

*I Mina'Trentai Kuáttro Na Liheslaturan*  
**BILL STATUS**

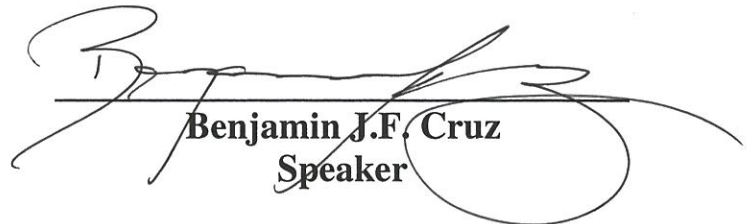
| BILL NO.    | SPONSOR  | TITLE  | DATE INTRODUCED      | DATE REFERRED   | CMTE REFERRED   | PUBLIC HEARING DATE  | DATE COMMITTEE REPORT FILED   | FISCAL NOTES   | NOTES                  |
|-------------|--|--|----------------------|---|---|----------------------|---|--|------------------------|
| 58-34 (COR) | Thomas C. Ada  | AN ACT TO ADD NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103, AND AMEND §§ 58D105, 58D106, AND 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOLICITING PURSUANT TO §5210 OF 5GCA AND §3108 OF 2GAR FOR THE CONSTRUCTION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONGTERM LEASE-BACK.                                      | 4/3/17<br>12:14 p.m. | 04/06/17  | Committee on Environment, Land, Agriculture, and Procurement Reform | 4/17/17<br>9:00 a.m. | 4/21/17<br>5:26 p.m.<br><br>As amended by the Committee on Environment, Land, Agriculture and Procurement Reform. | Fiscal Note Request 4/6/17<br><br>Fiscal Note 4/26/17      | Attachments: Exhibit A |
|             | SESSION DATE   | TITLE  | DATE PASSED          | TRANSMITTED   | DUE DATE  | VETOED               |   | NOTES  |                        |
|             | 4/24/17  | AN ACT TO AMEND SUBSECTIONS (c) AND (d), AND ADD NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103; AND TO AMEND §§ 58D105, 58D106, AND 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOLICITING FOR THE CONSTRUCTION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG TERM LEASE-BACK PURSUANT TO 5 GCA § 5210 AND 2 GAR § 3108. | 4/27/17              | 4/28/17<br>6:02 p.m.<br><br>As amended by the Committee on Environment, Land, Agriculture and Procurement Reform; and substituted and further amended on the Floor. | 5/10/17   | 5/10/2017            |   | Received: 5/10/17<br>Mess and Comm. Doc. No. 34GL-17-0502. |                        |
|             | SESSION DATE   | TITLE  | DATE PASSED          | TRANSMITTED   | DUE DATE  | ENACTED INTO LAW     |   | NOTES  |                        |
| 6/7/17      | AN ACT TO AMEND SUBSECTIONS (c) AND (d), AND ADD NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103; AND TO AMEND §§ 58D105, 58D106, AND 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOLICITING FOR THE CONSTRUCTION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG TERM LEASE-BACK PURSUANT TO 5 GCA § 5210 AND 2 GAR § 3108. | 6/7/17   | 6/7/17               | Designated on 6/7/17  | Public Law No. 34-19  |                      | Received: 6/13/17<br>Mess and Comm. Doc. No. 34GL-17-0629.  |  |                        |



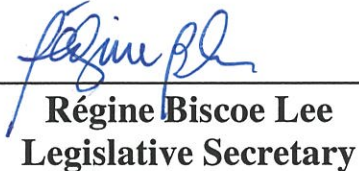
***I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN***  
**2017 (FIRST) Regular Session**

**CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÁHEN GUÁHAN***

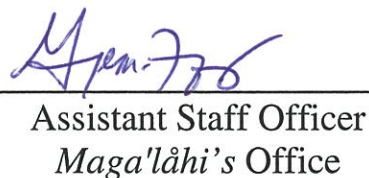
This is to certify that **Substitute Bill No. 58-34 (COR)**, “**AN ACT TO AMEND SUBSECTIONS (c) AND (d), AND ADD NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103; AND TO AMEND §§ 58D105, 58D106, AND 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOLICITING FOR THE CONSTRUCTION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG TERM LEASE-BACK PURSUANT TO 5 GCA § 5210 AND 2 GAR § 3108,**” was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 7<sup>th</sup> day of June 2017, to pass said bill notwithstanding the veto of *I Maga'låhen Guåhan* by a vote of thirteen (13) members.

  
**Benjamin J.F. Cruz**  
**Speaker**

Attested:

  
**Régine Biscoe Lee**  
**Legislative Secretary**

This Act was received by *I Maga'låhen Guåhan* this 7<sup>TH</sup> day of JUNE, 2017,  
at 4:55 o'clock P.m.

