



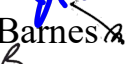
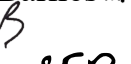



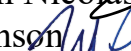
*I Mina'trentai Siette Na Liheslaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
94-37 (COR)	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	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.						Referred Version 4/13/23

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

**Bill No. 94-37 (COR)**

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 

**AN ACT TO *REPEAL* AND *REENACT* CHAPTER 58D OF  
TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO  
THE *MA KÅHAT* ACT OF 2013.**

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

**Section 1.** Chapter 58D of Title 5, Guam Code Annotated, is hereby  
*repealed* and *reenacted* to read:

**“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. Financing.~~

~~§ 58D109. Pledge of Additional Revenue from the Real Property Valuation.~~

1           ~~§58D110. Utilities and Routine Maintenance and Repair.~~

2           ~~§ 58D111. Maintenance Fund.~~

3           ~~§ 58D112. Contractual Safeguards.~~

4           ~~§ 58D113. Severability.~~

5           **§ 58D101. Title.**

6           This Act shall be known and shall be cited as “Ma Kåhat Act of 2013.”

7           **§ 58D102. Legislative Findings and Policies.**

8           ~~(a) *I Liheslaturan Guåhan* finds that Simon Sanchez High School faces the~~  
9           ~~combined challenges of deteriorating conditions, out of date design, and overcrowding.~~  
10           ~~These combined deficiencies impair the quality of teaching and learning and contribute to~~  
11           ~~health and safety problems for staff and students. It should be noted that it is critical for the~~  
12           ~~Guam Department of Education to develop a comprehensive capital improvement plan to~~  
13           ~~provide a roadmap for prioritizing facility improvements beyond Simon Sanchez.~~

14           ~~(b) *I Liheslatura* finds that after reviewing the summary of outstanding General and~~  
15           ~~Limited Obligation debts as of March 1, 2013, that the debt ceiling assessed value is at One~~  
16           ~~Billion One~~

17           ~~Hundred Thirty Nine Million Four Hundred Sixty Four Thousand Eight Hundred~~  
18           ~~Fifty Three Dollars (\$1,139,464,853). It also states that the General Obligation Debt is Four~~  
19           ~~Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight Hundred Fifty~~  
20           ~~Three Dollars (\$446,473,853); and the Limited Obligation Debt is Six Hundred Sixty Three~~  
21           ~~Million Eight Hundred Ninety Six Thousand Eight Hundred Three Dollars (\$663,896,803),~~  
22           ~~with an accumulated total of One Billion One Hundred Ten Million Three Hundred~~  
23           ~~Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656). Subtracting the debt~~  
24           ~~ceiling limit less the General and Limited Obligation Debts leaves the amount for future~~  
25           ~~debt obligation at Twenty Nine Million Ninety Four Thousand One Hundred Ninety Seven~~  
26           ~~Dollars (\$29,094,197).~~

27           ~~(c) *I Liheslatura* further finds that the cost for the renovation or construction of a~~  
28           ~~new Simon Sanchez High School would exceed Guam’s debt ceiling obligation cap if a~~  
29           ~~General Obligation Bond is pursued. To circumvent the debt ceiling cap, *I Liheslatura*~~  
30           ~~finds that the construction of Okkodo High School, Astumbo Middle School, Liguan~~  
31           ~~Elementary School, Adacao Elementary School, John F. Kennedy High School and the~~

1 expansion of Okkodo High School validates the fundamental soundness of using a  
2 municipal lease as a vehicle to build new educational facilities. By utilizing municipal  
3 leasing to renovate or construct a new Simon Sanchez High School, the remaining future  
4 debt obligation may be used to fund other priorities of the government.

5 (d) ~~I Liheslatura~~ further intends to authorize ~~I Maga'lahañ Guåhan~~ to pledge or  
6 reserve the additional proceeds as a source of payment for a municipal lease financing,  
7 secured for the purposes stated herein, either to renovate or construct a new Simon Sanchez  
8 High School.

