

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (First) Regular Session

Bill No. 299 - 31 (LS)

Introduced by:

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AN ACT TO REPEAL 17 GCA CHAPTER 26; AND TO
ADD A NEW CHAPTER 70 TO 5 GCA DIVISION 6,
RELATIVE TO EMPOWERING THE NORTHERN AND
SOUTHERN GUAM SOIL AND WATER
CONSERVATION DISTRICTS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Repeal. Title 17 Guam Code Annotated, Chapter 26 – “Soil & Water
3 Conservation Programs” – is hereby *repealed*.

4 Section 2. Soil and Water Conservation Districts and District Boards. A *new*
5 Chapter 70 is hereby *added* to Title 5 Guam Code Annotated, Division 6 to read:

6 “Chapter 70

7 Soil & Water Conservation Districts and District Boards.

8 § 70101. Definitions.

9 § 70102. Conservation Districts Established.

10 § 70103. Selection of Directors; Composition of District Boards; Tenure of
11 Directors; Board Vacancies; and Compensation of Directors.

12 § 70104. Organization of Districts; District Membership.

13 § 70105. Duties of District Boards.

14 § 70106. Powers of District Boards.

15 § 70107. Duties of the University of Guam.

16 § 70108. Powers of the University of Guam.

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1 **§ 70101. Definitions.** Whenever used in this Article, the following terms shall
2 have the meanings indicated, unless otherwise specified:

3 **(a)** *Cooperator* means a *land occupier* or *farm land owner* who has entered into an
4 agreement with a district requesting the district to provide aid under this Article.

5 **(b)** *Director, or district director,* means a member of either the *Northern or Southern*
6 *District Board.*

7 **(c)** *District* means the *Northern Soil and Water Conservation District* and the *Southern*
8 *Soil and Water Conservation District.*

9 **(1)** *Northern Soil and Water Conservation District, or Northern District,* means
10 the area organized pursuant to this Act as that area covering the northern
11 area of Guam.

12 **(2)** *Southern Soil and Water Conservation District, or Southern District,* means the
13 area organized pursuant to this Act as that area covering the southern area
14 of Guam.

15 **(d)** *District Board* means a Government of Guam board comprised of individuals
16 elected by local farmers, farm land owners or land occupiers to fulfill the duties
17 set forth in this Act.

18 **(1)** *Northern Soil and Water Conservation District Board, or Northern District*
19 *Board,* means the *District Board* which shall govern the *Northern District,*
20 organized pursuant to this Act.

21 **(2)** *Southern Soil and Water Conservation District Board, or Southern District*
22 *Board,* means the *District Board* which shall govern the *Southern District,*
23 organized pursuant to this Act.

24 **(e)** *Farmer* means a resident registered as a farmer by the Department of Agriculture.

25 **(f)** *Farm land owner* means a person, firm, or corporation who is an owner or
26 operator of land used for the purpose of producing aquaculture products,

1 bushes, crops, fruit or nut-bearing trees, herbs, livestock, ornamentals, timber or
2 vines.

3 **(g)** *Land occupier* includes any person, firm, or corporation who holds title to or, in
4 the case of leased land, the person, firm, or corporation who holds possession of
5 any lands lying within a district organized under this Article.

6 **(h)** *University* means the University of Guam.

7 **§ 70102. Conservation Districts Established.** A *Northern Soil and Water*
8 *Conservation District* and a *Southern Soil and Water Conservation District* are hereby
9 established to work in partnership with the University of Guam (University), and in
10 cooperation with all Government of Guam entities overseeing local and federal
11 programs established to promote the conservation, development and the use of soil and
12 water resources of Guam in order to control and prevent soil erosion, flooding and to
13 improve agriculture water management.

14 **§ 70103. Selection of Directors; Composition of District Boards; Tenure of**
15 **Directors; Board Vacancies; and Compensation of Directors.**

16 **(a) Selection of Directors.** *Farmers or farm land owners or land occupiers* from
17 within each district shall nominate individuals, from among their number, to serve
18 as non-partisan *district directors*; and shall elect five (5) *directors* from among those
19 nominated.

20 **(b) Composition of District Boards.** The Soil and Water Conservation
21 District Board shall each:

22 **(1)** Be composed of five (5) directors, each of whom is largely engaged
23 in farming and is a *land occupier* of the *district* to which they are elected to serve;

24 **(2)** Select a Chairperson and a Vice Chairperson from among the five
25 (5) *directors*, who shall be elected by at least three (3) affirmative votes.