  
**Assistant Staff Officer**  
***Maga'låhi's Office***

Public Law No. 34-19

***I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN***  
**2017 (FIRST) Regular Session**

**Bill No. 58-34 (COR)**

As amended by the Committee on Environment,  
Land, Agriculture and Procurement Reform; and  
substituted and further amended on the Floor.

Introduced by:

Thomas C. Ada  
FRANK B. AGUON, JR.  
William M. Castro  
B. J.F. Cruz  
James V. Espaldon  
Fernando Barcinas Esteves  
Régine Biscoe Lee  
Tommy Morrison  
Louise B. Muña  
Telena Cruz Nelson  
Dennis G. Rodriguez, Jr.  
Joe S. San Agustin  
Michael F.Q. San Nicolas  
Therese M. Terlaje  
Mary Camacho Torres

**AN ACT TO *AMEND* SUBSECTIONS (c) AND (d), AND  
*ADD* NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103;  
AND TO *AMEND* §§ 58D105, 58D106, AND 58D108, ALL  
OF CHAPTER 58D, TITLE 5, GUAM CODE  
ANNOTATED, RELATIVE TO SOLICITING FOR THE  
CONSTRUCTION OF SIMON SANCHEZ HIGH  
SCHOOL UNDER A LONG TERM LEASE-BACK  
PURSUANT TO 5 GCA § 5210 AND 2 GAR § 3108.**

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

2 **Section 1.** § 58D103(c) and (d) of Chapter 58D, Title 5, Guam Code

3 Annotated, are *amended* to read as follows:

1           “(c) Contract *shall* mean the various design, renovation or  
2 construction and financing agreements entered into by and between the  
3 education agency and the contractor following award.

4           (d) Contractor *shall* mean the authorized entity, which *shall* be the  
5 signatory on the Contract and *shall* be fully responsible for carrying out the  
6 design, renovation or construction, financing and maintenance of the  
7 education facility. The contractor may cooperate with another entity or entities  
8 in any manner the contractor deems appropriate to provide for the financing,  
9 design, renovation, construction or maintenance of the education facility  
10 envisioned by this Act.”

11       **Section 2.** New Subsections (k), (l), and (m) are hereby *added* to § 58D103  
12 of Chapter 58D, Title 5, Guam Code Annotated, to read as follows:

13           “(k) Responsible offeror *shall* mean a person or entity who has the  
14 capability in all respects to perform fully the contract requirements, and the  
15 integrity and reliability that will assure good faith performance.

16           (l) Responsive offer *shall* mean an offer that conforms, at bid  
17 opening, in all material respects to the solicitation. A responsive offer is an  
18 offer that unconditionally undertakes to provide the education facility the  
19 government intends to acquire as specified in the solicitation, and only on  
20 contract terms and conditions as are materially consistent with those specified  
21 in the solicitation, and that includes a complete breakdown of the project cost  
22 to include, at a minimum: (1) hard construction costs; (2) soft costs including  
23 management, development, and other related project fees; and (3) the annual  
24 lease payment schedule identifying any financing, insurance, and  
25 maintenance costs and terms.

26           (m) Responsive *shall* mean conforming in all material respects to  
27 the purchase description and contract terms contained in the solicitation. A

1 nonconforming offer is nonresponsive if it contains a material  
2 noncompliant term or condition that is in any respect prejudicial to other  
3 offerors, that is, the effect of such noncompliant term or condition on price,  
4 quantity, quality, delivery, or contractual terms specified in the solicitation  
5 is more than negligible.”

6 **Section 3.** § 58D105 of Chapter 58D, Title 5, Guam Code Annotated, is  
7 *amended* to read as follows:

8 **“§ 58D105. Procurement.**

9 The government of Guam or an education agency *shall* solicit through  
10 the Department of Public Works, in compliance with the Guam procurement  
11 law, for the renovation or construction of the education facility under a thirty  
12 (30) year lease-back arrangement, together with insurance and maintenance  
13 of the education facility over the lease-back period, according to the needs of  
14 the education agency and consistent with this Chapter. The solicitation *shall*  
15 specifically state the minimum specifications that will be required for a  
16 submitted proposal to be considered. The determination of responsible  
17 offerors and responsive offers *shall* be made by a selection committee  
18 comprised of the Superintendent of the Department of Education, serving as  
19 Chairman, and including the Director of the Department of Public Works or  
20 Deputy Director, the Director of the Department of Land Management or  
21 Deputy Director, the Administrator of the Guam Environmental Protection  
22 Agency or Deputy Administrator, and the Administrator of the Guam  
23 Economic Development Authority or Deputy Administrator. The committee  
24 *shall* evaluate offerors and offers received based on the requirements set forth  
25 in the solicitation for renovation or construction of the education facility.

