




TRENTAI U
I MINA' BENTE DOS NA LIHESLATURAN GUÁHAN
2013 (FIRST) Regular Session

Bill No. 125-32 (WR)

Introduced by:

J. T. Won Pat, Ed.D. 
Tina Rose Muña Barnes 
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AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §22425(q) ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §53101 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO EARLY CHILDHOOD PROGRAM FUND.

2013 FEB 27 11 08 AM


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

2 **Section 1. Title.** This Act *shall* be cited and referred to as the “*Ma Kåhat*
3 *Act of 2013*”.

4 **Section 2. Chapter 58C is hereby added to Title 5 of the Guam Code**
5 **Annotated to read as follows:**

6 **“CHAPTER 58C**
7 ***Ma Kåhat Act of 2013***

8 §58C101. Title.

9 §58C102. Legislative Findings and Policies.

10 §58C103. Definitions.

11 §58C104. Authorization to Enter into Long-term Leases.

12 §58C105. Procurement.

13 §58C106. Responsibilities of Contractor.

- 1 §58C107. Assignments.
- 2 §58C108. Use of Tax-Exempt Bonds for Financing.
- 3 §58C109. Pledge of Additional Revenue from the Real Property
- 4 Valuation.
- 5 §58C110. Utilities and Routine Maintenance.
- 6 §58C111. Maintenance Fund.
- 7 §58C112. Contractual Safeguards
- 8 §58C113. Severability.

9 **§58C101. Title.** This Act *shall* be known and *shall* be cited as “***Ma***
10 ***kāhat Act of 2013***”.

11 **§58C102. Legislative Findings and Policies.** *I Liheslaturan*
12 *Guāhan* finds that Simon Sanchez High School faces the combined
13 challenges of deteriorating conditions, out-of date design and overcrowding.
14 These combined deficiencies impair the quality of teaching and learning and
15 contribute to health and safety problems for staff and students.

16 *I Liheslatura* finds that after reviewing the summary of outstanding
17 General and Limited Obligation debts as of March 1, 2013, that the debt
18 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
19 Four Hundred Sixty Four Thousand Eight hundred Fifty Three Dollars
20 (\$1,139,464,853). It also states that the General Obligation Debt is Four
21 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
22 Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
23 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
24 Thousand Eight Hundred Three Dollars (\$663,896,803) with an accumulated
25 total of One Billion One Hundred Ten Million Three Hundred Seventy
26 Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656). Subtracting the
27 debt ceiling limit less the General and Limited Obligation Debts leaves the

1 amount for future debt obligation at Twenty Nine Million Ninety Four
2 Thousand One Hundred Ninety Seven (\$29,094,197).

3 *I Liheslatura* further finds that the cost for the renovation or
4 construction of a new Simon Sanchez High School would exceed Guam's
5 debt ceiling obligation cap if a General Obligation Bond is pursued. To
6 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
7 Okkodo High School, Astumbo Middle School, Liguán Elementary School,
8 Adacao Elementary School, John F. Kennedy High School and the
9 expansion of Okkodo High School validates the fundamental soundness of
10 using municipal lease as a vehicle to build new educational facilities. By
11 utilizing municipal leasing to renovate or construct a new Simon Sanchez
12 High School, the remaining future debt obligation may be used to fund other
13 priorities of the government.

14 *I Liheslatura* further intends to authorize *I Maga'láhen Guåhan* to
15 pledge or reserve the additional proceeds as a source of payment for a
16 municipal lease financing, secured for the purposes stated herein, either to
17 renovate or construct a new Simon Sanchez High School. To overcome the
18 financing hurdles *I Liheslaturan Guahan* supports the government of
19 Guam to enter into a contract for the financing, design, renovation or
20 construction and long-term capital maintenance of Simon Sanchez High
21 School with a private sector contractor who can provide long-term
22 financing obtained through tax-exempt obligations *or* other
23 competitive alternative financing based on long-term lease-backs to
24 the government of Guam. To facilitate the financing, design, renovation
25 or construction and maintenance of the Education Facility envisioned by
26 this Act, the government of Guam will be authorized to lease for up to
27 thirty (30) years government of Guam property on which the