9 (e) ~~To overcome the financing hurdles, I Liheslaturan Guåhan~~ supports the  
10 government of Guam to enter into a contract for the financing, design, renovation or  
11 construction and long term capital maintenance of Simon Sanchez High School with a  
12 private sector contractor who can provide long term financing obtained through tax-  
13 exempt obligations or other competitive alternative financing based on long term lease-  
14 backs to the government of Guam.

15 (1) ~~In order to facilitate system wide improvements, I Liheslatura~~ shall  
16 authorize the Guam Department of Education to develop a comprehensive capital  
17 improvement plan for prioritizing capital improvements to all Guam Department of  
18 Education schools.

19 (A) ~~To facilitate the financing, design, renovation or construction and~~  
20 ~~maintenance of an education facility envisioned by this Act, the government of~~  
21 ~~Guam will be authorized to lease, for up to thirty (30) years, government of Guam~~  
22 ~~property on which the facilities will be constructed to the contractor, who will~~  
23 ~~design, renovate or construct a new education facility in accordance with~~  
24 ~~specifications approved by Guam Department of Education.~~

25 (B) ~~The education facility and land will be leased back to the government of Guam for a~~  
26 ~~period not to exceed thirty (30) years or the initial ground lease to the contractor over which time~~  
27 ~~the government of Guam will amortize, as lease payments to the contractor, the cost of the~~  
28 ~~financing, design, renovation or construction and related expenses of the education facility.~~

29 (C) ~~The contractor will also be responsible for the capital maintenance of the education~~  
30 ~~facility constructed under this Act, which costs shall be paid by the government of Guam, as~~  
31 ~~provided for under this Act.~~

1           ~~(D) At the expiration of the lease-back period, the government of Guam real property and~~  
2 ~~the education facility that is renovated or constructed on the government of Guam real property~~  
3 ~~will revert to the government of Guam with no further obligations to the Contractor.~~

4           **~~§ 58D103. Definitions.~~**

5           ~~For purposes of this Chapter and unless otherwise specified, the following words and~~  
6 ~~phrases are defined to mean:~~

7                   ~~(a) Act means Chapter 58D of Title 5, Guam Code Annotated, known as the “Ma~~  
8 ~~Káhat Act of 2013.”~~

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

14                   ~~(c) Contract shall mean the various design, renovation or construction and financing~~  
15 ~~agreements entered into by and between the education agency and the contractor following~~  
16 ~~award.~~

17                   ~~(d) Contractor shall mean the authorized entity, and which shall include Guam~~  
18 ~~Economic Development Authority (GEDA) solely for purposes of entering into financing~~  
19 ~~agreement contracts including, but not limited to, any lease, which shall be the signatory~~  
20 ~~on the Contract and shall be fully responsible for carrying out the design, renovation or~~  
21 ~~construction, financing and maintenance of the education facility. The contractor may~~  
22 ~~cooperate with another entity or entities in any manner the contractor deems appropriate to~~  
23 ~~provide for the financing, design, renovation, construction or maintenance of the education~~  
24 ~~facility envisioned by this Act.~~

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

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

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

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

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

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

4           ~~(k) Responsible offeror shall mean a person or entity who has the capability in all~~  
5 ~~respects to perform fully the contract requirements, and the integrity and reliability that~~  
6 ~~will assure good faith performance.~~

7           ~~(l) Responsive offer shall mean an offer that conforms, at opening of the offers in~~  
8 ~~response to the solicitation, in all material respects to the solicitation.~~

9           ~~(m) Responsive shall mean conforming in all material respects to the purchase~~  
10 ~~description and contract terms contained in the solicitation.~~

11       **~~§ 58D104. Authorization to Enter Into Long-Term Leases.~~**

12       ~~For the purpose of facilitating the financing of the design, renovation or construction and~~  
13 ~~maintenance of an education facility encompassed by this Act, the government of Guam or an~~  
14 ~~education agency, as the case may be, is authorized to lease, if required, to the contractor sufficient~~  
15 ~~government of Guam real property on which to renovate or construct a new education facility;~~  
16 ~~provided, such property is in the inventory of the education agency or the government of Guam.~~