26 **(3)** Have assigned to it an advisor from the University of Guam
27 College of Natural and Applied Sciences.

1 (c) **Tenure of Directors.** Each *district director* shall be elected for a term of
2 three (3) years. Individuals serving as *district directors* at the time this Act is signed
3 into law *shall* be permitted to serve out the remainder of their term.

4 (d) **Board Vacancies.** Vacancies *shall* be filled for an unexpired term. The
5 selection of a successor to fill a vacancy for an unexpired term *shall* be made by *I*
6 *Maga'lalen Guåhan* within thirty (30) days of the notification of such vacancy; such
7 selection to be subject to the consent of *I Liheslaturan Guåhan*.

8 (e) **Compensation of Directors.** *District directors* shall be compensated in the
9 amount of Fifty Dollars (\$50) per meeting attended, such compensation not to
10 exceed One Hundred Dollars (\$100) per month.

11 (1) **Per Diem Allowance.** *District directors* shall receive one hundred
12 twenty-five percent (125%) of the basic per diem rates, just as other government
13 Boards and Commissions, as stipulated in 5 GCA §23104(a)(2).

14 **§ 70104. Organization of Districts; District Membership.**

15 (a) **Organization of Districts.** To complete the organization of a district, the
16 University of Guam, in accordance with the Administrative Adjudication Act, *shall*
17 present to *I Maga'lalen Guåhan* a statement setting out the name of the district and its
18 boundaries and certifying that the procedures prescribed in this Article for the
19 organization of a district have been fully complied with. The statement *shall* request
20 *I Maga'lalen Guåhan* to issue a certificate of organization to the district. *I Maga'lalen*
21 *Guåhan shall* record the statement in his office and *shall* issue to each district, under
22 the seal of Guam, of the due organization of the district.

23 The organization of the *Northern District* and *Southern District* in effect at
24 the time this law is enacted *shall* remain in effect, until and unless the University
25 presents to *I Maga'lalen Guåhan* new information concerning district names and
26 boundaries; such determination having been made in full compliance with the

1 Administrative Adjudication Act, all procedures prescribed in this Article, and all
2 other pertinent requirements, rules or regulations.

3 (b) **District Membership.** Each district board *shall* cause all farmers, farm
4 land owners or land occupiers, as appropriately registered with the Department of
5 Agriculture or the Department of Land Management, to register as active members
6 of each district.

7 Such membership roll *shall* be updated quarterly; and *shall* be submitted to
8 the advisor assigned to the *board* by the University. Such membership roll *shall* serve
9 as the official roster of those eligible to vote in subsequent *district* elections.

10 **§ 70105. Duties of District Boards.**

11 (a) **Quorum, Meeting and Budget Requirements.**

12 (1) Each board *shall* require a quorum of its members in order to conduct
13 business. Three (3) *directors shall* constitute a quorum; and the concurrence
14 of a majority vote, at least three (3) votes, *shall* be necessary to take action
15 on any official matter.

16 (2) Each *board shall* hold at least one meeting per month, which *shall* be subject
17 to the Open Government Law.

18 (A) **Attendance.** Each *director shall* attend meetings of the *district*
19 *board*. Unexcused absences of a director from three consecutive
20 board meetings *shall* constitute a cause for removal of the *director*
21 from the *board*, pursuant to 5 GCA §43106 "Removal from Office for
22 Absences."

23 (3) Both *district boards shall* have a joint meeting at least once per year, during
24 which time the *district directors shall* prepare an operating budget to
25 support their mission and mandates.

26 (A) **Budget.** Such budget *shall* be submitted to the University,
27 for subsequent submission to *I Liheslatura*.

1 **(b) Development of Plans.**

2 (1) Each *board shall* prepare a long range plan and an annual work-plan with
3 assistance from advisory members and agencies.

4 (2) Each *board shall* develop conservation plans for *cooperators* of the *district*, at
5 their request.

6 **(c) Record Keeping and Reporting Requirements.**

7 (1) Each *board shall* keep a record of proceedings, resolutions, regulations, and
8 orders issued or adopted.

