

# I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN

## 2023 (FIRST) Regular Session

### VOTING RECORD

<b>Bill No. 94-37 (COR)</b> As amended by the Committee on Infrastructure, Economic Development, Simon Sanchez High School, Disability Services, Self-Determination and Historic Preservation, Housing, Public Accountability, and the Guam Buildup; and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building June 30, 2023					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator Chris Barnett	✓					
Senator Frank Blas, Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator Thomas J. Fisher	✓					
Senator Jesse A. Lujan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator William A. Parkinson	✓					
Senator Sabina Flores Perez	✓					
Senator Roy A. B. Quinata	✓					
Senator Joe S. San Agustin	✓					
Senator Dwayne T. D. San Nicolas	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Speaker Therese M. Terlaje		✓				

**TOTAL**

**14**

**1**

**Aye**

**Nay**

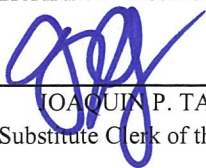
**Not  
Voting/  
Abstained**

**Out  
During  
Roll Call**

**Absent**

**Excused**

CERTIFIED TRUE AND CORRECT:



JOAQUIN P. TAITAGUE  
Substitute Clerk of the Legislature

I = Pass



- 1 § 58D101. Title.
- 2 § 58D102. Definitions.
- 3 § 58D103. Authorization to Enter Into Long-Term Leases.
- 4 § 58D104. Procurement.
- 5 § 58D105. Responsibilities of Contractor.
- 6 § 58D106. Contractual Safeguards.
- 7 § 58D107. Assignments.
- 8 § 58D108. Financing.
- 9 § 58D109. Leaseback Payments Under the Lease Payable from Lawfully
- 10 Available Monies.
- 11 § 58D110. Utilities and Routine Maintenance and Repair.
- 12 § 58D111. Maintenance Fund.
- 13 § 58D112. Severability.

14 **§ 58D101. Title.**

15 This Act shall be known and shall be cited as the “*Ma Kåhat* Act of 2013.”

16 **§ 58D102. Definitions.**

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

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

21 (b) *Contract* shall mean the agreement entered into by and between  
22 the Guam Department of Education (GDOE) and the contractor for the  
23 following services with regard to the new Simon Sanchez High School: (1)  
24 financing; (2) construction; (3) providing and installing fixtures, furniture, and  
25 equipment (FF&E services); and (4) insurance and maintenance.

1           (c) *Contractor* shall mean the authorized entity which shall be the  
2 signatory on the contract, and shall be fully responsible for carrying out the  
3 services required therein.

4           (d) *New Simon Sanchez High School* (or school) shall mean the  
5 replacement high school to be constructed on the school property.

6           (e) *Lease* shall mean a lease from the GDOE to the Contractor for  
7 the school property.

8           (f) *Leaseback* shall mean a lease from the Contractor to the GDOE  
9 of the new Simon Sanchez High School.

10          (g) *Leaseback period* shall mean the term of the leaseback from the  
11 Contractor to the GDOE for the new Simon Sanchez High School.

12          (h) *School property* shall mean the property on which the existing  
13 Simon Sanchez High School is currently located.

14          (i) *School design* shall mean the architectural and engineering  
15 design procured by GDOE in solicitation number RFP 006-2020 pursuant to  
16 Public Law 34-101 without a firing range.

17       **§ 58D103. Authorization to Enter Into Long-Term Leases.**

18          (a) The GDOE is authorized to lease the school property to the Contractor  
19 for the purpose of facilitating the financing, construction, FF&E services, and  
20 maintenance of the new Simon Sanchez High School.

21          (b) The GDOE is also authorized to lease back from the Contractor the new  
22 Simon Sanchez High School for a period mutually agreed upon between the GDOE  
23 and the Contractor as may be reasonably necessary to amortize over the leaseback  
24 period the costs associated with the financing, construction, and FF&E services for  
25 the new Simon Sanchez High School as provided in this Act. In no event shall the  
26 end of such leaseback period be later than the date thirty (30) years from the  
27 scheduled date of completion of the new Simon Sanchez High School. The leaseback

1 may be structured as an annually renewable lease with a provision for automatic  
2 renewal to the extent that pledged revenue under § 58D109 is available. The  
3 leaseback shall not be construed as “public indebtedness,” as that term is defined in  
4 48 USC § 1423a, §11 of the Organic Act of Guam, or Guam law.

