

I MINA 'TRENTA NA LIHESLATURAN GUÁHAN
2009 (First) REGULAR SESSION

Bill No. 24 (25)

Introduced by:

J.V. Espaldon



**AN ACT TO REPEAL AND RE-ENACT CHAPTER 70 OF
TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO THE
GUAM CONTRACTORS LICENSING BOARD.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

**Section 1. Chapter 70 of Title 21, Guam Code Annotated is repealed and re-enacted
to read:**

“21 GCA REAL

PROPERTY

CH. 70 CONTRACTORS

§ 70100. Definitions

§ 70101. Exemptions.

§ 70102. Contractors License Board.

§ 70103. Powers and Duties of Board.

§ 70104. Executive Secretary; Other Assistants.

§ 70105. Place of Meeting.

§ 70106. Classification.

§ 70107. Powers to Classify and Limit Operations.

§ 70108. Licenses Required

§ 70108.1. Advertising

§ 70109. Investigation Permitted.

§ 70109.1. Investigation Citation Authority.

§ 70109.2. False complaints against contractors; Penalties

§ 70109.3. Cease Work Order Permitted

§ 70110. No License Issued When.

§ 70111. Application: Fees.

2009 JAN - 5 AM 11:08

1 § 70112. Form of Licenses.

2 § 70113. Place of Business and Posting of License.

3 § 70114. Fees; Annual.

4 § 70115. Action on Application.

5 § 70116. Revocation, Suspension and Renewal of Licenses.

6 § 70117. Hearings.

7 § 70118. Appeal to Superior Court

8 § 70119. Disposition of Fees, Refunds.

9 § 70120. Death or Dissociation.

10 § 70121. Violation, Penalty.

11 § 70122. Injunction.

12 § 70123. Exemptions for Prior Licensees.

13 **§ 70100. Definitions.**

14 As used in this Chapter:

15 (a) Board means the Contractors License Board.

16 (b) Contractor means any person who undertakes to construct, alter, repair, add to, subtract from,
17 improve, move, wreck or demolish any building, highway, road, railroad, excavation or other
18 structure, project development or improvement or do any part thereof, including the erection
19 of scaffolding or other structure of works in connection therewith for another person for a fee.

20 (c) Contractor includes a subcontractor and a specialty contractor.

21 (d) Person means an individual, partnership, joint venture, corporation or any combination thereof.
22 Corporation includes an association, business trust or any organized group of persons.

23 (e) Self-construction means a project or operation performed by the owner for his own personal
24 needs on his own premises; a self-constructed/performed project or operation shall otherwise be
25 deemed performed by a contractor.

26 (f) Investigator means an employee with the contractors license board who conducts thorough
27 investigations of applicants applying for a contractors license; to inspect, regulate, and enforce the
28 laws and rules and regulations of the Licensing Board for Contractors.

29 (g) Responsible Management Employee means the individual responsible for the direct management
30 of the contracting business of the licensee.

31 **§ 70101. Exemptions.**

1 This Chapter shall not apply to:

2 (a) An officer or employee of the United States, the Territory or any political subdivision, if the
3 project or operation is performed by employees thereof;

4 (b) Any person acting as a receiver, trustee in bankruptcy, administrator or executor, or any other
5 person acting under any order or authorization of any court;

6 (c) A person who sells or installs any finished products, materials or articles or merchandise which
7 are not actually fabricated into and do not become a permanent fixed part of the structure, or to the
8 construction, alteration, improvement or repair of personal property;

9 (d) Any project or operation for which the aggregate contract price for labor, materials and all other
10 items is less than One Thousand Dollars (\$1,000). This exemption shall not apply in any case
11 wherein the undertaking is only part of a larger or major project or operation, whether undertaken by
12 the same or a different contractor or in which a division of the project or operation is made in
13 contracts of amounts less than One Thousand Dollars (\$1,000) for the purpose of evading this
14 Chapter or otherwise;

15 (e) A registered architect or professional engineer acting solely in his professional capacity;

16 (f) Any person who engages in the activities herein regulated as an employee with wages as his sole
17 compensation;

18 (g) Any person who undertakes by himself or through his employees any project or operation for
19 himself; and.

