I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 64-31 (COR), "AN ACT TO *ADD* A NEW §7112.1 TO DIVISION 2, CHAPTER 7 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM DEPARTMENT OF EDUCATION (GDOE) TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP FOR THE MANAGEMENT OF THE MAINTENANCE, OPERATION AND REPAIR OF GDOE FACILITIES"**, was on the 4th day of April, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 7th day of April, 2011, at 09:50 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 64-31 (COR)
As substituted by the Committee on Youth, Cultural Affairs,
General Government Operations, Procurement and Public Broadcasting
and the Author, and amended on the Floor.

Introduced by: Aline A.Yamashita, Ph.D.
T .C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Duenas
Sam Mabini, Ph.D.
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
M. Silva Taijeron
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW §7112.1 TO DIVISION 2, CHAPTER 7 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM DEPARTMENT OF EDUCATION (GDOE) TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP FOR THE MANAGEMENT OF THE MAINTENANCE, OPERATION AND REPAIR OF GDOE FACILITIES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the Guam Department of Education (GDOE) continues to be plagued with

issues throughout its facilities, resulting – over the years – in the temporary closure of some. There are currently forty-one (41) schools in the GDOE inventory, of which more than half are over forty (40) years old. As facilities get older the cost of maintenance increases. In some cases, the damages to facilities from natural disasters occurring almost ten (10) years ago still have yet to be addressed.

I Liheslaturan Guåhan further finds that maintenance and repair budgets for GDOE have been insufficient to accomplish needed tasks. Annually, GDOE receives about forty percent (40%) of the overall government of Guam fiscal year budget appropriations. Approximately eighty percent (80%) of the GDOE appropriation is used for personnel with the remainder divided among GDOE's operations, of which education-related activities are the most important. It is therefore imperative that the GDOE has the ability to provide its Facilities and Maintenance (F&M) Division employees proper training, and that maintenance activities are prioritized and streamlined using best-management practices established by industry standards to achieve optimum results, and to ensure that quality standards are maintained.

Furthermore, *I Liheslaturan Guåhan* finds that the Guam Waterworks Authority and the Guam Power Authority have engaged in public-private partnerships with positive results. Different audits on GDOE have also recommended that GDOE utilize the public-private partnership concept. Therefore, *I Liheslatura* intends to provide GDOE the ability to enter into a public-private partnership for the management of the maintenance, operation and repair of GDOE facilities.

Section 2. A new §7112.1 is hereby *added* to Chapter 7, Division 2 of Title 17, Guam Code Annotated, to read:

"§7112.1. Public-Private Partnership for the Management of the Maintenance, Operation and Repair of GDOE Facilities.

(a) The Guam Department of Education (GDOE) *shall s*olicit proposals or bids from qualified parties for the management of the maintenance, operation and repair of GDOE facilities. Such solicitation *shall* be subject to the procurement laws of the government of Guam. The solicitation *shall* include in its scope of work at a minimum, but *not* limited to:

(1) An energy savings performance contract (ESPC) in which the Contractor provides design-build services, inclusive of the acquisition of energy and water efficient fixtures, operations and maintenance services, with guaranteed utility savings which *shall* be used to pay the Contractor.;

(2) Facilities & Maintenance personnel training;

(3) A five (5)-year plan to address and ensure compliance with the Adequate Education Act found in Public Law 28-45 and other applicable public health and safety requirements.

GDOE *shall* issue such solicitation one hundred twenty (120) days after the enactment of this Section.

The procurement process *shall* adhere to the mandates of Public Law 30-157 relative to the duties of the Attorney General. In the event the GDOE finds that it is in its best interests to enter into a contract for the management of the GDOE facilities, the conditions set forth in this §7112.1 *shall* apply to such contract.

(b) Notwithstanding any other provision of law or regulation, the GDOE may enter into a public-private partnership agreement pursuant to this Section §7112.1 for a period *up to* fifteen (15) years. The initial term of such an agreement *shall* be for a period of *at least* five (5) years.

(c) Initial Investment. The Contractor *shall* be required to purchase or finance a minimum of Five Million Dollars ($5,000,000) in equipment acquisition or structural repairs and upgrades of GDOE facilities within one (1) year from the execution of the contract.

(d) Special Terms.

(1) The principal performance manager of the selected Contractor *shall* have a minimum of ten (10) years of experience in managing the operation and maintenance of educational, residential, or food service facilities;

(2) The Contractor must be licensed on Guam to perform the requisite services at the time of contract execution; and

(3) All GDOE Facilities and Maintenance Division employees *shall* continue to be employees of the government of Guam, and subject to the applicable personnel rules and regulations of the GDOE.

(e) Contract Performance Reviews. All contracts awarded subject to the provisions of this Act must contain performance reviews at least annually, and provisions for contract termination *or* penalty based upon such review.

(f) GDOE Maintenance Division employees *shall* have the option to transfer to another line or autonomous agency or department of the government within ninety (90) days of the GDOE contract with a PMC without losing their pay grade, leave, or other benefits, *provided,* that a vacancy exists in the receiving agency and the employee meets the qualification requirements."

Section 3. Effective Date. This Act *shall not* take effect until a payment source or a budget for the initial Five Million Dollars ($5,000,000) and the

amounts required for the remainder of the fifteen (15) year contract period is submitted to and approved by *I Liheslaturan Guåhan* (the Guam Legislature).

Section 4. Severability. *If* any provision of this law 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 law which can be given effect.