

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 378 (EC)

Introduced by:

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AN ACT TO *ADD* CHAPTER 88 TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION OF THE GUAM MUSEUM, AND TO CITE THE ACT AS “*THE MUSEUM CONSTRUCTION AND FACILITIES FUNDING ACT OF 2008.*”

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Title.** This Act *shall* be cited and referred to as the “*Museum*
3 *Construction and Facilities Funding Act of 2008.*”

4 **Section 2.** Chapter 88 is hereby *added* to Title 5 of the Guam Code Annotated
5 to read as follows:

6 **“CHAPTER 88.**

7 **Museum Construction and Facilities Funding.**

8	§88101.	Title.
9	§88102.	Legislative Findings and Policies.
10	§88103.	Definitions.
11	§88104.	Authorization to Enter into Long-term
12		Leases.
13	§88105.	Procurement.
14	§88106.	Responsibilities of Contractor.

1	§88107.	Assignments.
2	§88108.	Use of Tax-Exempt Bonds for
3		Financing.
4	§88109.	Pledge of Compact Impact Funds and
5		other alternative sources.
6	§88110.	Utilities and Routine Maintenance.
7	§88111.	Maintenance Fund.
8	§88112.	Rules, Regulations and Restrictions.
9	§88113.	Severability.

10

11 **§88101. Title.** This Act *shall* be known and *shall* be cited as “*The*
12 *Museum Construction and Funding Act of 2008.*”

13 **§88102. Legislative Findings and Policies.** *I Liheslaturan Guåhan*
14 finds that it is the vision of the Guam Museum to build a world-class facility
15 that is a home for artifacts and historic documents; a dynamic cultural
16 destination that reflects a sense of Guam and Micronesia and the Chamorro and
17 Micronesian cultures while at the same time stimulating community ownership
18 and involvement.

19 Furthermore, it is the sense of *I Liheslaturan Guåhan* that once this
20 world-class facility is constructed, the Guam Museum will be in a better
21 position to promote increased education and understanding of Guam’s geology,
22 biota, prehistory, history and contemporary culture as a journey through time
23 and space using transportation as a interpretive narrative. It shall foster research
24 and convey the results of research to the public primarily through the medium
25 of public exhibits, demonstrations, lectures, public programs and publications.

26 More importantly, the purposes for which the Guam Museum Foundation
27 was organized and its process in connection therewith are as follows:

1 (a) To promote cultural and historical activities.

2 (b) To engage in any lawful act or activity for which non-profit
3 foundations may be organized under the laws of Guam.

4 (c) To have and exercise all rights and powers now or hereafter
5 granted to a non-profit foundation by law.

6 (d) To enter into contracts with individuals, organizations, or
7 institutions whether public or private, which are engaged in projects or
8 programs related to museum activities.

9 (e) To receive and administer grants in furtherance of the Guam
10 Museum Foundation.

11 (f) To accept loans of cultural or intellectual properties from
12 individuals, families, organizations, or institutions with terms and
13 conditions to be agreed upon.

14 (g) To adopt, amend, and appeal by-laws and other rules,
15 regulations, and directives governing the conduct of its business and the
16 performance of the powers and duties granted under the Corporation's
17 enabling law or imposed upon it by law according to the Administrative
18 Adjunction Law.

19 (h) To determine the character of and the necessity of its
20 obligations and expenditures and the manner in which they shall be
21 incurred, allowed, and paid.

22 (i) To execute all instruments necessary or appropriate in the
23 exercise of any of its functions.

24 (j) To accept monetary or in-kind gifts or donations of services
25 or of property, whether tangible or intangible, in aid of any of the
26 activities of the Guam Museum. All donations to the Foundation and any
27 of its programs shall be tax deductible to the donors in the same manner

1 and extent that the donations to charitable or educational non-profit
2 organizations are deductible as provide by law.

