FILE COPY

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Bill No. 225-32 (COR), "AN ACT TO *ADD* A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO *AMEND* AND *RENUMBER* § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO *AMEND* § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND,"** was on the 1st day of February, 2014, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1ST day of FEB, 2014, at 10:50 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 225-32 (COR)
As amended by the Author; and
further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas

AN ACT TO *ADD* A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO *AMEND* AND *RENUMBER* § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO *AMEND* § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Title. This Act *shall* be cited and referred to as the *"Ma Kåhat* Act of 2013."

Section 2. A new Chapter 58 D is hereby *added* to Title 5, Guam Code Annotated, to read as follows:

"CHAPTER 58D

***MA KÅHAT* ACT OF 2013**

§ 58D101. Title.
§ 58D102. Legislative Findings and Policies.
§ 58D103. Definitions.
§ 58D104. Authorization to Enter Into Long-Term Leases.
§ 58D105. Procurement.
§ 58D106. Responsibilities of Contractor.
§ 58D107. Assignments.
§ 58D108. Use of Tax-Exempt Bonds for Financing.
§ 58D109. Pledge of Additional Revenue from the Real Property Valuation.
§58D110. Utilities and Routine Maintenance and Repair.
§ 58D111. Maintenance Fund.
§ 58D112. Contractual Safeguards.
§ 58D113. Severability.

§ 58D101. Title. This Act *shall* be known and *shall* be cited as "*Ma Kåhat* Act of 2013."

§ 58D102. Legislative Findings and Policies. *I Liheslaturan Guåhan* finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, out of date design, and overcrowding. These combined deficiencies impair the quality of teaching and learning and

contribute to health and safety problems for staff and students. It should be noted that it is critical for the Guam Department of Education to develop a comprehensive capital improvement plan to provide a roadmap for prioritizing facility improvements beyond Simon Sanchez.

I Liheslatura finds that after reviewing the summary of outstanding General and Limited Obligation debts as of March 1, 2013, that the debt ceiling assessed value is at One Billion One Hundred Thirty Nine Million Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars ($1,139,464,853). It also states that the General Obligation Debt is Four Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight Hundred Fifty Three Dollars ($446,473,853); and the Limited Obligation Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six Thousand Eight Hundred Three Dollars ($663,896,803), with an accumulated total of One Billion One Hundred Ten Million Three Hundred Seventy Thousand Six Hundred Fifty Six Dollars ($1,110,370,656). Subtracting the debt ceiling limit less the General and Limited Obligation Debts leaves the amount for future debt obligation at Twenty Nine Million Ninety Four Thousand One Hundred Ninety Seven Dollars ($29,094,197).

I Liheslatura further finds that the cost for the renovation or construction of a new Simon Sanchez High School would exceed Guam's debt ceiling obligation cap if a General Obligation Bond is pursued. To circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School, *Adacao* Elementary School, John F. Kennedy High School and the expansion of *Okkodo* High School validates the fundamental soundness of using a municipal lease as a vehicle to build new educational facilities. By utilizing municipal leasing to renovate or construct a new Simon Sanchez

High School, the remaining future debt obligation may be used to fund other priorities of the government.

I Liheslatura further intends to authorize *I Maga'lahen Guåhan* to pledge or reserve the additional proceeds as a source of payment for a municipal lease financing, secured for the purposes stated herein, either to renovate or construct a new Simon Sanchez High School. To overcome the financing hurdles, *I Liheslaturan Guåhan* supports the government of Guam to enter into a contract for the financing, design, renovation or construction and long-term capital maintenance of Simon Sanchez High School with a private sector contractor who can provide long-term financing obtained through tax-exempt obligations or other competitive alternative financing based on long-term lease-backs to the government of Guam. In order to facilitate system-wide improvements, *I Liheslatura shall* authorize the Guam Department of Education to develop a comprehensive capital improvement plan for prioritizing capital improvements to all Guam Department of Education schools. To facilitate the financing, design, renovation or construction and maintenance of an education facility envisioned by this Act, the government of Guam will be authorized to lease, for up to thirty (30) years, government of Guam property on which the facilities will be constructed to the contractor, who will design, renovate or construct a new education facility in accordance with specifications approved by Guam Department of Education. The education facility and land will be leased back to the government of Guam for a period *not to exceed* thirty (30) years or the initial ground lease to the contractor over which time the government of Guam will amortize, as lease payments to the contractor, the cost of the financing, design, renovation or construction

and related expenses of the education facility. The contractor will also be responsible for the capital maintenance of the education facility constructed under this Act, which costs *shall* be paid by the government of Guam, as provided for under this Act. At the expiration of the lease-back period, the government of Guam real property and the education facility that is renovated or constructed on the government of Guam real property will revert to the government of Guam with no further obligations to the Contractor.