20 (h) Any copartnership or joint venture if all members thereof hold licenses issued under this Chapter
21 or if the person or persons who have direct management of the contracting business thereof hold a
22 license.

23 **§ 70102. Contractors License Board.**

24 (a) There shall be a Contractors License Board compose of seven (7) members; two (2) of which
25 shall be appointed by the Governor from the construction industry; three (3) of which shall be
26 appointed by the Governor from the general public and who shall have no interest in the construction
27 industry; and the Director of Revenue and Taxation, ex-officio; and the Director of Public Works,
28 ex-officio. Those members appointed by the Governor are subject to confirmation by the
29 Legislature. Their terms shall be four (4) years and said terms to commence January 1 next
30 following the enactment hereof.

(b) The concurrence of four (4) members of the Board shall be necessary for the validity of any of its action.

(c) Organization, Records, Reports. Immediately upon the appointment and qualifications of the original members, and annually thereafter, the Board shall organize by the election of one member as Chairman and one member as Vice-Chairman. The Board shall keep a complete record of all its proceedings and shall present annually to the Governor through the ~~[Director of Public Works]~~ Executive Secretary a detailed statement of the previous year, proceedings and such recommendations as the Board may deem proper.

(d) Compensation. Members of the Board shall receive the sum of Fifty Dollars (\$50) for each attendance at the meeting of the Board, provided, however, that no member shall receive more than One Hundred Dollars (\$100) per month.

§ 70103. Powers and Duties of Board.

In addition to any other duties and powers granted by this Chapter the Contractors License Board shall:

(a) Grant licenses to contractors pursuant to this Chapter;

(b) Make, amend or repeal such rules and regulations as it may deem proper fully to effectuate this Chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules and regulations shall be adopted pursuant to the Administrative Adjudication Law. The rules and regulations may forbid acts or practices deemed by the Board to be detrimental to the accomplishment of the purpose of this Chapter. The rules and regulations may require contractors to make reports to the Board containing such items of information as will better enable the Board to enforce this Chapter and rules and regulations, or as will better enable the Board from time to time to amend the rules and regulations more fully to effectuate the purposes of this Chapter. The rules and regulations may require contractors to furnish reports to owners containing such matters of information as the Board deems necessary to promote the purpose of this Chapter. The enumeration of specific matters which may properly be made the subject of rules and regulations shall not be construed to limit the Board's general power to make all rules and regulations necessary fully to effectuate the purpose of this Chapter;

(c) Enforce this Chapter and rules and regulations adopted pursuant thereto;

1 (d) Suspend or revoke any license for any cause prescribed by § 70116 or for any cause for
2 suspension or revocation prescribed by the rules and regulations, and refuse to grant any license for
3 any cause which would be ground for revocation or suspension of a license; and

4 (e) Publish and distribute pamphlets and circulars containing such information as it deems proper to
5 further the accomplishment of the purpose of this Chapter.

6 (f) Contract professional testing services as deemed necessary to prepare, administer, and grade the
7 examinations for applicants as may be required for the purpose of this chapter.

8 **§ 70104. Executive Secretary; Other Assistants.**

9 ~~(a) [Subject to the Personnel Law the Department of Public Works may employ and remove~~
10 ~~such administrative and clerical assistants and require and prescribe their powers and duties.]~~

11 (a)(1) The Contractors License Board shall employ an Executive Secretary. The Executive
12 Secretary shall be employed with due regard to his fitness, thorough administrative ability and
13 knowledge of and experience in the business of contracting. The Executive Secretary shall act only
14 with the advice and consent of the Board and shall be responsible to the Board. He shall devote his
15 entire time to the duties of his office and shall not be actively engaged or employed in any other
16 business, vocation or employment, nor shall he have any pecuniary interest, direct or indirect, in any
17 contracting enterprise or enterprises conducted or carried on within the Territory.

