


I Mina'trentai Ocho Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
243-38 (COR)	William A. Parkinson	AN ACT TO <i>AMEND</i> § 5425(g) OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO ADD A NEW § 5425.1 TO ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REMOVING THE AUTOMATIC STAY OF PROCUREMENT UPON THE FILING OF A PROTEST AND REQUIRING AN AFFIRMATIVE DETERMINATION OR ORDER TO STAY AN AWARD, TO MODERNIZE GUAM'S PROCUREMENT REGIME.	12/10/25 2:22 p.m.						

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 243-38 (COR)

Introduced by:

William A. Parkinson 

AN ACT TO AMEND § 5425(g) OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO ADD A NEW § 5425.1 TO ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REMOVING THE AUTOMATIC STAY OF PROCUREMENT UPON THE FILING OF A PROTEST AND REQUIRING AN AFFIRMATIVE DETERMINATION OR ORDER TO STAY AN AWARD, TO MODERNIZE GUAM'S PROCUREMENT REGIME.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the current procurement protest procedures under Guam law, specifically the
4 "Automatic Stay" provision in 5 GCA § 5425(g), have been frequently utilized to
5 delay essential government services and critical infrastructure projects. Under the
6 current statute, a mere administrative filing of a protest, regardless of its merit,
7 automatically halts the procurement process, often leading to months or years of
8 litigation before a shovel hits the ground or medicine reaches the hospital.

9 *I Liheslaturan Guåhan* further finds that this automatic mechanism is an
10 outlier compared to modern procurement efficiencies sought by other United States
11 jurisdictions. For instance, protests filed at the United States Court of Federal Claims
12 do not trigger an automatic stay; rather, the protestor must demonstrate a likelihood
13 of success on the merits and irreparable harm to obtain a preliminary injunction.
14 Similarly, many jurisdictions utilizing the American Bar Association (ABA) Model
15 Procurement Code have adopted provisions that allow the government to proceed

1 with an award unless a stay is affirmatively ordered by a court or administrative body
2 upon a showing of good cause.

3 It is the intent of *I Liheslaturan Guåhan* to balance the right of an aggrieved
4 bidder to protest with the government's obligation to provide uninterrupted services
5 to the People of Guam. Therefore, this Act amends the procurement law to remove
6 the automatic nature of the stay, shifting the burden to the protestor to justify why a
7 stay is necessary, or requiring the government to stay performance only when a
8 "substantial interest" of the Territory is not harmed.

9 **Section 2.** § 5425(g) of Article 9, Chapter 5, Title 5, Guam Code Annotated,
10 is hereby *amended* to read:

11 ~~"(g) In the event of a timely protest under Subsection (a) of this Section or~~
12 ~~under Subsection (a) of § 5480 of this Chapter, Guam shall not proceed further~~
13 ~~with the solicitation or with the award of the contract prior to final resolution~~
14 ~~of such protest, and any such further action is void, unless:~~

15 ~~(1) The Chief Procurement Officer or the Director of Public Works after~~
16 ~~consultation with and written concurrence of the head of the using or~~
17 ~~purchasing agency and the Attorney General or designated Deputy Attorney~~
18 ~~General, makes a written determination that the award of the contract without~~
19 ~~delay is necessary to protect substantial interests of Guam; and~~

20 ~~(2) Absent a declaration of emergency by I Maga'håga/Maga'låhi, the~~
21 ~~protestant has been given at least two (2) days notice (exclusive of Guam~~
22 ~~holidays); and~~

23 ~~(3) If the protest is pending before the Public Auditor or the Court, the~~
24 ~~Public Auditor or Court has confirmed such determination, or if no such~~
25 ~~protest is pending, no protest to the Public Auditor of such determination is~~
26 ~~filed prior to expiration of the two (2) day period specified in Item (2) of~~
27 ~~Subsection (g) of this Section.~~

1 No Automatic Stay. Notwithstanding any other provision of law or
2 regulation, the filing of a protest under Subsection (a) of this Section, or an appeal
3 under § 5480 of this Chapter, shall not automatically stay the solicitation, award, or
4 performance of a contract. The Territory may proceed with the procurement unless
5 a stay is affirmatively ordered by the Public Auditor or the Superior Court of Guam
6 pursuant to § 5425.1 of this Chapter.

7 **Section 3.** A new § 5425.1 is hereby *added* to Article 9, Chapter 5, Title 5,
8 Guam Code Annotated, to read:

9 **"§ 5425.1. Procedure for Requesting a Stay; Protest Security Bonds.**

10 (a) Motion for Stay Required. A protestor seeking to stay a solicitation
11 or award must file a separate *Motion to Stay Procurement* concurrently with
12 their protest or appeal. The Motion must include:

13 (1) A sworn affidavit detailing specific facts that demonstrate
14 immediate and irreparable injury, loss, or damage; and

15 (2) A Memorandum of Law addressing the factors in Subsection
16 (c) of this Section.

17 (b) Mandatory Protest Bond.

18 (1) Requirement. Any person who files a protest under § 5425(a)
19 or an appeal under § 5703 shall post a protest bond payable to the
20 General Fund of Guam.

21 (2) Amount. The bond shall be equal to two percent (2%) of the
22 estimated value of the contract or Five Thousand Dollars (\$5,000),
23 whichever is greater.

24 (3) Forfeiture. If the Public Auditor or Court determines that the
25 protest was frivolous, malicious, or filed primarily to cause delay, the
26 entire amount of the bond shall be forfeited to the Territory.

1 (4) Return. If the protest is sustained, or if the protest is denied
2 but found to be non-frivolous, the bond shall be returned to the protestor
3 within thirty (30) days of final resolution.

4 (c) Standard for Granting a Stay. The Public Auditor or the Superior
5 Court shall not grant a stay of procurement unless the protestor establishes,
6 by clear and convincing evidence, all of the following:

7 (1) Likelihood of Success: The protestor possesses a strong
8 likelihood of success on the merits of the underlying protest;

9 (2) Irreparable Harm: The protestor will suffer irreparable harm
10 if the stay is not granted. Economic loss alone, including bid
11 preparation costs or lost profits, shall not constitute irreparable harm;

12 (3) Balance of Hardships: The harm to the protestor outweighs
13 the harm to the government and the winning bidder; and

14 (4) Public Interest: The stay will not negatively impact the public
15 interest, including the delivery of essential services or public safety.

16 (d) Expedited Determination.

17 (1) The Public Auditor or Court shall hold a hearing on the
18 Motion to Stay within seven (7) days of its filing.

19 (2) A written decision granting or denying the stay shall be issued
20 within three (3) days of the hearing.

21 (3) If no decision is issued within ten (10) days of the filing of
22 the Motion, the Motion shall be deemed denied by operation of law.

23 (e) Immediate Lifting of Stay. Even if a stay is granted under
24 Subsection (c), the Chief Procurement Officer or Director of Public Works
25 may petition the Governor to lift the stay. Upon a written declaration by the
26 Governor that the immediate award or performance of the contract is

1 necessary to protect the public health, safety, or welfare, the stay shall be
2 immediately dissolved."

3 **Section 4. Effective Date.** This Act shall be effective upon enactment.

4 **Section 5. Severability.** If any provision of this Act or its application to any
5 person or circumstance is found to be invalid or inorganic, such invalidity shall not
6 affect other provisions or applications of this Act that can be given effect without
7 the invalid provision or application, and to this end the provisions of this Act are
8 severable.