

**12 GCA AUTONOMOUS AGENCIES
CH. 83 THE GUAM TWENTY-FIRST (21ST) CENTURY
HEALTHCARE CENTER ACT OF 2021**

CHAPTER 83

**THE GUAM TWENTY-FIRST (21ST) CENTURY
HEALTHCARE CENTER ACT OF 2021**

SOURCE: Entire chapter added by P.L. 36-056:1 (Oct. 13, 2021).

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§ 83101. Legislative Findings and Policy.

(a) *I Liheslaturan Guåhan* finds that the Guam Memorial Hospital Authority (GMHA), the Department of Public Health and Social Services (DPHSS), and the Guam Behavioral Health and Wellness Center (GBHWC) are in dire need of new facilities. The healthcare facilities' structures have been used for more than five (5) decades and are showing stages of structural failure due to the age of said facilities. The structures of the healthcare facilities are also not meeting modern building codes, which creates a liability to the staff, patients, and visitors of the facilities.

(b) The need for new facilities is in demand as the U.S. Department of the Interior, Office of Insular Affairs, has funded an assessment for the U.S. Army Corps of Engineers (USACE) to

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investigate the failing structure and the long and short-term needs of the hospital. The failing structure is being used to continue operation, and addressing structural and environmental issues is outlined in the USACE reports. GMHA needs a new facility as it endangers the accreditation status of the hospital based on standards and guidelines promulgated by United States Centers for Medicare and Medicaid Services (CMS) and applicable codes. *I Liheslaturan Guåhan* finds that the current infrastructure of the GMHA facility is in an overall state of failure due to its age of more than fifty (50) years, environmental exposure, lack of financial resources to support the pre-planned capital infrastructure replacements, and lack of the facilities design adherence to current building codes. According to USACE, the replacement of all GMHA facilities is required to ensure renewed compliance with hospital accreditation standards and to protect the life, health, and safety of staff, patients, and visitors.

(c) *I Liheslaturan Guåhan* finds that the DPHSS has not been occupying its main building in Mangilao due to an electrical fire caused by aged electrical wires within the building. DPHSS services have been relocated to various commercial rentals and Government of Guam buildings in order to provide services to the people of Guam. The Mangilao facility of DPHSS has been deemed unsafe by the Chief of the Guam Fire Department as their investigation shows that multiple electrical wiring issues are present due to the age of the structure as it was built in 1973.

(d) *I Liheslaturan Guåhan* finds that DPHSS should have a central facility for the people of Guam to have better access to public health and social services. The Mangilao facility of DPHSS is deemed dangerous and hazardous, and rehabilitation is not possible. It is necessary for DPHSS to ensure that services are available for the people of Guam which they have been providing, with services scattered in different locations on the island.

(e) *I Liheslaturan Guåhan* finds that with the growing population of the island of Guam, the GBHWC needs to expand their facilities as their services evolve to meet the needs of our community. The main facility of GBHWC has outgrown its main building as the staff and patient populations have increased. The

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growing population of our island has caused the GBHWC to actively operate its services, but with the lack of facilities within their main building, various GBHWC services are scattered throughout the island; and it is deemed necessary for the Government of Guam to provide behavioral health and wellness services to our people as social issues are present within our community.

(f) Furthermore, *I Liheslaturan Guåhan* finds that the pandemic has reinforced the need for better healthcare facilities, such as the Guam Memorial Hospital Authority facilities, the Department of Public Health and Social Services main building, and the Guam Behavioral Health and Wellness Center facilities. *I Maga'ḥagan Guåhan* stated that she intends to allocate Three Hundred Million Dollars (\$300,000,000) from the American Rescue Plan to construct a new hospital facility. The U.S. Army Corps of Engineers has stated that the replacement of the GMHA facility would cost an estimated Seven Hundred Forty-three Million Dollars (\$743,000,000), including Twenty-one Million Dollars (\$21,000,000) for rehabilitation of the current facility to receive accreditation. The American Rescue Plan also allows for Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars (\$60,000,000) annually, of which an estimate of no more than Thirty-five Million Dollars (\$35,000,000) would be allocated for the payments of the lease-back agreement annually.