9 (2) Each *board shall* keep a statement of activity documenting all actions taken
10 with respect to the receipt and disbursement of any all and funds. Such report *shall*
11 be forwarded to *I Liheslatura* on a quarterly basis.

12 (3) Each *board shall* furnish to their assigned advisor from the University of
13 Guam, copies of such documents, instruments or information concerning their
14 activities, as the *University* requests.

15 **(d) District Projects and Activities.**

16 (1) Projects and Activities *shall* be limited to the following types of land
17 within the district:

18 (A) All public land leased for agricultural activities, including leased
19 federal land. Any and all projects which are proposed for leased federal land
20 *shall* require the review and approval of the federal agency which has
21 jurisdiction over the land;

22 (B) Public and private land which is designated for agricultural use or
23 conservation preserves; and

24 (C) Land which is used for the purpose of producing an agricultural
25 commodity which is located in an area designated as urban or rural.

26 (2) Government Agency Input Required for District Projects and Activities.
27 For any project or activity proposed by a *district board*, which involves the

1 responsibilities of another Government of Guam entity, the *district board shall* request
2 the input of each of the affected entities on the scope of work of the project.

3 Projects proposed by a *district board shall* be planned and executed in
4 compliance with provisions of Guam Law, and *shall* not duplicate the efforts of, or
5 conflict with, other local and federal programs already in place in Guam.

6 Each entity consulted *shall* provide a response to the *district* within thirty (30)
7 calendar days from the date of receipt of the request for input. The district *shall* keep
8 on record, copies of all submitted requests for input and all responses to such
9 requests; and *shall* further act on such responses, including providing any
10 justification for any rejected recommendations.

11 **(3) District Coordination.** Each *district board shall* inform the other *district*
12 *board* of their approved projects and activities.

13 **§ 70106. Powers of District Boards.** A *district board*, and the *directors* thereof,
14 elected to serve a district organized under this Article *shall* have the following powers:

15 (a) To provide for and encourage surveys, investigations, and research
16 relating to soil and water conservation and to publish and disseminate information
17 concerning such subjects;

18 (b) To provide for and encourage demonstrations relative to the control and
19 prevention of erosion and the conservation of soil and water resources; and to carry
20 out preventive control measures on publicly owned land within the district with the
21 consent of the *land occupier*;

22 (c) To cooperate, or enter into agreements with, and to furnish aid to any
23 agency or *land occupier* within a *district* insofar as it is feasible to do so, for specific
24 soil and water conservation activities not in conflict with or duplicating other
25 activities of the University of Guam or cooperating agencies. Such agreements *shall*
26 be subject to such conditions as the *district board* may deem necessary;

1 **(d)** To review conservation plans prepared by *farm land owners* and *land*
2 *occupiers*, which are a precondition for a contract between the *farm land owners* and
3 *land occupiers* and the U.S. Secretary of Agriculture; to provide to the U.S. Secretary
4 of Agriculture, or his designee, a recommendation concerning the acceptability of
5 *farm land owners'* and *land occupiers'* plans, such recommendation to be based upon
6 the district's conservation plan; and to provide, when requested by the Secretary, or
7 his designee, recommendations on the contract;

8 **(e)** To acquire property such as equipment or machinery to introduce soil
9 conservation practices to the agricultural community and to dispose of such
10 property when appropriate;

11 **(f)** To acquire private land or land rights in full compliance with all
12 requirements set forth in Guam Law, and in consultation with *I Maga'lahen Guåhan*
13 and *I Liheslaturan Guåhan*, as needed for implementation of watershed projects for
14 purposes such as flood control, irrigation, or soil conservation;

15 **(1) Disposition of Unused Land.** Any land or land rights acquired by a
16 *district board* and not used for the purposes justifying the acquisition,
17 within the term of the district directors who requested the acquisition,
18 *shall* be returned to the original owners for the price paid by the
19 government when such property was originally acquired;

20 **(g)** To construct, improve, and maintain structures, such as sediment ponds
21 or earthen dams, following all requirements set forth in Guam law and any
22 pertinent rules and regulations and proper engineering standards and specifications,
23 when these structures are found necessary for carrying out the purposes of soil and
24 water conservation;

25 **(h)** To have a seal which can be affixed to certificates issued to *cooperators* of
26 the *district* and to any contract or other instruments requiring certification;

1 (i) As a condition to the extending of benefits, or the performance of work
2 upon land, the *district board* may require contributions of services, materials or
3 otherwise, to any operation conferring such benefits, and may impose any other
4 reasonable condition, such as contributions of labor for the planting of trees and
5 payment for specific erosion control materials secured by the *district board* for the
6 benefit of its *cooperators*. All such contributions would necessarily be determined by
7 the *district* as a whole and must not be in violation of the laws of Guam or common
8 practice; and

9 (j) To hire personnel, under a restricted employment status, to support their
10 mandates as the *district board* deems appropriate.