17           ~~(a) The property may be the site of an existing education facility under the control~~  
18 ~~of an education agency, which existing facility may be renovated or demolished and rebuilt~~  
19 ~~under the provisions of this Act.~~

20           ~~(b) The education agency is also authorized to lease back from the contractor the~~  
21 ~~property for a period mutually agreed upon between the education agency and the~~  
22 ~~contractor as may be reasonably necessary to amortize over the leaseback period the costs~~  
23 ~~associated with the financing, design, renovation or construction of the education facility.~~

24           ~~(1) In no event shall the end of such lease-back period be later than the date thirty~~  
25 ~~(30) years from the scheduled date of completion of the education facility. (2) Rental~~  
26 ~~payments under the lease shall be payable from any lawfully available moneys of the~~  
27 ~~government of Guam. The lease-back may be structured as an annually renewable lease~~  
28 ~~with provision for automatic renewals to the extent that such lawfully available moneys are~~  
29 ~~available.~~

30           ~~(3) The lease-back shall not be construed as a debt under any applicable debt~~  
31 ~~limitation under the Guam Organic Act or Guam law.~~

1           **§ 58D105. Procurement.**

2           ~~(a) In addition to availing of the services of the Department of Public Works, the Guam~~  
3 ~~Department of Education may solicit, in compliance with the Guam procurement law, for the~~  
4 ~~services of an Owner's Agent Engineer (OAE) to assist the Guam Department of Education in the~~  
5 ~~procurement of architectural and engineering (A&E) services, construction management (CM)~~  
6 ~~services, financing services, renovation and construction services, collateral equipment, and~~  
7 ~~related services consistent with this Chapter.~~

8                     ~~(1) The solicitation shall specifically state the minimum specifications that will be~~  
9 ~~required for a submitted offer to be considered.~~

10                    ~~(2) The determination of responsible offerors and responsive offers shall be made~~  
11 ~~by an evaluation committee comprised of the Superintendent of the Department of~~  
12 ~~Education, serving as Chairman, and including the Director of the Department of Public~~  
13 ~~Works or Deputy Director, the Director of Land Management or Deputy Director, and the~~  
14 ~~Administrator of the Guam Economic Development Authority or Deputy Administrator.~~

15                    ~~(3) (A) The committee shall evaluate offerors and offers received based on the~~  
16 ~~requirements set forth in the solicitation.~~

17                    ~~(B) Upon completion of the committee's evaluation, the Superintendent shall issue~~  
18 ~~the award, in accordance with the Guam procurement law.~~

19           ~~(b) (1) The solicitation for the renovation, construction, or combination thereof for a new~~  
20 ~~fully equipped and functional Simon Sanchez High School as specified in the solicitation, on the~~  
21 ~~existing site, which may include demolition of such portions of the existing facility as necessary,~~  
22 ~~shall be issued within forty five (45) days of completion of the architectural and engineering~~  
23 ~~design for the new Simon Sanchez High School.~~

24                    ~~(2) The award of any lease back contract shall be based upon a responsive offer submitted~~  
25 ~~by a responsible offeror that offers the lowest annual aggregate leaseback payment, inclusive of~~  
26 ~~finance and capital maintenance cost, to the government of Guam for a fixed thirty (30) year term.~~

27           ~~(c) Notwithstanding any other provision of law, the solicitation shall not be combined with~~  
28 ~~other procurement pursuant to Public Law 32-121 (the repair and maintenance of 35~~  
29 ~~other schools).~~

30           **§ 58D106. Responsibilities of Contractor.**

1           ~~(a) (1) The contract shall require that the contractor will work with GDOE to develop the~~  
2 ~~comprehensive capital improvement plan in connection with the design of a renovated or~~  
3 ~~construction of a new Simon Sanchez High School.~~

