

5 GCA GOVERNMENT OPERATIONS  
CHAPTER 58E THE FINANCE, DESIGN, RENOVATION, REHABILITATION,  
CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS

**CHAPTER 58E**  
**THE FINANCE, DESIGN, RENOVATION, REHABILITATION,**  
**CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS**

**SOURCE:** Entire chapter added by P.L. 32-121:2 (Feb. 10, 2014).

**2014 NOTE:** Pursuant to the authority granted by 1 GCA § 1606, sections were renumbered to adhere to the Compiler's general codification scheme.

- § 58E101. Legislative Findings and Intent.
- § 58E102. Definitions.
- § 58E103. Authorization to Enter into Long-Term Leases.
- § 58E104. Identification of Projects and Procurement.
- § 58E105. Responsibilities of Developer/Contractor.
- § 58E106. Contractual Safeguards.
- § 58E107. Assignments.
- § 58E108. Pledge of Revenues.
- § 58E109. Use of Tax-Exempt Bond and Other Financing Instruments for Financing.
- § 58E110. Utilities, Maintenance and Repair.
- § 58E111. Severability.

**§ 58E101. Legislative Findings and Intent.**

*I Liheslaturan Guåhan* finds that Guam public school facilities face deficiencies in its roofing, exterior, interior, structural, mechanical, electrical, plumbing, and school grounds, which create a non-conductive environment that hinders learning and the work and production of teachers and students.

*I Liheslaturan Guåhan* finds that the Guam Department of Education is about \$90 Million behind on maintenance projects for the island's public schools, according to a report commissioned by the Department of the Interior in 2012, and recently submitted to the Guam Department of Education in August 2013.

It is, therefore, the intent of *I Liheslaturan Guåhan* for the government of Guam to use one quarter of the business privilege tax to pay for the interest payments of the lease and lease-back as a form of bridge financing until the maturity of the Business Privilege Tax bond series 2013C.

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*I Liheslatura* finds that after reviewing the summary of outstanding General and Limited Obligation debts as of March 1, 2013, that the debt ceiling assessed value is at One Billion One Hundred Thirty Nine Million Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars (\$1,139,464,853). It also states that the General Obligation Debt is Four Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six Thousand Eight Hundred Three Dollars (\$663,896,803), with an accumulated total of One Billion One Hundred Ten Million Three Hundred Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656). Subtracting the debt ceiling limit less the General and Limited Obligation Debts leaves the amount for future debt obligation at Twenty Nine Million Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

*I Liheslatura* further finds that the cost to fund the rehabilitation of the public schools will certainly exceed the debt ceiling obligation if a general obligation bond is pursued. To circumvent Guam's debt ceiling cap, *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School, *Adacao* Elementary School, John F. Kennedy High School, and the expansion of *Okkodo* High School, has demonstrated the fundamental soundness of using municipal lease as a vehicle to build new educational facilities. By making the most of municipal leasing to rehabilitate and construct Guam public schools, the remaining future debt obligation may be used to fund other priorities of the government.

**§ 58E102. Definitions.**

For purposes of this Chapter and *unless* otherwise specified, the following words and phrases are defined to mean:

- (a) *Comprehensive capital improvement plan* means a plan that takes into consideration the physical condition of each school along with attendance area population, enrollment patterns, and bussing logistics. It *shall* also include how each school meets the instructional needs of GDOE, and prioritizes repairs of existing schools and renovation and construction of new school facilities in order to deal with GDOE limited resources.

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(b) *Contract shall* mean the design, renovation, rehabilitation, construction, and financing contract entered into by and between the education agency and the contractor chosen by the Guam Economic Development Agency and approved by *I Liheslaturan Guåhan*.

(c) *Contractor shall* mean the authorized entity which *shall* be the signatory on the contract and *shall* be fully responsible for carrying out the design, renovation, rehabilitation, construction, financing, or maintenance of the education facility. The contractor may cooperate with another entity or entities in any manner the contractor deems appropriate to provide for the financing, design, renovation, rehabilitation, construction or maintenance of the public school facilities envisioned by this Act.