26 The award of the contract *shall* be based upon a responsive offer  
27 submitted by a responsible offeror that is responsive to the solicitation and

1 offers the lowest annual leaseback rate to the government of Guam for a fixed  
2 thirty (30) year term.

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

7 Notwithstanding any other provision of law, the solicitation for the  
8 renovation or construction of the education facility to be located on the  
9 existing site of Simon Sanchez High School, together with insurance and  
10 maintenance of the education facility over the lease-back period, *shall not* be  
11 combined with other procurement pursuant to Public Law 32-121 (the repair  
12 and maintenance of 35 other schools).”

13 **Section 4.** § 58D106 of Chapter 58D, Title 5, Guam Code Annotated, is  
14 *amended* to read as follows:

15 **“§ 58D106. Responsibilities of Contractor.**

16 The contract *shall* require that the contractor will work with GDOE to  
17 develop the comprehensive capital improvement plan in connection with the  
18 design of a renovated or construction of a new Simon Sanchez High School.  
19 Further, the contractor *shall* be responsible for all costs, expenses and fees of  
20 any kind or nature, associated with the design, civil improvements, on-site and  
21 off-site infrastructure, construction, permits, and financing associated with the  
22 completion of an education facility, including the financing of furniture and  
23 equipment for the education facility, as, and to the extent, provided by the  
24 education agency in the solicitation for renovation or construction of the  
25 education facility.

26 The contract will also require that all major subcontracts be covered by  
27 a performance bond; the government of Guam and financing entities, or

1 bondholders, *shall* be the named obligee under the bond; the government of  
2 Guam *shall* have the sole right to call on the bid bond; and further, that there  
3 be a specific delivery date with liquidated damages for failure to deliver the  
4 school by the specified date.

5 The contractor *shall* also be responsible for the capital maintenance of  
6 the education facility during the lease-back period, but *shall not* be  
7 responsible for the capital maintenance of the furniture and equipment.

8 The lease-back may provide that if sufficient funds are not appropriated  
9 or otherwise available for the payment of amounts due under the lease and  
10 any maintenance agreement, the education agency will have the obligation to  
11 vacate the education facility, and the contractor *shall* have the right of use and  
12 occupancy of the education facility for the remainder of the term of the lease,  
13 unless new mutually satisfactory terms are entered into. For this purpose, the  
14 lease may provide that its term *shall* be extended for a period not to exceed  
15 the shorter of ten (10) years beyond the original term of the lease-back or such  
16 period of time as is necessary to repay in full any financing arranged pursuant  
17 to § 58D108.

18 The capital maintenance costs *shall* be paid by the government of Guam  
19 on a periodic basis as incurred by the contractor on terms to be agreed to in  
20 the contract for the education facility.

21 The lease-back agreement *shall* include a provision that no rental  
22 payments, reserve, advance, or deposit payments, *shall* be paid by the  
23 government of Guam to the successful contractor until and unless the entire  
24 education facility has received a full occupancy permit and the education  
25 agency accepts the project.”

26 **Section 5.** § 58D108 of Chapter 58D, Title 5, Guam Code Annotated, is  
27 *amended* to read as follows:



1           **“§ 58D108. Financing.**

2           To minimize the financing cost to the government of Guam, financing  
3           utilized by the contractor to fund the design, renovation, or construction of an  
4           education facility may be through tax-exempt obligations or other financial  
5           instruments, provided, such financing is available at interest rates determined  
6           by the Guam Economic Development Authority (GEDA) to be reasonable and  
7           competitive. Alternatively, the contractor may use an alternative method of  
8           financing, including, but not limited to, a short term debt, mortgage, loan,  
9           federally guaranteed loan, or loan by an instrumentality of the United States  
10          of America, if such financing will better serve the needs of the people of  
11          Guam. Such alternative financing *shall* be approved by *I Liheslaturan*  
12          *Guåhan*. The purpose for the requirements of this Section is to assure the  
13          government of Guam pays the lowest possible interest rate so that the cost to  
14          the government of Guam of financing the design, renovation or construction  
15          of an education facility, amortized through the lease-back payments from the  
16          government of Guam to the contractor, will be lower than regular commercial  
17          rates.”

18          **Section 6. Severability.** If any provision of this act or its application to any  
19          person or circumstance is found to be invalid or contrary to law, such invalidity *shall*  
20          *not* affect other provisions or applications of this act that can be given effect without  
21          the invalid provisions or application, and to this end the provisions of this act are  
22          severable.