18 (2) The Executive Secretary shall, under the supervision of the Board, administer this
19 Chapter and the rules and regulations and orders established thereunder and perform such other
20 duties as the Board may require; he shall attend but not vote at all meetings of the Board; he shall be
21 in charge of the offices of the Board and responsible to the Board for the preparation of reports and
22 the collection and dissemination of data and other public information relating to contracting.

23 (3) The Board may, by written order filed in its office, delegate to the Executive Secretary
24 such of its powers or duties as it deems reasonable and proper for the effective administration of this
25 Chapter, except the power to make rules or regulations. The delegated powers and duties may be
26 exercised by the Executive Secretary in the name of the Board.

27 (4) Subject to the Personnel Law the Executive Secretary may employ and remove such
28 administrative and clerical assistants and require and prescribe their powers and duties.

29 **§ 70105. Place of Meeting.**

30 The ~~[Director of Public Works]~~ Executive Secretary shall provide a suitable quarters for meetings of
31 the Contractors License Board and for the transaction of its other business.

1 **§ 70106. Classification.**

2 (a) For the purpose of classification, the contracting business includes any or all of the following
3 branches:

- 4 (1) General Engineering Contracting;
- 5 (2) General Building Contracting;
- 6 (3) Specialty Contracting;
- 7 (4) Responsible Management Employee (R.M.E.).

8 (b) A general engineering contractor is a contractor whose principal contracting business is in
9 connection with fixed works requiring specialized engineering knowledge and skill, including the
10 following divisions or subjects: irrigations, drainage, water power, water supply, flood control,
11 inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects,
12 levees, river control and reclamation works, highways, streets and roads, tunnels, airports and
13 airways, sewer, sewage disposal plants and systems, waste reduction plants, bridges, overpasses,
14 underpasses and other similar works, pipelines and other systems for the transmission of petroleum
15 and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries,
16 chemical plants and similar industrial plants requiring specialized engineering knowledge and skill,
17 powerhouses, power plants and other utility plants and installations, mines and metallurgical plants,
18 land leveling and earth-moving projects, excavating, grating, trenching, paving and surfacing work
19 and cement and concrete works in connection with the above-mentioned fixed works.

20 (c) A general building contractor is a contractor whose principal contracting business is in
21 connection with any structure built, being built or to be built, for the support, shelter and enclosure
22 of persons, animals, chattels or movable property of any kind, requiring in its construction the use of
23 more than two unrelated building trades or crafts, or to do or superintend the whole or any part
24 thereof.

25 (d) A specialty contractor is a contractor whose operations as such are the performance of
26 construction work requiring special skill and whose principal contracting business involves the use
27 of specialized building trades or crafts.

28 (e) A Responsible Management Employee is an individual who has proved his contracting
29 knowledge by written examination.

30 **§ 70107. Powers to Classify and Limit Operations.**

1 (a) The Contractors License Board may adopt rules and regulations necessary to effect the
2 classification of contractors and shall require a written examination in a manner consistent with
3 established usage and procedure as found in the construction business, and may limit the field and
4 scope of the operations of a licensed contractor to those in which he is classified and qualified to
5 engage, as defined in § 70106.

6 (b) A licensee may make application for classification and be classified in more than one
7 classification if the licensee meets the qualifications prescribed by the Board for such additional
8 classification. For qualifying or classifying in additional classifications, the licensee shall pay the
9 appropriate application fee but shall not be required to pay any additional license fee.

10 (c) This Section shall not prohibit a specialty contractor from taking and executing a contract
11 involving the use of two or more crafts or trades, if the performance of the work in the crafts or
12 trades, other than in which he is licensed, is less than thirty-five percent (35%) and supplemental to
13 the performance of work in the craft for which the specialty contractor is licensed.

14 **§ 70108. Licenses Required.**

15 No person within the purview of this Chapter shall act, or assume to act, or advertise, as general
16 engineering contractor, general building contractor or specialty contractor without a license
17 previously obtained under and in compliance with this Chapter and the rules and regulations of the
18 Contractors License Board.