4           ~~(2) Further, the contractor shall be responsible for all costs, expenses and fees of any kind~~  
5 ~~or nature, associated with the design, civil improvements, on-site and off-site infrastructure,~~  
6 ~~construction, permits, and financing associated with the completion of an education facility,~~  
7 ~~including the financing of furniture and equipment for the education facility, as, and to the extent,~~  
8 ~~provided by the education agency in the solicitation for renovation or construction of the education~~  
9 ~~facility.~~

10          ~~(b) The contract will also require that all major subcontracts be covered by a performance~~  
11 ~~bond; the government of Guam and financing entities, or bondholders, shall be the named obligee~~  
12 ~~under the bond; the government of Guam shall have the sole right to call on the bid bond; and~~  
13 ~~further, that there be a specific delivery date with liquidated damages for failure to deliver the~~  
14 ~~school by the specified date.~~

15          ~~(c) The contractor shall also be responsible for the capital maintenance of the education~~  
16 ~~facility during the lease-back period, but shall not be responsible for the capital maintenance of~~  
17 ~~the furniture and equipment.~~

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

26          ~~(e) The capital maintenance costs shall be paid by the government of Guam on a periodic~~  
27 ~~basis as incurred by the contractor on terms to be agreed to in the contract for the education facility.~~

28          ~~(f) The lease-back agreement shall include a provision that no rental payments, reserve,~~  
29 ~~advance, or deposit payments, shall be paid by the government of Guam to the successful~~  
30 ~~contractor until and unless the entire education facility has received a full occupancy permit and~~  
31 ~~the education agency accepts the project.~~



1           **§ 58D107. Assignments.**

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

7           **§ 58D108. Financing.**

8           (a) To minimize the financing cost to the government of Guam, to fund the design,  
9 renovation, or construction of an education facility may be through tax exempt obligations or other  
10 financial instruments. *Liheslatura* n Guåhan, pursuant to §50103(k) of Title 12 of the Guam Code  
11 Annotated, hereby approves the issuance and sale by the Guam Economic Development Authority  
12 (GEDA) of one or more series of tax exempt and/or taxable Lease Revenue Bonds, as provided in  
13 this Section, in an aggregate principal amount not to exceed One Hundred Sixty Six Million Three  
14 Hundred Sixty five Thousand Dollars (\$166,365,000), for one or more of the following purposes:

- 15           (1) financing the design, renovation or construction and maintenance of an  
16 education facility,  
17           (2) financing any capitalized interest relating to the bonds,  
18           (3) funding a reserve fund with respect to the bonds, and (4) to paying expenses  
19 relating to the authorization, sale and issuance of the bonds, including without limitation,  
20 printing costs, costs of reproducing documents, credit enhancement fees, underwriting,  
21 legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks or  
22 other financial institutions providing credit enhancement, costs of credit ratings and other  
23 costs, charges and fees in connection with the issuance, sale and delivery of the bonds,  
24 subject to the following additional conditions:

25           (A) The terms and conditions of the bonds shall be as determined by *I*  
26 *Maga'hågan* Guåhan by the execution of a certificate or indenture authorizing the  
27 issuance of the bonds; provided, however, that the bonds shall mature not later than  
28 thirty (30) years after their date of issuance, shall bear interest at such rates and be  
29 sold for such price or prices as shall result in a yield to the bondholders that does  
30 not exceed seven and one half percent (7.50%) per annum;

1                   (B) Any such pledge or reservation authorized hereunder shall be valid and  
2 binding from the time the pledge or reservation is made; and

3                   (C) that the bonds will not be “public indebtedness,” as that term is defined  
4 in 48 USC § 1423a, §11 of the Organic Act of Guam.

5           (b) Such bonds may be supported by a lease-back authorized by § 58D104, including, but  
6 not limited to, a lease-back between the government of Guam or an education agency and GEDA.

