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
250-36 (COR)	James C. Moylan Joe S. San Agustin	AN ACT TO *AMEND* § 5127 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO COMMERCIAL LEASES FOR PROPERTIES MANAGED BY CERTAIN AUTONOMOUS AGENCIES OF THE GOVERNMENT OF GUAM.	2/4/22 11:46 a.m.						

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

Bill No. 250-36 (COR)

Introduced by: James C. Moylan
Joe S. San Agustin

AN ACT TO *AMEND* § 5127 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO COMMERCIAL LEASES FOR PROPERTIES MANAGED BY CERTAIN AUTONOMOUS AGENCIES OF THE GOVERNMENT OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that Guam's current statute associated with leasing commercial property managed by the government of Guam creates many challenges. Presently, government entities are authorized to enter into contractual agreements which can't exceed five (5) years. The problem is that for certain autonomous agencies such as the Guam Economic Development Authority, Guam International Airport Authority, and Port Authority of Guam, have inventory which location wise, appeal to potential investors, however any interested party who elects to invest millions of dollars into building the infrastructure of a new business entity, will not recovery their investments in such a short period.

The current statute does allow for an investor to seek out a longer lease through an Exceptional Term Contract process. However, the process creates many layers for interested parties if they desire reasonable lease terms, such as 25 to 30 years to recoup their investments. This would include multiple steps and

approvals, inclusive of a final authorization by the Guam Legislature. Realistically in terms of the overall timelines with these various levels, it could take years for one to obtain a response. From an investor perspective, this is a very unfriendly business policy, especially if they learn years later, that their request has been denied.

Presently when an entity seeks a contract, there is already a tedious process in place to obtain a five (5) year lease agreement. Nothing changes in terms of this practice if this Act were to be enacted, when it comes to those leases being negotiated by the boards of autonomous agencies. Further, nothing precludes these government instrumentalities from establishing additional internal procedures for leases exceeding five (5) years, if this Act were to be enacted, inclusive of additional public hearings.

It shall also be noted that the specific Chapter being amended by this Act (§ 5127 of Chapter 5, Title 5, GCA) is in reference to Commercial Property and not residential or agricultural leases. Further, it is paramount that some assessment of the available inventory of those public real properties, which would be impacted if this Act were to be enacted, be made available for community, through the submittal of a report to the Guam Legislature.

This Act allows for a business-friendly policy when it comes to the leases of commercial property, with regulatory processes already in place. Ultimately it has the potential of creating new jobs, infusing economic activity, and supporting our tax base. It is also reasonable to believe that potential investors for these commercial lots are established businesses already conducting activity in Guam, who either may seek to grow their operations, or diversify, hence the importance of publicly promoting the available inventory of such commercial property.

Section 2. § 5127 of Chapter 5 of Title 5, Guam Code Annotated is hereby *amended* to read as follows:

§ 5127. Commercial Leasing of Public Real Property and Related Facilities.

(a) Public Real Property and Related Facilities. From the effective date of this law, and notwithstanding any other provision of this Chapter, other than those stipulated in § 5127(b) of this Chapter, no commercial contract, lease, permit, or license for use of public real property, and related facilities by any nongovernmental person or entity shall be solicited, negotiated, entered into, or made for a term in excess of five (5) years, inclusive of any extension, option, or renewal.

(1) Any contract, lease, permit, or license made, renewed, or extended in violation of this law shall become void upon the fifth (5th) anniversary of the making of such contract, lease, permit, or license.

(2) This limitation shall not apply to residential and agricultural leases to beneficiaries under the Chamorro Land Trust.

(3) Any such contract, lease, permit, or license shall mean a "lease of real property" and not the lease of supplies as that term is used in § 5030(u) of this Chapter.

(b) Notwithstanding any other provisions of law, rule, or regulation to the contrary, no commercial contract, lease, permit, or license for use of commercial public property and related facilities managed by the Guam Economic Development Authority, Guam International Airport Authority, the Port Authority of Guam, the Guam Power Authority, or the Guam Waterworks Authority, *shall* be solicited, negotiated, entered into, or made for a term in excess of thirty (30) years, inclusive of any extension, option, or renewal. The provisions of § 5127(a)(1), (2), and (3) of this Chapter *shall* also apply to § 5127(b) of this Chapter.

