construction, collateral equipment and maintenance of the DOC  
12 Correctional Facility.

13 (c) "Contract" shall mean the design, construction, maintenance, or financing  
14 contract(s) entered into by and between the Department of Corrections and a Contractor(s) to  
15 accomplish the purpose(s) of this act.

16 (d) "DOC" means Department of Corrections.

17 (e) "Director" means the Director, Department of Corrections.

18 (f) "Government" shall mean the government of Guam.

19 (g) "DOC Correctional Facility" shall mean the Department of Corrections building  
20 structure or structures, together with all ancillary facilities, including parking facilities,  
21 utilities, infrastructure and equipment associated with providing the services required by the  
22 public safety agency.

23 (h) "Lease" means a ground or site lease of property from DOC, or other government  
24 entity, or private property, as applicable, to the Contractor.

25 (i) "Property" means any property on which the correctional facility is located.

26 **§90.203. New DOC Correctional Facility.**

27 (a) I Maga'lahaen Guahan, on behalf of the Department of Corrections, is hereby  
28 authorized to enter into a financial arrangement with a Contractor(s) for the financing,  
29 design, construction, collateral equipment and maintenance of the DOC Correctional Facility.  
30 Such financing arrangement may be with the U.S. Department of Agriculture, or other

1 financing sources available, in an effort to identify necessary funds for the implementation of  
2 the provisions contained in this Act.

3 (b) The design of the facility and any financial arrangement to provide for the design,  
4 construction, collateral equipment and maintenance of the DOC Correctional Facility shall be  
5 subject to consultation with the Director.

6 (c) The design of the facility shall include efficient use of space that will allow for the  
7 Department of Corrections to enhance its rehabilitation programs to ensure that work  
8 opportunities are provided for all inmates to be engaged in a productive, healthy manner  
9 while they are incarcerated. Rehabilitation may include farming, gardening, art production,  
10 license plate production, animal training, and any other light industry that are found to be  
11 successful in preparing inmates for re-integration into community life.  
12 The DOC Director shall conduct a review of proven and successful rehabilitation programs  
13 across national penal systems. The DOC Director shall search for grant opportunities as a  
14 way to fund the initiation of rehabilitation programs.

15 Monies generated from rehabilitation programs shall be deposited into the Prison  
16 Industries Revolving Fund to sustain the operations of the identified programs. Rules and  
17 regulations shall be promulgated by DOC to carry out the provisions of this item, if  
18 necessary.

19 (d) Any monies reimbursed to the Government of Guam by the Contractor(s) for  
20 expenses not actually incurred on the design and construction of the DOC Correctional  
21 Facility shall revert to the government of Guam.

22 (e) Any revenue derived from an arrangement entered into, consistent with this Act,  
23 shall be exempt from business privilege taxation by the government of Guam.

24 (f) DOC Correctional Facility shall be built or acquired within its current location in  
25 Mangilao. Alternatively, the Facility may be constructed on any other site that has been  
26 deemed appropriate by the Department of Public Works, in consultation with DOC and with  
27 approval of the Legislature..

28 **§90.204. Authorization to Enter into Arrangements.** *1 Maga'lahen Guahan* may  
29 enter into arrangements with a contractor on behalf of the Department for the financing of the  
30 acquisition, design, construction, improvement, equipping, repair, renewal, replacement, or

1 reconstruction of any DOC building, to include the maintenance of all or any portion of such  
2 facility over the term of the arrangement, according to the needs of the Department and  
3 consistent with this Act.

4 The Guam Economic Development Authority shall determine what arrangement(s)  
5 would be most feasible for the government of Guam to enter into with a contractor for the  
6 construction of a new correctional facility for Guam, which may include a municipal lease,  
7 leaseback or any other arrangement that it deems most appropriate. The Guam Economic  
8 Development Authority shall report back to *I Maga'Lahen Guåhan* and *I Liheslaturan*  
9 *Guåhan* within 120 days of the passage of this Act its professional recommendation as to the  
10 most appropriate arrangement(s) to carry out the provisions of this Act.

11 The contractor, in an effort to effectively carry out its responsibilities in accordance  
12 with any agreed upon contract and the provisions set forth herein, may work with the Guam  
13 Economic Development's Real Property Division to this end or with another business entity  
14 or entities in any manner the contractor deems appropriate to provide for the financing,  
15 design, construction, collateral equipment and maintenance of the DOC Correctional Facility.

16 It is hereby declared that the DOC Correctional Facility shall be a public  
17 improvement or undertaking as that term is used in Section 11 of the Organic Act (§ 1423a,  
18 Title 48, U.S. Code). Obligations incurred by the government pursuant to this Act will not be  
19 and shall not be deemed to be public indebtedness of Guam as that term is used in said  
20 Section 11.

