

I Mina'trentai Siette Na Liheslaturan Guåhan
 BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
29-37 (COR) As substituted, and amended by the Committee on Health, Land, Justice, and Culture and further amended on the Floor	Chris Barnett Sabina Flores Perez Therese M. Terlaje Roy A.B. Quinata William A. Parkinson Christopher M. Dueñas Telo T. Taitague Frank Blas, Jr. Thomas J. Fisher Joanne Brown Jesse A. Lujan Tina Rose Muña Barnes Joe S. San Agustin Amanda L. Shelton Dwayne T. D. San Nicolas	AN ACT TO <i>RENUMBER AND AMEND</i> § 4721 ENTITLED "VARIANCE" AND TO <i>ADD</i> A NEW SUBSECTION (b) TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER 4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO UPDATING SANITATION REGULATIONS TO PROMOTE HEALTH AND SAFETY OF GUAM DEPARTMENT OF EDUCATION PUBLIC SCHOOLS.	2/3/23 4:23 p.m.	2/3/23	Committee on Health, Land, Justice, and Culture	3/9/23 5:30 p.m.	3/21/23 8:50 a.m. As substituted and further amended by the Committee on Health, Land, Justice, and Culture	Request: 2/3/23 2/16/23	2/18/23 As substituted by the Committee on Health, Land, Justice, and Culture.
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	LAPSED	NOTES	
	3/20/23	AN ACT TO <i>RENUMBER AND AMEND</i> § 4721 ENTITLED "VARIANCE" AND TO <i>ADD</i> A NEW SUBSECTION (b) TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER 4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO UPDATING SANITATION	3/21/23	3/21/23	4/1/23	37-4	4/1/23	Received: 4/1/23 Messages and Communications Doc. No. 37GL-23-0321	

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

April 1, 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

31GL-23-0321
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

04 01 2023

RECEIVED
4/3/23 4:21 pm
By

Time: 1:50pm
Received: [Signature]

Re: SUBSTITUTE BILL NO. 29-37 (COR) - AN ACT TO RENUMBER AND AMEND § 4721 ENTITLED "VARIANCE" AND TO ADD A NEW SUBSECTION (b) TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER 4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO UPDATING SANITATION REGULATIONS TO PROMOTE HEALTH AND SAFETY OF GUAM DEPARTMENT OF EDUCATION PUBLIC SCHOOLS

Hafa Adai Madame Speaker,

For the reasons provided below, Substitute Bill No. 29-37 will lapse into law without my signature. While our Administration wholeheartedly supports this legislation's general intent of safeguarding the health and safety of our schoolchildren, I cannot sign off on legislation that seeks to amend existing rules and regulations, which should be accomplished through the rulemaking process.

Our children spend more time at school than they do at home, and just as we work to ensure they are safe at home, we must also ensure they are safe at school. Implementing measures to ensure safety in our schools is necessary to foster the development of our children and preserve the confidence of parents and the community.

Administrators and staff of the Guam Department of Education ("GDOE") prioritize the health, safety and development of our children. The same is true for the employees of the Department of Public Health and Social Services' ("DPHSS"), who are charged with inspecting our schools and public establishments to ensure they comply with health and safety regulations.

Guam law authorizes the DPHSS to promulgate rules relative to inspecting schools to ensure public health and safety. Amendments to regulations, such as those codified in 26 GARR Chapter 4, which govern the DPHSS' oversight relative to the health and safety of all employees and students in Guam, must be accomplished through the rulemaking process, which was designed to maximize public participation. Attempting to amend regulations through a bill violates the separation of powers doctrine.

The powers over rulemaking and lawmaking are separate and distinct under the Organic Act of Guam. Under the Organic Act of Guam, the powers of the three branches of government are enumerated and separated in Subchapters II—Executive Branch, III—The Legislature, and IV—The Judiciary, and each branch of government must operate in its own appropriate sphere of activity. The Organic Act of Guam charges the Executive Branch with powers to issue *regulations* not in conflict with any applicable law, including Guam's rulemaking laws. In contrast, the Legislature is charged with drafting and passing *bills*.

