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CHAPTER 58A
Ma Kåhat Act of 2008

SOURCE: This entire chapter was added by P.L. 29-114:2 (Oct. 10, 2008) and amended as indicated herein.

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

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§ 58A101. Title.

This Act *shall* be known and *shall* be cited as "***Ma Kåhat Act of 2008***".

§ 58A102. Legislative Findings and Policies.

I Liheslaturan Guåhan finds that there is a critical shortage of public school facilities on Guam. Many existing facilities are antiquated and are *not* fit for the purpose of public education. The Department of Education is in need of at least three (3) new public schools with all the related civil and structural facilities and amenities customarily associated with a first rate public education facility. Specifically, there is an immediate need to replace the John F. Kennedy (JFK) High School in Tumon, Guam and to build a modern facility on the site of the existing school. In an effort to overcome these financing hurdles and to provide for the educational needs of the students of Guam, *I Liheslaturan*

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Guåhan desires to authorize the government of Guam to enter into contracts for the financing, design, construction and long-term capital maintenance of the John F. Kennedy High School with private sector contractors 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. These projects will constitute the first phase of a capital improvement plan approved by *I Liheslaturan Guåhan* to address Guam's long term education, health, public safety and governmental needs. To facilitate the financing, design, construction and maintenance of the facilities 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. The lease of the government property will be to the contractor, who will design and construct the facilities in accordance with specifications approved by Department of Education, and provide funding for the design and construction through the use of tax-exempt obligations *or* other competitive alternative funding sources. The facilities and land will be leased back to the government of Guam for a period *not to exceed* 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, construction and related expenses of the facilities. The annual commitment of Section 30 Revenues authorized in the Act is based on the sum of Section 30 Revenue available after the final payment on the Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A.

The contractor will also be responsible for the capital maintenance of the public school facilities constructed under this Act, which costs *shall* be paid by the government of Guam as provided for under this Act. At the expiration of the Lease-Back Period, the government of Guam real property and the public facilities constructed on the government of Guam real property will revert to the government of Guam with *no* further obligations to the Contractor.

§ 58A103. Definitions.

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

- (a) "Act" means Chapter 58A of Title of the Guam Code Annotated, known as the "*Ma Kâhat Act of 2008.*"

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(b) “Contract” *shall* mean the design, construction and financing contract entered into by and between the Education Agency and the Contractor following negotiations on the response to the Request for Proposal.

(c) “Contractor” *shall* mean the authorized entity which *shall* be the signatory on the Contract and *shall* be fully responsible for carrying out the design, 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, construction *or* maintenance of the public school facilities envisioned by this Act.

(d) “Education Agency” *shall* mean the Department of Education.

(e) “Education Facility” as used in this Act *shall* mean a replacement high school to be located on the existing site of John F. Kennedy High School in Tumon.

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

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

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

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

§ 58A104. Authorization to Enter into Long-Term Leases.

For the purpose of facilitating the financing of the design, 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 construct, convert *or* rehabilitate an Education Facility; provided, such property is in the inventory of the Education Agency *or* the government of Guam. The property may be the site of an existing Education Facility under the control of an Education Agency, which existing facility may be

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converted, rehabilitated *or* demolished and rebuilt under the provisions of this Act.

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 and construction of the Education Facility. 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. The Lease-Back may be structured as an annually renewable lease with provision for automatic renewals to the extent that pledged revenue under Section 58A109 is available. The Lease-Back *shall not* be construed as a debt under any applicable debt limitation under the Guam Organic Act *or* Guam law.

§ 58A105. Procurement.

(a) Subject to the approval of *I Liheslaturan Guåhan*, the government of Guam or an Education Agency may solicit Requests for Proposals ('RFP') through the Department of Public Works, in compliance with the Guam Procurement Law, for the financing, design and construction of the Education Facility, together with maintenance of the Education Facility over the term of the Lease-Back, according to the needs of the Education Agency and consistent with this Chapter. Notwithstanding the foregoing, in connection with any amendments to an existing Lease or Lease-Back, the Contractor with respect to such amendments *shall* be the Contractor with respect to the existing Lease or Lease-Back. The RFP *shall* be issued within thirty (30) days of enactment of this Act for replacement of the John F. Kennedy High School Facility on the existing site; may include demolition of such portions of the existing facility as necessary; and *shall* include a requirement that occupancy of the JFK facility take place *no later than* nine (9) months after execution of the Contract.

(b) Upon the execution and delivery by the Education Agency of the Contract, the Lease, the Lease-Back and any other agreements relating to the design, construction, maintenance and financing of the Education Facility, the Contract, Lease, Lease-Back and such other agreements *shall* be valid and binding obligations of the Education Agency, enforceable in accordance with their respective terms, and there shall be

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no power to terminate or declare null and void the Contract, Lease, Lease-Back, or such other agreement pursuant to § 5452 of Title 5, Guam Code Annotated.

(c) The Contractor selected through Subsection (a) of this Section *shall* be deemed disqualified if funding is *not* secured within ninety (90) calendar days from the enactment of this Act that adds this Subsection. *If* funding is *not* secured as required by this Subsection, the Department of Public Works *shall* proceed as provided in § 3114 (l)(4) of Chapter 3 of Division 4 of Title 2 of GAR.

