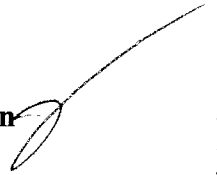


I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) REGULAR SESSION

Bill No. 103-31 (COR)

Introduced by:

v.c. pangelinan



AN ACT TO REPROGRAM \$36,673,370 FROM OBJECT CLASS 111 AND 113 FROM THE GUAM DEPARTMENT OF EDUCATION FY 2011 BUDGET TO OBJECT CLASS 450 FOR ONGOING AND CONTINUING CAPITAL EXPENDITURE PROJECTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Statement and Intent.** The 111th United States
2 Congress enacted the American Recovery and Reinvestment Act (ARRA) of 2009 for the
3 purpose of providing economic stimulus and relief to states and taxpayers. In enacting
4 ARRA, the primary goal of its framers was to provide a quick infusion of cash to state
5 and local governments for the preservation and creation of jobs, thus stimulating the
6 economy. *I Liheslaturan Guåhan* agrees with the economic basis of the following
7 approach and seeks to promote the principles and objectives of this federal legislation at
8 the local level.

9 *I Liheslaturan Guåhan* finds that US Department of Education (USDOE)
10 approved the Guam Department of Education (GDOE) State Fiscal Stabilization Fund
11 (SFSF) Phase II application which budgets \$36,673,370 (Thirty Six Million Six Hundred
12 Seventy Three Thousand Three Hundred Seventy Dollars) for the modernization,
13 renovation and repair of public educational facilities used primarily for classroom
14 instruction that are most in need of modernization, renovation and repair. The GDOE,
15 which was awarded the SFSF funds two years ago, has experienced difficulty in
16 obligating and expending the funds prior to the September 2011 deadline. In failing to

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1 obligate or expend the funds, the GDOE shall forfeit the funds earmarked to improve the
2 physical infrastructure of our educational institutions.

3 The management of the GDOE cites the legal review of procurement contracts,
4 applicable to all Government of Guam entities, as a bottleneck in the obligation and the
5 expenditure of the funds. In citing the following provision, the GDOE has requested
6 exemption to the legal review requirement within the procurement statutes and the right
7 of bidders to access their rights to the legal system in protesting bid awards.

8 *I Liheslaturan Guåhan* affirms that the GDOE has not presented a compelling
9 reason to merit exemption from the procurement statutes, which were crafted to protect
10 the public interest in contractual negotiations. Furthermore, *I Liheslaturan Guåhan* finds
11 that the following solution to GDOE’s inability to expend the funds represent a
12 dangerous precedent whereby legislative remedies are sought for administrative issues.

13 *I Liheslaturan Guåhan* wherever possible seeks a win-win approach to problems
14 facing our community and thus finds that the inability of the GDOE to expend ARRA
15 SFSF funds presents an opportunity for such a solution. *I Liheslaturan Guåhan*
16 recognizes that the following approach is consistent with the spirit in of *Inafa Maolek* and
17 is an example of a bi-partisan approach to solving problems because “*the greatness of*
18 *Guam transcends all political lines.*”

19 *I Maga’låhen Guåhan* continues to communicate to the people of Guam that an
20 impending cash shortfall is inevitable in FY 2011 due to unbudgeted expenditures.
21 Although the magnitude of the cash shortfalls remains unclear, *I Liheslaturan Guåhan*
22 recognizes the Organic authority and responsibility of *I Maga’låhen Guåhan* to manage
23 the daily operations of the Government of Guam. Therefore, *I Liheslaturan Guåhan* seeks
24 to empower the Executive Branch with the necessary fiscal tools to confront the FY 2011
25 cash shortfalls and immediately rescind Executive Order 2011-02 in order to reinstate the
26 Hay Study pay increases. The partnership of *I Maga’låhen Guåhan* is necessary for
27 success in stimulating the Guam economy through raising the standard of living for
28 public employees for the first time in twenty years.

29 In granting the following budgetary mechanisms, *I Liheslaturan Guåhan* is
30 providing a solution and creating the opportunity for the chief executive to exercise his
31 referent authority to convince the leadership of the GDOE and USDOE of the worthiness

1 of this cause. The cause involves requesting the USDOE to reprogram \$36,673,370
2 (Thirty Six Million Six Hundred Seventy Three Thousand Three Hundred and Seventy
3 Dollars) of the ARRA SFSF grant earmarked for capital expenditures for the payment of
4 personnel cost for FY 2011.