5 **§ 58D104. Procurement.**

6 (a) Within ninety (90) days of the enactment of this Act, the GDOE,  
7 through the Department of Public Works (DPW), shall issue a solicitation in  
8 compliance with the Guam Procurement Law, for the following services with regard  
9 to the new Simon Sanchez High School: (1) financing; (2) construction; (3) FF&E  
10 services; and (4) insurance and maintenance. The services provided shall utilize and  
11 incorporate the school design.

12 (b) The determination of responsible offerors and responsive offers shall  
13 be made by an evaluation committee comprised of the Superintendent of the  
14 Department of Education, serving as the Chairman, and including the Director of  
15 Public Works or Deputy Director and the Building Permits Administrator; the  
16 Director of Land Management or Guam Chief Planner; the Administrator of the  
17 Guam Economic Development Authority or Deputy Administrator; and the Principal  
18 of Simon Sanchez High School or his/her designee.

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

21 (d) Upon completion of the committee’s evaluation, the Superintendent  
22 through the Department of Public Works shall issue the award in accordance with  
23 the Guam Procurement Law.

24 **§ 58D105. Responsibilities of Contractor.**

25 The Contractor shall be responsible for all costs, expenses, and fees of any  
26 kind or nature, associated with civil improvements, on-site and off-site  
27 infrastructure, construction, demolition of the existing facility, permits, FF&E

1 services, and financing associated with the completion of the new Simon Sanchez  
2 High School, consistent with the school design, as and to the extent provided in the  
3 solicitation. The contractor shall also be responsible for maintenance of and  
4 insurance for the new Simon Sanchez High School during the leaseback period, but  
5 shall not be responsible for maintenance of the furniture and equipment. The  
6 leaseback may provide that if sufficient funds are not appropriated or otherwise  
7 available for the payment of amounts due under the lease and any maintenance  
8 agreement, the GDOE will have the obligation to vacate the new Simon Sanchez  
9 High School, and the contractor shall have the right of use and occupancy of the new  
10 Simon Sanchez High School for the remainder of the term of the lease, unless the  
11 parties to the contract enter into new mutually satisfactory terms. For this purpose,  
12 the lease may provide that its term shall be extended for a period not to exceed the  
13 shorter of ten (10) years beyond the original term of the leaseback or such period of  
14 time as is necessary to repay in full any financing arranged pursuant to § 58D108.

15 Furniture and equipment maintenance costs shall be paid by the GDOE on a  
16 periodic basis as incurred by the contractor on terms to be agreed to in the contract.

17 **§ 58D106. Contractual Safeguards.**

18 The contract for the new Simon Sanchez High School shall provide for the  
19 construction of and FF&E services for the new Simon Sanchez High School in  
20 accordance with the Guam Building Code under Chapter 67 of Title 21, Guam Code  
21 Annotated, and any other applicable requirements. The contract shall contain  
22 contractual obligations typically found in government of Guam construction  
23 contracts, including, but not limited to, the following:

- 24 (a) all major subcontracts shall be covered by a performance bond;  
25 (b) the government of Guam and financing entities, or bondholders,  
26 shall be the named obligee under the bond;

1 (c) the government of Guam shall have the sole right to call on the  
2 bid bond;

3 (d) requirements to obtain performance and or payment bonds,  
4 indemnification, standard insurance specifications, technical  
5 building/construction specifications, construction progress schedule,  
6 applicable and or necessary maintenance schedules, and compliance with  
7 applicable rules, regulations, and Guam law; and

8 (e) there shall be a specific delivery date with liquidated damages  
9 for failure to deliver the new Simon Sanchez High School by the specified  
10 date, which may include warranties for liquidated damages.

