

*I Mina'trentai Singko 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
386-35 (COR)	Sabina Flores Perez Therese M. Terlaje	AN ACT TO AMEND §§ 19102(c) AND (h), 19104(m), OF ARTICLE 1, § 19202(a)(3) OF ARTICLE 2, § 19403(a)(1) OF ARTICLE 4, AND TO ADD A NEW § 19203 TO ARTICLE 2, ALL OF CHAPTER 19, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING EMERGENCY HEALTH POWERS AND CONNECTING IT TO PROCUREMENT LAW.	7/30/20 3:13 p.m.						

***I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN***  
**2020 (SECOND) Regular Session**

**Bill No. 386-35 (COR)**

Introduced by:

Sabina Flores Perez *SFP*  
Therese M. Terlaje *TKS*

**AN ACT TO *AMEND* §§ 19102(c) AND (h), 19104(m), OF ARTICLE 1, § 19202(a)(3) OF ARTICLE 2, § 19403(a)(1) OF ARTICLE 4, AND TO ADD A NEW § 19203 TO ARTICLE 2, ALL OF CHAPTER 19, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING EMERGENCY HEALTH POWERS AND CONNECTING IT TO PROCUREMENT LAW.**

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

**Section 1. Legislative Findings and Intent.** *I Liheslatura* finds that with the ongoing COVID-19 pandemic and its uncertainties, emergency powers may be used more often. These emergency powers are needed to act swiftly to protect the people of Guam.

*I Liheslatura* also finds that with recent concerns over how the authority is being used, clarifications to that law need to be made. The COVID-19 pandemic is long-term, it's important to allow for use of other methods of procurement, especially in the case where the immediate need does not exist and especially for technology procurement, which is a long-term investment. Furthermore, to the extent that emergency procurements are necessary, they must be conducted within the scope of the principles, purposes and intent of the Procurement Law, not on the absolute discretion of the executive branch. As a result, it is important to allow for

1 use of non-emergency procurement, when practicable, and to clarify who has what  
2 authority.

3 Therefore, it is the intent of *I Liheslatura* to clarify that all purchases made  
4 under emergency health powers must go through proper procurement and a health  
5 emergency procurement task force must be ready to respond, not just to the health  
6 crisis itself but the situations that surround it.

7 **Section 2.** § 19102(c) of Article 1, Chapter 19, Title 10, Guam Code  
8 Annotated, is *amended* to read:

9 “(c) a renewed focus, after the lessons learned from the Covid-19  
10 pandemic, on the reasonable prevention, detection, management and  
11 containment of public health emergencies having the discernible likelihood of  
12 substantial death and disability is needed;”

13 **Section 3.** § 19102(h) of Article 1, Chapter 19, Title 10, Guam Code  
14 Annotated, is *amended* to read:

15 “(h) the exercise of the extraordinary emergency health powers must be  
16 grounded in a thorough scientific understanding of public health threats and  
17 disease transmission, balanced, focused, and guided by principles  
18 proportionally affecting the whole of the island community, with fair and  
19 equitable good governance, justice, and anti- non-discrimination, it is the duty  
20 of the government of Guam to act with fairness and tolerance towards the full  
21 electorate and all residents individuals and groups;”

22 **Section 4.** § 19104(m) of Article 1, Chapter 19, Title 10, Guam Code  
23 Annotated, is *amended* to read:

24 “(m) A ‘public health emergency’ is an occurrence ~~or~~ of imminent  
25 threat of an illness or health condition that, grounded in a thorough scientific  
26 understanding of public health threats and disease transmission:

- 27 (1) is believed to be caused by any of the following:  
28 (i) bioterrorism;

1 (ii) the appearance of a novel or previously controlled  
2 or eradicated infectious agent or biological toxin;

3 (iii) a natural disaster relative to an act of God caused by  
4 a typhoon, earthquake, tsunami, flood or intra-terrestrial  
5 collision;

6 (iv) a chemical attack or accidental release; or(v)a  
7 nuclear attack or accident; and

8 (2) poses a high probability of any of the following harms:

9 (i) a large number of deaths in the affected population;

10 (ii) a large number of serious or long-term disabilities  
11 in the affected population; or

12 (iii) widespread exposure to an infectious or toxic agent  
13 that poses a significant risk of substantial future harm to a large  
14 number of people in the affected population.”

15 **Section 5.** § 19202(a)(3) of Article 2, Chapter 19, Title 10, Guam Code  
16 Annotated, is *amended* to read:

17 “(3) the location, procurement (as authorized under Title 5, Chapter 5  
18 of the Guam Annotated Code), storage, transportation, maintenance, and  
19 distribution of essential materials, including but not limited to medical  
20 supplies, drugs, vaccines, food, shelter, clothing and beds;”

21 **Section 6.** A new § 19203 is hereby *added* to Article 2, Chapter 19, Title  
22 10, Guam Code Annotated, to read:

23 **“§19203. Public Health Emergency Purchasing Task Force.**

24 (a) There shall be, within the DPHSS, a Public Health  
25 Emergency Purchasing Task Force (“the Task Force”) consisting of the  
26 Director or DPHSS, the Director of the Department of Administration,  
27 the Administrator of Civil Defense, the Homeland Security Advisor of  
28 Guam Homeland Security, the Chief Procurement Officer, and the

1 Director of Public Works, and, as needed, such other persons employed  
2 in the Government who, in the opinion of the Chair, would be of  
3 substantial assistance to the Task Force. The Director of DPHSS, shall  
4 be the Chair and convenor of the Task Force, with power to delegate  
5 such duties to a senior administrator or manager of any government  
6 agency designated to take part in the Task Force, and the duty to  
7 supervise such designee and Task Force.