1 facilities will be constructed. The lease of the government property to
2 the contractor, who will design, renovate or construct a new Education
3 Facility in accordance with specifications approved by Guam Department
4 of Education. The Education Facility and land will be leased back to the
5 government of Guam for a period *not to exceed* thirty years or the initial
6 ground lease to the contractor over which time the government of Guam
7 will amortize, as lease payments to the contractor, the cost of the
8 financing, design, renovation or construction and related expenses of the
9 Education Facility. The contractor will also be responsible for the capital
10 maintenance of the Education Facility constructed under this Act, which
11 costs *shall* be paid by the government of Guam as provided for under this
12 Act. At the expiration of the Lease-Back Period, the government of Guam
13 real property and the Education Facility renovated or constructed on the
14 government of Guam real property will revert to the government of Guam
15 with *no* further obligations to the Contractor.

16 **§58C103. Definitions.** For purposes of this Chapter and *unless*
17 otherwise specified, the following words and phrases are defined to mean:

18 (a) “*Act*” means Chapter 58C of Title of the Guam Code
19 Annotated, known as the “*Ma Kåhat* Act of 2013.”

20 (b) “*Contract*” shall mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the Education Agency and the Contractor following negotiations on
23 the response to the Request for Proposal.

24 (c) “*Contractor*” shall mean the authorized entity which shall
25 be the signatory on the Contract and shall be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the Education Facility. The Contractor may cooperate

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

5 (d) “*Education Agency*” shall mean the Guam Department of
6 Education

7 (e) “*Education Facility*” as used in this Act shall mean the
8 renovation or construction of a new high school and to include its
9 athletic facilities to be located on the existing site of Simon Sanchez
10 High School.

11 (f) “*Lease*” shall mean a lease from an Education Agency to
12 the Contractor entered into at the time of the Contract for the
13 Property.

14 (g) “*Lease-Back*” shall mean the lease from the Contractor to
15 the Education Agency.

16 (h) “*Lease-Back Period*” shall mean the term of the lease from
17 the Contractor to the Education Agency.

18 (i) “*Property*” shall mean any property on which an Education
19 Facility is located.

20 **§58C104. Authorization to Enter into Long-term Leases.** For the
21 purpose of facilitating the financing of the design, renovation or
22 construction and maintenance of an Education Facility encompassed by
23 this Act, the government of Guam *or* an Education Agency, as the case
24 may be, is authorized to lease, if required, to the Contractor sufficient
25 government of Guam real property on which to renovate or construct a
26 new Education Facility; provided, such property is in the inventory of the
27 Education Agency *or* the government of Guam. The property may be the

1 site of an existing Education Facility under the control of an Education
2 Agency, which existing facility may be renovated *or* demolished and
3 rebuilt under the provisions of this Act. The Education Agency is also
4 authorized to Lease Back from the Contractor the property for a
5 period mutually agreed upon between the Education Agency and the
6 Contractor as may be reasonably necessary to amortize over the Lease-
7 Back Period the costs associated with the financing, design, renovation or
8 construction of the Education Facility. In no event *shall* the end of such
9 Lease-Back Period be *later than* the date thirty (30) years from the
10 scheduled date of completion of the Education Facility. The Lease-Back
11 may be structured as an annually renewable lease with provision for
12 automatic renewals to the extent that pledged or reserved revenue under
13 Section 22425 (q)(4) and (6) of Title 5 Guam Code Annotated is available.
14 The Lease-Back *shall not* be construed as a debt under any applicable
15 debt limitation under the Guam Organic Act *or* Guam law.