To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: April 1, 2023
Re: Substitute Bill No. 29-37 (COR) nka P.L. 37-4

Page 2 of 2

The separation of powers doctrine prohibits the Legislature from amending rules and regulations. Similarly, an executive branch agency has no authority to amend legislative enactments. Once the Legislature has delegated rulemaking authority to an agency, such as the DPHSS, it must abide by that delegation and not interfere with agency rulemaking unless the delegation is altered or revoked by law. Effectuating the well-meaning intent of Substitute Bill No. 29-37 should not come at the expense of observing the distinct powers conferred on the respective branches of government. This bill's attempt to perform an executive function likely results in an ineffective measure that cannot be ratified by my signature, were I willing to provide it, which I am not.

Further, the bill imposes impracticable timelines on agency action, and wholly disregards operational barriers to such action, including capacity challenges resulting from staff shortages at the DPHSS. In their testimony on Substitute Bill 29-37, DPHSS officials testified that there are currently eleven (11) total inspectors in the Division of Environmental Health of the DPHSS, who are responsible for performing health inspections required under law including for restaurants, schools, and other public establishments. These 11 inspectors are responsible for completing twelve thousand (12,000) annual compliance inspections of nearly three thousand (3,000) permitted establishments; regulating food, drugs, medical devices and cosmetics sold on island; and overseeing a mosquito-borne disease prevention program.

DPHSS officials testified that it generally takes four (4) working days for five (5) inspectors to thoroughly inspect a medium-sized school, and that it would take five hundred (500) working days to inspect all sixty-six (66) permitted schools on the island, assuming optimal conditions and no violations. This estimate does not include any time for the inspectors to prepare their reports following the completion of the inspection. Given the time and resources necessary to conduct proper inspections of schools, and the limited staff available to perform this function as well as the other critical services provided by the DEH, this bill imposes a mandate on the DPHSS that is impossible to meet, and would set the DPHSS up for failure. It will be necessary to build capacity at the DPHSS in order to fulfill the aggressive timelines contemplated in this bill.

On the whole, I support the intent of this bill to ensure our schools are safe for our children. However, we must all acknowledge that the DPHSS lacks the capacity to fully meet the requirements of this bill, and it cannot squeeze water from a stone. Until such time as the DPHSS is able to develop this capacity, the aggressive timelines in this bill will be merely aspirational. I am confident that the DPHSS will aggressively pursue recruitment of qualified inspectors to shore up the necessary capacity to meet the goals of this bill. In the interim, I expect that the DPHSS will continue to work according to the urgent priorities it is tasked to address.

This bill will lapse into law without my signature. It shall be known as ***Public Law No. 37-4***.

Senseremente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan
Governor of Guam

Enclosure: Substitute Bill No. 29-37 (COR) *nka P.L. No. 37-4 (LAPSE)*

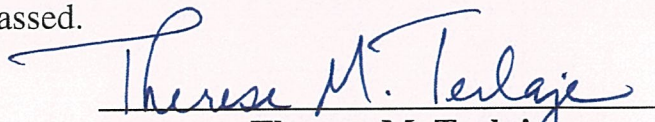
cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

COPY

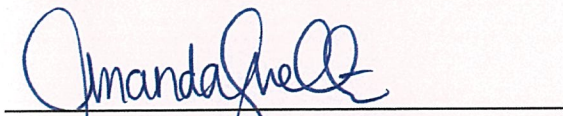
I MINA 'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

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

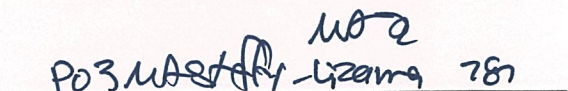
This is to certify that **Substitute Bill No. 29-37 (COR)**, "AN ACT TO **RENUMBER AND AMEND § 4721 ENTITLED "VARIANCE" AND TO ADD A NEW SUBSECTION (b) TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER 4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO UPDATING SANITATION REGULATIONS TO PROMOTE HEALTH AND SAFETY OF GUAM DEPARTMENT OF EDUCATION PUBLIC SCHOOLS,**" was on the 21st day of March 2023, duly and regularly passed.


