

LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA F. TENORIO  
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN  
OFFICE OF THE GOVERNOR OF GUAM

**Transmitted via email to: [speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)**

July 5, 2023

**HONORABLE THERESE M. TERLAJE**, *Speaker*

*I Mina'trentai Siette Na Liheslaturan Guåhan*

37<sup>th</sup> Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

**Re: Bill No. 94-37 (COR) - AN ACT TO REPEAL AND REENACT CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE MA KÅHAT ACT OF 2013**

*Håfa Adai* Madame Speaker,

Enactment of Bill No. 94-37, which amends the *Ma Kåhat* Act of 2013, is a critical step toward finally building the new Simon Sanchez High School. This bill simplifies the procurement process for the new school, authorizing the Guam Department of Education (“GDOE”), in cooperation with the Department of Public Works (“DPW”) to utilize the reliable leaseback method our government has utilized to build our island’s most recent schools.

In the ten (10) years that have passed since the original *Ma Kåhat* Act was enacted, the law has undergone several amendments intended to shift procurement responsibility between relevant agencies to accomplish specific operational or financing goals. Bill 94-37 takes into account the concerns of all agency stakeholders, and restores responsibility for the procurement of the new school to GDOE, whose efforts will be bolstered by the technical expertise to be provided by DPW. These amendments clarify the respective responsibilities of our agencies, and resolve lingering concerns regarding the applicable procurement structure, which will enable our agencies to move forward expeditiously and minimize confusion that may lead to protests.

The proposed design of the school was previously procured and completed, and Bill No. 94-37 contemplates that the solicitation for the financing, construction and all the related services for the new Simon Sanchez High School will be issued within ninety (90) days of the bill’s signing. Based on my discussions with GDOE and DPW, I am confident that we have the capacity to proceed without further delay. I would like to thank Senator Roy Quinata, who is himself a proud graduate of Simon Sanchez High School and whose accomplishments are a testament to the power of public school education, for his leadership on this issue.

To: Therese M. Terlaje, *Speaker, 37<sup>th</sup> Guam Legislature*  
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*  
Date: July 5, 2023  
Re: Bill No. 94-37 (COR) nka P.L. 37-22

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The wait for the construction of a new Simon Sanchez High School is coming to an end, and our future Sharks can look forward to a new home, in a modern facility that will provide them with the resources they need to prepare them for their bright futures. For this reason, I sign Bill No. 94-37 (COR) into law as ***Public Law 37-22***.

*Senseramente,*



**LOURDES A. LEON GUERRERO**  
*Maga'hågan Guåhan*  
Governor of Guam

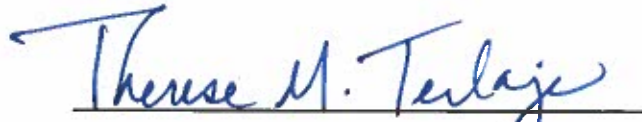
Enclosure: Bill No. 94-37 (COR) nka P.L. 37-22

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam  
Compiler of Laws

***I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN***  
**2023 (FIRST) Regular Session**

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

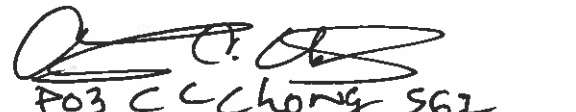
This is to certify that **Bill No. 94-37 (COR)**, "AN ACT TO **REPEAL AND REENACT** CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE **MA KÅHAT** ACT OF 2013," was on the 30<sup>th</sup> day of June 2023, duly and regularly passed.

  
**Therese M. Terlaje**  
**Speaker**


Attested:

  
**Amanda L. Shelton**  
**Legislative Secretary**

This Act was received by *I Maga'hågan Guåhan* this 30<sup>TH</sup> day of June, 2023, at 6:57 o'clock P.M.

  
**P03 C C Chong**  
**SG2**  
**Assistant Staff Officer**  
**Maga'håga's Office**

APPROVED:

  
**Lourdes A. Leon Guerrero**  
***I Maga'hågan Guåhan***

Date: 7/5/2023

Public Law No. 37-22

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Jessica Dydasco

**I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÁHAN  
2023 (FIRST) Regular Session**

**Bill No. 94-37 (COR)**

As amended by the Committee on Infrastructure,  
Economic Development, Simon Sanchez High School,  
Disability Services, Self-Determination, and Historic Preservation,  
Housing, Public Accountability, and the Guam Buildup; and  
further amended on the Floor.

