

**5 GCA GOVERNMENT OPERATIONS
CH. 58D MA KĀHAT ACT OF 2013**

**CHAPTER 58D
MA KĀHAT ACT OF 2013**

SOURCE: Entire chapter added by P.L. 32-120:2 (Feb. 10, 2014).

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§ 58D101. Title.

This Act shall be known and shall be cited as “*Ma Kāhat Act of 2013.*”

§ 58D102. Legislative Findings and Policies.

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*I Liheslaturan Guåhan* finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, out of date design, and overcrowding.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

(b) *I Liheslatura* finds that after reviewing the summary of outstanding General and Limited Obligation debts as of March 1, 2013, that the debt ceiling assessed value is at One Billion One Hundred Thirty Nine Million Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars (\$1,139,464,853).

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

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

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

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

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

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

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

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

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

2018 NOTE: Subsection designations have been added to adhere to the Compiler's general codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

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§ 58D103. Definitions.

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

(a) Act means Chapter 58D of Title 5, Guam Code Annotated, known as the “*Ma Kāhat* Act of 2013.”

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

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

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

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

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

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

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

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

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

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

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

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

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014). Subsections (c) and (d) amended by P.L. 34-019:1 (June 7, 2017). Subsections (k), (l), and (m) added by P.L. 24-019:2 (June 7, 2017). Subsection (l) amended by P.L. 34-101:1 (May 16, 2018). Subsection (m)(2) repealed by P.L. 34-101:2 (May 16, 2018).

2018 NOTE: Subitem designations altered in subsection (m) pursuant to the authority of 1 GCA § 1606.

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

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

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

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

(1) In no event shall the end of such lease-back period be later than the date thirty (30) years from the scheduled date of completion of the education facility.

(2) The lease-back may be structured as an annually renewable lease with provision for automatic renewals to the extent that pledged or reserved revenue under § 22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available.

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

2017 NOTE: Subsection/subitem designations added pursuant to authority of 1 GCA § 1606.

§ 58D105. Procurement.

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

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

(2) The determination of responsible offerors and responsive offers *shall* be made by an evaluation committee comprised of the Superintendent of the Department of

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Education, serving as Chairman, and including the Director of the Department of Public Works or Deputy Director, the Director of Land Management or Deputy Director, and the Administrator of the Guam Economic Development Authority or Deputy Administrator.

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

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

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

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

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

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014). Amended by P.L. 34-019:5 (June 7, 2017). Amended by P.L. 34-101:3 (May 16 2018).

2018 NOTE: Subitem designations added in subsections (a)(3) and (b) pursuant to authority of 1 GCA § 1606.

2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 58D106. Responsibilities of Contractor.

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

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

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

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

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

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

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

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014). Amended by P.L. 34-019:4 (June 7, 2017).

2017 NOTE: Subsection/subitem designations added pursuant to authority of 1 GCA § 1606.

§ 58D107. Assignments.

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

§ 58D108. Financing.

(a) To minimize the financing cost to the government of Guam, financing utilized by the contractor to fund the design, renovation, or construction of an education facility may be through tax-exempt obligations or other financial instruments, provided, such financing is available at interest rates determined by the Guam Economic Development Authority (GEDA) to be reasonable and competitive.

(b) Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short term debt, mortgage, loan, federally guaranteed loan, or loan by an instrumentality of the United States of America, if such financing will better serve the needs of the people of Guam. Such alternative financing *shall* be approved by *I Liheslaturan Guåhan*.

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(c) The purpose for the requirements of this Section is to assure the government of Guam pays the lowest possible interest rate so that the cost to the government of Guam of financing the design, renovation or construction of an education facility, amortized through the lease-back payments from the government of Guam to the contractor, will be lower than regular commercial rates.

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014), entitled “Use of Tax-Exempt Bonds for Financing.” Amended by P.L. 34-019:5 (June 7, 2017).

2018 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

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

Rental payments under the lease and the lease-back, as well as funding required to support the activities set forth in § 58D105(a) of this Chapter, may be secured by a pledge or other reservation of revenues received by the government of Guam pursuant to 5 GCA §§ 22425(q)(4) and (6).

(a) Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making lease-back payments, but any amounts only reserved as provided in this Section, and not pledged, *shall* be subject to an annual appropriation for the purpose of funding the activities set forth in § 58D105(a) of this Chapter, and making lease-back payments.

(b) Any such pledge or reservation authorized hereunder *shall* be valid and binding from the time the pledge or reservation is made, and *shall* be limited to the sum of Five Million Fifty-one Thousand Nine Hundred Seventy-seven Dollars and Ninety-eight Cents (\$5,051,977.98) per year during the pre-development, construction, and lease-back period, as outlined in 5 GCA §§ 22425(q)(4) and (6).

(c) The revenues pledged or reserved and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate

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account and *shall* be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further act, and such reservation or the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need not be recorded.

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014). Amended by P.L. 34-101:4 (May 16, 2018).

2018 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 58D110. Utilities and Routine Maintenance and Repair.

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

§ 58D111. Maintenance Fund.

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

§ 58D112. Contractual Safeguards.

(a) Prior to undertaking the work of renovating or constructing a new Simon Sanchez High School, the Guam Economic Development Authority, the Guam Department of Education, and the developer or contractor shall enter into a

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binding construction contract to renovate or construct a new Simon Sanchez High School in accordance with the Guam Building Code (21 GCA Chapter 67), and any other applicable requirements.

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

- (1) warranties;
- (2) liquidated damages;
- (3) performance and payment bonds;
- (4) indemnity;
- (5) insurance;
- (6) standard specifications;
- (7) technical specifications;
- (8) progress schedule;
- (9) maintenance;
- (10) compliance with Guam labor regulations;

(11) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(12) compliance with Public Law 29-98: restriction against contractors employing convicted sex offenders to work at government of Guam venues.

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

SOURCE: Added by P.L. 32-120:2 (Feb. 10, 2014). Amended by P.L. 34-101:5 (May 16, 2018).

2018 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

§ 58D113. Severability.

If any provision of this Act or its application to any person

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or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.
