

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

July 12, 2023

HONORABLE THERESE M. TERLAJE, *Speaker*
I Mina 'trentai Siette Na Liheslaturan Guāhan
37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Bill No. 44-37 (COR) - AN ACT TO ADD NEW §§ 7112(d) AND 7112.2 TO CHAPTER 7 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO CREATING THE SAFE SCHOOL FACILITIES ACT OF 2023

Hāfa Adai Madame Speaker,

Bill No. 44-37 (COR) creates the *Safe School Facilities Act of 2023*, which requires the Superintendent of the Guam Department of Education (“GDOE”) to receive and retain any reports relative to maintenance problems, facilities defects, structural problems, safety concerns, and the presence of hazardous materials, and copies of such reports shall be included in any procurement solicitations for services. In essence, this act enlists school officials, students, parents and stakeholders to participate in the evaluation and upkeep of facilities by engaging them in the reporting process, and providing a formal mechanism to place their concerns on the record.

Bill No. 44-37 additionally requires the Superintendent to develop procedures to identify and remediate conditions of the facilities related to any substance or infestation deemed to be hazardous by the Superintendent and a number of regulatory agencies. The Superintendent is further mandated to conduct at a minimum annual inspection for remediated hazards in addition to developing and implementing standard operating procedures.

The safety and well-being of our children is of paramount importance to our Administration and our community, and at first glance, Bill No. 44-37 appears consistent with these priorities. However, certain aspects of Bill No. 44-37 merit additional consideration.

While the bill requires that copies of reports submitted by community stakeholders regarding maintenance and safety concerns in our schools be “included” with procurement solicitations for architectural and engineering services to evaluate facility conditions, prepare improvement and renovation plans, procure and provide construction management services, and provide price consultation services, the bill does not discuss the purpose of including these reports. It is unclear, for example, whether entities submitting proposals will be required to include plans to resolve the issues identified in the reports or even take these reports into account in their proposals. Without further instruction regarding the purpose to be served by including reports in solicitations, the reports may have no impact whatsoever on such proposals while creating an additional bureaucratic requirement to an already inefficient procurement process.

Bill No. 44-37's addition of a new 17 GCA § 7112.2 is cause for greater concern. This section casually imposes requirements on GDOE that the agency has no capacity to meet, including developing procedures to identify and remediate hazardous substances in GDOE facilities; conducting annual inspections of partially or fully remediated hazards; developing standard operating procedures to assess and remediate hazardous substances, isolating areas containing hazardous substances or infestation; developing systems of notifications for stakeholders; investigating reports of hazardous substances and infestations; and developing inspection schedules.

Statements made by senators during session reveal that they had lingering questions regarding existing responsibilities Guam law assigns to agencies with subject matter expertise that might be duplicated by the new responsibilities Bill No. 44-37 assigns to GDOE. The Committee Report for the bill further reveals that none of the relevant regulatory agencies, including the Department of Public Health and Social Services ("DPHSS") and the Guam Environmental Protection Agency ("GEPA"), provided testimony on this bill, and the record is silent as to whether they were even invited to participate. The same is true for GDOE itself. Input from the relevant agencies, particularly those with subject matter experts on staff, would have helped clarify not only existing processes, but also given the agencies the opportunity to improve the bill.

For instance, the Speaker of the Guam Legislature herself noted concerns that the categories of items which GDOE was required to inspect for and remediate were overly broad, and may disrupt GDOE's primary function. The ultimate version of the bill the Legislature passed eliminated the list of things GDOE was required to inspect for and remediate in favor of categories that are still too broad – hazardous substances or infestations. This amendment appears to have been made in an effort to address the Speaker's suggestion that the hazardous substances GDOE should be required to inspect for or remediate should be those already defined under Guam law. However, Guam law provides key references to "hazardous substances" that render the inspection and remediation requirements of Bill No. 44-37 onerous, particularly for an agency with no subject matter experts on staff.

Title 10 GCA Chapter 32 defines a "hazardous substance," among other things, as a substance which is toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible or which generates pressure through decomposition or heat, if such substance may cause substantial personal injury or illness during customary use, including reasonably foreseeable ingestion by children. While the Speaker noted the presence of some hazardous substances in science classrooms, there are countless more hazardous substances and materials in regular, everyday use in our schools, including cleaners, bleach, glue, paint, hair products, nail polish, pesticides, automotive products, batteries, thermometers and fluorescent light bulbs. The bill requires GDOE to inspect for and "remediate" these substances, some of which are necessary to the operation of our schools and for which "remediation" is not appropriate or desirable.

Remediation is, however, appropriate in the context of hazardous *wastes*. Title 10 GCA Chapter 51 defines hazardous wastes according to relevant federal statutes, and notably includes hazardous *substances* as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The relevant federal regulations for CERCLA, in turn, list over 800 hazardous substances. While it appears from the legislative session for Bill No. 44-37 that the intent of the bill may have been to capture specific categories of sanitary concerns, such as mold, the lack of precision in the bill has led to regulatory mandates that are so expansive that they are difficult to implement.

To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: July 12, 2023
Re: Bill No. 44-37 (COR) nka P.L. 37-26

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These new mandatory functions exceed GDOE's Organic Act mandate of ensuring our island's youth receive an adequate education. The GDOE is not a regulatory agency with capacity to inspect for, detect, isolate, remediate and monitor hazardous materials or infestations. It does not have the personnel with the requisite education, experience and training to perform these functions. It does not even have inspector positions within its agency. Nor does it have the necessary equipment to ensure the tasks are performed in a safe manner. Though GDOE may arguably attempt to procure the services, it does not have the expertise necessary to craft the scope of work for such solicitations or to evaluate proposals.

Building capacity to conduct or oversee inspections itself takes time. The Division of Environmental Health ("DEH") at the DPHSS has a total of twelve (12) Environmental Public Health Officers, including its leadership, with varying degrees of experience and training in conducting inspections, such that each inspector is only equipped to conduct inspections for which they have received requisite training. Retention is a recurring challenge – the DEH has lost three (3) inspectors this year alone.

Inspector positions are paid through the General Pay Plan ("GPP"), which our Administration fought hard to adjust this year for the first time in nearly a decade. Certain members of the Guam Legislature, including the main sponsor of this bill, worked hard to hinder implementation of the GPP, referring to employees who stood to benefit from the plan, which include inspectors, bus drivers, and school maintenance personnel, as "political hacks." So when our people try to ascertain the root cause of our government's challenges recruiting and retaining experienced personnel to staff these critical positions that ensure the safety of our schools and our students, they should look to these legislators, whose actions speak far louder than their words claiming they care about making our schools safe.

Bill No. 44-37 does not provide that GDOE will assume these functions at some future effective date, at which time GDOE will be expected to have built capacity to start conducting hazardous materials and infestations inspections. The law is effective immediately. The Organic Act of Guam vests the Guam Legislature with ultimate authority over the public schools, and the Guam Legislature has wielded this power to add new substantial statutory requirements to GDOE's mandate with no additional resources, manpower, or funding, and no meaningful capacity-building period to ensure it is prepared to carry out this new mission. The Guam Legislature has, in effect, set GDOE up for failure.

Though this bill was unanimously passed, it suffers from the lack of engagement of relevant and affected agencies, including DPHSS, GEPA, and especially, GDOE. For this reason, and the reasons identified above, it will lapse into law without my signature. I encourage the Guam Legislature to engage the subject matter experts in these agencies to assist the legislature in correcting the clear oversights in this bill that will hinder its implementation.

Senseramente,



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

Enclosure: Bill No. 44-37 (COR) nka P.L. 37-26 (LAPSE)

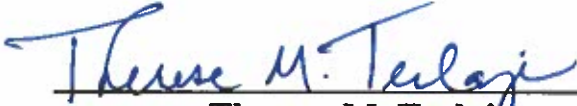
cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

I MINA TRENDAI 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. 44-37 (COR), "AN ACT TO ADD NEW §§ 7112(d) AND 7112.2 TO CHAPTER 7 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO CREATING THE SAFE SCHOOL FACILITIES ACT OF 2023,"** was on the 30th day of June 2023, duly and regularly passed.




Therese M. Terlaje
Speaker

Attested:



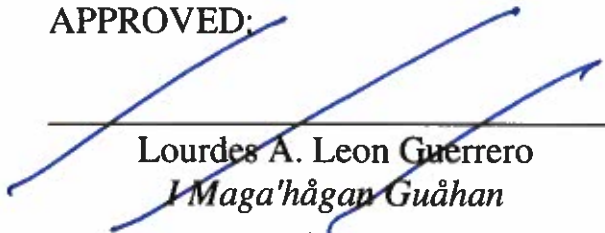
Amanda L. Shelton
Legislative Secretary

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



Assistant Staff Officer
Maga'håga's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 7/12/2023

Public Law No. PL - 37 - 24

RCVD AT CENTRAL F
JUL 2 '23 AM 10:49

2023-19473

Jessica Dydasco

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

Bill No. 44-37 (COR)
As amended on the Floor.

Introduced by:

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

**AN ACT TO ADD NEW §§ 7112(d) AND 7112.2 TO
CHAPTER 7 OF TITLE 17, GUAM CODE ANNOTATED,
RELATIVE TO CREATING THE *SAFE SCHOOL
FACILITIES ACT OF 2023.***

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

2 **Section 1. Short Title.** This Act shall be known as the *Safe School*
3 *Facilities Act of 2023.*

4 **Section 2.** A new Subsection (d) is *added* to § 7112 of Chapter 7, Title 17,
5 Guam Code Annotated, to read as follows:

6 “(d) The Superintendent shall receive and retain any reports of, including
7 but not limited to, maintenance problems, facilities defects, structural problems,

1 safety concerns, and the presence of hazardous materials from students, principals,
2 faculty, school employees, parents, and other stakeholders. Copies of such reports
3 shall be included with any procurement solicitations for services described in
4 Subsection (a) *supra*.”

5 **Section 3.** A new § 7112.2 is *added* to Chapter 7, Title 17, Guam Code
6 Annotated, to read as follows:

7 **“§ 7112.2. Assessment and Remediation of Hazardous Substances and**
8 **Infestations.**

9 (a) The Superintendent shall develop, pursuant to the provisions of Chapter
10 9, Title 5, Guam Code Annotated, procedures to identify and remediate conditions
11 of the facilities of the Guam Department of Education, including, but not limited to
12 any substance or infestation deemed to be hazardous by, including, but not limited
13 to, the Department of Public Health and Social Services, the Guam Environmental
14 Protection Agency, the United States Department of Health and Human Services,
15 the United States Environmental Protection Agency, the United States Drug
16 Enforcement Administration, and the United States Department of Agriculture.

17 (b) Conduct, at least once annually, inspections of remediated hazards
18 where the hazard was a result of infestation or contamination.

19 (c) Conduct, at least once annually, inspections of remediated hazards
20 where the form of remediation did not involve the complete removal of the
21 hazardous substances or the complete repair or abatement of the causes of hazardous
22 conditions.

23 (d) Develop standard operating procedures to:

24 (1) assess and remediate hazardous substances and infestations,
25 including if necessary, hiring of contractors to perform the remediation;

26 (2) isolate areas found to contain hazardous substances or
27 infestations until the hazardous substance or infestation is remediated;

- 1 (3) develop systems of notifications for students, faculty, school
- 2 personnel, parents, and regulatory agencies of the discovery of hazardous
- 3 substances and infestations and the completion of remediation;
- 4 (4) investigate reports of discovery of hazardous substances and
- 5 infestations;
- 6 (5) develop inspection schedules;
- 7 (6) report findings to regulatory agencies as required by public law;
- 8 and
- 9 (7) develop a warning system to notify the public of areas within
- 10 school property that may contain hazardous substances or infestations until
- 11 the area is remediated.”