

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
342-36 (LS)	Joe S. San Agustin Clynton E. Ridgell Mary Camacho Torres Tina Rose Muña Barnes V. Anthony Ada Jose "Pedro" Terlaje Frank Blas Jr.	AN ACT TO AMEND §§ 1203(f) AND 1203.1 OF ARTICLE 2, TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM CONTRACTS FOR THE USE OF AIRPORT FACILITIES AND PROPERTIES	9/28/22 2:19 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 342-36 (LS)

Introduced by:

Joe S. San Agustin 

Clynton E. Ridgell 

Mary Camacho Torres 

Tina Rose Muña Barnes 

V. Anthony Ada 

Jose 'Pedo' Terlaje 

Frank F. Blas, Jr. 

**AN ACT TO AMEND §§ 1203(f) AND 1203.1 OF ARTICLE
2, TITLE 12 OF THE GUAM CODE ANNOTATED,
RELATIVE TO THE ANTONIO B. WON PAT
INTERNATIONAL AIRPORT AUTHORITY, GUAM
CONTRACTS FOR THE USE OF AIRPORT FACILITIES
AND PROPERTIES**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the A.B Won Pat International Airport Authority, Guam (“GIAA”) is Guam’s only commercial service airport and contributes substantially to the economic health and welfare of Guam’s economy. The GIAA plays an important role in the local, regional, and international air transportation system as the largest airport in Micronesia.

I Liheslaturan Guåhan further finds that Fiscal Years (“FYs”) 2020, 2021, and 2022 were the most challenging years in the history of the GIAA as a result of the 2019 Novel Coronavirus (“COVID-19”) pandemic and its impact to regional and global air travel. The COVID-19 pandemic has stymied Guam’s air traffic recovery

1 due to the island’s reliance on tourism and travel from Japan and Korea, where entry
2 and re-entry requirements and restrictions—although are being lifted—has
3 disincentivized air travel for leisure and other purposes. In FY 2021, total passenger
4 enplanements, which include departing and transiting passengers, amounted to
5 135,566—the lowest seen in decades.

6 *I Liheslaturan Guåhan* further finds that the impact of the COVID-19
7 pandemic on GIAA operating revenues has been commensurate with the reduction
8 in passenger activity with operating revenues in FY 2021 experiencing an over 66%
9 decline as compared to FY 2019. In FY 2020, the GIAA had budgeted for operating
10 expenses of over \$52 million. But when the impact of the COVID-19 pandemic
11 started in February 2020, GIAA was determined to ensure it did everything within
12 its control to manage the financial impacts and reduced its operating expenses to
13 \$41.4 million in FY 2020. And with the continued impact of the COVID-19
14 pandemic for the full FY 2021, the GIAA managed to reduce its operating expenses
15 to \$34.5 million—the lowest since FY 2011.

16 *I Liheslaturan Guåhan* further finds that the COVID-19 pandemic has
17 revealed the resiliency and responsibility of GIAA as well as all the airport
18 stakeholders who continue to manage through one of the most harrowing events in
19 aviation history. And that the prudent spending, proper management and allocation
20 of federal resources, and the GIAA’s ability to prioritize safety and security has
21 provided it the ability to continue to operate today, 24 hours a day, 7 days a week.
22 But *I Liheslaturan Guåhan* understands that in order for the GIAA to succeed in its
23 ability to manage its way, not only through the COVID-19 pandemic, but also
24 beyond it, necessary changes in Guam law will help increase the value and
25 opportunities afforded to it.

26 *I Liheslaturan Guåhan* further finds that the GIAA is mandated to acquire,
27 construct, reconstruct, purchase, extend, improve, better, operate, and maintain the

1 airport and related facilities for civil aviation purposes on Guam, and is bound by
2 certain United States federal grant assurances including the assurance that the GIAA
3 “will maintain a fee and rental structure for the facilities and services at the airport
4 which will make the airport as self-sustaining as possible under the circumstances
5 existing at the particular airport, taking into account such factors as the volume of
6 traffic and economy of collection.”

7 *I Liheslaturan Guåhan* further finds that the GIAA must be given the
8 flexibility to diversify its revenue streams, including through the use of GIAA’s
9 properties and assets, and to leverage those assets for both aeronautical and non-
10 aeronautical uses subject to federal regulations and grant assurances, so that the
11 GIAA can further diversify its sources of revenue to withstand material reduction in
12 passenger activity caused by changing industry trends or unexpected events such as
13 the COVID-19 pandemic.

14 *I Liheslaturan Guåhan* further finds that any proposed development of GIAA
15 properties and facilities are limited to improving leased property because as a
16 recipient of federal funding and federal land grants, the GIAA is subject to federal
17 grant assurances that restrict GIAA from disposing of its properties. In order to
18 attract any potential interest for substantial development, especially the development
19 of raw land, business arrangements are generally accomplished under a long-term
20 lease of sufficient term to recoup private partners’ capital investments.