19 **§ 70108.1. Advertising**

20 (a) A Contractor may advertise in print or broadcast medium only if the contractor includes in the
21 advertisement or listing the contractor's applicable and current license number, and provides proof
22 of the number's to validity to the publisher or producer of the advertising medium. The publisher or
23 producer of a print or broadcast advertising medium shall refuse to publish or broadcast an
24 advertisement or listing for a contractor who does not comply with this subsection.

25 **§ 70109. Investigation Permitted.**

26 The Contractors License Board may investigate, classify and qualify applicants for contractors
27 licenses.

28 **§ 70109.1. Investigation Citation Authority .**

29 (a) In addition to any other remedy available, the investigator of the contractors license board may
30 issue citations to persons in violation of the provisions of this chapter and rules promulgated.

1 (b) Each citation shall be in writing and shall describe the basis of the citation, including the
2 statutory provisions alleged to have been violated. The citation shall also contain and order to cease
3 and desist from the violation, and an assessment of civil penalties not to exceed ten thousand
4 (\$10,000) dollars.

5 **§ 70109.2. False complaints against contractors; Penalties.**

6 (a) Any person who reports to, or causes a complaint to be filed with, the Contractors License Board
7 that a person licensed by that entity has engaged in professional misconduct, knowing the report or
8 complaint to be false, is guilty of an infraction punishable by a fine not to exceed one thousand
9 dollars (\$1,000).

10 (b) The board may notify the Attorney General's Office that a person has made or filed what the
11 entity believes to be a false report or complaint against a licensee.

12 **§ 70109.3. Cease Work Order Permitted.**

13 The investigator may issue a cease work order to any person's construction activity if found to be in
14 violation of this chapter.

15 **§ 70110. No License Issued When.**

16 No license hereunder shall be issued to:

17 (1) Any person unless he has filed an application and paid the applicable fees therefore;

18 (2) Any person who does not possess a good reputation for honesty, truthfulness, financial
19 integrity and fair dealing;

20 (3) Any copartnership or joint venture who does not actively participate in at least one
21 construction job in the course of the license year in the contracting business and thereof does not
22 hold an appropriate license;

23 (4) Any corporation unless the contracting business thereof is under the direct management
24 of an officer or employee thereof and unless the officer or employee holds an appropriate
25 Responsible Management Employee license;

26 (5) Any individual, unless he is of the age of eighteen (18) years or more;

27 (6) Any person who employs any employees in addition to himself unless he submits
28 satisfactory proof that he has a current workers' compensation insurance policy.

29 **§ 70111. Application: Fees.**

30 (a) Every applicant for a license under this Chapter shall file an application with the Contractors
31 License Board in such form and setting forth such information as may be prescribed or required by

the Board, and shall furnish such additional information bearing upon the issuance of the license as it shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership, joint venture or corporation, any member or officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application, in the case of an individual, shall be accompanied by sworn certificates of not less than two (2) persons who have known the applicant for a period of not less than six (6) months certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealings.

(c) Every application for a license hereunder shall be accompanied by an application fee of FIFTY DOLLARS (\$50.00)

§ 70112. Form of Licenses.

The form of every license shall be prescribed by the Contractors License Board and shall be issued in the name of the Board.

§ 70113. Place of Business and Posting of License.

A licensed contractor shall have and maintain a definite place of business in the Territory and shall display therein his contractor's license.

§ 70114. Fees; Annual.

(a) The annual fees for each license thereof prescribed by this Chapter shall be as follows:

(1) License Fee

License to act as specialty contractor\$400

License to act as general engineering contractor.....\$400

License to act as general building contractor.....\$400

(2) License Fee for Responsible Management Employee (RME)

License to act as RME in specialty Contracting.....\$400

License to act as RME in general engineering contracting \$400

License to act as RME in general building contracting..... \$400

(3) Reissuance of a license or issuance of a certified copy of license \$20

(4) Application:\$50

(5) Additional Classifications:\$50

(6) Letter of Good Standing..... \$20

(7) Study Guide\$50

(8) Inactive license fee (in lieu of renewal fee)\$20

(b) The annual fee or inactive license fee shall be paid on or before June 30 of each year for a license year beginning on July 1. Failure, neglect or refusal of any licensee to pay the annual fee before such date shall constitute a forfeiture of his license. Any such license may be restored upon written application therefore within one (1) year from such date and the payment of the required fee plus an amount equal to ten percent (10%) thereof.