21 No obligation undertaken by the government pursuant to this Act shall be or become  
22 a lien, charge or liability against the government of Guam or against the Department or  
23 against any property or funds of the government of Guam or the Department, except to the  
24 extent of the pledge of revenue of the project provided by the arrangement. The arrangement  
25 shall not be construed as a debt under any applicable debt limitation under Guam law.

26 **§90.205. Procurement Process for the DOC Correctional Facility.** The  
27 Department of Corrections, Department of Public Works and the Guam Economic  
28 Development Authority, acting collaboratively, shall facilitate the procurement process(es)  
29 for those things necessary to accomplish the purposes of this act.

1           §90.206. Authority of DOC. Notwithstanding any provision of law or regulation,  
2 DOC is authorized to exercise any or all of the powers granted to DOC by this Act.

3           §90.207. Use of Tax-Exempt Financing. To minimize the financing cost to DOC if  
4 any, financing utilized by the Contractor to fund the design, construction, collateral  
5 equipment and maintenance of the DOC Correctional Facility may be through tax-exempt  
6 obligations or other financial instruments provided such financing is available at reasonable  
7 interest rates. Alternatively, the Contractor may use an alternative method of financing,  
8 including, but not limited to, a short term debt, mortgage, loan, federally guaranteed loan or  
9 loan by an instrumentality of the United States Federal Government if such financing will  
10 better serve the needs of the people of Guam. The Contractor financing shall have a final  
11 term that does not exceed thirty (30) years from the DOC Facility occupancy date. The  
12 purpose for the requirements of this Section is to assure that DOC pays the lowest possible  
13 payment and that the cost of financing the design, construction, collateral equipment, and  
14 maintenance of the DOC Facility to the Department if any is minimized.

15           §90.208. Issuance of Bonds or Acquisition of Financing through the Guam  
16 Economic Development Authority; Debt Service. In the event financing is sought through  
17 the sale of bonds, the Department of Corrections is hereby granted the authority to issue and  
18 sell bonds to carry out the purposes mandated by this Act in accordance with §50103(k) of  
19 Title 12, Guam Code annotated. The Department of Corrections shall solicit and acquire the  
20 assistance of the Guam Economic Development Authority in the issuance and sale of any  
21 bonds, or the acquisition of financing necessary to carry out the provisions contained in this  
22 Act.

23           The Guam Economic Development Authority shall assist the government of Guam in  
24 identifying potential debt service payment options for the financing required by this Act.

25           §90.209. Responsibility of Contractor. Any arrangement shall require that the  
26 contractor be responsible for financing all costs, expenses and fees of any kind or nature,  
27 associated with the improvements, on-site infrastructure and off-site infrastructure,  
28 construction, permits and financing associated with the completion of the correctional  
29 facility, which may include the financing of furniture and equipment for the facility, as to the  
30 extent provided by the Department in the Request For Proposal (RFP). The Contractor shall

1 also be responsible for the capital maintenance of the DOC Correctional Facility during the  
2 term.

3 The Contractor shall also be responsible for the installation of security equipment, to  
4 include but not limited to, automated locking systems, surveillance cameras, fences, barriers  
5 and other security technology both inside and around the perimeter of the property of the  
6 DOC Correctional Facility. The Contractor will be responsible for the maintenance of all  
7 security equipment during the term.

8 **§90.210. Responsibility of Costs for the initial Installation of Utility Services,**  
9 **Telephone, Cable, and General Maintenance and Repair.** The Contractor shall be  
10 responsible for the connection and payment of all utilities associated costs, including without  
11 limitation, power, water, sewer, telephone and cable, and all routine interior maintenance and  
12 repair and exterior grounds keeping and landscaping and upkeep of the headquarters Building  
13 facility. General building maintenance and repair shall be performed by Contractor as  
14 provided for in this Act.

15 **§90.211. Construction of Act.** This Act shall be liberally construed to carry out the  
16 objects and purposes and the declared policy of the government of Guam as in this Article set  
17 forth. Nothing contained in this Act shall be construed directly or by implication to be in any  
18 way in derogation or limitation of powers conferred upon or existing in the Department, the  
19 Director or *I Maga'lahaen Guåhan* by virtue of any provisions of the Organic Act or laws of  
20 Guam.

21 **§90.212. Administration of DOC.** Nothing in this act shall remove the Director,  
22 corrections officers and staff of the Department of Corrections from running the day-to-day  
23 operations of DOC. In no way shall this Act privatize the operations at DOC, except as  
24 explicitly indicated in this Act.

25 **§90.213. Energy Efficiency.** The Contractor shall construct and/or renovate DOC  
26 facilities to be as energy efficient as possible in order to promote cost savings and lessen the  
27 environmental impact at DOC.”

28 **Section 3. Effective Date.** The provisions contained in this Act shall be effective  
29 immediately upon enactment. Any Rules and Regulations promulgated as a result of provisions  
30 contained herein shall be effective upon the date specified per existing statutory mandates.

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