

*I Mina'Trentai Dos Na Liheslaturan Guahan***Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
172-32 (COR)	Brant T. McCreddie, Aline A. Yamashita, Ph.D., T. C. Ada, Tommy Morrison, V. Anthony Ada, Dennis G. Rodriguez, Jr., T. R. Muña Barnes, R. J. Respicio, Chris M. Dueñas	AN ACT TO CREATE A NEW ARTICLE 6 & 7 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 2013".	08/21/13 11:31 a.m.	08/21/13	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land			



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

August 21, 2013

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

MEMORANDUM

Senator
Vicente (Ben) C. Pangelinan
Member

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

Speaker
Judith T.P. Won Pat, Ed.D.
Member

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Senator
Dennis G. Rodriguez, Jr.
Member

Subject: Referral of Bill No. 172-32(COR)

Vice-Speaker
Benjamin J.F. Cruz
Member

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 172-32(COR)**.

Legislative Secretary
Tina Rose Muña Barnes
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator
Frank Blas Aguon, Jr.
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator
Michael F.Q. San Nicolas
Member

Si Yu'os Ma'åse!

Senator
V. Anthony Ada
Member
MINORITY LEADER

Attachment

Senator
Aline Yamashita
Member



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MINORITY LEADER

Attachment

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Member

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

Bill No. 172-32 (COR)

Introduced by:

Brant T. McCreadie
Aline A. Yamashita Ph.D.
T.C. Ada
Tommy Morrison
V. Anthony Ada
Dennis G. Rodriguez Jr.
T. R. Muña Barnes
R.J. Respicio
Frank B. Aguon Jr.
Chris M. Duenas

AN ACT TO CREATE A NEW ARTICLE 6 & 7 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 2013".

2013 AUG 21 AM 11:31

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

I Liheslaturan Guåhan further finds that these structural limitations hamper the Department's mission to protect society by confining offenders in a controlled environment that is safe, humane, cost-efficient and secure. Furthermore, the Department is unable to provide prisoners with a range of work and other self-improvement and rehabilitative programs that will help reduce recidivism

1 among inmates as well as help them adopt a crime-free lifestyle upon reintegration in our island
2 community.

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

12 Therefore, it is the intent of *I Liheslaturan Guåhan* to authorize the construction of a new
13 detention facility and the renovation of the Department of Corrections existing facilities as
14 appropriate and to identify dedicated funding sources needed to finance the project.

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

17 **“ARTICLE 6**

18 **THE DEPARTMENT OF CORRECTIONS**

19 **CONSTRUCTION INITIATIVE ACT OF 2013**

20 **§90.200. Title.** This Act shall be known as the “*Department of Corrections*
21 *Construction Initiative Act of 2013*”.

22 **§90.201. Purpose.** *I Liheslaturan Guåhan*, recognizing the need to ensure the safety
23 of the people of Guam by constructing a modern, secure and safe correctional facility
24 authorizes the construction and renovation of the Department of Corrections (DOC). This
25 will benefit Guam's taxpayers by confining offenders in the controlled environment of prison
26 and community-based facilities that are safe, humane, cost-efficient, and appropriately
27 secure, and to provide prisoners with a range of work and other self-improvement programs
28 that will help them adopt a crime-free lifestyle upon their return to our community. To
29 establish, identify, and authorize revenue streams as a funding source to provide the needed

1 revenue to secure a loan or other forms of financing arrangements for the design,
2 construction, collateral equipment and maintenance of the new correctional facility.

3 **§90.202. Definitions.** The following terms wherever used or referred to in this Act
4 shall have the following definitions, respectively, unless a different meaning appears from
5 the context:

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

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

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

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

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

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

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

21 (h) "DOC Building Fund" means Department of Corrections Building Fund by that
22 name established pursuant to this Act.

23 (i) "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 (j) "Lease-back" means the facilities lease or other lease of the property from the
26 Contractor back to DOC, over the term of which the costs of the design, construction,
27 collateral equipment or maintenance of the corrections building facility are amortized,
28 according to the terms agreed to between DOC and the Contractor(s).

29 (k) "Pledged revenue" means any revenues identified within this Act pledged to
30 secure payments for the financing, lease or lease-back arrangement.

1 (l) “Property” means any property on which the correctional facility is located.

2 (m) “Revenue” of the project means all gross income and other amounts received by
3 or on behalf of DOC as revenues identified within this Act, including all adjusted rates, fees
4 and charges received by DOC and all proceeds of insurance or grants covering business
5 interruption loss (and related losses and expenses) relating to the project, and all other
6 income and revenue however derived by DOC from ownership, leasing, or operation of, or
7 arising from, the project, together with all interest, profits or other income derived from the
8 investment of amounts from revenues identified within this Act, to be deposited, directly into
9 the DOC Building Fund in accordance with this Act.