Introduced by:

Roy A.B. Quinata  
Joe S. San Agustin  
Tina Rose Muña Barnes  
Chris Barnett  
Sabina Flores Perez  
Amanda L. Shelton  
Dwayne T.D. San Nicolas  
William A. Parkinson  
Thomas J. Fisher  
Frank Blas, Jr.  
Joanne Brown  
Christopher M. Dueñas  
Jesse A. Lujan  
Telo T. Taitague  
Therese M. Terlaje

**AN ACT TO REPEAL AND REENACT CHAPTER 58D OF  
TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO  
THE MA KÁHAT ACT OF 2013.**

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

2        **Section 1.** Chapter 58D of Title 5, Guam Code Annotated, is hereby  
3 *repealed and reenacted* to read:

4                                    **“CHAPTER 58D**  
5                                    **MA KÁHAT ACT OF 2013**

6        § 58D101. Title.

- 1       § 58D102. Definitions.
- 2       § 58D103. Authorization to Enter Into Long-Term Leases.
- 3       § 58D104. Procurement.
- 4       § 58D105. Responsibilities of Contractor.
- 5       § 58D106. Contractual Safeguards.
- 6       § 58D107. Assignments.
- 7       § 58D108. Financing.
- 8       § 58D109. Leaseback Payments Under the Lease Payable from Lawfully
- 9               Available Monies.
- 10      § 58D110. Utilities and Routine Maintenance and Repair.
- 11      § 58D111. Maintenance Fund.
- 12      § 58D112. Severability.
- 13      **§ 58D101. Title.**

14      This Act shall be known and shall be cited as the “*Ma Kåhat* Act of 2013.”

15      **§ 58D102. Definitions.**

16      For purposes of this Chapter and unless otherwise specified, the following

17 words and phrases are defined to mean:

- 18           (a) *Act* shall mean Chapter 58D of Title 5, Guam Code Annotated,
- 19           known as the “*Ma Kåhat* Act of 2013.”
- 20           (b) *Contract* shall mean the agreement entered into by and between
- 21           the Guam Department of Education (GDOE) and the contractor for the
- 22           following services with regard to the new Simon Sanchez High School: (1)
- 23           financing; (2) construction; (3) providing and installing fixtures, furniture, and
- 24           equipment (FF&E services); and (4) insurance and maintenance.
- 25           (c) *Contractor* shall mean the authorized entity which shall be the
- 26           signatory on the contract, and shall be fully responsible for carrying out the
- 27           services required therein.

1 (d) *New Simon Sanchez High School* (or school) shall mean the  
2 replacement high school to be constructed on the school property.

3 (e) *Lease* shall mean a lease from the GDOE to the Contractor for  
4 the school property.

5 (f) *Leaseback* shall mean a lease from the Contractor to the GDOE  
6 of the new Simon Sanchez High School.

7 (g) *Leaseback period* shall mean the term of the leaseback from the  
8 Contractor to the GDOE for the new Simon Sanchez High School.

9 (h) *School property* shall mean the property on which the existing  
10 Simon Sanchez High School is currently located.

11 (i) *School design* shall mean the architectural and engineering  
12 design procured by GDOE in solicitation number RFP 006-2020 pursuant to  
13 Public Law 34-101 without a firing range.

14 **§ 58D103. Authorization to Enter Into Long-Term Leases.**

15 (a) The GDOE is authorized to lease the school property to the Contractor  
16 for the purpose of facilitating the financing, construction, FF&E services, and  
17 maintenance of the new Simon Sanchez High School.