(c~~b~~) Exceptional Term Contracts. The Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency, as authority may exist therefore, *may* solicit a contract for a term(s) longer than otherwise allowed by § 5127(a) and § 5128(b) of this Chapter, ~~Section~~ ~~(~~which shall be herein referred to as an "Exceptional Term Contract"~~)~~. For the purposes of this Chapter, the provisions of § 5127(c), (d), (e), and (f), related with Exceptional Term Contracts *shall* only apply for leases exceeding five (5) years pursuant to § 5127(a) and thirty (30) years pursuant to § 5127(b), both of this Chapter.

(1) Prior to soliciting any Exceptional Term Contract, *I Maga'hågan~~låhi~~* (the Governor) or, in the case of an autonomous agency, the Board of Directors, *shall* make a written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract, and specifying the full term, inclusive of extensions, options and renewals, for such contract, and provide a copy of such Determination of Need to the Speaker of *I Liheslaturan Guåhan*.

(2) No Exceptional Term Contract *shall* be solicited unless a Determination of Need is obtained from *I Maga'hågan~~låhi~~* (the Governor) or, in the case of an autonomous agency, the Board of Directors.

(3) A written Determination of Need *shall* be valid for two (2) years or until an Exceptional Term Contract is executed to fill the stated need, whichever comes first.

(d~~c~~) Subsequent to transmitting a Determination of Need to the Speaker of *I Liheslaturan Guåhan,* a notice of solicitation *shall* be published as provided in § 5211(c) of Subarticle B of Article 3 of this Chapter, such notice to conspicuously note the solicitation is for an Exceptional Term

Contract, and specifying the term thereof, as well as the date of the proper Determination of Need. Any Exceptional Term Contract made in violation of this Section *shall* be void.

(e~~d~~) Legislative Approval Required for Exceptional Term Contracts. Subsequent to satisfying the requirements of this § 5127, the commercial contract, lease, permit, or license for use of public real property and related facilities *shall* be transmitted to *I Liheslaturan Guåhan* for approval or disapproval, in whole.

(1) *I Liheslaturan Guåhan shall* take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

(2) A public hearing *shall* be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60)-day review period~~,~~ and said Committee *shall* report its findings and recommendations to *I Liheslaturan Guåhan*.

~~(3) The sixty (60) day period allowed for *I Liheslaturan Guåhan* to approve or disapprove the contract, lease, permit, or license *shall* be tolled from the time that a public hearing is noticed and until a Committee Report is completed.~~

(3~~4~~) Legislative approval *shall* be by enactment into law.

(f~~e~~) The solicitation and award of any such contract, lease, permit, or license *shall* be conducted as provided in this Chapter, and the Determination of Need *shall* be a part of such record and subject to § 5251 of this Chapter, along with any modification, amendment, exercise of option or renewal, or extension of such contract, lease, permit, or license.

Section 3. Authorization to Transfer Funds to the Guam Economic Development Authority. Notwithstanding any other provisions of the law, rule,

or regulation to the contrary, *I Maga'hågan Guåhan may* identify and transfer up to Five Thousand Dollars ($5,000) from the General Fund to the Guam Economic Development Authority (hereinafter referred to as GEDA) for the purposes of compiling a report of available Commercial Real Property available under the provisions of § 5127 of Chapter 5, Title 5, Guam Code Annotated. This report *shall* include specifics, but is not limited to, the location, lot size, and the government entity which has management of the property. This report *shall* be submitted to *I Maga'hågan Guåhan* and *I Liheslaturan Guåhan*, no more than thirty (30) days from the enactment of this Act. The transfer authority pursuant to this Section *shall* be above the transfer authority granted to *I Maha'hågan Guåhan* pursuant to Public Law 36-54.

Section 4. Severability. If any provision of this Act 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 Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 5. Effective Date. This Act *shall* be effective upon enactment.