(g) It is the intent of *I Liheslaturan Guåhan* to provide the people of Guam with state-of-the-art healthcare facilities which will be designed to include all healthcare agencies within the Guam Twenty-First Century Healthcare Center. The creation of the Guam Twenty-First Century Healthcare Center is to ensure that all healthcare agencies have proper facilities that follow accreditation standards, guidelines promulgated by the Centers for Medicare and Medicaid Services, and applicable codes. It will also allow for Guam to become the regional healthcare hub of Micronesia as it will open up opportunities for medical training and tourism, to and from, other Pacific islands, while increasing medical professional services and capacity within the entire region.

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(h) In an effort to overcome financing hurdles, and to provide for the healthcare needs of the people of Guam, *I Liheslaturan Guåhan* desires to authorize the Government of Guam to enter into a contract for the design, build, finance, lease, transfer and long-term capital maintenance of the Guam Twenty-First Century Healthcare Center with private sector contractors who can provide long-term financing.

(i) To facilitate the financing, design, construction, and maintenance of the Guam Twenty-First Century Healthcare Center envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to forty (40) years on which the Guam Twenty-First Century Healthcare Center will be constructed, and the forty (40) year term shall begin immediately after the design, permitting, and construction phase has been completed.

(j) The lease of the Government of Guam property will be to the contractor/developer, who will design and construct the Guam Twenty-First Century Healthcare Center and provide funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund annually thereafter. Upon completion of the construction, the facilities will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the Guam Economic Development Authority and/or the contractor/developer over which time the Government of Guam will amortize, as lease payments to the Guam Economic Development Authority and/or the contractor/developer, the cost of the financing, design, construction, and related expenses of the Guam Twenty-First Century Healthcare Center.

(k) The contractor/developer will also be responsible for the capital maintenance and repair of the Guam Twenty-First Century Healthcare Center constructed under this Act, whose costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Guam Twenty-First Century Healthcare Center constructed on the Government of Guam real

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property will revert to the Government of Guam with no further obligations to the Guam Economic Development Authority and/or the contractor/developer.

2022 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 83102. Definitions.

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

(a) *Act* means Chapter 83 of Title 12, Guam Code Annotated, which shall be known as the “Guam Twenty-First Century Healthcare Center Act of 2021.”

(b) *Contract* shall mean the design, construction, financing, maintenance, and transfer contract entered into by and between the Government of Guam and the contractor/developer following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the design, build, finance, transfer, and maintenance of projects that make up the Guam Twenty-First Century Healthcare Center that is deemed appropriate by GEDA. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and build of the Guam Twenty-First Century Healthcare Center envisioned by this Chapter.

(d) ‘*Guam Twenty-First Century Healthcare Center Committee*’ shall be chaired by Administrator or Deputy Administrator of the Guam Economic Development Authority and include the Administrator and Directors of all Healthcare Agencies, the Director or Deputy Director of Department of Public Works, the Director or Deputy Director of Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget Management and Research, Director or Deputy Director of the Department of

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Administration, the Legislative committee chairperson with jurisdiction on health matters or his/her designee, Chairpersons of the Municipal Planning Councils of impacted villages as determined by the Mayors Council of Guam or their designee, President of the Guam Medical Society or their designee, and President of the Guam Medical Association or their designee. Notwithstanding any other provision of law, Members of the Guam Twenty-First Century Healthcare Center Committee are “officials” for the purposes of Title 4 Chapter 13 Guam Code Annotated, the Public Official Disclosure Act and shall file a financial disclosure pursuant to that Chapter .

(e) *Healthcare agencies* shall mean the Guam Memorial Hospital Authority (GMHA), the Department of Public Health and Social Services (DPHSS), and the Guam Behavioral Health and Wellness Center (GBHWC).

(f) *Guam Twenty-First Century Healthcare Center* as used in this Act shall mean the Guam Memorial Hospital Authority, the Department of Public Health and Social Services, and the Guam Behavioral Health and Wellness Center located as a whole, on one (1) property, or separately, if feasible.

(g) *Healthcare facilities* shall mean the facilities of the Guam Memorial Hospital Authority, the Department of Public Health and Social Services, and the Guam Behavioral Health and Wellness Center.

(h) *Leases* shall mean leases from the Government of Guam or by and through one or more of the healthcare agencies to the contractor/developer and/or the Guam Economic Development Authority entered into at the time of the contract for the property.

(i) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam or by and through one or more of the healthcare agencies of the newly constructed Guam Twenty-First Century Healthcare Center.

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(j) *Property* shall mean any property on which the Guam Twenty-First Century Healthcare Center is located.

