



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

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

July 12, 2023

**HONORABLE THERESE M. TERLAJE, Speaker**

*I Mina 'trentai Siette Na Liheslaturan Guāhan*

37<sup>th</sup> Guam Legislature  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

**Re: Bill No. 62-37 (COR) - AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS**

*Hāfa Adai* Madame Speaker,

The First Amendment of the United States Constitution guarantees the freedom of religion, and protects religious diversity by prohibiting the use of government power to enforce religious uniformity, to endorse or favor one religion over another. This concept is commonly encapsulated in the phrase “the separation of church and state.” The Establishment Clause of the United States Constitution applies in Guam through Sections 1421b(a) and (u) of the Organic Act of Guam.

Over time, the United States Supreme Court (“SCOTUS”) has issued numerous decisions further refining both the protections and limitations provided in the First Amendment, particularly in the area of education. Several of these decisions have been referenced in the legislative findings in support of Bill No. 62-37, which, if enacted, would allow private religious schools to petition the Guam Academy Charter Schools Council to convert to an Academy Charter School. In essence, this bill would allow the operation of religious schools using public funds.

However, the referenced cases—*Carson v. Makin*, 142 S. Ct. 1987 (2022), *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020), and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) – do not in fact support the creation of state-sponsored religious schools. Rather, these cases authorized government assistance to *individuals*, families or non-profit organizations in the form of tuition assistance, scholarships or grants. In all three cases, the government did not exercise regulatory authority over the school receiving the government money. This is a major distinction between Bill No. 62-37 and the factual situation in the three cited SCOTUS cases.

These cases do *not* stand for the proposition that the establishment of religious state-sponsored charter schools is consistent with the Establishment Clause of the First Amendment. In fact, despite the current conservative make-up of the SCOTUS, only one religious charter school presently exists in the entire nation, the St. Isidore of Seville Catholic Virtual School, established in Oklahoma in June 2023. The recent establishment of St. Isidore is expected to lead to a constitutional battle over whether taxpayer dollars can directly fund religious schools, a question that, despite the representations made in Bill No. 62-37, remains unresolved as of the time of this writing.

Though it is possible the SCOTUS may, in the future, determine that somehow state-sponsored religious charter schools do not constitute “state actors” such that their establishment is prohibited by the

To: Therese M. Terlaje, *Speaker*, 37<sup>th</sup> Guam Legislature  
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*  
Date: July 12, 2023  
Re: Bill No. 62-37 (COR) - VETO

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Establishment Clause, recent activity in SCOTUS indicates otherwise. On June 26, 2023, the SCOTUS declined the opportunity to hear *Peltier v. Charter Day School, Inc.*, Nos. 201001, 20-1023 (4th Cir.), a case involving a charter school in North Carolina. The Fourth Circuit affirmed the District Court's determination that charter schools are a form of public schools and that charter schools are "state actors" that must abide by the Constitution like other public schools. The Fourth Circuit's holding was based on the fact that North Carolina, like Guam, has delegated to the charter school operators part of the state's constitutional duty to provide a free universal elementary and secondary education. The United States Constitution and the Guam Bill of Rights both prohibit the government of Guam from running a religious school, even if it is a charter school. By declining to hear the *Peltier* case, the SCOTUS allowed the Fourth Circuit's holding that charter schools are state actors to stand.


Under the *Peltier* analysis, the Guam Academy Charter School Act of 2009 creates public schools, not private schools. Unlike a private school, a charter school created pursuant to the statute must enroll all students who apply in a timely fashion, and if more students apply than there is space for, the school must use a method such as a lottery to determine who shall be admitted. The charter schools are prohibited from charging tuition because all of the funding for charter schools comes from appropriations from the general fund of the government of Guam. Charter schools are subject to the Guam Procurement Code just like every other government of Guam entity. As with any other government board, the charter school's board of trustee meetings are subject to the requirements of Guam's Open Government law. Taken as a whole, these requirements establish that the Charter Schools Act creates charter schools that are state actors. As state actors, charter schools cannot also be operated as religious schools, which, as discussed, would violate the Establishment Clause.

Based on existing authority, if enacted, Bill No. 62-37 would violate the U.S. Constitution and the Guam Bill of Rights, and expose the government of Guam to lawsuits involving constitutional protections and the illegal expenditure of government funds.