16 **§58C105. Procurement.** Subject to the approval of *I Liheslaturan*
17 *Guåhan*, the government of Guam or an Education Agency shall solicit
18 Requests for Proposals ('RFP') through the Department of Public Works, in
19 compliance with the Guam Procurement Law, for the financing, design,
20 renovation or construction of the Education Facility, together with insurance
21 and maintenance of the Education Facility over the Lease-Back Period,
22 according to the needs of the Education Agency and consistent with this
23 Chapter. The choice of the Contractor shall be made by a selection
24 committee comprised of the Superintendent of the Department of Education
25 serving as Chairman and including the Director of the Department of Public
26 Works or Deputy Director, the Director of the Department of Land
27 Management or Deputy Director, the Administrator of Guam EPA or Deputy

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

6 The selection of a Contractor shall be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the Education
8 Agency.

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

13 **§58C106. Responsibilities of Contractor.** The Contract *shall* require
14 that the Contractor be responsible for all costs, expenses and fees of any
15 kind *or* nature, associated with the design, civil improvements, on-site
16 and off-site infrastructure, construction, permits, and financing
17 associated with the completion of an Education Facility, including the
18 financing of furniture and equipment for the Education Facility, as and
19 to the extent provided by the Education Agency in the Request for
20 Proposals. The Contract will also require that all major subcontracts be
21 covered by a Performance Bond and further that there be a specific
22 delivery date with liquidated damages for failure to deliver the school by
23 the specified date. The Contractor *shall* also be responsible for the capital
24 maintenance of the schools during the Lease-Back Period, but *shall not* be
25 responsible for the capital maintenance of the furniture and equipment.
26 The Lease-Back may provide that *if* sufficient funds are *not* appropriated
27 *or* otherwise available for the payment of amounts due under the lease and

1 any maintenance agreement, the Education Agency will have the
2 obligation to vacate the Education Facility, and the Contractor *shall* have
3 the right of use and occupancy of the Education Facility for the
4 remainder of the term of the Lease, unless new mutually satisfactory terms
5 are entered into. For this purpose, the Lease may provide that its term *shall*
6 be extended for a period *not to exceed* the shorter of ten (10) years
7 beyond the original term of the Lease-Back *or* such period of time as is
8 necessary to repay in full any financing arranged pursuant to Section
9 58C108. The capital maintenance costs *shall* be paid by the Education
10 Agency on a periodic basis as incurred by the Contractor on terms to be
11 agreed to in the Contract for the Education Facility.

12 **§58C107. Assignments.** To facilitate the purposes of this Act
13 and to provide security for the holders of any financing instruments issued
14 pursuant to this Act, the Contractor may assign, without the need of the
15 consent of the Education Agency, the Contract, the Lease and the
16 Lease-Back to any underwriter, trustee *or* other party as appropriate to
17 facilitate the issuance of the tax-exempt obligations, other financial
18 instruments *or* alternative financing for the Education Facility.

19 **§58C108. Use of Tax-Exempt Bonds for Financing.** To
20 minimize the financing cost to the Education Agency, financing utilized by
21 the Contractor to fund the design, renovation or construction of an
22 Education Facility *shall* be through tax-exempt obligations *or* other
23 financial instruments provided such financing is available at interest rates
24 determined by the Education Agency to be reasonable and competitive.
25 Alternatively, the Contractor may use an alternative method of financing,
26 including, but *not limited to*, a short term debt, mortgage, loan, federally
27 guaranteed loan *or* loan by an instrumentality of the United States of

1 America *if* such financing will better serve the needs of the people of
2 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
3 *Guahan*. The purpose for the requirements of this Section is to assure the
4 Education Agency pays the lowest possible interest rate so that the cost to
5 the Education Agency of financing the design, renovation or
6 construction of an Education Facility, amortized through the Lease-
7 Back payments from the Education Agency to the Contractor, will
8 be lower than regular commercial rates.