3 (k) To work closely with all government entities, educational,
4 and religious institutions on Guam, public and private organizations, both
5 on and off-island and other appropriate agencies to maximize the public
6 benefits and opportunities, which enhance the purposes of the
7 Foundation.

8 (l) To negotiate agreements for the construction of tourist
9 attractions depicting the historical and cultural development of the
10 Chamorro people.

11 In an effort to overcome these financing hurdles and to provide the
12 people of Guam with a world-class facility, *I Liheslaturan Guåhan* hereby
13 authorizes the Guam Museum together with the Guam Museum Foundation and
14 the government of Guam to enter into contracts for the financing, design,
15 construction and long-term capital maintenance of the Guam Museum with
16 private sector contractors who can provide long-term financing obtained
17 through tax-exempt obligations or other competitive alternative financing based
18 on long-term lease-backs to the government of Guam.

19 To facilitate the financing, design, construction and maintenance of the
20 project envisioned by this Act, the government of Guam will be authorized to
21 lease for up to thirty (30) years government of Guam property on which the
22 facilities will be constructed. The lease of the government property will be to
23 the contractor, who will design and construct the facilities in accordance with
24 specifications approved by Guam Museum and the Guam Museum Foundation,
25 and provide funding for the design and construction through the use of tax-
26 exempt obligations or other competitive alternative funding sources. The
27 facilities and land will be leased back to the government of Guam for a period

1 not to exceed the initial ground lease to the contractor over which time the
2 government of Guam will amortize, as lease payments to the contractor, the
3 cost of the financing, design, construction and related expenses of the facilities.

4 The contractor will also be responsible for the capital maintenance of the
5 museum facilities constructed under this Act, which costs shall be paid by the
6 government of Guam as provided for under this Act. At the expiration of the
7 Lease-Back Period, the government of Guam real property and the public
8 facilities constructed on the government of Guam real property will revert to the
9 government of Guam with no further obligations to the Contractor.

10 **§88103. Definitions.** For purposes of this Chapter and *unless*
11 otherwise specified, the following words and phrases are defined to mean:

12 (a) "Act" means Chapter 88 of Title of the Guam Code Annotated,
13 known as the *"Museum Construction and Funding Act of 2008."*

14 (b) "Contract" *shall* mean the design, construction and financing
15 contract entered into by and between the Museum Agency and the Contractor
16 following negotiations on the response to the Request for Proposal.

17 (c) "Contractor" *shall* mean the authorized entity which *shall* be the
18 signatory on the Contract and *shall* be fully responsible for carrying out the
19 design, construction, financing and maintenance of the Museum Facility. The
20 Contractor may cooperate with another entity or entities in any manner the
21 Contractor deems appropriate to provide for the financing, design, construction
22 or maintenance of the public school facilities envisioned by this Act.

23 (d) "Museum Agency" *shall* mean the Guam Museum.

24 (e) "Museum Facility" as used in this Act *shall* mean the Museum
25 facility to be constructed on Lot No. 2062 Part-1-R1, Agana Heights Guam.

26 (f) "Lease" *shall* mean a lease from the Museum Agency to the
27 Contractor entered into at the time of the Contract for the Property.

1 (g) "Lease-Back" *shall* mean the lease from the Contractor to the
2 Museum Agency.

3 (h) "Lease-Back Period" *shall* mean the term of the lease from the
4 Contractor to the Museum Agency.

5 (i) "Property" *shall* mean any property on which the Museum facility
6 is located such as Lot No. 2062 Part-1-R1, Agana Heights Guam, or the area
7 situated in and around the Plaza de España.

8 **§88104. Authorization to Enter into Long-term Leases.** For the
9 purpose of facilitating the financing of the design, construction and
10 maintenance of an Museum Facility encompassed by this Act, the government
11 of Guam *or* an Museum Agency as the case may be, is authorized to lease, if
12 required, to the Contractor sufficient government of Guam real property on
13 which to construct, convert *or* rehabilitate an Museum Facility; provided, such
14 property is in the inventory of the Museum Agency *or* the government of
15 Guam. The property may be the site of an existing Museum Facility under the
16 control of an Museum Agency, which existing facility may be converted,
17 rehabilitated *or* demolished and rebuilt under the provisions of this Act.