2023 NOTE: Added by P.L. 36-056:1 (Oct. 13, 2021). Subsection (d) amended by P.L. 37-010:2 (May 10, 2023).

§ 83103. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, build and maintenance of the Guam Twenty-First Century Healthcare Center encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the Guam Twenty-First Century Healthcare Center, as required, to the Guam Economic Development Authority and/or the contractor/developer sufficient Government of Guam real property; provided, that such property is in the inventory of the Government of Guam.

(b) The Government of Guam is also authorized to lease-back the property from the Guam Economic Development Authority and/or the contractor/developer for a period mutually agreed upon between the Government of Guam and the Guam Economic Development Authority and/or the contractor/developer as may be reasonably necessary to amortize the lease-back period of no more than forty (40) years of the cost associated with the design, construction, and maintenance of the Guam Twenty-First Century Healthcare Center. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 83109 of this Chapter is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

2022 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 83104. Hospital Project Supervision, Reuse Study, and Appropriation.

(a) The Guam Twenty-First Century Healthcare Center project undertaken under the provisions of this Act shall be in accordance with the plans, specifications, standards and costs approved by GEDA and shall be under the supervision of GEDA.

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(b) A detailed reuse study which compares the feasibility of either converting the existing GMH inpatient hospital to a Government of Guam facility or developing a new Government of Guam facility for the purposes of housing Government of Guam agencies that are currently renting commercial spaces shall also include financing options for the purpose of funding the reuse or development of the said Government of Guam facility by utilizing the savings from annual rent realized by the Government of Guam based on moving from commercial spaces to the redeveloped facility. Further, the reuse study shall include the estimated costs associated with the design, financing, renovation and/or new construction of the central government office complex separate and apart from the Guam Twenty-First Century Healthcare Center.

(c) GEDA may solicit the services for a Program Management Office, which shall include, but is not limited to, creating scopes of work, coordinating projects, performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule during the construction of the Guam Twenty-First Century Healthcare Center.

§ 83105. Identification of Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the administrators and directors of healthcare agencies on Guam, shall utilize the program study generated by each of the healthcare agencies and the report generated by the U.S. Department of the Interior funded assessment report by the U.S. Army Corps of Engineers and the Guam Fire Department to identify and prioritize potential projects from such program studies and assessment reports to be completed. Upon receipt of the program study of each healthcare agency, the Guam Economic Development Authority, in consultation with the administrator or director of the respective healthcare agency, shall solicit Request for Proposals (RFP), in compliance with the Guam Procurement Law, for the design, build, finance, lease, transfer, and maintenance of the Guam Twenty-First Century Healthcare

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Center, according to the needs of all the healthcare agencies and consistent with this Chapter. The choice of the contractor/developer shall be made by the Guam Twenty-First Century Healthcare Center Committee. The Committee shall assess the prior performance of the contractor/developer on similar projects and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or in any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to financing, development, and construction of healthcare facilities.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of all healthcare agencies.

2022 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 83106. Responsibility of Contractor/Developer.

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Guam Twenty-First Century Healthcare Center to the extent provided by GEDA in consultation with the Guam Twenty-First Century Healthcare Center Committee in the Request for Proposals. The lease may, for its purposes, provide that its term shall be extended for a period not to exceed ten (10) years beyond the original term of the lease-back.

§ 83107. Contractual Safeguards.

(a) The contractor/developer shall build the Guam Twenty-First Century Healthcare Center in accordance with the Guam Building Code under Chapter 67 of Title 21, Guam Code Annotated, and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

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- (1) warranties;
- (2) liquidated damages;
- (3) performance and payments bonds;
- (4) indemnity;
- (5) insurance;
- (6) standard specifications;
- (7) technical specifications;
- (8) progress schedule;
- (9) maintenance;
- (10) compliance with Guam labor regulations;
- (11) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;
- (12) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and
- (13) the 2017 Guam Tropical Energy Code.

(b) The contract must be approved as to form and legality by the Attorney General of Guam.

2022 NOTE: Subsection designations added/ altered pursuant to the authority of 1 GCA § 1606.

§ 83108. 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/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease, and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

§ 83109. Pledge or Reservation of Revenues.

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(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:

(1) The sum of no more than Thirty-five Million Dollars (\$35,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit, will be available for Fiscal Year 2022 only.