(d) *Education agency shall* mean the Guam Department of Education.

(e) *Education facility* as used in this Act *shall* mean public elementary and secondary schools on Guam, to include its athletic fields and playgrounds, excluding the five leased schools under the education agency.

(f) *Lease shall* mean a lease from an education agency to the contractor entered into at the time of the contract for the property.

(g) *Lease-back shall* mean the lease from the contractor to the education agency of the rehabilitated, renovated or newly constructed education facility.

(h) *Lease-back period shall* mean the term of the lease from the contractor to the education agency.

(i) *Property shall* mean any property on which an education facility is located.

**§ 58E103. Authorization to Enter into Long-term Leases.**

For the purpose of facilitating the financing, design, construction and rehabilitation and maintenance of an education facility encompassed by this Act, the government of Guam or an education agency, as the case may be, is authorized to lease, if required, to the contractor sufficient government of Guam real property on which to rehabilitate an education facility; provided, such property is in the inventory of the education

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agency or the government of Guam. The property may be the site of an existing education facility under the control of an education agency, which existing facility may be rehabilitated under the provisions of this Act.

The education agency is also authorized to lease back from the contractor the property for a period mutually agreed upon between the education agency and the contractor as may be reasonably necessary to amortize over the lease-back period the costs associated with the design, renovation, rehabilitation, construction or maintenance of the education facility. In no event shall the end of such lease-back period be later than the date thirty (30) years from the scheduled date of completion of the education facility. The lease-back may be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 58E108 is available. The lease-back *shall not* be construed as a debt under any applicable debt limitation under the Guam Organic Act or Guam law.

**§ 58E104. Identification of Projects and Procurement.**

Under the Superintendent of Education's direction, the education agency *shall* utilize the Program Study, and the report generated by the Department of Interior (DOI)-funded assessment report by the Army Corps of Engineers, to identify and prioritize potential projects to be completed. The list of projects *shall* be included in a Request for Proposals developed by the education agency. Upon receipt of the Program Study, the Superintendent of Education *shall* solicit Requests for Proposals (RFP) through the Department of Public Works, in compliance with the Guam Procurement Law, for the financing, design, construction and rehabilitation of the education facility, according to the needs of the education agency and consistent with this Chapter. The choice of the contractor *shall* be made by a selection committee comprised of the Superintendent of the Department of Education, serving as Chairman, and including the Director of the Department of Public Works or Deputy Director, the Director of the Department of Land Management or Deputy Director, the Administrator of the Guam Environmental Protection Agency or Deputy Administrator, and the Administrator of the Guam Economic Development Authority or Deputy Administrator. The committee *shall* assess the prior performance of the contractor on similar projects, and *shall* be free to disqualify any

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contractor that *does not* have a successful record of project completion on Guam.

The selection of a contractor *shall* be based upon the proposal that delivers the best value for Guam in meeting the objectives of the education agency.

The RFP *shall* be issued within thirty (30) days after the receipt of the Program Study for the design, renovation, rehabilitation, construction or maintenance of the education facility.

**§ 58E105. Responsibilities of Developer/Contractor.**

The contract *shall* require that the contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the rehabilitation, design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of an education facility, including the financing of furniture and equipment for the education facility, as and to the extent provided by the education agency in the Request for Proposals. The lease-back may provide that if sufficient funds are not appropriated or otherwise available for the payment of amounts due under the lease, the education agency will have the obligation to vacate the education facility, and the contractor *shall* have the right of use and occupancy of the education facility for the remainder of the term of the lease, *unless* new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term *shall* be extended for a period *not to exceed* the shorter of ten (10) years beyond the original term of the lease-back, or such period of time as is necessary to repay in full any financing arranged pursuant to § 58E109 of this Chapter. The capital maintenance costs *shall* be paid by the education agency.