18 The Museum Agency is also authorized to lease back from the Contractor
19 the property for a period mutually agreed upon between the Museum Agency
20 and the Contractor as may be reasonably necessary to amortize over the Lease-
21 Back Period the costs associated with the financing, design and construction of
22 the Museum Facility. In no event *shall* the end of such Lease-Back Period be
23 *later than* the date thirty (30) years from the scheduled date of completion of
24 the Museum Facility. The Lease-Back may be structured as an annually
25 renewable lease with provision for automatic renewals to the extent that
26 pledged revenue under Section 88109 is available. The Lease-Back *shall not* be

1 construed as a debt under any applicable debt limitation under the Guam
2 Organic Act *or* Guam law.

3 **§88105. Procurement.** Subject to the approval of *I Liheslaturan*
4 *Guåhan*, the government of Guam *or* an Museum Agency may solicit Requests
5 for Proposals ('RFP') through the Department of Public Works, in compliance
6 with the Guam Procurement Law, for the financing, design and construction of
7 the Museum Facility, together with maintenance of the Museum Facility over
8 the Lease-Back Period, according to the needs of the Museum Agency and
9 consistent with this Chapter. Notwithstanding the foregoing, in connection with
10 any amendments to an existing Lease *or* Lease-Back, the Contractor with
11 respect to such amendments *shall* be the Contractor with respect to the existing
12 Lease *or* Lease-Back. The RFP *shall* be issued within thirty (30) days of
13 enactment of this Act for the construction of the Guam Museum on the existing
14 site; may include demolition of such portions of the existing facility as
15 necessary; and *shall* include a requirement that occupancy of the Museum
16 facility take place *no later than* nine (9) months after execution of the Contract.

17 **§88106. Responsibilities of Contractor.** The Contract *shall* require that
18 the Contractor be responsible for all costs, expenses and fees of any kind *or*
19 nature, associated with the design, civil improvements, on-site and off-site
20 infrastructure, construction, permits, and financing associated with the
21 completion of an Museum Facility, including the financing of furniture and
22 equipment for the Museum Facility, as and to the extent provided by the
23 Museum Agency in the Request for Proposals. The Contractor *shall* also be
24 responsible for the capital maintenance of the schools during the Lease-Back
25 Period, but *shall not* be responsible for the capital maintenance of the furniture
26 and equipment. The Lease-Back may provide that *if* sufficient funds are not
27 appropriated or otherwise available for the payment of amounts due under the

1 lease and any maintenance agreement, the Museum Agency will have the
2 obligation to vacate the Museum Facility, and the Contractor *shall* have the
3 right of use and occupancy of the Museum Facility for the remainder of the
4 term of the Lease, unless new mutually satisfactory terms are entered into. For
5 this purpose, the Lease may provide that its term *shall* be extended for a period
6 not to *exceed* the shorter of ten (10) years beyond the original term of the
7 Lease-Back or such period of time as is necessary to repay in full any financing
8 arranged pursuant to Section 88108. The capital maintenance costs *shall* be paid
9 by the Museum Agency on a periodic basis as incurred by the Contractor on
10 terms to be agreed to in the Contract for each Museum Facility.

11 **§88107. Assignments.** To facilitate the purposes of this Act and to
12 provide security for the holders of any financing instruments issued pursuant to
13 this Act, the Contractor may assign, without the need of the consent of the
14 Museum Agency, the Contract, the Lease and the Lease-Back to any
15 underwriter, trustee or other party as appropriate to facilitate the issuance of the
16 tax-exempt obligations, other financial instruments or alternative financing for
17 the Museum Facility.