(2) The sum of no more than Thirty-five Million Dollars (\$35,000,000) from the General Fund shall be appropriated annually thereafter.

(3) The Governor of Guam may use federal funds that is made available to the Government of Guam by the United States federal government for such purposes.

(4) The use of other financing options is authorized for the purposes of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding or financing options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section 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 action, 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 be recorded.

2022 NOTE: Subsection designation added pursuant to the authority of 1 GCA § 1606.

§ 83110. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

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(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Guam Twenty-First Century Healthcare Center shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations, unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor/developer 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 that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam's financing of the design and construction of the Guam Twenty-First Century Healthcare Center, amortized through the lease-back payments from the Government of Guam to the Guam Economic Development Authority and/or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guåhan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the "bonds") for the purposes of financing the Guam Twenty-First Century Healthcare Center in an aggregate principal amount not to exceed Six Hundred Million Dollars (\$600,000,000) for the following purposes:

- (1) to finance the design, construction, and/or maintenance of the Guam Twenty-First Century Healthcare Center;
- (2) to fund a deposit to a debt service reserve fund;

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(3) to fund capitalized interest with respect to the bonds; and

(4) to pay expenses relating to the authorization, sale and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds, subject to the following additional conditions:

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed forty (40) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

(c) The Guam Economic Development Authority and the Government of Guam shall undertake their respective best efforts to prioritize application of the portion of the net proceeds of the bonds allocated towards the design, construction, and/or maintenance of the Guam Twenty-First Century Healthcare Center first towards the construction of the new GMHA hospital facility, if and to the extent that such prioritization is practical, does not impact the marketing of the bonds and does not increase

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the costs to the Guam Economic Development Authority and/or the Government of Guam of issuing and repaying such bonds.

§ 83111. Hospital IT and Building Management System.

(a) For the purpose of extending the useful life of the Guam Twenty-First Century Healthcare Center, GEDA may include, in the specifications for the new facilities, the requirement for a medical information management system, an electronic medical records system, and a building management system. These systems identified must be done in consultation with the healthcare agencies and comply with federal mandates related to medical records, and foster compliance with requirements of the Centers for Medicare and Medicaid Services and of the accrediting organizations.

(b) GEDA, in consultation with the healthcare agencies, shall determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States healthcare industry in connection with the development of new healthcare facilities.

(c) In order to ensure immediate response to system downtimes or failure, GEDA shall include in the specifications the requirement that the provider of these systems have a local Guam office and service technicians stationed on Guam.

§ 83112. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, cable, and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Guam Twenty-First Century Healthcare Center.

§ 83113. Maintenance Fund.

The contract with the contractor/developer, and the lease-back, shall provide that all capital maintenance and repair of the Guam Twenty-First Century Healthcare Center facilities be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund

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for this purpose; sufficient funds for this purpose shall be defined as the cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after the completion of the Guam Twenty-First Century Healthcare Center. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

§ 83114. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the healthcare agencies, may promulgate rules and regulations pursuant to the Administrative Adjudication Law to implement the provisions of this Chapter.

§ 83115. Financial Plan Required.

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Guam Twenty-First Century Healthcare Center (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *ILiheslaturan Guåhan*. No solicitation of Request for Proposal or Invitation for Bid authorized to effectuate the requirements of this Act may be issued until the financial plan is delivered to the Speaker of *ILiheslaturan Guåhan*.

§ 83116. Public Notices of Guam Twenty-First Century Healthcare Center Committee Meetings.

(a) All meetings, including working meetings and subcommittee meetings of the Guam Twenty-First Century Healthcare Center Committee shall be subject to the Open

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Government Law pursuant to 5 GCA Chapter 8 and the public shall be allowed to attend. It is intended that the Guam Medical Association and the Guam Medical Society shall notify their members of meetings via email.

(b) All meeting minutes shall be posted on the Guam Economic Development Authority website, the audio recording of each meeting shall be provided to the Office of Public Accountability within seven (7) calendar days after the meeting, and electronic copies of the meeting agendas, minutes, and other attachments and addendums as discussed in each meeting shall be provided to the Speaker of *I Liheslaturan Guåhan* no later than fifteen (15) days after the meeting.

2023 NOTE: Added by P.L. 36-056:1 (Oct. 13, 2021). Subsection (d) amended by P.L. 37-010:3 (May 10, 2023).