(c) Upon written request by a contractor and for good cause the Board shall place an active license in an inactive status. The license, upon payment of the annual inactive license fee, may continue inactive for a period of three (3) years after which time it must be reactivated or shall automatically become forfeited. The license may be reactivated at any time within the three-year period by fulfilling the requirements for renewal, including the payment of the appropriate renewal fee.

§ 70115. Action on Application.

Within forty-five (45) days after the filing of a proper application for a license and the payment of the required fees, the Contractors License Board shall:

(a) Conduct an investigation of the applicant and in such investigation may post pertinent information, including but not limited to, the name and address of the applicant, and if the applicant is associated in any partnership, corporation or other entity, the names, addresses and official capacities of his associates; and

(b) Either issue a license to the applicant or else notify him in writing by registered mail of the Board's decision not to grant the license and specifically notify applicant of his right to have a hearing within fifteen (15) days from the receipt of the Board's decision. The hearing shall be conducted in accordance with § 70117.

§ 70116. Revocation, Suspension and Renewal of Licenses.

(a) The Contractors License Board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

(1) Conviction of any felony or misdemeanor involving moral turpitude;

(2) Any dishonest or fraudulent or deceitful act as a contractor which causes a substantial damage to another;

(3) Pursuing a continued and flagrant course of misrepresentation or of making false promises through advertising or otherwise;

(4) Abandonment of any construction project or operation without reasonable or legal excuse;

1 (5) Wilful departure from or wilful disregard of plans or specifications in any material
2 respect without consent of the owner or his duly authorized representative, which is prejudicial to a
3 person entitled to have the construction project or operation completed in accordance with such
4 plans and specifications;

5 (6) Wilful violation of any law of the Territory or of any political subdivision thereof,
6 relating to building, including any violation of any applicable rule or regulation of the Department of
7 Public Health, or of any applicable safety or labor law;

8 (7) Failure to make and keep records showing all contracts, documents, records, receipts and
9 disbursements by a licensee of all his transactions as a contractor for a period of not less than three
10 (3) years after completion of any construction project or operation to which the records refer or to
11 permit inspections of such records by the Board;

12 (8) When the licensee being a copartnership or a joint venture permits any member of such
13 copartnership or joint venture who does not hold a license to actively participate in the contracting
14 business thereof;

15 (9) When the licensee being a corporation permits any officer or employee of such
16 corporation who does not hold a license to have the direct management of the contracting business
17 thereof;

18 (10) Misrepresentation of a material fact by an applicant in obtaining a license;

19 (11) Failure of a licensee to complete in a material respect any construction project or
20 operation for the agreed price if such failure is without legal excuse;

21 (12) Wilful failure in any material respect to comply with this Chapter or the rules and
22 regulations promulgated pursuant thereto;

23 (13) Wilful failure or refusal to prosecute a project or operation to completion with
24 reasonable diligence;

25 (14) Wilful failure to pay when due a debt incurred for services of materials rendered or
26 purchased in connection with his operations as a contractor when he has the ability to pay or when
27 he has received sufficient funds therefor as payment for the particular operation for which the
28 services or materials were rendered or purchased;

29 (15) The false denial of any debt due or the validity of the claim therefor with intent to secure
30 for licensee, his employer or other person, any discount of such debt or with intent to hinder, delay
31 or defraud the person to whom such debt is due;

1 (16) Failure to secure or maintain workmen's compensation insurance;

2 (17) Knowingly entering into a contract with an unlicensed contractor involving work or
3 activity for the performance of which licensing is required under this Chapter; or

4 (18) When the Responsible Management Employee and/or the majority stockholders have,
5 under another corporate or company structure, caused the non-payment of employees wages and/or
6 the abandonment of alien workers to become a burden on the Government.

