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CH. 58 THE EDUCATION FACILITIES
CONSTRUCTION INITIATIVE ACT OF 2001

CHAPTER 58
THE EDUCATION FACILITIES
CONSTRUCTION INITIATIVE ACT OF 2001

SOURCE: This entire chapter was added by P.L. 26-061:2 (Dec. 22, 2001).

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

- § 58101. Title.
- § 58102. Legislative Findings and Policy. [Repealed]
- § 58103. Definitions.
- § 58104. Authorization to Enter into Long-Term Leases.
- § 58105. Procurement.
- § 58106. Responsibilities of Contractor.
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- § 58108. Use of Tax-Exempt Bonds for Financing.
- § 58109. Utilities and Routine Maintenance and Repair.
- § 58110. Contractor Responsible for Capital Maintenance.
- § 58111. Rules, Regulations and Restrictions.
- § 58112. Severability.

§ 58101. Title.

This Act shall be known and shall be cited as *The Education Facilities Construction Initiative Act of 2001*.

§ 58102. Legislative Findings and Policy.

[Repealed.]

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and repealed by P.L. 28-047:1 (June 10, 2005).

§ 58103. Definitions.

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

- (a) ‘*Act*’ means Chapter 58 of Title 5 of the Guam Code Annotated, known as ‘The Education Facilities Construction Initiative Act of 2001.’

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(b) *'Contractor'* shall mean the authorized entity which shall be the signatory on the Contract and shall be fully responsible for carrying out the design, construction, financing and 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, construction and maintenance of the public school facilities envisioned by this Chapter.

(c) *'Contract'* shall mean the design, construction, financing and maintenance contract entered into by and between the Education Agency and the Contractor, following negotiations on the response to the Request for Proposal.

(d) *'Education Agency'* shall mean the Department of Education, the University of Guam or the Guam Community College.

(e) *'Education Facility'* shall mean any structure or structures, together with all ancillary facilities, including parking facilities, utilities, infrastructure and equipment associated with providing the educational or related services required by an Education Agency. *'Education Facility'* may include an existing facility being converted or rehabilitated by the Contractor.

(f) *'Lease'* shall mean a ground or site lease of the property from an Education Agency, the Chamorro Land Trust Commission, or other government land, as applicable, to the Contractor.

(g) *'Lease-Back'* shall mean the facilities lease *or* other lease of the property from the Contractor back to the Education Agency, over the term of which the costs of the design, construction, financing and maintenance of an Education Facility are amortized according to the terms agreed to between the government of Guam and the Contractor.

(h) *'Property'* shall mean any property on which an Education Facility is located.”

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and amended by P.L. 28-047:2 (June 10, 2005). Subsection (g) amended by P.L. 29-069:2 (Apr. 29, 2008).

§ 58104. Authorization to Enter into Long-Term Leases.

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(a) For the purpose of facilitating the refinancing of the design, construction and maintenance of an existing Education Facility or existing Education Facilities encompassed by this Act, the government of Guam or an Education Agency, as the case may be, is authorized to lease under existing contracts and/or existing amendments thereto, if required, to the Contractor, subject to legislative approval, sufficient government of Guam real property, to include, but not be limited to, Chamorro Land Trust Commission property and Guam Ancestral Lands Commission property, on which to construct, convert or rehabilitate an Education Facility; provided, such property is in the inventory of the Education Agency. The location of the property may be at the site of an existing Education Facility under the control of an Education Agency, which may be converted, rehabilitated or demolished and rebuilt under the provisions of this Act.

(b) Any lease of property pursuant to this Act will be 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 of the Contract, the costs associated with the financing, design, construction and maintenance of the Education Facility, and in no event shall such period exceed thirty (30) years from the date of commencement of the Lease-Back period; and provided further, that with respect to leases of property for the sole purpose of refinancing the prior design, construction and maintenance of an existing Education Facility or existing Education Facilities:

(1) any leases and/or amendments to such leases entered into for such purposes shall not extend the original Lease-Back period relating to such prior design, construction and maintenance of an existing Education Facility or existing Education Facilities of any original leases applied to finance such prior design, construction and maintenance of an existing Education Facility or existing Education Facilities;

(2) with respect to any existing leases and/or existing amendments to leases that have the effect of refinancing the government's obligations with respect to the Guam Education Financing Foundation Certificates of Participation Series 2006 and 2008 (2006 and 2008 Certificates), all obligations of the government to pay debt service with respect to the 2006 and 2008

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Certificates being refinanced shall be discharged concurrently with the execution of the leases and/or amendments to leases entered into for such refinancing purpose, and thereafter any remaining debt service on the refunded 2006 and 2008 Certificates shall be payable solely from and secured solely by a refunding escrow established for such purpose;

(3) the present value in the aggregate of debt service with respect to the government's obligations with respect to such new leases or amendments to leases shall be at least two percent (2%) less than the present value in the aggregate of debt service on the refunded 2006 and 2008 Certificates, using the yield on the refunding bonds as the discount rate; and

(4) no increase in the amount of outstanding "public indebtedness" as that term is used in 48 USC 1423a (§11 of the Organic Act of Guam) shall result from the execution of any such existing leases and/or existing amendments to leases.