18 (b) The GDOE is also authorized to lease back from the Contractor the new  
19 Simon Sanchez High School for a period mutually agreed upon between the GDOE  
20 and the Contractor as may be reasonably necessary to amortize over the leaseback  
21 period the costs associated with the financing, construction, and FF&E services for  
22 the new Simon Sanchez High School as provided in this Act. In no event shall the  
23 end of such leaseback period be later than the date thirty (30) years from the  
24 scheduled date of completion of the new Simon Sanchez High School. The leaseback  
25 may be structured as an annually renewable lease with a provision for automatic  
26 renewal to the extent that pledged revenue under § 58D109 is available. The

1 leaseback shall not be construed as “public indebtedness,” as that term is defined in  
2 48 USC § 1423a, §11 of the Organic Act of Guam, or Guam law.

3 **§ 58D104. Procurement.**

4 (a) Within ninety (90) days of the enactment of this Act, the GDOE,  
5 through the Department of Public Works (DPW), shall issue a solicitation in  
6 compliance with the Guam Procurement Law, for the following services with regard  
7 to the new Simon Sanchez High School: (1) financing; (2) construction; (3) FF&E  
8 services; and (4) insurance and maintenance. The services provided shall utilize and  
9 incorporate the school design.

10 (b) The determination of responsible offerors and responsive offers shall  
11 be made by an evaluation committee comprised of the Superintendent of the  
12 Department of Education, serving as the Chairman, and including the Director of  
13 Public Works or Deputy Director and the Building Permits Administrator; the  
14 Director of Land Management or Guam Chief Planner; the Administrator of the  
15 Guam Economic Development Authority or Deputy Administrator; and the Principal  
16 of Simon Sanchez High School or his/her designee.

17 (c) The Committee shall evaluate offerors and the offers received based on  
18 the requirements set forth in the solicitation.

19 (d) Upon completion of the committee’s evaluation, the Superintendent  
20 through the Department of Public Works shall issue the award in accordance with  
21 the Guam Procurement Law.

22 **§ 58D105. Responsibilities of Contractor.**

23 The Contractor shall be responsible for all costs, expenses, and fees of any  
24 kind or nature, associated with civil improvements, on-site and off-site  
25 infrastructure, construction, demolition of the existing facility, permits, FF&E  
26 services, and financing associated with the completion of the new Simon Sanchez  
27 High School, consistent with the school design, as and to the extent provided in the

1 solicitation. The contractor shall also be responsible for maintenance of and  
2 insurance for the new Simon Sanchez High School during the leaseback period, but  
3 shall not be responsible for maintenance of the furniture and equipment. The  
4 leaseback may provide that if sufficient funds are not appropriated or otherwise  
5 available for the payment of amounts due under the lease and any maintenance  
6 agreement, the GDOE will have the obligation to vacate the new Simon Sanchez  
7 High School, and the contractor shall have the right of use and occupancy of the new  
8 Simon Sanchez High School for the remainder of the term of the lease, unless the  
9 parties to the contract enter into new mutually satisfactory terms. For this purpose,  
10 the lease may provide that its term shall be extended for a period not to exceed the  
11 shorter of ten (10) years beyond the original term of the leaseback or such period of  
12 time as is necessary to repay in full any financing arranged pursuant to § 58D108.

13 Furniture and equipment maintenance costs shall be paid by the GDOE on a  
14 periodic basis as incurred by the contractor on terms to be agreed to in the contract.

15 **§ 58D106. Contractual Safeguards.**

16 The contract for the new Simon Sanchez High School shall provide for the  
17 construction of and FF&E services for the new Simon Sanchez High School in  
18 accordance with the Guam Building Code under Chapter 67 of Title 21, Guam Code  
19 Annotated, and any other applicable requirements. The contract shall contain  
20 contractual obligations typically found in government of Guam construction  
21 contracts, including, but not limited to, the following:

- 22 (a) all major subcontracts shall be covered by a performance bond;  
23 (b) the government of Guam and financing entities, or bondholders,  
24 shall be the named obligee under the bond;  
25 (c) the government of Guam shall have the sole right to call on the  
26 bid bond;



1 (d) requirements to obtain performance and or payment bonds,  
2 indemnification, standard insurance specifications, technical  
3 building/construction specifications, construction progress schedule,  
4 applicable and or necessary maintenance schedules, and compliance with  
5 applicable rules, regulations, and Guam law; and

6 (e) there shall be a specific delivery date with liquidated damages  
7 for failure to deliver the new Simon Sanchez High School by the specified  
8 date, which may include warranties for liquidated damages.