**§ 58E106. Contractual Safeguards.**

Prior to undertaking the work of rehabilitating educational facilities, the Guam Economic Development Authority, the Department of Public Works, the Guam Department of Education, and the developer or contractor, *shall* negotiate and enter into a binding construction contract to build or refurbish the educational facility in accordance with the Guam Building Code (21 GCA Ch. 67), and any other applicable requirements. The construction contract *shall* contain contractual obligations typically

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found in government of Guam construction contracts, including, but *not* limited to:

- (a) warranties;
- (b) liquidated damages;
- (c) performance and payment bonds;
- (d) indemnity;
- (e) insurance;
- (f) standard specifications;
- (g) technical specifications;
- (h) progress schedule;
- (i) maintenance;
- (j) compliance with Guam labor regulations;
- (k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;
- (l) compliance with Public Law 29-98: restriction against contractors employing convicted sex offenders to work at government of Guam venues.

The contract must be submitted for review and approval to all entities charged by law with the duty to review and approve government contracts, including the Office of the Attorney General.

**§ 58E107. Assignments.**

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor may assign, without the need of the consent of the education agency, the contract, the lease and lease-back to any underwriter, trustee or other party as appropriate to facilitate the contractor financing.

**§58E108. Pledge of Revenues.**

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the government of Guam from the following:

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(1) Taxes collected under the Business Privilege Tax Law (namely, 11 GCA Chapter 25, excluding the alcoholic beverage taxes, liquid fuel taxes, automotive surcharges, tobacco taxes and real property taxes). The business privilege tax pledged or reserved *shall only* apply to the unpledged portion of the business privilege tax (currently one percentage point of the current four percent business privilege tax rate) so as not to violate the government's covenants to bondholders of the Series A, Series B and Series C Limited Obligation bonds authorized through Public Law 31-76, Public Law 31-196 and Public Law 31-276. The sum of approximately One Million Eight Hundred Eighty-Two Thousand Eighty-Two Dollars (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the sum of approximately Two Million Five Hundred Sixty Four Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall* fund interest payment annually for Fiscal Years 2016 through 2018.

(2) The sum of One Million Two Hundred Thousand Dollars (\$1,200,000) from the revenues received pursuant to § 22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated will be available annually beginning in Fiscal Year 2016; and

(3) The sum of Four Million Eight Hundred Thousand Dollars (\$4,800,000) from the maturity of Business Privilege Tax Bond Series 2013C *shall* be available annually beginning in Fiscal Year 2019.

(b) Revenues pledged or reserved *shall* be remitted in the following manner:

(1) The Business Privilege Tax *shall* only pay for the interest payments of the lease and the lease-back pending the maturity of the Business Privilege Tax Bond Series 2013C in Fiscal Year 2019, and said interest payments *shall* cease.

(2) Revenues received pursuant to § 22425 (q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated, upon availability; and

(3) Upon the maturity of the Business Privilege Tax Bond Series 2013C.

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Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making lease-back payments, but any amounts only reserved as provided in this Section, and not pledged, shall be subject to annual appropriation for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account and *shall* be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further act, and such reservation or the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need not be recorded.

**§ 58E109. Use of Tax-Exempt Bond, Taxable Bond and Other Financing Instruments for Financing.**

To minimize the financing cost to the education agency, financing utilized by the contractor to fund the design, renovation, rehabilitation, construction or maintenance of an education facility *shall* be through tax-exempt obligations, taxable bond obligation, or other financial instruments, provided, such financing is available at interest rates determined by the education agency to be reasonable and competitive. Alternatively, the contractor may use an alternative method of financing, including, but *not* limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure the education agency pays the lowest possible interest rate so that the cost to the education agency of financing the design and construction of an education facility, amortized through the lease-back payments from the education agency to the contractor, will be lower than regular commercial rates.

**§ 58E110. Utilities, Maintenance and Repair.**

The education agency *shall* be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable, and all maintenance and repair and exterior

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groundskeeping and landscaping, and upkeep of the education facility.

**§ 58E111. Severability.**

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

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