8 (b) Duties. The Task Force shall have the following duties.

9 (1) To be alert to any evidence of any incipient public  
10 health emergency threat, as such emergency is defined in this  
11 Chapter 19, and to meet or confer as it evolves to assess the threat  
12 level of such an emergency, and establish preliminary plans to  
13 address any reasonably foreseeable requirements for the kinds  
14 and amounts of supplies, services or construction to address the  
15 threat, together with an initial estimate of a range of costs  
16 therefor. The Director of DPHSS or designee shall keep the  
17 Governor advised in writing of all relevant events concerning  
18 any public health emergency, incipient or declared. All records  
19 of the Task Force related to any purchase, acquisition or  
20 procurement made under or contrary to the authorities or powers  
21 granted by this Chapter 19 shall be made and maintained as  
22 procurements are initiated in accordance with the requirements  
23 of 5 GCA § 5249, and, made part of the procurement record of  
24 each procurement, subject to 5 GCA §§ 5247 through 5252, and  
25 § 5485.

26 (2) Be alert to and informed of the source of any funds  
27 that may be available to procure estimated needs so as to become

1 aware of and knowledgeable with any spending, procurement or  
2 other conditions of expenditure and accounting for such funds.

3 (3) Coordinate all communications with and activities  
4 of the various government entities who are or may become  
5 involved in or be of assistance in such public health emergency.

6 (c) Special Duties of the Chief Procurement Officer. The Chief  
7 Procurement Officer shall be attend, in person or by designated senior GSA  
8 manager, all Task Force meetings or conferences so as to be kept abreast of  
9 any public health emergency at the earliest practical moment. In keeping with  
10 the responsibilities of the Chief Procurement Officer under 5 GCA §  
11 5113(c)(1)(A), the Chief Procurement Officer shall be responsible for the  
12 procurement, management, and staffing of the procurement of all supplies and  
13 services needed to address a public health emergency, in accordance with the  
14 Guam Procurement Law, or any other law or regulation governing the  
15 procurement or the receipt or expenditure of any non-Guam public funds. All  
16 such emergency health procurements shall be prioritized over all other  
17 procurements of GSA, pending or otherwise. The Chief Procurement Officer  
18 shall keep the Task Force informed of the status of all such procurements,  
19 regularly and as requested by the Task Force Chair.”

20 **Section 7.** § 19403(a)(1) of Article 4, Chapter 19, Title 10, Guam Code  
21 Annotated, is *amended* to read:

22 “(1) through an executive order suspend, the provisions of any  
23 regulatory statute prescribing procedures for conducting local business, or the  
24 orders, rules and regulations of any government of Guam agency, to the extent  
25 that strict compliance with the same would prevent, hinder or delay necessary  
26 action ~~(including emergency purchases)~~ by the public health authority to  
27 respond to the public health emergency, or increase the health threat to the  
28 population;

1           (A) Nothing in this Title 10, captioned Health & Safety, nor in  
2 this Chapter 19 of said Title, captioned Emergency Health Powers, is  
3 intended to imply or express, nor to be construed to grant, any power  
4 or authority to purchase, procure, or expend public funds under any  
5 contract, except as authorized under Title 5, Chapter 5 of the Guam  
6 Code Annotated, captioned Guam Procurement Law.

7           (B) Effect on automatic stay. In the event of a protest of a  
8 solicitation under authority of 5 GCA § 5425(a), which solicitation was  
9 made after or in contemplation of a declaration of a public health  
10 emergency by the Governor in accordance with 10 GCA § 19401, and  
11 notwithstanding the provisions of 5 GCA § 5425 (g) subsections (1)  
12 through (3), the automatic stay of a protested solicitation under §  
13 5425(g) shall be lifted by the written determination of the Director of  
14 DPHSS that there exists an imminent threat of public health emergency  
15 as contemplated within the purposes of 10 GCA Chapter 19  
16 (Emergency Health Powers) and that the award of the solicited contract  
17 without delay is necessary to protect substantial public health interests  
18 of the Territory. Lifting of the automatic stay does not preclude  
19 administrative appeal to the Public Auditor pursuant to 5 GCA §  
20 5425(e), nor application to the Superior Court for writ, injunction or  
21 other relief as may be appropriate.

22       **Section 8. Effective Date.** This Act *shall* be effective upon enactment.

23       **Section 9. Severability.** If any provision of this Act or its application to  
24 any person or circumstance is found to be invalid or contrary to law, such invalidity  
25 *shall not* affect other provisions or applications of this Act that can be given effect  
26 without the invalid provision or application, and to this end the provisions of this  
27 Act are severable.