21 *I Liheslaturan Guåhan* finds that it is in the best interest of GIAA that all
22 contracts, leases, concession agreements, public-private partnerships, licenses, and
23 permits for the use of GIAA properties and facilities between the GIAA and other
24 parties and airlines are authorized in a manner that allows for the best opportunity
25 and ability to effectively and efficiently carry out its statutory mandates and federal
26 grant assurances. Granting GIAA financial flexibility to maximize revenue
27 generation through innovative property development will allow the GIAA to

1 diversify its revenues while also maintaining competitive rates and charges for
2 airlines and users.

3 *I Liheslaturan Guåhan* further finds that it is projected to take some time for
4 travel to the Territory to achieve pre-pandemic operating levels, for the Territory’s
5 visitor industry to recover, and for GIAA to stabilize its financial structure through
6 the restoration of operating reserves and capital improvement funds. As part of
7 achieving these goals, providing the GIAA the ability to establish rules and
8 regulations through the Administrative Adjudication Law or via enactment into law
9 with regard to the solicitation, selection and award of concession agreements—
10 otherwise known as revenue-generating contracts—will provide the best opportunity
11 to achieve the best value for airport space for concession contracts and services.

12 *I Liheslaturan Guåhan* further finds that non-aeronautical revenues have been
13 an important part of the GIAA’s ability to achieve financial stability through revenue
14 diversification. Included as major parts of non-aeronautical revenues are both the
15 ability to lease commercial properties and the GIAA’s concession contracts. Given
16 the impacts of the COVID-19 pandemic on all GIAA revenues, the uncertainty
17 surrounding the GIAA’s ability to solicit for concessionaires, and the need to ensure
18 continuity of receiving non-aeronautical revenues from concession services—in the
19 event such is necessary—the granting of the authority to negotiate extensions with
20 the GIAA’s existing concessionaires may assist in avoiding the potential negative
21 impacts of decreased non-aeronautical revenues for the GIAA and a further
22 devaluation of GIAA concessions. For these reasons, *I Liheslaturan Guåhan* finds
23 that it is in the best interest of the people of Guam, the traveling public, GIAA
24 bondholders, the GIAA, and the Territory that the GIAA be permitted to negotiate
25 extensions to existing concession agreements, for up to an additional three (3) years
26 to address the potential negative impacts as described herein.

1 **Section 2.** Section 1203(f) of Article 2, Chapter 1 of Title 12 of the Guam
2 Code Annotated is hereby amended to read as follows:

3 “(f) Improve, construct or reconstruct, lease, furnish or refurnish,
4 use, repair, maintain, control, sell or dispose of its property, including any
5 buildings, structures, lighting equipment and all other equipment and
6 facilities necessary therefor; and, notwithstanding any other provision of
7 law, including without limitation 5 GCA Chapter 5 and 21 GCA section
8 60112, 60114 and 60115, make and enter into contracts, including without
9 limitation, leases, concession agreements, public-private partnerships,
10 licenses, and permits, for the use of airport facilities and properties for
11 airport purposes, and/or visitor related activities, and make and enter into
12 airline agreements, without prior approval of I Liheslaturan Guåhan,
13 [Legislature] as long as these agreements are in conformity with the
14 provisions of § 1203.1 of this Title.”

15 **Section 3.** Section 1203.1 of Article 2 of Chapter 1 of Title 12 of
16 the Guam Code Annotated is hereby amended to read as follows:

17 “**§ 1203.1. Agreements Between the AuthorityABWPGIAA and**
18 **Other Partiesand Concessions, Other Businesses and Service**
19 **Providers; Agreements Between the AuthorityABWPGIAA and**
20 **Airlines.**

21 (a) Any agreement between the AuthorityABWPGIAA and any other
22 party for the use of airport facilities and properties for airport purposes
23 and/or visitor related activitiesconcerning the operation of a concession,
24 other business or a service provider at ABWPGIAA shall conform to the
25 following:

26 (1) shall not exceed a term of thirty (30) years, provided, however,
27 that concession agreements shall not exceed a term of ten (10) yearsallow

1 for an exclusive right to sell certain goods or provide certain services only
2 after a competitive proposal procedure, according to the General Services
3 Administration rules and regulations, and for a duration of no longer than
4 five (5) years (Any exclusive right for a duration of longer than five (5)
5 years shall be given by the ABWPGIAA to any party only upon
6 subsequent approval by I Liheslaturan Guåhan by statute.);

7 (2) shall be subject to:

8 (i) with regard to concession agreements, rules and
9 regulations for the solicitation, selection and award of concession
10 agreements established in accordance with the Administrative
11 Adjudication Law or by enactment into law. Concessions include,
12 but are not limited to retail, specialty retail, food & beverage,
13 advertising, currency exchange, car rentals, and parking; and