§ 58D103. Definitions. For purposes of this Chapter and *unless* otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Chapter 58D of Title 5, Guam Code Annotated, known as the "*Ma Kåhat* Act of 2013."

(b) *Comprehensive capital improvement plan* means a plan that takes into consideration the physical condition of each school, along with attendance area population, enrollment patterns, and bussing logistics. It *shall* also include how each school meets the instructional needs of GDOE and prioritizes repairs of existing schools, and renovation and construction of new school facilities in order to deal with GDOE limited resources.

(c) *Contract shall* mean the various design, renovation or construction and financing agreements entered into by and between the education agency and the contractor following negotiations on the response to the Request for Proposal.

(d) *Contractor shall* mean the authorized entity which *shall* be the signatory on the Contract and *shall* be fully responsible for carrying out the design, renovation or construction, financing and maintenance of the education facility. The contractor may cooperate

with another entity or entities in any manner the contractor deems appropriate to provide for the financing, design, renovation, construction or maintenance of the public school facilities envisioned by this Act.

(e) *Education agency shall* mean the Guam Department of Education.

(f) *Education facility* as used in this Act, *shall* mean the renovation or construction of a new high school, and to include its athletic facilities to be located on the existing site of Simon Sanchez High School.

(g) *Lease shall* mean a lease from an education agency to the contractor entered into at the time of the contract for the property.

(h) *Lease-back shall* mean the lease from the contractor to the education agency.

(i) *Lease-back period shall* mean the term of the lease from the contractor to the education agency.

(j) *Property shall* mean any property on which an education facility is located.

§ 58D104. Authorization to Enter Into Long-Term Leases. For the purpose of facilitating the financing of the design, renovation or construction and maintenance of an education facility encompassed by this Act, the government of Guam or an education agency, as the case may be, is authorized to lease, if required, to the contractor sufficient government of Guam real property on which to renovate or construct a new education facility; *provided*, such property is in the inventory of the education agency or the government of Guam. The property may be the site of an existing education facility under the control of an education

agency, which existing facility may be renovated or demolished and rebuilt under the provisions of this Act. The education agency is also authorized to lease back from the contractor the property for a period mutually agreed upon between the education agency and the contractor as may be reasonably necessary to amortize over the lease-back period the costs associated with the financing, design, renovation or construction of the education facility. In no event shall the end of such lease-back period be later than the date thirty (30) years from the scheduled date of completion of the education facility. The lease-back may be structured as an annually renewable lease with provision for automatic renewals to the extent that pledged or reserved revenue under §22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available. The lease-back *shall not* be construed as a debt under any applicable debt limitation under the Guam Organic Act or Guam law.

§ 58D105. Procurement. Subject to the approval of *I Liheslaturan Guåhan*, the government of Guam or an education agency *shall* solicit Requests for Proposals (RFP) through the Department of Public Works, in compliance with the Guam procurement law, for the development of the comprehensive capital improvement plan, the financing, design, renovation or construction of the education facility, together with insurance and maintenance of the education facility over the lease-back period, according to the needs of the education agency and consistent with this Chapter. The choice of the contractor *shall* be made by a selection committee comprised of the Superintendent of the Department of Education, serving as Chairman, and including the Director of the Department of Public Works or Deputy Director, the Director of the Department of Land Management or Deputy Director, the Administrator of the Guam Environmental Protection Agency

or Deputy Administrator, and the Administrator of the Guam Economic Development Authority or Deputy Administrator. The committee *shall* access the prior performance of the contractor on similar projects and may disqualify any Contractor that does not have a successful record of project completion on Guam.

The selection of a contractor *shall* be based upon the proposal that delivers the best value for Guam in meeting the objectives of the education agency.

The RFP *shall* be issued within thirty (30) days of enactment of this Act for the renovation or construction of a new Simon Sanchez High School on the existing site, which may include demolition of such portions of the existing facility as necessary.