11 **(1) Restricted Employment Status.** Restricted employees hired
12 pursuant to this Act *shall* not be in the classified service of the Government of
13 Guam. Restricted employees are ineligible for medical, dental or life insurance
14 benefits, but *shall* be entitled to government of Guam Workmen's Compensation.
15 They may not join the Government of Guam Retirement Plan, but FICA must be
16 paid on such employees, with the *district board* responsible for the employer's
17 share of FICA. Annuitants of the Government of Guam Retirement Fund may
18 serve as Restricted Employees for the *district board* without losing their annuities.
19 Restricted Employees are not eligible to accrue annual or sick leave. Working
20 hours *shall* be determined by the *district board*.

21 **(2) Selection of Employees.** Restricted employees *shall* be selected by
22 majority vote of the *district board*, which selection *shall* be evidenced by a
23 memorandum from the district chairperson to the president of the University of
24 Guam.

25 **(3) Dismissal of Employees.** Unless otherwise specified by law, the
26 dismissal of a restricted employee of a district *shall* be with a majority vote of the
27 *district board*.

1 **(4) Working Hours.** Restricted employees who work at irregular hours
2 at the direction of the *district board*, shall be deemed to work the complete
3 assigned and designated hours per week, and their work records shall so
4 indicate, but such employees shall receive neither overtime nor night-time
5 differential, but shall receive compensatory time off for hours worked in excess of
6 per week.

7 **§ 70107. Duties of the University of Guam.** The *University* shall work in
8 partnership with the *Soil and Water Conservation District Boards* to promote and support
9 the conservation of our island's soil and water resources. The *University* shall further:

10 **(a)** Assign to the *district boards* an advisor from the College of Natural and Applied
11 Sciences;

12 **(b)** Assist *district boards* with the coordination of programs, projects and activities
13 insofar as that may be done by advice and consultation;

14 **(c)** Assist *district boards* with the dissemination of information throughout the
15 University and the island, concerning district programs, projects and activities.

16 **(d)** Assist the *district boards* with the preparation and implementation of soil and
17 water resource conservation and utilization to ensure the promotion the conservation,
18 improvement and protection of the island's soil and water resources, in coordination
19 with the pertinent Government of Guam entities;

20 **(e)** Assist the *district boards* in fulfilling their mandates, to include obtaining the
21 assistance of the Federal Government and of Government of Guam agencies in the work
22 of the districts;

23 **(f)** Provide technical support at the request of a district, as may be approved by the
24 President of the *University*;

25 **(g)** Keep a record of all official actions taken with respect to working with, or
26 providing support or assistance to the *districts* and *district boards*;

27 **(h)** Conduct the election of all *district directors* and in conjunction therewith:

1 **(1)** Promulgate the necessary rules and regulations by which *farmers, farm*
2 *land owners, and land occupiers* shall nominate and elect, from among their number,
3 *district directors; and*

4 **(2)** The President of the University of Guam shall certify the election results
5 and provide a copy to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*.

6 **§ 70108. Powers of the University of Guam.** The *University* shall have the power
7 to:

8 **(a)** Delegate to any member, agent, or employee such powers and duties as it may
9 deem proper to fulfill the duties set forth in this Chapter;

10 **(b)** Promulgate rules and regulations as may be necessary for the execution of its
11 duties set forth in this Chapter; and

12 **(c)** Insofar as available appropriations and resources permit, request for staff
13 support and assistance from other agencies of the Government of Guam, to include the
14 preparation or conduct of reports, surveys and studies to fulfill the duties set for the in
15 this Chapter.

16 **Section 3. Enumeration.** The Compiler of Laws *shall* add this Act as a new Chapter
17 70 to Title 5 Guam Code Annotated, under “Division 6: Agriculture,” and *shall*
18 renumber the remaining chapters accordingly.

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