SOURCE: Added by P.L. 29-114:2 (Oct. 10, 2008). Amended by P.L. 30-178:2 (Aug. 3, 2010).

§ 58A106. Responsibilities of Contractor.

The Contract *shall* require that the Contractor 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 Request for Proposals. The Contractor *shall* also be responsible for the capital maintenance of the schools during the Lease-Back Period, but *shall not* be responsible for the capital maintenance of the furniture and equipment. 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 Section 58A108. The capital maintenance costs *shall* be paid by the Education Agency on a periodic basis as incurred by the Contractor on terms to be agreed to in the Contract for each Education Facility.

§ 58A107. Assignments.

To facilitate the purposes of this Act and to provide security for the

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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.

§ 58A108. Use of Tax-Exempt Bonds for Financing.

To minimize the financing cost to the Education Agency, financing utilized by the Contractor to fund the design and construction of an Education Facility *shall* be through tax-exempt obligations *or* other financial instruments *provided* such financing is available at an interest rate of *no more than* eight and a half percent (8.50%). 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*. The purpose for the requirements of this Section is to assure the Education Agency pays the lowest possible interest rate so that the cost to the Education Agency of financing the design and construction of an Education Facility, amortized through the Lease-Back payments from the Education Agency to the Contractor, will be lower than regular commercial rates.

SOURCE: Amended by P.L. 30-178:4 (Aug. 3, 2010).

§ 58A109. Pledge of Section 30 Revenue.

Rental payments under the Lease and the Lease-Back may be secured by a pledge or other reservation of revenues received by or on behalf of the government of Guam from the United States of America pursuant to Section 30 of the Guam Organic Act (48 U.S.C.A. Section 1421h). Any pledge or reservation of Section 30 revenues authorized by the Act *shall* be subordinate *only* to the existing lien securing the Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A. 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 Six Million Nine Hundred Thousand Dollars (\$6,900,000) per year during the Lease-Back Period. The remainder of the funds from the existing lien, *supra*, *shall* be used for the expansion of

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Okkodo High School to fund the expansion of classrooms to accommodate the overcrowding, restroom facilities at all outdoor sports fields, additional restrooms required by public health due to the increase in student population, solar panels, the culinary arts building, signalization, the track and field track with proper turf, and other projects needed to facilitate the expansion to accommodate the increase in student population. The Section 30 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 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: Amended by P.L. 30-178:3 (Aug. 3, 2010).

§ 58A110. 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 grounds keeping and landscaping and upkeep of the Education Facility.

§ 58A111. 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 request for proposal process; 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. The Contract *or* agreement and the Lease-Back may provide for a separate maintenance reserve fund for this purpose with sufficient funds to pay the costs of capital maintenance for a reasonable period *not exceeding* five (5) years. The

maintenance reserve fund *shall* be used exclusively for the purpose of capital maintenance and *shall* be an interest bearing account segregated from other funds of the Education Agency.

§ 58A112. Rules, Regulations and Restrictions.

The Department of Public Works may promulgate rules and regulations pursuant to Guam law necessary to implement the provisions of this Act.

§ 58A113. Severability.

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

§ 58A114. Approval of 2020 Certificates.

I Liheslaturan Guåhan, pursuant to § 50103(k) of Title 12, Guam Code Annotated, hereby approves the terms and conditions of the execution and delivery of the 2020 Certificates of Participation (John F Kennedy High School Project) (2020 Certificates) for the purpose of (a) refunding all or a portion of the 2010A Certificates of Participation (John F. Kennedy High School Project) (prior certificates); (b) financing costs of issuance; (c) financing any debt service reserve funds, or other reserves, if applicable; (d) financing capitalized interest, if applicable, in accordance with the following requirements, limitations, terms and conditions; and (e) financing additional capital improvements to an Education Facility, including, but not limited to, solar installations, in accordance with the following requirements, limitations, terms and conditions:

(a) all obligations of the government to pay debt service with respect to, and the prepayment price of, the prior certificates refunded shall be discharged concurrently with the execution and delivery of the 2020 Certificates. Thereafter, such prior certificates shall be payable solely from and secured solely by an escrow established for such purpose in accordance with the existing trust agreement relating to the prior certificates;

(b) the sale of the 2020 Certificates shall be approved by the Board of Directors of the Guam Economic Development Authority

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(GEDA) as provided in Chapter 50, Title 12, Guam Code Annotated;

(c) solely with respect to the portion of the debt service relating to the refunding of the prior certificates, the present value in the aggregate of debt service of the government’s obligations with respect to such new leases or amendments to leases shall be at least two percent (2%) less than the present value in the aggregate of debt service on the prior certificates, using the yield on the 2020 Certificates as the discount rate; and

(d) no increase in the amount of outstanding “public indebtedness” as that term is used in 48 U.S.C. § 1423a (§ 11 of the Organic Act of Guam) shall result from the execution of any such new leases or amendments to leases.

SOURCE: Added by P.L. 35-099:XIV:1 (Sept. 15, 2020).

2021 NOTE: Subsection designations were altered by the Compiler pursuant to 1 GCA § 1606.