7           (e) (d) GEDA may use an alternative method of financing, including, but not limited to, a  
8 short-term debt, mortgage, loan, federally guaranteed loan, or loan by an instrumentality of the  
9 United States of America, if such financing will better serve the needs of the people of Guam. The  
10 purpose for this Section is to assure the government of Guam pays the lowest possible interest rate  
11 so that the cost to the government of Guam of financing the design, renovation or construction of  
12 an education facility, amortized through the lease-back payments from the government of Guam  
13 to the contractor, will be lower than regular commercial rates.

14           ~~§ 58D109. Rental Payments Under the Lease Payable from Lawfully Available~~  
15 ~~Moneys.~~

16           ~~Rental payments under the lease and the lease-back, as well as funding required to support~~  
17 ~~the activities set forth in § 58D105(a) of this Chapter, shall be reserved and payable from any~~  
18 ~~lawfully available moneys of the government of Guam, and may be secured by a pledge or other~~  
19 ~~reservation of such moneys.~~

20           ~~(a) Any amounts reserved as provided in this Section and subsequently appropriated for~~  
21 ~~the purpose of making lease-back payments may thereafter be pledged toward making lease-back~~  
22 ~~payments; provided, however, that any amounts reserved as provided in this Section shall be~~  
23 ~~subject to an annual appropriation for the purpose of funding the activities set forth in § 58D105(a)~~  
24 ~~of this Chapter, and making lease-back payments.~~

25           ~~(b) Any such pledge or reservation authorized hereunder shall be valid and binding from~~  
26 ~~the time the pledge or reservation is made and shall be limited to the sum of Sixteen Million Three~~  
27 ~~Hundred Seventy-seven Thousand One Hundred Twenty-five Dollars (\$16,377,125) per year~~  
28 ~~during the pre-development, construction, and lease-back period. The revenues pledged or~~  
29 ~~reserved and thereafter received by the government of Guam or by any trustee, depository or~~  
30 ~~custodian shall be deposited in a separate account and shall be immediately subject to such~~  
31 ~~reservation or the lien of such pledge without any physical delivery thereof or further act, and such~~

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

5 ~~(e) Rental payments under the lease and the leasebacks may be applied towards the~~  
6 ~~purposes described in this Act, as well as to pay periodic costs of GEDA in connection with its~~  
7 ~~ongoing responsibilities relating to the Lease Revenue Bonds authorized under § 58D108 hereof,~~  
8 ~~including, but not limited to, costs relating to continuing disclosure compliance, tax compliance,~~  
9 ~~investor outreach, rating agency compliance and outreach, and any other compliance or outreach~~  
10 ~~costs.~~

11 **~~§ 58D110. Utilities and Routine Maintenance and Repair.~~**

12 ~~The education agency shall be responsible for the connection and payment of all utilities,~~  
13 ~~including without limitation, power, water, sewer, telephone and cable, and all routine interior~~  
14 ~~maintenance and repair and exterior groundskeeping and landscaping, and upkeep of the education~~  
15 ~~facility.~~

16 **~~§ 58D111. Maintenance Fund.~~**

17 ~~The contract or a separate maintenance agreement with the contractor, and the lease back,~~  
18 ~~shall provide that all capital maintenance of the education facility be performed by the contractor~~  
19 ~~as a separate cost, the terms of which, and the manner for establishing the amount of payment,~~  
20 ~~shall be determined as a part of the contract; provided, however, that said documents may, at the~~  
21 ~~discretion of the education agency, provide that capital~~  
22 ~~aintenance with respect to equipment (including collateral equipment), onsite utilities, offsite~~  
23 ~~utilities, access roads and other similar improvements need not be performed by the contractor.~~

24 **~~§ 58D112. Contractual Safeguards.~~**

25 ~~(a) Prior to undertaking the work of renovating or constructing a new Simon Sanchez High~~  
26 ~~School, the Guam Economic Development Authority, the Guam Department of Education, and the~~  
27 ~~developer or contractor shall enter into a binding construction contract to renovate or construct a~~  
28 ~~new Simon Sanchez High School in accordance with the Guam Building Code (21 GCA Chapter~~  
29 ~~67), and any other applicable requirements.~~