(c) The Contractor shall lease back to the Education Agency the property for the Lease-Back period. Upon the expiration of the Lease and the Lease-Back periods and the fulfillment of the terms and conditions of the Lease-Back by the Education Agency, the property and the existing Education Facility or existing Education Facilities shall become the property of the Education Agency, and the Contractor shall have no further right, title or interest in the property or the existing Education Facility or existing Education Facilities.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), amended by P.L. 28-047:3 (June 10, 2005), P.L. 29-069:3 (Apr. 29, 2008), P.L. 33-094:2 (Nov. 9, 2015), and P.L. 33-118:1 (Feb. 3, 2016).

2016 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 58105. Procurement.

(a) Subject to the approval of *I Liheslaturan Guåhan*, the government of Guam or an Education Agency may solicit Requests for Proposals ('RFP') through the Department of Public Works, in compliance with the Guam Procurement Law, for the financing, design and construction of the Education Facility, together with maintenance of

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the Education Facility over the term of the Lease-Back, according to the needs of the Education Agency and consistent with this Chapter.

(b) Notwithstanding the foregoing, in connection with any amendments to an existing Lease *or* Lease-Back, the Contractor with respect to such amendments *shall* be the Contractor with respect to the existing Lease *or* Lease-Back.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), amended by P.L. 28-047:4 (June 10, 2005), and P.L. 29-069:4 (Apr. 29, 2008).

2016 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 58106. Responsibilities of Contractor.

(a) The Contract shall require that the Contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the design, civil improvements, on-site infrastructure, construction, permits and financing associated with the completion of an Education Facility. The Contractor shall also be responsible for the capital maintenance and upkeep of the schools during the Lease-Back term.

(b) The costs of the design, construction and financing for an Education Facility shall be paid in periodic installments over the term of the Lease-Back period, which shall be mutually determined by the Education Agency and the Contractor, but which will not exceed thirty (30) years.

(c) The Lease and Lease-Back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, 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 Section 58108.

(d) The capital maintenance, repair and upkeep costs shall be paid on a periodic basis as incurred by the Contractor on terms to be agreed to in the Contract for each Education Facility.

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SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and amended by P.L. 28-047:5 (June 10, 2005).

2015 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 58107. Assignments.

To facilitate the purposes of this Chapter and to provide security for the bondholders, the Contractor may assign, without the need of the consent of the Education Agency, the Contract, the Lease and the Lease-Back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of the tax-exempt bonds or other financial instruments to provide the financing for the Education Facility.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and amended by P.L. 28-047:6 (June 10, 2005).

§ 58108. Use of Tax-Exempt Bonds for Financing.

(a) To minimize the financing cost to the Education Agency, all financing utilized by the Contractor to fund the design, construction and maintenance of an Education Facility shall be through tax-exempt bonds or other financial instruments, if a mechanism to do so is available. The purpose for this requirement is to assure the Education Agency pays the lowest possible interest rate so that the cost of financing the design, construction and maintenance of an Education Facility to the Education Agency, amortized through the Lease-Back payments from the Education Agency to the Contractor, will be lower than regular commercial rates.

(b) The Lease and the Lease-Back may include a pledge of compact impact funds or other federal grant revenues that are legally available for such purpose. Any such pledge made hereunder shall be valid and binding from the time the pledge is made.

(c) The revenues pledged 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 the lien of such pledge without any physical delivery thereof or further act, and 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.

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(d) The instrument by which such pledge is created need not be recorded.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and amended by P.L. 28-047:7 (June 10, 2005).

2015 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 58109. Utilities and Routine 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 of the Education Facility. Capital maintenance and repair shall be performed by the Contractor as provided for in 5 GCA § 58110. Routine maintenance, repair and upkeep shall be the responsibility of the Education Agency and/or the Contractor, as provided by the terms of the Contract.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), and amended by P.L. 28-047:8 (June 10, 2005).

§ 58110. Contractor Responsible for Capital Maintenance.

(a) The Contract with the Contractor, and the Lease-Back, *shall* provide that all capital maintenance and repair of the Education Facility be performed by the Contractor as a separate cost; provided, however, that said documents may, at the discretion of the Education Agency, provide that capital maintenance and repair with respect to equipment (including collateral equipment), onsite utility construction, offsite utility connections, access roads, and other similar improvements to the Education Facility need *not* be performed by the Contractor. The terms by which the Contractor is to perform such capital maintenance *shall* be determined as a part of the bid process and *shall* be part of the conditions of the Contract.

(b) The Contract *shall* provide initial funding for the first five (5) years after the completion of the Education Facility.

SOURCE: Added by P.L. 26-061:2 (Dec. 22, 2001), amended by P.L. 28-047:9 (June 10, 2005), and amended by P.L. 29-069:5 (Apr. 29, 2008).

2015 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 58111. Rules, Regulations and Restrictions.

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The Department of Public Works may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Chapter.

§ 58112. Severability.

If any provision of this Chapter 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 Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are severable.