9 **§58C109. Pledge of Additional Revenue from Real Property**
10 **Valuation.** Rental payments under the Lease and the Lease-Back may be
11 secured by a pledge or other reservation of revenues received by the
12 government of Guam pursuant to §22425 (q)(4) and (6) Article 4, Chapter
13 22 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
14 provided in this Section are hereby continuously appropriated for the
15 purpose of making Lease-Back payments, but any amounts only reserved as
16 provided in this Section, and not pledged, shall be subject to annual
17 appropriation for the purpose of making Lease-Back payments. Any such
18 pledge or reservation authorized hereunder shall be valid and binding from
19 the time the pledge or reservation is made and shall be limited to the sum of
20 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
21 Ninety Eight Cents (\$5,051,977.98) per year during the Lease-Back Period
22 as outlined in §22425 (q)(4) and (6) of Title 5 Guam Code Annotated hereof.
23 The revenues pledged or reserved and thereafter received by the government
24 of Guam or by any trustee, depository or custodian shall be deposited in a
25 separate account and shall be immediately subject to such reservation or the
26 lien of such pledge without any physical delivery thereof or further act, and
27 such reservation or the lien of such pledge shall be valid and binding against

1 all parties having claims of any kind in tort, contract or otherwise against the
2 government of Guam or such trustee, depository or custodian, irrespective of
3 whether the parties have notice thereof. The instrument by which such
4 pledge or reservation is created need not be recorded.

5 **§58C110. Utilities and Routine Maintenance and Repair.** The
6 Education Agency *shall* be responsible for the connection and payment of all
7 utilities, including without limitation, power, water, sewer, telephone and
8 cable, and all routine interior maintenance and repair and exterior grounds
9 keeping and landscaping and upkeep of the Education Facility.

10 **§58C111. Maintenance Fund.** The Contract or a separate
11 maintenance agreement with the Contractor, and the Lease-Back, shall
12 provide that all capital maintenance of the Education Facility be performed
13 by the Contractor as a separate cost, the terms of which, and the manner for
14 establishing the amount of payment, shall be determined as a part of the
15 Contract; provided, however, that said documents may, at the discretion of
16 the Education Agency, provide that capital maintenance with respect to
17 equipment (including collateral equipment), onsite utilities, offsite utilities,
18 access roads and other similar improvements need not be performed by the
19 Contractor.

20 **§58C112. Contractual Safeguards.** Prior to undertaking the work
21 of renovating or constructing a new Simon Sanchez High School, the Guam
22 Economic Development Authority, The Department of Public Works, Guam
23 Department of Education and the Developer or Contractor shall negotiate
24 and enter into a binding construction contract to renovate or construct a new
25 Simon Sanchez High School in accordance with Guam Building Code, (21
26 G.C.A. Ch. 67) and any other applicable requirements. The Construction

1 contract shall contain contractual obligations typically found in Government
2 of Guam construction contracts, including but not limited to:

- 3 1. Warranties;
- 4 2. Liquidated damages;
- 5 3. Performance and payment bonds;
- 6 4. Indemnity;
- 7 5. Insurance;
- 8 6. Standard Specifications;
- 9 7. Technical Specifications;
- 10 8. Progress Schedule;
- 11 9. Maintenance;
- 12 10. Compliance with Guam Labor Regulations;
- 13 11. Compliance with Guam Prevailing Wage Rates for
14 Employment of Temporary Alien Workers (H2) on Guam;
- 15 12. Compliance with Public Law 29-98: Restriction Against
16 Contractors Employing Convicted Sex Offenders to Work at
17 Government of Guam Venues.

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

21 **§58C113. Severability.** *If any provision of this Act or its*
22 *application to any person or circumstance is found to be invalid or contrary*
23 *to law, such invalidity shall not affect other provisions or applications of this*
24 *Act which can be given effect without the invalid provisions or application,*
25 *and to this end the provisions of this Act are severable.”*

26 **Section 3. §22425(q) Article 4, Chapter 22, Division 2, Title 5, Guam**
27 **Code Annotated is hereby amended and renumbered:**

1 §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam Code
2 Annotated, is hereby *amended* to read:

3 “(q) Notwithstanding any other provision of law, any additional real
4 property tax revenues received as a result of the most recent valuation of real
5 property due to commence during the calendar years 2013 and 2014 is
6 hereby continuously appropriated, *not to exceed* ~~Seven~~ Eight Million Five
7 Hundred Thousand Dollars (\$78,050,000), from the Territorial Educational
8 Facilities Fund in the amounts and for purposes set forth in this Subsection:

9 (1) The sum of One Million Dollars (\$1,000,000), beginning
10 in FY 2014, for the construction of the Student Services Center and
11 Engineering Annex at the University of Guam, as a source of payment
12 to the University of Guam Capital Improvements Fund for the purpose
13 of paying rental payments due under the lease-leaseback agreements
14 with the University of Guam Endowment Foundation;

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

20 (3) The sum of One Hundred Thirty-two Thousand Fifteen
21 Dollars (\$132,015) to the Guam Public Library System to hire a
22 Territorial Librarian at Ninety-three Thousand Three Hundred
23 Seventy-seven Dollars (\$93,377), and a Computer Analyst II at
24 Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

25 (4) The sum of One Million Seven Hundred Seven Thousand
26 Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department
27 of Education for ~~the Okkodo High School Expansion to included~~

1 rental, prorated insurance, maintenance and utilities for the renovation
2 or construction of a new Simon Sanchez High School.

3 (5) The sum of One Million Two Hundred Thousand Dollars
4 (\$1,200,000) for rental payments under the Lease and the Lease-Back
5 as described in Chapter 58D of Title 5 Guam Code Annotated.

6 ~~(5)~~(6) other than the portions designated to be used for in Items
7 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, eighty percent (80%) of
8 the remaining balance *shall* be appropriated as a source of payment
9 for a ~~General Obligation bond paying rental payments due under the~~
10 ~~lease-leaseback agreement with GDOE secured for the replacement or~~
11 ~~renovation or construction of a new Simon Sanchez High School, to~~
12 include its athletic facilities, and other Guam Department of
13 Education public school facilities requiring new construction,
14 rehabilitation or maintenance;

15 ~~(6)~~(7) other than the portions designated to be used for in Items
16 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, seven percent (7%) of
17 the remaining balance *shall* be deposited in the Early Childhood
18 Program Fund, as described in §53101 of Title 17, Guam Code
19 Annotated;

20 ~~(7)~~(8) other than the portions designated to be used for in Items
21 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, ten percent (10%) of
22 the remaining balance *shall* be appropriated as a source of funding to
23 the Department of Revenue and Taxation for the following:

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

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

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

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

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

10 (8)(9) Other than the portions designated to be used for in Items
11 (1), (2) (3) ~~and~~ (4) and (5) of this Subsection, three percent (3%) of
12 the remaining balance *shall* be a source of funding for island-wide
13 school bus shelters. The Director of the Department of Public Works
14 *shall* submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan*
15 *Guåhan* on a monthly basis as to the expenditures of the funds
16 following enactment of this Act, detailing all transactions; and

17 ~~(9) In the event the purposes set forth in this Subsection are~~
18 ~~affected by the debt ceiling, the Guam Economic Development~~
19 ~~Authority may pursue municipal lease financing for any or all of the~~
20 ~~above related items."~~

21 **Section 4. §53101 of Title 17 Guam Code Annotate is hereby**
22 **amended to read as follow:**

23 "§ 53101. **Early Childhood Program Fund.** There is hereby
24 created, separate and apart from all other funds of the government of Guam,
25 a fund known as the "Early Childhood Program Fund." All monies received
26 by or on behalf of the government of Guam pursuant to §22425(q)~~(6)~~(7) of
27 Title 5 GCA, *shall* be deposited in the Fund and used for early childhood

1 programs at the University of Guam, the Guam Community College, or the
2 Guam Department of Education. The Fund *shall not* be commingled with the
3 General Fund or any other funds of the government of Guam, and it *shall* be
4 maintained in a separate bank account. All monies in the Fund *shall* require
5 legislative appropriation, and *shall not* be subject to any transfer authority of
6 *I Maga'lahañ Guåhan.*”

7 **Section 5. Severability.** *If* any provision of this Act *or* its
8 application to any person *or* circumstance is found to be invalid *or* contrary
9 to law, such invalidity *shall not* affect other provisions *or* applications of this
10 Act which can be given effect without the invalid provisions *or* application,
11 and to this end the provisions of this Act are severable.”