10 **§90.203. New DOC Correctional Facility.**

11 (a) I Maga’lahen Guāhan, on behalf of the Department of Corrections, is hereby
12 authorized to enter into a financial arrangement with a Contractor(s) for the financing,
13 design, construction, collateral equipment and maintenance of the DOC Correctional Facility.
14 Such financing arrangement may be with the U.S. Department of Agriculture, or other
15 financing sources available, in an effort to identify necessary funds for the implementation of
16 the provisions contained in this Act.

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

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

29 Monies generated from rehabilitation programs shall be deposited into the Prison
30 Industries Revolving Fund to sustain the operations of the identified programs. Rules and

1 regulations shall be promulgated by DOC to carry out the provisions of this item, if
2 necessary.

3 (d) Any monies reimbursed to the Government of Guam by the Contractor(s) for
4 expenses not actually incurred on the design and construction of the DOC Correctional
5 Facility shall revert to the Fund.

6 (e) In addition to the provisions contained in this Act, *I Maga'lahaen Guåhan* is hereby
7 authorized to identify and apply other funding sources, if necessary, to be designated and
8 deposited into the DOC Building Fund. The Contractor in conjunction with DOC shall
9 explore and identify any and all potential financing sources or grants, including, but not
10 limited to, any Federal government agencies or private financial lending sources, that may be
11 applied toward the financing of the construction of the DOC Correctional Facility. In
12 carrying out the provisions of this subsection, the Contractor shall work with the Guam
13 Economic Development Authority in the solicitation or acquisition of financing for the
14 project.

15 (f) Any revenue derived from a lease-back entered into, consistent with this Act, shall
16 be exempt from business privilege taxation by the government of Guam. -

17 (g) DOC Correctional Facility shall be built or acquired within its current location in
18 Mangilao. Alternatively, the Facility may be constructed on any other site that has been
19 deemed appropriate by the Department of Public Works, in consultation with DOC, with
20 prior approval of the Legislature..

21 (h) Valid and Binding General Obligations. Where appropriate, the financial
22 obligation(s) arising from or attendant to any lease of lease-back authorized by this Act shall
23 constitute valid and binding general obligations of the government of Guam. The
24 government of Guam pledges its full faith and credit for the timely payment of both principal
25 of and interest on the financial instrument authorized by this Act.

26 **§90.204. Authorization to Enter into Lease or Lease-Back Arrangements.** *I*
27 *Maga'lahaen Guåhan* may enter into a lease and lease-back on behalf of the Department for
28 the financing of the acquisition, design, construction, improvement, equipping, repair,
29 renewal, replacement, or reconstruction of any DOC building, to include the maintenance of
30 all or any portion of such facility over the term of the lease-back, according to the needs of

1 the Department and consistent with this Act. The costs of the financing, design, construction,
2 collateral equipment and maintenance of the facility pursuant to this Act shall be amortized
3 in periodic installments over the term of the lease-back period, which shall be mutually
4 negotiated and determined by the Department and the Contractor, provided such lease-back
5 does not exceed thirty (30) years from the date of construction completion. The lease and
6 lease-back arrangement may contain a provision that should insufficient funds be available to
7 meet the annualized payment obligation, the Department may be required to vacate the DOC
8 buildings, and the contractor shall have the right of use and occupancy of the DOC building
9 for the remainder of the term of the lease, unless new mutually satisfactory terms are entered
10 into. For this specific purpose, the term of the lease may be extended for a period not to
11 exceed the shorter of ten (10) years beyond the original term of the lease-back or such period
12 of time as is necessary to repay in full any financing arranged pursuant to this Act. Upon the
13 expiration of the lease-back period, and the fulfillment of the terms and conditions of the
14 lease-back by the Department, the facilities shall revert to the Government of Guam with no
15 further obligation to the Contractor.

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

22 It is hereby declared that the DOC Correctional Facility shall be a public
23 improvement or undertaking as that term is used in Section 11 of the Organic Act (§ 1423a,
24 Title 48, U.S. Code). Obligations incurred by the government pursuant to this Act that are
25 payable only from funds in the DOC Building Fund and from any other revenues generated
26 by the headquarters building facility, and will not be and shall not be deemed to be public
27 indebtedness of Guam as that term is used in said Section 11.

28 No obligation undertaken by the government pursuant to this Act shall be or become
29 a lien, charge or liability against the government of Guam or against the Department or
30 against any property or funds of the government of Guam or the Department, except to the

1 extent of the pledge of revenue of the project provided by the lease-back. The lease-back
2 shall not be construed as a debt under any applicable debt limitation under Guam law.