30 ~~(b) The construction contract shall contain contractual obligations typically found in~~  
31 ~~government of Guam construction contracts, including, but not limited to:~~

- 1           (1) ~~warranties;~~
- 2           (2) ~~liquidated damages;~~
- 3           (3) ~~performance and payment bonds;~~
- 4           (4) ~~indemnity;~~
- 5           (5) ~~insurance;~~
- 6           (6) ~~standard specifications;~~
- 7           (7) ~~technical specifications;~~
- 8           (8) ~~progress schedule;~~
- 9           (9) ~~maintenance;~~
- 10          (10) ~~compliance with Guam labor regulations;~~
- 11          (11) ~~compliance with Guam prevailing wage rates for employment of temporary~~
- 12          ~~alien workers (H2) on Guam;~~
- 13          (12) ~~compliance with Public Law 29-98: restriction against contractors employing~~
- 14          ~~convicted sex offenders to work at government of Guam venues.~~

15          (c) ~~The contract shall be submitted for review and approval to all entities charged by law~~  
16 ~~with the duty to review and approve government contracts, including the Office of the Attorney~~  
17 ~~General.~~

18          **§ 58D113. Severability.**

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

23   **“CHAPTER 58D**

24   **MA KĀHAT ACT OF 2013**

25          § 58D101. Title.

26          § 58D102. Definitions.

27          § 58D103. Authorization to Enter Into Long-Term Leases.

28          § 58D104. Procurement.

29          § 58D105. Responsibilities of Contractor.

30          § 58D106. Contractual Safeguards.

1       § 58D107. Assignments.

2       § 58D108. Financing.

3       § 58D109. Leaseback Payments Under the Lease Payable from Lawfully  
4               Available Monies.

5       § 58D110. Utilities and Routine Maintenance and Repair.

6       § 58D111. Maintenance Fund.

7       § 58D112. Severability.

8       **§ 58D101. Title.**

9       This Act shall be known and shall be cited as “Ma Kåhat Act of 2013.”

10      **§ 58D102. Definitions.**

11      For purposes of this Chapter and unless otherwise specified, the following  
12 words and phrases are defined to mean:

13           (a) *Act* shall mean Chapter 58D of Title 5, Guam Code Annotated,  
14 known as the “*Ma Kåhat Act of 2013.*”

15           (b) *Contract* shall mean the agreement entered into by and between  
16 the Guam Department of Education (“GDOE”) and the Contractor, for the  
17 following services with regard to the New Simon Sanchez High School: (1)  
18 financing; (2) construction; (3) providing and installing fixtures, furniture, and  
19 equipment (“FF&E services”); and (4) insurance and maintenance.

20           (c) *Contractor* shall mean the authorized entity which shall be the  
21 signatory on the Contract, and shall be fully responsible for carrying out the  
22 services required therein.

23           (d) *New Simon Sanchez High School* (or “school”) shall mean the  
24 replacement high school to be constructed on the School Property.

25           (e) *Lease* shall mean a lease from the GDOE to the Contractor for  
26 the School Property.

1           (f) Leaseback shall mean a lease from the Contractor to the GDOE  
2 of the New Simon Sanchez High School.

3           (g) Leaseback Period shall mean the term of the Leaseback from the  
4 Contractor to the GDOE for the New Simon Sanchez High School.

5           (h) School Property shall mean the property on which the existing  
6 Simon Sanchez High School is currently located.

7           (i) School Design shall mean the architectural and engineering  
8 design procured by GDOE in solicitation number RFP 006-2020 pursuant to  
9 Public Law No. 34-101.

10 **§ 58D103. Authorization to Enter Into Long-Term Leases.**

11           (a) The GDOE is authorized to lease the School Property to the Contractor  
12 for the purpose of facilitating the financing, construction, FF&E services, and  
13 maintenance of the New Simon Sanchez High School.