7 (19) willful failure to pay when due a debt or penalty incurred for damaging a public utility
8 operated by the Guam Power Authority, the Guam Telephone Authority or the Guam Waterworks
9 Authority and the Department of Public Works.

10 (20) Knowingly taps into any power, water or sewer line belonging to the Guam Power
11 Authority and Guam Waterworks Authority without the prior written permission.

12 (b) No license shall be suspended for longer than two (2) years and no person whose license is
13 revoked shall be eligible for a new license until the expiration of two (2) years.

14 (c) For purposes of this Section, the Contractors License Board in cooperation and in conjunction
15 with the Department of Public Works, Department of Revenue and Taxation and the Department of
16 Labor may have investigative powers for purposes of carrying out the intent of this Section.

17 **§ 70117. Hearings.**

18 (a) In every case where it is proposed to refuse to grant a license or to revoke or suspend a license or
19 to refuse to renew a license, the Contractors License Board shall give the person concerned notice
20 and hearing in conformity with the Administrative Adjudication Law. The notice shall be given in
21 writing by registered or certified mail with return receipt requested at least fifteen (15) days before
22 the hearing.

23 (b) In all proceedings before it, the Board and each member thereof shall have the same powers
24 respecting administering oaths, compelling the attendance of witnesses and the production of
25 documentary evidence and examining witnesses as are possessed by circuit judges at chambers. In
26 case of disobedience by any person of any order of the Board, or any member thereof, or any
27 subpoena issued by it, or him, or the refusal of any witness to testify to any matter regarding which
28 he may be questioned lawfully, any judge of the Superior Court, on application by the Board thereof,
29 shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by
30 the Superior Court, or a refusal to testify therein.

31 **§ 70118. Appeal to Superior Court.**

1 An applicant who has been refused a license and every licensee whose license has been suspended,
2 revoked or not renewed may appeal the Contractors License Board's decision to the Superior Court
3 in the manner provided in the Administrative Adjudication Law.

4 **§ 70119. Disposition of Fees, Refunds.**

5 (a) All fees received by the Contractors License Board under this Chapter shall be deposited by the
6 Executive Secretary with the Treasurer of Guam to the credit of the General Fund.

7 (b) The Board may request the Treasurer of Guam to have any fee erroneously paid to it under this
8 Chapter refunded when the Board deems it just and equitable.

9 **§ 70120. Death or Dissociation.**

10 No copartnership, joint venture or corporation shall be deemed to have violated any provision of this
11 Chapter by acting or assuming to act as a contractor after the death or dissociation of a licensee who
12 had the direct management of the contracting business thereof prior to final disposition by the
13 Contractors License Board of an application for a license made within thirty (30) days from the date
14 of the death or dissociation.

15 **§ 70121. Violation, Penalty.**

16 Any person who violates or omits to comply with any of the provisions of this Chapter shall be fined
17 not more than Ten Thousand Dollars (\$10,000).

18 **§ 70122. Injunction.**

19 The Contractors License Board may, in addition to any other remedies available, apply to a judge of
20 the Superior Court for a preliminary or permanent injunction restraining any person from acting or
21 assuming to act or advertising as general engineering contractor, general building contractor or
22 specialty contractor, without a license previously obtained under and in compliance with this
23 Chapter and the rules and regulations of the Board and upon hearing and for cause shown, the judge
24 may grant the preliminary or permanent injunction.

25 **§ 70123. Exemptions for Prior Licensees.**

26 Any contractor who obtained a valid contractor's license under the existing license statute prior to
27 July 1, 1977 shall be exempt from provision of this Chapter relative to application, investigations
28 and examinations. Any contractor with a valid license issued prior to July 1, 1977 with a
29 classification different from those enumerated in § 70106 shall be automatically placed in the
30 appropriate classification without the necessity of complying with the application, investigation and
31 examination provisions of this Chapter. All other provisions shall apply."