3 **§90.205. Procurement Process for the DOC Correctional Facility.** The
4 Department of Corrections, Department of Public Works and the Guam Economic
5 Development Authority, acting collaboratively, shall facilitate the procurement process(es)
6 for those things necessary to accomplish the purposes of this act.

7 **§90.206. Authority of DOC.** Notwithstanding any provision of law or regulation,
8 DOC is authorized to exercise any or all of the powers granted to DOC by this Act.

9 **§90.207. Optional Assignment of Lease or Lease-Back.** To facilitate the purposes
10 of this Act and to provide security for the leaseholders, the contractor may assign, with the
11 consent of DOC and the Guam Economic Development Authority, the lease and the lease-
12 back to any trustee, underwriter or other appropriate party as may be necessary to facilitate
13 the issuance of certificates of participation in lease-back payments or other financial
14 instruments to provide the financing for the DOC Correctional Facility.

15 **§90.208. Use of Tax-Exempt Financing.** To minimize the financing cost to DOC,
16 financing utilized by the Contractor to fund the design, construction, collateral equipment
17 and maintenance of the DOC Correctional Facility shall be through tax-exempt obligations or
18 other financial instruments provided such financing is available at reasonable interest rates.
19 Alternatively, the Contractor may use an alternative method of financing, including, but not
20 limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an
21 instrumentality of the United States Federal Government if such financing will better serve
22 the needs of the people of Guam. Such alternative financing shall be approved by the Guam
23 Economic Development Authority before being entered into by DOC. The Contractor
24 financing shall have a final term that does not exceed thirty (30) years from the DOC Facility
25 occupancy date. The purpose for the requirements of this Section is to assure that DOC pays
26 the lowest possible interest rate so that the cost of financing the design, construction,
27 collateral equipment, and maintenance of the DOC Facility to the Department is minimized.

28 **§90.209. Use of DOC Building Fund Proceeds and Other Identified Revenues as**
29 **Secured Funding for Lease-Back Arrangement.** The Lease or Lease-Back arrangement
30 may be secured by a pledge of funding sources identified within Section 3 of this Act, and

1 any other revenue sources that *I Maga'lahaen Guåhan* or the Legislature may identify. Any
2 such pledge shall not be construed to cause the lease-back obligation to be included as debt
3 for purposes of the Guam government debt limit.

4 **§90.210. Issuance of Bonds or Acquisition of Financing through the Guam**
5 **Economic Development Authority.** In the event financing is sought through the sale of
6 bonds, the Department of Corrections is hereby granted the authority to issue and sell bonds
7 to carry out the purposes mandated by this Act in accordance with §50103(k) of Title 12,
8 Guam Code annotated. , The Department of Corrections shall solicit and acquire the
9 assistance of the Guam Economic Development Authority in the issuance and sale of any
10 bonds, or the acquisition of financing necessary to carry out the provisions contained in this
11 Act.

12 **§90.211. Responsibility of Contractor.** The lease or lease-back arrangement shall
13 require that the contractor be responsible for financing all costs, expenses and fees of any
14 kind or nature, associated with the improvements, on-site infrastructure and off-site
15 infrastructure, construction, permits and financing associated with the completion of the
16 correctional facility, which may include the financing of furniture and equipment for the
17 facility, as to the extent provided by the Department in the RFP. The Contractor shall also be
18 responsible for the capital maintenance of the DOC Correctional Facility during the term of
19 the lease-back.

20 The Contractor shall also be responsible for the installation of security equipment, to
21 include but not limited to, automated locking systems, surveillance cameras, fences, barriers
22 and other security technology both inside and around the perimeter of the property of the
23 DOC Correctional Facility. The Contractor will be responsible for the maintenance of all
24 security equipment during the term of the leaseback.

25 **§90.212. Responsibility of Costs for the initial Installation of Utility Services,**
26 **Telephone, Cable, and General Maintenance and Repair.** The Contractor shall be
27 responsible for the connection and payment of all utilities associated costs, including without
28 limitation, power, water, sewer, telephone and cable, and all routine interior maintenance and
29 repair and exterior grounds keeping and landscaping and upkeep of the headquarters Building

1 facility. General building maintenance and repair shall be performed by Contractor as
2 provided for in this Act.

3 **§90.213. Construction of Act.** This Act shall be liberally construed to carry out the
4 objects and purposes and the declared policy of the government of Guam as in this Article set
5 forth. Nothing contained in this Act shall be construed directly or by implication to be in any
6 way in derogation or limitation of powers conferred upon or existing in the Department, the
7 Director or *I Maga'lahaen Guåhan* by virtue of any provisions of the Organic Act or laws of
8 Guam.

9 **§90.214. Administration of DOC.** Nothing in this act shall remove the Director,
10 corrections officers and staff of the Department of Corrections from running the day-to-day
11 operations of DOC. In no way shall this Act privatize the operations at DOC, except as
12 explicitly indicated in this Act.