I understand that the bill was passed to help support private religious schools that are struggling financially. I am, myself, the proud product of a religious private school education, an education that is consistent with the religious beliefs of my family. I cannot sign a law that authorizes the use of taxpayer dollars to sponsor the establishment of religious schools, even if the school teaches *my* religion. As state actors or governmental entities, Guam's charter schools must respect the Constitution and the Organic Act of Guam, which clearly prohibit public schools from discriminating based on religion, or promoting or coercing students to engage in religious activities.

For these reasons, I am vetoing Bill No. 62-37.

*Senseramente,*

  
**LOURDES A. LEON GUERRERO**  
*Maga'hāgan Guāhan*  
Governor of Guam

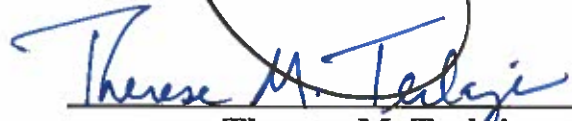
Enclosure: VETO - Bill No. 62-37 (COR)

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

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

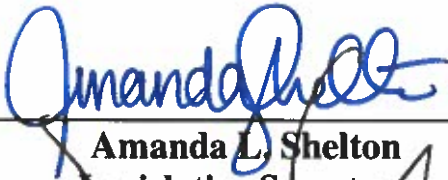
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'HÅGAN GUÅHAN**

This is to certify that **Bill No. 62-37 (COR), "AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS,"** was on the 30<sup>th</sup> day of June 2023, duly and regularly passed.



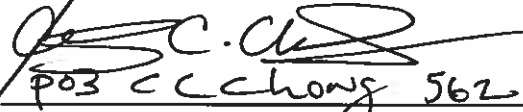
**Therese M. Terlaje**  
**Speaker**

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 CC Chong 562**  
**Assistant Staff Officer**  
**Maga'håga's Office**

APPROVED:

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

Date: 7/12/2023

Public Law No.                     

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2023-19468

Jessica Dydasc

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

**Bill No. 62-37 (COR)**  
As amended on the Floor.

Introduced by:

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

**AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* intends  
3 to create Charter Schools to address critical areas of education currently neglected  
4 and where traditional methods of instruction have failed. From their earliest years in  
5 school, Guam students remain in great need of learning and mastering the *CHamoru*  
6 language, music, physical fitness, and the performing arts. Students spend

1 approximately eight (8) hours a day in school-related activities and in today's world  
2 it requires alternative approaches to teaching and learning. Most students, and  
3 especially those not performing well in the traditional institutional classroom style  
4 of instruction, enjoy a more engaging and relevant interaction with their teachers and  
5 classmates. Benjamin Franklin said it best: Tell me and I forget; Teach me and I may  
6 remember; Involve me and I learn!

7         The Guam Vocational Technical High School (Trade) enjoyed great success  
8 with its limited application of this learning environment in its "shops" portion of the  
9 school day. Trade graduates mastered their selected career field subjects and  
10 performed well in their jobs. University of Guam (UOG) accounting students  
11 experienced great success with the addition of internships to their subject mastery  
12 while still attending UOG. Performance and competition are distinct and proven  
13 methods of making learning fun for students. Performance and competition also  
14 increase student interest, learning, and proficiency. "Practice makes perfect" is about  
15 the power of habitual and instinctive action. Student enjoyment of high levels of  
16 learning and relevancy lead to higher standards of achievement.

17         The inner child oftentimes determines students' interests in school and quality  
18 of life as adults. Fulfilling students' full potential in the arts while in school leads to  
19 positive, contributing members of society. Music, sports, fitness, creative writing  
20 and related artistic performance, and the competitive aspects of students' education  
21 experience, fulfill adolescents during a most critical time in their lives. Project-based  
22 learning (PBL) involves students designing, developing, and constructing hands-on  
23 solutions to a problem. The educational value of PBL is that it aims to build students'  
24 creative capacity to work through difficult or ill-structured problems, commonly in  
25 small teams. Community interaction, stage performances, game competition,  
26 individual and team events all provide students with skills they will value and use  
27 for a lifetime.

1           The Supreme Court of the United States over the past five (5) years issued  
2 rulings prohibiting the historic distinction between sectarian and non-sectarian  
3 private schools. The Court invalidated discrimination between sectarian and non-  
4 sectarian government funding for schools. *Carson v. Makin* (142 S. Ct. 1987 (2022)),  
5 *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020), and *Trinity*  
6 *Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

7           Therefore, *I Liheslaturan Guåhan* intends to remove any discrimination or  
8 distinction between private sectarian or non-sectarian applicants for converting  
9 existing schools or for new charter schools. *I Liheslaturan Guåhan* recognizes the  
10 enormous contribution and history of private sectarian education on Guam and  
11 intends for all applicants to be considered on their records and applications to convert  
12 to an Academy Charter School.

13           **Section 2.** § 12104 of Chapter 12, Title 17, Guam Code Annotated, is  
14 hereby *amended* to read as follows:

15           **“§ 12104. Process for Filing Charter Petitions.**

16           (a) Private, religious schools shall be eligible to apply to convert to  
17 an Academy Charter School under this Chapter.

18           (b) Existing public or private school. An eligible applicant seeking  
19 to convert a public or private school into an Academy Charter School:

20                   (1) shall prepare a petition to establish an Academy Charter  
21 School that meets the requirements of § 12105 of this Chapter;

22                   (2) shall provide a copy of the petition to:

23                           (A) the parents and guardians of minor students  
24 attending the existing public or private school;

25                           (B) adult students attending the existing public or  
26 private school;

27                           (C) employees of the existing public or private school;

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(D) parents and guardians of minor students who attend the school grade immediately lower than the first (1<sup>st</sup>) school grade which is served by the public or private school which is the subject of the conversion petition; and

(E) each Mayor which represents an area within the attendance area of the public or private school which is the subject of the conversion petition; and

(3) shall file the petition with the Council for approval after the petition:

(A) is signed by not less than sixty percent (60%) of the sum of:

(i) the total number of parents and guardians of minor students attending the public or private school; and

(ii) the total number of adult students attending the public or private school; and

(iii) the total number of full-time teachers currently assigned to the public or employed by the private school.

(B) New School. An eligible applicant seeking to establish an Academy Charter School, but not converting an existing public or private school, shall file with the Council for approval a petition to establish an Academy Charter School that meets the requirements of § 12105 of this Chapter.

(C) Limitations on Multiple Petitions. An eligible applicant may not file more than one (1) petition to establish an Academy Charter School during a calendar year.

1 (D) A petition to establish an Academy Charter School,  
2 or to convert a public or private school, is a public document.”

3 Section 3. § 12106 of Chapter 12, Title 17, Guam Code Annotated, is  
4 hereby *amended* to read as follows:

5 “§ 12106. Process for Approving or Denying Charter School  
6 Petitions.

7 (a) Schedule. An eligible applicant seeking to establish an Academy  
8 Charter School *shall* submit a petition pursuant to § 12105 of this Chapter to  
9 the Council no later than the first Monday of August. However, it is  
10 recommended that an eligible applicant consult with the Council prior to  
11 submitting the petition. All petitions submitted no later than the first Monday  
12 in August *shall* be for the following school year. The deadline to submit a  
13 petition to establish a non-converted public school into an Academy Charter  
14 School or convert a public elementary school into an Academy Charter School  
15 for the School Year 2010-2011 *shall* be March 8, 2010. The deadline to submit  
16 a petition to establish an existing, accredited, non-converted private school  
17 into an Academy Charter School or convert a private Pre- Kindergarten-Three  
18 (PreK-3) through at least eighth (8<sup>th</sup>) grade school into an Academy Charter  
19 School for the School Year 2023-2024 *shall* be September 1, 2023.

20 (b) Public Hearing. No later than forty-five (45) days after a petition  
21 to establish an Academy Charter School is filed with the Council, and no later  
22 than thirty (30) days for a petition to convert an existing school, the Council  
23 shall hold a public hearing on the petition to gather the information that is  
24 necessary for the Council to make the decision to approve or deny the petition.