§ 58D106. Responsibilities of Contractor. The contract *shall* require that the contractor will work with GDOE to develop the comprehensive capital improvement plan in connection with the design of a renovated or construction of a new Simon Sanchez High School. Further, the contractor *shall* be responsible for all costs, expenses and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of an education facility, including the financing of furniture and equipment for the education facility, as, and to the extent, provided by the education agency in the Request for Proposals. The contract will also require that all major subcontracts be covered by a performance bond; and further, that there be a specific delivery date with liquidated damages for failure to deliver the school by the specified date. The contractor *shall* also be responsible for the capital maintenance of the schools during the lease-back period, but *shall not* be

responsible for the capital maintenance of the furniture and equipment. The lease-back may provide that if sufficient funds are *not* appropriated or otherwise available for the payment of amounts due under the lease and any maintenance agreement, the education agency will have the obligation to vacate the education facility, and the contractor *shall* have the right of use and occupancy of the education facility for the remainder of the term of the lease, *unless* new mutually satisfactory terms are entered into. For this purpose, the lease may provide that its term shall be extended for a period *not to exceed* the shorter of ten (10) years beyond the original term of the lease-back or such period of time as is necessary to repay in full any financing arranged pursuant to § 58D108. The capital maintenance costs *shall* be paid by the education agency on a periodic basis as incurred by the contractor on terms to be agreed to in the contract for the education facility.

§ 58D107. Assignments. To facilitate the purposes of this Act and to provide security for the holders of any financing instruments issued pursuant to this Act, the contractor may assign, without the need of the consent of the education agency, the contract, the lease, and the lease-back to any underwriter, trustee, or other party as appropriate, to facilitate the issuance of the tax-exempt obligations, other financial instruments or alternative financing for the education facility.

§ 58D108. Use of Tax-Exempt Bonds for Financing. To minimize the financing cost to the education agency, financing utilized by the contractor to fund the design, renovation or construction of an education facility *shall* be through tax-exempt obligations or other financial instruments, provided, such financing is available at interest rates

determined by the education agency to be reasonable and competitive. Alternatively, the contractor may use an alternative method of financing, including, but *not* limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America, if such financing will better serve the needs of the people of Guam. Such alternative financing *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure the education agency pays the lowest possible interest rate so that the cost to the education agency of financing the design, renovation or construction of an education facility, amortized through the lease-back payments from the education agency to the contractor, will be lower than regular commercial rates.

§ 58D109. Pledge of Additional Revenue from the Real Property Valuation. Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues received by the government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making lease-back payments, but any amounts *only* reserved as provided in this Section, and *not* pledged, *shall* be subject to an annual appropriation for the purpose of making lease-back payments. Any such pledge or reservation authorized hereunder *shall* be valid and binding from the time the pledge or reservation is made, and *shall* be limited to the sum of Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and Ninety Eight Cents ($5,051,977.98) per year during the lease-back period, as outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof. The revenues pledged or reserved and thereafter received by the government

of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account and *shall* be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further act, and such reservation or the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need not be recorded.

§ 58D110. Utilities and Routine Maintenance and Repair. The education agency *shall* be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone and cable, and all routine interior maintenance and repair and exterior groundskeeping and landscaping, and upkeep of the education facility.

§ 58D111. Maintenance Fund. The contract or a separate maintenance agreement with the contractor, and the lease-back, *shall* provide that all capital maintenance of the education facility be performed by the contractor as a separate cost, the terms of which, and the manner for establishing the amount of payment, *shall* be determined as a part of the contract; provided, however, that said documents may, at the discretion of the education agency, provide that capital maintenance with respect to equipment (including collateral equipment), onsite utilities, offsite utilities, access roads and other similar improvements need not be performed by the contractor.

§ **58D112**. **Contractual Safeguards**. Prior to undertaking the work of renovating or constructing a new Simon Sanchez High School, the Guam Economic Development Authority, the Department of Public Works, the Guam Department of Education, and the developer or contractor *shall*

negotiate and enter into a binding construction contract to renovate or construct a new Simon Sanchez High School in accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other applicable requirements. The construction contract *shall* contain contractual obligations typically found in government of Guam construction contracts, including, but *not* limited to:

(a) warranties;

(b) liquidated damages;

(c) performance and payment bonds;

(d) indemnity;

(e) insurance;

(f) standard specifications;

(f) technical specifications;

(g) progress schedule;

(h) maintenance;

(i) compliance with Guam labor regulations;

(j) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(k) compliance with Public Law 29-98: restriction against contractors employing convicted sex offenders to work at government of Guam venues.

The contract *shall* be submitted for review and approval to all entities charged by law with the duty to review and approve government contracts, including the Office of the Attorney General.

§ 58D113. 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 which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable."