14           (b) The GDOE is also authorized to lease back from the Contractor the  
15 New Simon Sanchez High School for a period mutually agreed upon between the  
16 GDOE and the Contractor as may be reasonably necessary to amortize over the  
17 Leaseback Period the costs associated with the financing, construction, and FF&E  
18 services for the New Simon Sanchez High School as provided in this Act. In no event  
19 shall the end of such Leaseback Period be later than the date thirty (30) years from  
20 the scheduled date of completion of the New Simon Sanchez High School. The  
21 Leaseback may be structured as an annually renewable lease with a provision for  
22 automatic renewal to the extent that pledged revenue under Section 58D109 is  
23 available. The Leaseback shall not be construed as “public indebtedness,” as that  
24 term is defined in 48 USC § 1423a, §11 of the Organic Act of Guam, or Guam law.

25 **§ 58D104. Procurement.**

1           (a) Within forty-five (45) days of the enactment of this Act, the GDOE,  
2 through the Department of Public Works (“DPW”), shall issue a Request for  
3 Proposal (“RFP”), in compliance with the Guam Procurement Law, for the following  
4 services with regard to the New Simon Sanchez High School: (1) financing; (2)  
5 construction; (3) FF&E services; and (4) insurance and maintenance. The services  
6 provided shall utilize and incorporate the School Design.

7           (b) The determination of responsible offerors and responsive offers shall  
8 be made by an evaluation committee comprised of the Superintendent of the  
9 Department of Education, serving as the Chairman, and including the Director of  
10 Public Works or Deputy Director, the Director of Land Management or Deputy  
11 Director and the Administrator of the Guam Economic Development Authority or  
12 Deputy Administrator

13           (c) The Committee shall evaluate offerors and the offers received based on  
14 the requirements set forth in the solicitation.

15           (d) Upon completion of the committee’s evaluation the Superintendent  
16 shall issue the award in accordance with the Guam procurement law.

17           **§ 58D105. Responsibilities of Contractor.**

18           The Contractor shall be responsible for all costs, expenses and fees of any  
19 kind or nature, associated with civil improvements, on-site and off-site  
20 infrastructure, construction, permits, FF&E services, and financing associated with  
21 the completion of the New Simon Sanchez High School, consistent with the School  
22 Design, as and to the extent provided by GDOE in the Request for Proposal. The  
23 Contractor shall also be responsible for maintenance of and insurance for the New  
24 Simon Sanchez High School during the Leaseback Period, but shall not be  
25 responsible for maintenance of the furniture and equipment. The Leaseback may  
26 provide that if sufficient funds are not appropriated or otherwise available for the

1 payment of amounts due under the Lease and any maintenance agreement, the  
2 GDOE will have the obligation to vacate the New Simon Sanchez High School, and  
3 the Contractor shall have the right of use and occupancy of the New Simon Sanchez  
4 High School for the remainder of the term of the Lease, unless the parties to the  
5 Contract enter into new mutually satisfactory terms. For this purpose, the Lease may  
6 provide that its term shall be extended for a period not to exceed the shorter of ten  
7 (10) years beyond the original term of the Leaseback or such period of time as is  
8 necessary to repay in full any financing arranged pursuant to Section § 58D108.  
9 Maintenance costs shall be paid by the GDOE on a periodic basis as incurred by the  
10 Contractor on terms to be agreed to in the Contract.

11 **§ 58D106. Contractual Safeguards.**

12 The Contract for the New Simon Sanchez High School shall provide for the  
13 construction of and FF&E services for the New Simon Sanchez High School in  
14 accordance with the Guam Building Code under Chapter 67 of Title 21, Guam Code  
15 Annotated, and any other applicable requirements. The Contract shall contain  
16 contractual obligations typically found in Government of Guam construction  
17 contracts, including but not limited to the following:

18 (a) all major subcontracts shall be covered by a performance bond;

19 (b) the government of Guam and financing entities, or bondholders,  
20 shall be the named obligee under the bond;

21 (c) the government of Guam shall have the sole right to call on the  
22 bid bond; and

23 (d) there shall be a specific delivery date with liquidated damages  
24 for failure to deliver the New Simon Sanchez High School by the specified  
25 date.