Therese M. Terlaje
Speaker

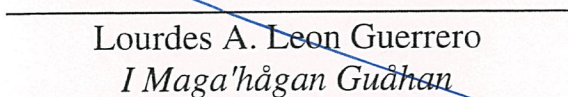
Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 21st day of March,
2023, at 10:41 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:

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

Date: 4/1/2023

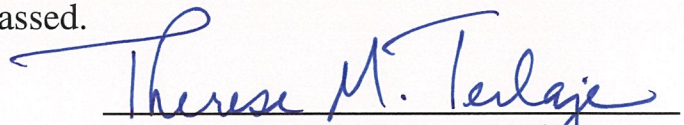
Public Law No. 37-4

Georgiana
Rodrigues
2023-18888
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I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

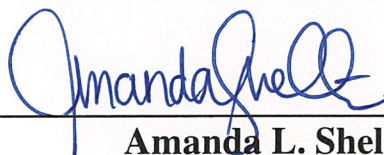
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 29-37 (COR)**, “AN ACT TO ***RENUMBER AND AMEND § 4721 ENTITLED “VARIANCE” AND TO ADD A NEW SUBSECTION (b) TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER 4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO UPDATING SANITATION REGULATIONS TO PROMOTE HEALTH AND SAFETY OF GUAM DEPARTMENT OF EDUCATION PUBLIC SCHOOLS,***” was on the 21st day of March 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 _____ day of _____,
2023, at _____ o'clock ____ .M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: _____

Public Law No. _____

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

Bill No. 29-37 (COR)

As substituted; and amended by the
Committee on Health, Land, Justice,
and Culture and further amended
on the Floor.

Introduced by:

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

**AN ACT TO *RENUMBER* AND *AMEND* § 4721 ENTITLED
“VARIANCE” AND TO *ADD* A NEW SUBSECTION (b)
TO § 4719, ALL OF DIVISION 1, ARTICLE 7, CHAPTER
4, TITLE 26 OF GUAM ADMINISTRATIVE RULES AND
REGULATIONS, RELATIVE TO UPDATING
SANITATION REGULATIONS TO PROMOTE HEALTH
AND SAFETY OF GUAM DEPARTMENT OF
EDUCATION PUBLIC SCHOOLS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

3 finds that current sanitation rules and regulations pertaining to schools exempt

1 existing schools from coming into full compliance until June of 2024, which is five
2 years after its adoption.

3 *I Liheslatura* further finds that four years after the enactment of these rules
4 and regulations, numerous schools require immediate corrective action for building
5 facilities, ventilation, plumbing, restrooms, garbage and recycling disposal, food
6 protection, environmental health, and other safety issues. To prolong the safety
7 compliance of our schools for an additional seventeen months would be a grave
8 disservice to our public school children and faculty.

9 *I Liheslatura* further finds that expediting the date of compliance with the
10 Rules and Regulations for School Building Sanitation will catalyze the Department
11 of Public Health and Social Services to conduct immediate assessments of the
12 corrective actions needed to address potential Imminent Health Hazards and ensure
13 compliance with the requirements necessary to retain Sanitary Permits for the
14 operation of our schools.

15 *I Liheslatura* finds that the bottom line is our students do not deserve to go to
16 schools that do not meet basic public health and safety standards and requirements.
17 Additionally, the difficult circumstances facing the school system requires going
18 above and beyond the "adequate education" promised to our public school
19 stakeholders.

20 *I Liheslatura* further finds saving our schools is an all hands on deck issue that
21 requires a community effort and government-wide coordination and support. *I*
22 *Liheslatura* stands by ready and willing to support our schools.

23 *I Liheslatura Guåhan* intends to update regulations to ensure public schools
24 come into full compliance immediately to protect the health and safety of our
25 school community and the community at large.