14 (ii) with regard to all other contracts for the use of Airport
15 facilities and properties, notwithstanding any other provision of
16 law, policies and procedures adopted from time to time by the
17 GIAA's Board of Directors, following a thirty (30) day public
18 notice and comment period. ~~criteria established for the operation~~
19 of a concession, other business or service provider at the
20 ABWPGIAA, which criteria shall be reviewed at a public hearing
21 held within ninety (90) days of the effective date of this Section,
22 and held in accordance with the Administrative Adjudication Law;

23 (3) shall be subject to applicable federal laws and regulations~~not be~~
24 ~~extended in duration or otherwise modified, unless the extension or other~~
25 ~~modification conforms to the requirements of this Section~~
26 ~~(Notwithstanding the forgoing sentence, the exclusive concessionaire~~
27 ~~agreement between the ABWPGIAA and DFS, in effect on the effective~~

1 date of this Section, modified by a memorandum of understanding, shall
2 be modified again, but not extended in duration of term, pursuant to the
3 cooperative efforts of the parties to reach a mutual understanding in the
4 best interests of the People of Guam.); and

5 (4) shall be subject to the Authority's bond covenants in order to
6 maximize local participation in concession businesses at the
7 ABWPGIAA, the ABWPGIAA shall abide by the competitive bid
8 process, to the extent consistent with good business practice, and make
9 available the maximum number of opportunities for local businesses to
10 provide concession goods and services at the ABWPGIAA.

11 (b) Any agreement between the Authority ~~ABWPGIAA~~ and any airline
12 offering service to Guam shall charge the airline using the Antonio B.
13 Won Pat Guam International Air Terminal ~~ABWPGIAA~~ air terminal
14 facilities rates sufficient to cover the operating expenses of the air terminal
15 and debt service coverage of the bonds authorized to be issued by this
16 Section, and be in compliance with the requirement that no one (1) or
17 more airlines shall be unreasonably discriminated against in comparison
18 with any other airline in these charges.

19 (c) This section 1203.1 shall not apply to:

20 (1) Permits to operate or access GIAA facilities or properties for
21 the purpose of operating a commercial ground transportation service. A
22 separate ground transportation policy has been established by GIAA for
23 permits to operate or access GIAA facilities or properties for the purpose
24 of operating a commercial ground transportation service; and

25 (2) Non-commercial activity leases, leases with non-profit
26 organizations and educational institutions, leases with the government of

1 Guam, its line agencies, autonomous agencies, and public corporations,
2 and leases with the United States of America.

3 ~~Notwithstanding any other provision of law, the ABWPGIAA is~~
4 ~~authorized to enter into individual leases or agreements with those tenants~~
5 ~~currently operating food and beverage concessions at the ABWPGIAA as~~
6 ~~of February 28, 2001, for a period or term not to exceed two (2) years~~
7 ~~from January 1, 2002 under terms and conditions agreed upon between~~
8 ~~ABWPGIAA and the tenants; provided, however, this Section does not~~
9 ~~authorize an extension or renewal of any existing Master Food and~~
10 ~~Beverage Concession Agreement or lease.~~

11 ~~(d) Notwithstanding Subsection (a) of this Section, the ABWPGIAA~~
12 ~~is authorized to enter into an agreement to extend the current exclusive~~
13 ~~DFS Concession Agreement one (1) time only for a period or term not to~~
14 ~~exceed two (2) years from January 20, 2002. Any such agreement shall~~
15 ~~still be subject to approval by I Liheslaturan Guåhan, and shall provide~~
16 ~~that annual payment during the period of the extension shall be no less~~
17 ~~than the sum of Eight Million Dollars (\$8,000,000), or twenty percent~~
18 ~~(20%) of gross sales at the ABWPGIAA, whichever is greater, and ten~~
19 ~~percent (10%) of gross sales at non-ABWPGIAA-owned facilities where~~
20 ~~passengers are checked in for outgoing airline flights from Guam.~~

21 ~~The extension of the DFS Concession Agreement shall be~~
22 ~~submitted to I Liheslaturan Guåhan [Guam Legislature] for approval no~~
23 ~~later than September 30, 2001. I Liheslaturan Guåhan [Guam Legislature]~~
24 ~~shall have forty five (45) days upon receipt of the proposal to act on the~~
25 ~~approval or disapproval of the concessionaire agreement. Inaction by I~~
26 ~~Liheslaturan Guåhan [Guam Legislature] within the designated timeframe~~
27 ~~shall constitute approval.”~~

1 **Section 4. Authority to Extend Concession Agreements.** The A.B. Won
2 Pat International Airport Authority, Guam is authorized to negotiate extensions of
3 its current concession agreements for up to an additional three (3) years from the end
4 of the then-current term. All such extensions shall be subject to approval by the
5 GIAA Board of Directors.

6 **Section 5. Effective Date.** This Act shall be effective from and after its
7 enactment.

8 **Section 6. Severability.** If any provision of this Act or its application to any
9 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*
10 *not* affect other provisions or applications of this Act that can be given effect without
11 the invalid provision or application, and to this end the provisions of this Act are
12 severable.