26 **§ 58D107. Assignments.**



1 To facilitate the purposes of this Act and to provide security for the holders of  
2 any financing instruments issued pursuant to this Act, the Contractor may assign,  
3 without the need of the consent of the GDOE, the Contract, the Lease, and the  
4 Leaseback to any underwriter, trustee, or other party as appropriate, to facilitate the  
5 issuance of the tax-exempt obligations, other financial instruments or alternative  
6 financing for the New Simon Sanchez High School.

7 **§ 58D108. Financing.**

8 To minimize the cost to the government of Guam, financing utilized by the  
9 Contractor to fund the construction of and FF&E services for the New Simon  
10 Sanchez High School shall be through tax-exempt obligations, or other financial  
11 instruments provided such financing is available at an interest rate of no more than  
12 8.5%. The Contractor may use an alternative method of financing, including, but not  
13 limited to, a short-term debt, mortgage, loan, federally guaranteed loan, or loan by  
14 an instrumentality of the United States of America if such financing will better serve  
15 the needs of the people of Guam, subject to approval by I Liheslaturan Guåhan. The  
16 principal amount of financing authorized under this section shall not exceed One  
17 Hundred Sixty-Six Million Three Hundred Sixty-five Thousand Dollars  
18 (\$166,365,000).

19 **§ 58D109. Leaseback Payments Under the Lease Payable from**  
20 **Lawfully Available Monies.**

21 (a) Payments under the Lease and the Leaseback may be secured by a  
22 pledge or other reservation of revenues payable from any lawfully available monies  
23 of the government of Guam, and may be secured by a pledge or other reservation of  
24 such monies on an annual basis.

25 (b) Any amounts pledged or reserved as provided in this Section and  
26 subsequently appropriated for the purpose of making Leaseback payments may  
27 thereafter be pledged toward making Leaseback payments; provided, however, that

1 any amounts reserved as provided in this Section shall be subject to an annual  
2 appropriation by the Guam Legislature for the purpose of funding the activities set  
3 forth in § 58D104 of this Chapter, and making Leaseback payments.

4 (c) Any such pledge or reservation authorized hereunder shall be valid and  
5 binding from the time the pledge or reservation is made and shall be limited to the  
6 sum of Sixteen Million Three Hundred Seventy-seven Thousand One Hundred  
7 Twenty-five Dollars (\$16,377,125) per year during the pre-development,  
8 construction, and Leaseback Period. The revenues pledged or reserved and thereafter  
9 received by the government of Guam or by any trustee, depository or custodian shall  
10 be deposited in a separate account and shall be immediately subject to such  
11 reservation or the lien of such pledge without any physical delivery thereof or further  
12 act, and such reservation or the lien of such pledge shall be valid and binding against  
13 all parties having claims of any kind in tort, contract or otherwise against the  
14 government of Guam or such trustee, depository or custodian, irrespective of  
15 whether the parties have notice thereof. The instrument by which such a pledge or  
16 reservation is created need not be recorded.

17 **§ 58D110. Utilities and Routine Maintenance and Repair.**

18 The Contractor shall be responsible for the connection and payment of all  
19 utilities, including without limitation, power, water, sewer, telephone and cable, and  
20 all routine interior maintenance and repair and exterior groundskeeping and  
21 landscaping, and upkeep of the New Simon Sanchez High School.

22 **§ 58D111. Maintenance Fund.**

23 The Contract and the Leaseback, shall provide that all maintenance of the New  
24 Simon Sanchez High School not described in Section 58D110 be performed by the  
25 Contractor as a separate cost, the terms of which, and the manner for establishing  
26 the amount of payment, shall be determined as a part of the Contract; provided,  
27 however, that the Contract may, at the discretion of the GDOE, provide that

1 maintenance with respect to equipment (including collateral equipment), onsite  
2 utilities, offsite utilities, access roads and other similar improvements need not be  
3 performed by the contractor.

4 **§ 58D112. Severability.**

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