5 The following approach will not reduce or redirect funds due to the GDOE for
6 repairs of educational institutions. Rather, the approach seeks to guarantee that the
7 GDOE not lose ARRA SFSF funds due to not expending the funds by September 2011
8 and ensure that GDOE complies with local procurement laws. In doing so, the approach
9 merely utilizes the ARRA SFSF funds to supplant the cash shortfalls of the Government
10 of Guam for the second quarter of FY 2011 and appropriates and reserves the funds
11 transferred for capital expenditure projects as they become shovel ready.

12 *I Liheslaturan Guåhan* finds that the use of ARRA SFSF funds for GDOE's
13 payroll will provide the following advantages to GDOE as well as the General Fund:

- 14 • Approximately six pay periods of salaries and benefits for the GDOE will
15 be covered;
- 16 • ARRA SFSF funds will insulate the GDOE from any cash flow difficulty
17 should it be faced by the Government of Guam; ensuring compliance of
18 the Adequate Education Act;
- 19 • Reporting requirements for expenditures of GDOE payroll will be less
20 burdensome to the administrative infrastructure of the department;
- 21 • Locals funds relieved by ARRA SFSF funds will allow the Government of
22 Guam to meet impending short term unbudgeted obligations, including the
23 Mental Health Permanent Injunction and the Calvo's SelectCare contract;
- 24 • The GDOE will be able to preserve and retain jobs; consistent with the
25 overarching principle of ARRA;
- 26 • The GDOE will not need to seek an exemption from the procurement
27 statutes;
- 28 • Infusion of ARRA SFSF monies will provide external sources of funding
29 for the island's economy, spurring economic activity; consistent with
30 ARRA's goals;

- 1 • The risk to losing ARRA SFSF funds due to inability to expend funds or
2 due to procurement challenges will be abated;
- 3 • Cash requirements for GDOE Capital Improvement Projects (CIPs) for the
4 next three to six months are small because bid proposals specifications and
5 project bid solicitations are being developed.

6 For its cooperation with the following approach, the GDOE has demonstrated its
7 stewardship and sense of the shared responsibility with the entire Government of Guam.
8 *I Liheslaturan Guåhan* recognizes the selfless act of assisting *I Maga'låhen Guåhan* to
9 reinstitute the Hay study increases and reaffirms its commitment to Education by
10 providing safeguards to the funds transferred to be used in FY 2011 and beyond.

11 **SECTION 2. Reprogramming of Appropriation.** A new Section 17 is added
12 to Chapter II, Part I of Public Law 30-196:

13 “Upon USDOE approval to amend the Phase II ARRA SFSF grant application,
14 whereby, the amount of \$36,673,370 (Thirty Six Million Six Hundred Seventy Three
15 Thousand Three Hundred and Seventy Dollars) originally allocated for CIPs is
16 reprogrammed to Salary and Benefits, the amount of \$36,673,370 (Thirty Six Million
17 Six Hundred Seventy Three Thousand Three Hundred and Seventy Dollars) is re-
18 appropriated (from the General Fund) in Chapter II, Part I Section 2 of this Act, from
19 Object Classes 111 and 113 to Object Class 450. Funds transferred to Object Class 450
20 shall be a continuing appropriation for the GDOE and shall be earmarked for CIPs
21 approved by USDOE contained in the June 10, 2010 ARRA SFSF Phase II grant
22 application. Furthermore, the aforementioned funds shall not be subject to allotment
23 reserves by the Bureau of Budget Management and Research nor shall they be subject to
24 the Governor’s transfer authority and shall be designated as the first allotment priority
25 only to be superseded by allotments designated for health care mandates and government
26 wide payroll expenses.

27 **SECTION 3. Severability.** If any provision of this Law or its application to any
28 person or circumstances is found to be invalid or contrary to law, such invalidity shall not
29 affect other provisions or applications of this Law which can be given effect without the
30 invalid provisions or application, and to this end the provisions of this Law are severable.