11 **§ 58D107. Assignments.**

12 To facilitate the purposes of this Act and to provide security for the holders of  
13 any financing instruments issued pursuant to this Act, the Contractor may assign,  
14 with the consent of GDOE, the contract, the lease, and the leaseback to any  
15 underwriter, trustee, or other party as appropriate, to facilitate the issuance of the  
16 tax-exempt obligations, other financial instruments or alternative financing for the  
17 new Simon Sanchez High School.

18 **§ 58D108. Financing.**

19 To minimize the cost to the government of Guam, financing utilized by the  
20 Contractor to fund the construction of and FF&E services for the new Simon  
21 Sanchez High School shall be through tax-exempt obligations, or other financial  
22 instruments; provided, that such financing is available at an interest rate of no more  
23 than eight-and-a-half percent (8.5%). The contractor may use an alternative method  
24 of financing, including, but not limited to, a short-term debt, mortgage, loan,  
25 federally guaranteed loan, or loan by an instrumentality of the United States of  
26 America if such financing will better serve the needs of the people of Guam, subject  
27 to approval by *I Liheslaturan Guåhan*. The principal amount of financing authorized

1 under this Section shall not exceed One Hundred Sixty-six Million Three Hundred  
2 Sixty-five Thousand Dollars (\$166,365,000).

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

5 (a) Payments under the lease and the leaseback may be secured by a pledge  
6 or other reservation of revenues payable from any lawfully available monies of the  
7 government of Guam, and may be secured by a pledge or other reservation of such  
8 monies on an annual basis.

9 (b) Any amounts pledged or reserved as provided in this Section and  
10 subsequently appropriated for the purpose of making leaseback payments may  
11 thereafter be pledged toward making leaseback payments; provided, however, that  
12 any amounts reserved as provided in this Section shall be subject to an annual  
13 appropriation by the Guam Legislature for the purpose of funding the activities set  
14 forth in § 58D104 of this Chapter, and making leaseback payments.

15 (c) Any such pledge or reservation authorized hereunder shall be valid and  
16 binding from the time the pledge or reservation is made and shall be limited to the  
17 sum of Sixteen Million Three Hundred Seventy-seven Thousand One Hundred  
18 Twenty-five Dollars (\$16,377,125) per year during the pre-development,  
19 construction, and leaseback period. The revenues pledged or reserved and thereafter  
20 received by the government of Guam or by any trustee, depository or custodian shall  
21 be deposited in a separate account and shall be immediately subject to such  
22 reservation or the lien of such pledge without any physical delivery thereof or further  
23 act, and such reservation or the lien of such pledge shall be valid and binding against  
24 all parties having claims of any kind in tort, contract or otherwise against the  
25 government of Guam or such trustee, depository or custodian, irrespective of  
26 whether the parties have notice thereof. The instrument by which such a pledge or  
27 reservation is created need not be recorded.



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

2           The contractor shall be responsible for the connection of all utilities, including  
3 without limitation, power, water, sewer, telephone and cable, and all routine interior  
4 and exterior maintenance and repair, and exterior groundskeeping and landscaping,  
5 and upkeep of the new Simon Sanchez High School.

6           **§ 58D111. Maintenance Fund.**

7           The contract and the leaseback shall provide that all maintenance of the new  
8 Simon Sanchez High School not described in § 58D110 be performed by the  
9 Contractor as a separate cost, the terms of which, and the manner for establishing  
10 the amount of payment, shall be determined as a part of the contract; provided,  
11 however, that the contract may, at the discretion of the GDOE, provide that  
12 maintenance with respect to equipment (including collateral equipment), onsite  
13 utilities, offsite utilities, access roads and other similar improvements need not be  
14 performed by the Contractor.

15           **§ 58D112. Severability.** If any provision of this Act or its application to any  
16 person or circumstance is found to be invalid or inorganic, such invalidity shall not  
17 affect other provisions or applications of this Act that can be given effect without  
18 the invalid provision or application, and to this end the provisions of this Act are  
19 severable.”