18 **§88108. Use of Tax-Exempt Bonds for Financing.** To minimize the
19 financing cost to the Museum Agency, financing utilized by the Contractor to
20 fund the design and construction of an Museum Facility *shall* be through tax-
21 exempt obligations or other financial instruments provided such financing is
22 available at interest rates determined by the Museum Agency to be reasonable
23 and competitive. Alternatively, the Contractor may use an alternative method of
24 financing, including, but not *limited* to, a short term debt, mortgage, loan,
25 federally guaranteed loan or loan by an instrumentality of the United States of
26 America *if* such financing will better serve the needs of the people of Guam.
27 Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The

1 purpose for the requirements of this Section is to assure the Museum Agency
2 pays the lowest possible interest rate so that the cost to the Museum Agency of
3 financing the design and construction of a Museum Facility, amortized through
4 the Lease-Back payments from the Museum Agency to the Contractor, will be
5 lower than regular commercial rates.

6 **§88109. Pledge of Compact Impact Funds and Other Alternative**
7 **Sources.** Rental payments under the Lease and the Lease-Back may be secured
8 by a pledge or other reservation of revenues received by or on behalf of the
9 government of Guam from the United States of America pursuant to compact
10 impact funds in the amount of [annual amount to obligate]. Any pledge or
11 reservation of compact impact funds authorized by the Act shall be subordinate
12 only to the existing lien securing the Government of Guam Limited Obligation
13 Bonds, Series _____.

14 Any such pledge or reservation authorized hereunder shall be valid and
15 binding from the time the pledge or reservation is made and shall be limited to
16 \$1,358,579 per year during the Lease-Back Period. The compact impact funds
17 pledged or reserved and thereafter received by the government of Guam or by
18 any trustee, depository or custodian shall be deposited in a separate account and
19 shall be immediately subject to such reservation or the lien of such pledge
20 without any physical delivery thereof or further act, and such reservation or the
21 lien of such pledge shall be valid and binding against all parties having claims
22 of any kind in tort, contract or otherwise against the government of Guam or
23 such trustee, depository or custodian, irrespective of whether the parties have
24 notice thereof. The instrument by which such pledge or reservation is created
25 need not be recorded.

26 **§88110. Utilities and Routine Maintenance and Repair.** The
27 Museum Agency *shall* be responsible for the connection and payment of all

1 utilities, including without limitation, power, water, sewer, telephone and cable,
2 and all routine interior maintenance and repair and exterior grounds keeping
3 and landscaping and upkeep of the Museum Facility.

4 **§88111. Maintenance Fund.** The Contract or a separate
5 maintenance agreement with the Contractor, and the Lease-Back, *shall* provide
6 that all capital maintenance of the Museum Facility be performed by the
7 Contractor as a separate cost, the terms of which, and the manner for
8 establishing the amount of payment, *shall* be determined as a part of the request
9 for proposal process; provided, however, that said documents may, at the
10 discretion of the Museum Agency, provide that capital maintenance with
11 respect to equipment (including collateral equipment), onsite utilities, offsite
12 utilities, access roads and other similar improvements need not be performed by
13 the Contractor. The Contract or agreement and the Lease-Back may provide for
14 a separate maintenance reserve fund for this purpose with sufficient funds to
15 pay the costs of capital maintenance for a reasonable period not *exceeding* five
16 (5) years. The maintenance reserve fund *shall* be used exclusively for the
17 purpose of capital maintenance and *shall* be an interest bearing account
18 segregated from other funds of the Museum Agency.

19 **§88112. Rules, Regulations and Restrictions.** The Department of
20 Public Works together with the Guam Museum may promulgate rules and
21 regulations pursuant to Guam law necessary to implement the provisions of this
22 Act.

23 **§88113. Severability.** *If any provision of this Act or its application*
24 *to any person or circumstance is found to be invalid or contrary to law, such*
25 *invalidity shall not affect other provisions or applications of this Act which can*
26 *be given effect without the invalid provisions or application, and to this end the*
27 *provisions of this Act are severable.”*