

I Mina'trentai Siette 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	
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	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	4/10/23 2:23 p.m.	4/14/23	Committee on Infrastructure, Economic Development, Simon Sanchez High School, Disability Services, Self-Determination and Historic Preservation, Housing, Public Accountability, and the Guam Buildup	Request: 4/14/23 4/24/23	4/26/23 5:30 p.m.	6/15/23 2:34 p.m.	Referred Version 4/13/23	
	SESSION DATE		TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	6/27/23	AN ACT TO REPEAL AND REENACT CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE MA KÁHAT ACT OF 2013.	6/30/23	6/30/23	7/12/23	37-22	7/5/23	Received: 7/5/23 Messages and Communications Doc. No. 37GL-23-0650		

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

July 5, 2023

HONORABLE THERESE M. TERLAJE, *Speaker*

I Mina'trentai Siette Na Liheslaturan Guåhan

37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

3161-23-0650
**OFFICE OF THE SPEAKER
THERESE M. TERLAJE**

-07-05-2023

Time: 4:38pm
Received: *[Signature]*

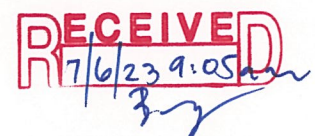
Re: Bill No. 94-37 (COR) - AN ACT TO REPEAL AND REENACT CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE MA KÅHAT ACT OF 2013

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.

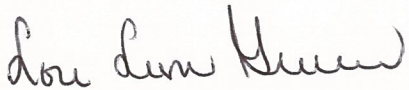


To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: July 5, 2023
Re: Bill No. 94-37 (COR) nka P.L. 37-22

Page 2 of 2

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

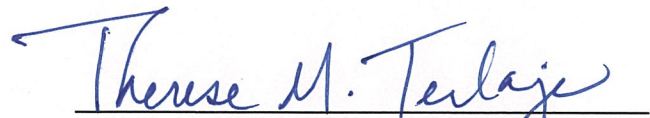
Enclosure: Bill No. 94-37 (COR) nka P.L. 37-22

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*

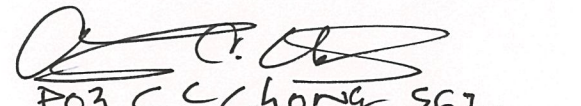
This is to certify that Bill No. 94-37 (COR), "AN ACT TO *REPEAL AND REENACT* CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE *MA KÅHAT* ACT OF 2013," was on the 30th day of June 2023, duly and regularly passed.


Therese M. Terlaje
Speaker

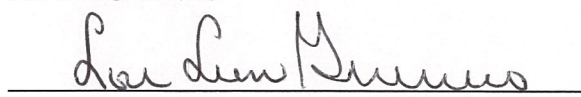
Attested:


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.


P03 CC Chong S62
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 Dydasc

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
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 KÅHAT* 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 KÅHAT* 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.”