25 (c) Notice. Ten (10) days before the scheduled time of the public  
26 hearing on a petition to establish an Academy Charter School, the Council  
27 shall:



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(1) send a written notification of the public hearing to the eligible applicant;

(2) post notice of the public hearing at a place convenient to the public in the administrative office, cafeteria, and the classrooms of the public or private school which is subject to be converted into an Academy Charter School;

(3) post notice of the public hearing at a place convenient to the public in the administrative office, cafeteria and the classrooms of the public or private school which is school grade lower than the first (1<sup>st</sup>) school grade which is served by the public or private school which is subject to conversion; and

(4) post notice of the public hearing at a place convenient to the public in the Mayor's office which represents an area within the attendance area of the public or private school which is the subject of the conversion petition.

(d) The Council shall approve a petition to establish an Academy Charter School, if:

(1) the Council determines that the petition satisfies the requirements of this Chapter;

(2) the eligible applicant who filed the petition agrees to satisfy any condition or requirement, consistent with this Chapter and other applicable law that is set forth in writing by the Council as an amendment to the petition;

(3) the Council determines that the Academy Charter School has the ability to meet the educational objectives outlined in the petition; and

1 (4) the approval will not cause the Council to exceed a limit  
2 under Subsection (h) of this Section.

3 (e) The Council shall approve and admit a new or converted Pre-K3  
4 through at least eighth (8<sup>th</sup>) grade school whose curriculum is Project Based,  
5 utilizing a Critical Thinking method of learning resulting in measurable  
6 proficiency in the *CHamoru* language and history, music, physical fitness, and  
7 the performing arts.

8 (f) The Council shall approve or deny a petition to establish an  
9 Academy Charter School not later than sixty (60) days after the conclusion of  
10 the public hearing on the petition and not later than thirty (30) days for a  
11 petition to convert an existing school.

12 (g) Denial Explanation. Written notice of the Council's action shall  
13 be sent to the eligible applicant. If the petition is not approved, the reasons for  
14 the denial and suggested remedial measures, if any, shall be clearly stated in  
15 the notice sent by the Council to the eligible applicant. If the petition is not  
16 approved, the eligible applicant may amend the petition to address objections  
17 and any suggested remedial measures and resubmit the petition to the Council.  
18 The Council shall approve or disapprove the resubmitted petition within  
19 twenty (20) days after receiving it. If the petition is not approved, the eligible  
20 applicant may appeal the decision of the Council to the Appeals Board.

21 (h) The total number of Academy Charter Schools operating on  
22 Guam under this Chapter at any one (1) time *shall not* exceed seven (7). At  
23 least two (2) Academy Charter Schools *shall* be an elementary school; at least  
24 one (1) Academy Charter School *shall* be a middle school; at least one (1)  
25 Academy Charter School *shall* be a high school; and at least one (1) Academy  
26 Charter School *shall* be a school servicing elementary and middle school  
27 students. An Academy Charter School applicant *shall* submit a written request

1 to the Superintendent or the Guam Education Board to determine whether an  
2 available or suitable facility exists within the Department before the applicant  
3 submits its application to the Council. If a response is not provided within  
4 thirty (30) days of receipt of the request, the applicant may submit its  
5 application without said determination to the Council.”

6 **Section 4.** §§ 12107(r) and (t) of Chapter 12, Title 17, Guam Code  
7 Annotated, are hereby *repealed*:

8 **“§ 12107. Duties and Powers, and other Requirements, of**  
9 **Charter Schools.**

10 (r) An Academy Charter School shall not be home based.”

11 **Section 5.** § 12108(b) of Chapter 12, Title 17, Guam Code Annotated, is  
12 hereby *amended* to read:

13 “(b) In the case of the first Trustees of an Academy Charter School to  
14 be elected or selected after the date on which the school is granted a Charter,  
15 the election or selection of the members under Subsection (a) of this Section  
16 shall occur on the earliest practicable date after classes at the school have  
17 commenced. Until such date, any other members who have been elected or  
18 selected shall serve as interim Trustees. Such an interim Board of Trustees  
19 may exercise all of the powers, and shall be subject to all of the duties, of a  
20 Board of Trustees. Converted existing school Trustees shall serve an initial  
21 term of three (3) years after the date on which the school is granted a Charter.”

22 **Section 6. Effective Date.** This Act shall be effective upon enactment.

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