13 **§90.215. LEED Certification.** The Contractor shall construct and/or renovate DOC
14 facilities to be "Leadership in Energy & Environmental Design" (LEED) certified as outlined
15 by the United States Green Building Council in order to promote cost savings and lessen the
16 environmental impact at DOC."

17 **Section 3.** A new Article 7 of Chapter 90 Title 9, Guam Code Annotated is hereby *added* to
18 read as follows:

19 **"ARTICLE 7.**

20 **Department of Corrections Building Fund**

21 **§90.300. Creation of the Department of Corrections Building Fund.** There is
22 hereby created, separate and apart from other funds of the government of Guam, a special
23 fund known as the "Department Of Corrections Building Fund ", hereinafter referred to as
24 the "fund".

25 **§90.301. Separate Fund and Bank Account.** The DOC Building Fund shall not be
26 commingled with the General Fund or any other fund of the government of Guam, and shall
27 be maintained in a separate bank account. The Fund shall be exempted from the Governor's
28 transfer authority and may not be borrowed against unless otherwise provided for in this Act,
29 and shall be exclusively used for the purposes set forth herein.

1 **§90.302. Authorized Expenditures of the Department of Corrections Building**
2 **Fund and Authorization to Construct.** Funds within the DOC Building Fund shall be
3 expended exclusively for financing the design, construction, collateral equipment and
4 maintenance of a new correctional facility, including, but not limited to, making lease
5 payments and paying costs related to the following: architectural and engineering design for
6 the proposed correctional facility; environmental concerns; archeological and historic site
7 survey and or assessment of the project site; site preparation and civil work for the building
8 foundation; construction cost for the structure of the building facility, to include project
9 associated costs incurred by the Department of Public Works.

10 **§90.303. Administration and Accountability of the Department of Corrections**
11 **Building Fund.** The Director shall account for and administer the DOC Building Fund and
12 shall keep all books, records, files and accounts relative to the respective DOC Building
13 Fund. The Director shall prepare quarterly reports relative to the DOC Building Fund
14 reflecting the transactions and the financial condition of the respective DOC Building Fund,
15 which shall be transmitted to the Speaker of *I Liheslaturan Guåhan* and *I Maga'lahren*
16 *Guåhan*.

17 **§90.304. Traffic Citation Surcharge.** Any and all traffic citations issued shall have
18 a 20% surcharge applied therein, which shall be directly deposited into the DOC Building
19 Fund and shall be subject to the provisions of this Act.

20 **§90.305. Special Assessment for Contempt of Court and Probation Violations.** A
21 special assessment in the amount of \$300.00 shall be levied against all individuals sentenced,
22 remanded, or held for any period of confinement with the DOC for violating probation, pre-
23 trial release conditions, or for being held in contempt of court. Payment of the special
24 assessment shall become a term of the violators probation or release conditions or fine for
25 contempt as the case may be and shall not be convertible to community service. All monies
26 collected through this special assessment shall be directly deposited into the DOC Building
27 Fund and shall be subject to the provisions of this Act.

28 **§90.306. Deposit of Monies into the DOC Building Fund.** All monies generated
29 from traffic surcharges, special assessment, and other sources as identified shall be deposited
30 into the DOC Building Fund. *I Maga'lahren Guåhan* is hereby authorized to utilize any other

1 funding source within his oversight to commit and deposit into the DOC Building Fund.
2 Such funds once committed and deposited therein shall be subject to the provisions and
3 restrictions of the Fund. All monies deposited into the Fund shall be solely for the purpose of
4 paying debt service for the financing of the DOC Correctional Facility, and as provided in
5 this Act.

6 The Director, without jeopardizing operational requirements, is authorized to use no
7 more than five percent (5%) of its approved budget, or other available funding sources, to be
8 deposited into the DOC Building Fund for the payment of loan or financing obligations. The
9 Director is authorized to apply the use of excess Fund proceeds, only if such funds are in
10 excess of the annualized payment requirements and are approved by the financing entity
11 prior to any expenditures; which shall be subject to Legislative Approval.

12 All fines and surcharges generated under this Act shall be paid at the Superior Court
13 of Guam. Prior to any deposits required by this section, the Superior Court shall deduct up to
14 ten percent (10%) and use such funds for the increased demands and administrative costs
15 associated with the implementation of this Act.”

16 **Section 4. Effective Date.** The provisions contained in this Act shall be effective
17 immediately upon enactment. Any Rules and Regulations promulgated as a result of provisions
18 contained herein shall be effective upon the date specified per existing statutory mandates.

19 **Section 5. Severability.** If any provision of this Act or its application to any person or
20 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other
21 provisions or applications of this Act which can be given effect without the invalid provisions
22 application, and to this end the provisions of this Act are severable.