26 **Section 2.** A new subsection (b) is *added* to § 4719 of Division 1, Article 7,
27 Chapter 4, Title 26 of Guam Administrative Rules and Regulations, to read:

28 **“§ 4719. Existing Facilities.**

1 (a) School facilities in existence at the time that these regulations
2 take effect shall be given five years from the date that these rules become
3 effective to come into full compliance with the requirements of these rules
4 unless a school facility or operator files a written statement of exception with
5 the Director and receives a variance as provided in § 4722.

6 (b) Guam Department of Education (GDOE) Public school facilities
7 shall come into full compliance by the start of School Year 2023-2024 with
8 the requirements of these rules unless a public school facility or operator files
9 a written statement of exception with the Director and receives a variance as
10 provided in § 4722.”

11 **Section 3.** § 4721 of Division 1, Article 7, Chapter 4, Title 26 of Guam
12 Administrative Rules and Regulations is hereby *renumbered* and *amended* to read:

13 “§4722. **Variance.**

14 In the event that a school or an operator is unable to comply with certain
15 requirements of these rules and regulations, upon a showing of good cause
16 which is not the result of negligence or malfeasance and if corrective action
17 is in progress, the Director may grant a variance from the requirements of a
18 particular rule by making a written determination. Before a variance from a
19 requirement of these rules is approved, the school or the operator *shall* submit
20 a written statement of the proposed variance from the requirement citing the
21 relevant rule section numbers. The written statement shall include an alternate
22 plan to address the potential public health hazards and nuisances under the
23 relevant rule sections. The Director, not his/her representative, is delegated
24 the authority to approve such variance.

25 (a) A variance shall not be issued to a GDOE public school if failure
26 to comply with Article 7, Chapter 26 of these Rules and Regulations will result
27 in the suspension of the Sanitary Permit of a GDOE public school.

28 (b) Reporting Requirement for GDOE Public Schools.

1 The Director shall submit a report on the 5th day of each month, of all
2 written requests for variances submitted by a GDOE public school or operator
3 and received by DPHSS, whether such variances were approved or denied, to
4 the Guam Education Board and *I Liheslaturan Guåhan*. These monthly
5 reports shall be categorized by school or operator and shall cover the
6 preceding month.”

7 **Section 4. Immediate Site Inspections of GDOE Public School**
8 **Facilities.** The Guam Department of Education shall conduct immediate site
9 inspections of all public schools to assess and monitor corrective action to meet
10 compliance with these rules and regulations. The assessment and report of the
11 corrective actions for each public school, and Inspection and Grading Reports
12 conducted pursuant to § 4720 of Chapter 4, Division 1, Title 26 Guam
13 Administrative Rules and Regulations shall be submitted monthly to the Guam
14 Education Board, *I Maga'hågan Guåhan*, and *I Liheslaturan Guåhan*. DPHSS shall
15 conduct site inspections before the issuance or renewal of sanitary permits for
16 schools before the start of School Year 2023-2024 and the start of every school year
17 thereafter.

18 **Section 5. Compliance Timeline.** Compliance shall be met by the start of
19 School Year 2023-2024.

20 **Section 6. Additional Resources to Obtain Compliance.** *I Maga'hågan*
21 *Guåhan* may transfer personnel and other resources from, but not limited to, the
22 Department of Public Works to assist with preparing procurement related scope of
23 work preparation, repairs or other actions deemed necessary to obtain GDOE public
24 school compliance with sanitary permit requirements. *I Maga'hågan Guåhan* may
25 use federal funds or unaudited surplus revenues from FY 2023 to assist with
26 procurement and compliance efforts. All GDOE public school facilities shall utilize
27 the Community-Supported School Maintenance Program provided by the

1 Department of Public Health and Social Services, to assist schools with utilizing
2 community resources to assist with improving school maintenance.

3 **Section 7. Effective Date.** This act shall be effective upon enactment.

4 **Section 8. Severability.** If any provision of this Act or its application to any
5 person or circumstance is found to be invalid or inorganic, such invalidity shall not
6 affect other provisions or applications of this Act that can be given effect without
7 the invalid provision or application, and to this end the provisions of this Act are
8 severable.