9 **§ 58D107. Assignments.**

10 To facilitate the purposes of this Act and to provide security for the holders of  
11 any financing instruments issued pursuant to this Act, the Contractor may assign,  
12 with the consent of GDOE, the contract, the lease, and the leaseback to any  
13 underwriter, trustee, or other party as appropriate, to facilitate the issuance of the  
14 tax-exempt obligations, other financial instruments or alternative financing for the  
15 new Simon Sanchez High School.

16 **§ 58D108. Financing.**

17 To minimize the cost to the government of Guam, financing utilized by the  
18 Contractor to fund the construction of and FF&E services for the new Simon  
19 Sanchez High School shall be through tax-exempt obligations, or other financial  
20 instruments; provided, that such financing is available at an interest rate of no more  
21 than eight-and-a-half percent (8.5%). The contractor may use an alternative method  
22 of financing, including, but not limited to, a short-term debt, mortgage, loan,  
23 federally guaranteed loan, or loan by an instrumentality of the United States of  
24 America if such financing will better serve the needs of the people of Guam, subject  
25 to approval by *I Liheslaturan Guåhan*. The principal amount of financing authorized  
26 under this Section shall not exceed One Hundred Sixty-six Million Three Hundred  
27 Sixty-five Thousand Dollars (\$166,365,000).

1           **§ 58D109. Leaseback Payments Under the Lease Payable from**  
2 **Lawfully Available Monies.**

3           (a) Payments under the lease and the leaseback may be secured by a pledge  
4 or other reservation of revenues payable from any lawfully available monies of the  
5 government of Guam, and may be secured by a pledge or other reservation of such  
6 monies on an annual basis.

7           (b) Any amounts pledged or reserved as provided in this Section and  
8 subsequently appropriated for the purpose of making leaseback payments may  
9 thereafter be pledged toward making leaseback payments; provided, however, that  
10 any amounts reserved as provided in this Section shall be subject to an annual  
11 appropriation by the Guam Legislature for the purpose of funding the activities set  
12 forth in § 58D104 of this Chapter, and making leaseback payments.

13           (c) Any such pledge or reservation authorized hereunder shall be valid and  
14 binding from the time the pledge or reservation is made and shall be limited to the  
15 sum of Sixteen Million Three Hundred Seventy-seven Thousand One Hundred  
16 Twenty-five Dollars (\$16,377,125) per year during the pre-development,  
17 construction, and leaseback period. The revenues pledged or reserved and thereafter  
18 received by the government of Guam or by any trustee, depository or custodian shall  
19 be deposited in a separate account and shall be immediately subject to such  
20 reservation or the lien of such pledge without any physical delivery thereof or further  
21 act, and such reservation or the lien of such pledge shall be valid and binding against  
22 all parties having claims of any kind in tort, contract or otherwise against the  
23 government of Guam or such trustee, depository or custodian, irrespective of  
24 whether the parties have notice thereof. The instrument by which such a pledge or  
25 reservation is created need not be recorded.

26           **§ 58D110. Utilities and Routine Maintenance and Repair.**

1           The contractor shall be responsible for the connection of all utilities, including  
2 without limitation, power, water, sewer, telephone and cable, and all routine interior  
3 and exterior maintenance and repair, and exterior groundskeeping and landscaping,  
4 and upkeep of the new Simon Sanchez High School.

5           **§ 58D111. Maintenance Fund.**

6           The contract and the leaseback shall provide that all maintenance of the new  
7 Simon Sanchez High School not described in § 58D110 be performed by the  
8 Contractor as a separate cost, the terms of which, and the manner for establishing  
9 the amount of payment, shall be determined as a part of the contract; provided,  
10 however, that the contract may, at the discretion of the GDOE, provide that  
11 maintenance with respect to equipment (including collateral equipment), onsite  
12 utilities, offsite utilities, access roads and other similar improvements need not be  
13 performed by the Contractor.

14           **§ 58D112. Severability.** If any provision of this Act or its application to any  
15 person or circumstance is found to be invalid or inorganic, such invalidity shall not  
16 affect other provisions or applications of this Act that can be given effect without  
17 the invalid provision or application, and to this end the provisions of this Act are  
18 severable.”