Section 3. §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam Code Annotated, is hereby *amended* to read:

"(q) Notwithstanding any other provision of law, any additional real property tax revenues received as a result of the most recent valuation of real property due to commence during the calendar years 2013 and 2014 is hereby continuously appropriated annually, *not to exceed* Eight Million Five Hundred Thousand Dollars ($8,500,000), from the Territorial Educational Facilities Fund in the amounts and for purposes set forth in this Subsection:

(1) The sum of One Million One Hundred Fifty Eight Thousand Two Hundred Eighty Three Dollars ($1,158,283), beginning in FY 2014, for the construction of the Student Services Center and Engineering Annex at the University of Guam, as a source of payment to the University of Guam Capital Improvements Fund for the purpose of paying rental payments due under the lease-leaseback agreements with the University of Guam Endowment Foundation for a term of forty (40) years;

(2) The sum of Two Hundred Seventy-eight Thousand Nine Hundred Twenty-one Dollars and Fifty-two Cents ($278,921.52), beginning in FY 2014 for forty (40) years, for the construction or renovation of Building 100 and the DNA Laboratory at the Guam Community College;

(3) The sum of One Hundred Thirty-two Thousand Fifteen Dollars ($132,015) to the Guam Public Library System to hire a Territorial Librarian at Ninety-three Thousand Three Hundred

Seventy-seven Dollars ($93,377), and a Computer Analyst II at Thirty-eight Thousand Six Hundred Thirty-eight Dollars ($38,638);

(4) The sum of One Million Seven Hundred Seven Thousand Six Hundred Fifty-two Dollars ($1,707,652) to the Guam Department of Education for the renovation or construction of a new Simon Sanchez High School.

(5) The sum of One Million Two Hundred Thousand Dollars ($1,200,000) for rental payments under the lease and the lease-back as described in Chapter 58D of Title 5, Guam Code Annotated.

(6) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, eighty percent (80%) of the remaining balance for rental payments due under the lease-leaseback agreement with GDOE secured for the renovation or construction of a new Simon Sanchez High School, to include its athletic facilities, and other Guam Department of Education public school facilities requiring new construction, rehabilitation or maintenance;

(7) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5% of the remaining balance for the Early Childhood Program Fund, as described in §53101 of Title 17, Guam Code Annotated;

(8) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5 % of the remaining balance for *I Famagu'on-ta*, Child Adolescent Services Division of the Guam Behavioral Health and Wellness Center, and Project *Karinu*. These funds *shall not* be subject to *I Maga'lahen Guåhan's* transfer authority.

(9) other than the portions designated to be used for in Items (1), (2), (3) (4) and (5) of this Subsection, five percent (5%) of the remaining balance to the Department of Revenue and Taxation for the following:

(A) for maintenance support and sustainability of real property data and system;

(B) for the five (5) year (quinquennial) property tax revaluation as mandated by law;

(C) for enhancements, and technological advancements related to software/hardware, and support staff necessary to improve electronic services; and

(D) for other costs directly associated with improving the efficiency of the real property tax system.

The Director of the Department of Revenue and Taxation *shall* submit a report to *I Maga'lahen Guåhan* and *I Liheslaturan Guåhan* on a monthly basis as to the expenditures of the funds following the enactment of this Act, detailing all transactions;

(10) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, five percent (5%) of the remaining balance *shall* be lock boxed for the procurement of a unified financial management information system, as recommended by consensus from the Department of Revenue and Taxation, the Department of Administration, the General Services Agency, the Office of Public Accountability, the Office of Technology, the University of Guam, the Guam Community College, the Guam Department of Education, and Guam Memorial Hospital Authority. This amount shall be subject to legislative appropriation.

(11) Other than the portions designated to be used for in Items (1), (2) (3) (4) and (5) of this Subsection, three percent (3%) of the remaining balance *shall* be a source of funding for island-wide school bus shelters. The Director of the Department of Public Works *shall* submit a report to *I Maga'lahen Guåhan* and *I Liheslaturan Guåhan* on a monthly basis as to the expenditures of the funds following enactment of this Act, detailing all transactions."

Section 4. §53101 of Title 17, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 53101. Early Childhood Program Fund.** There is hereby created, separate and apart from all other funds of the government of Guam, a fund known as the "Early Childhood Program Fund." All monies received by or on behalf of the government of Guam pursuant to §22425(q)(7) of Title 5 GCA, *shall* be deposited in the Fund and used for early childhood programs at the University of Guam, the Guam Community College, or the Guam Department of Education. The Fund *shall not* be commingled with the General Fund or any other funds of the government of Guam, and it *shall* be maintained in a separate bank account. All monies in the Fund *shall* require legislative appropriation, and *shall not* be subject to any transfer authority of *I Maga'lahen Guåhan*."

Section 5. 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 which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable."