

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

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GWR

BILL NO. 318-31(Lar)

Introduced by:

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AN ACT TO AMEND SECTIONS 3102.1 AND 3103 OF CHAPTER 3, ARTICLE 1, TITLE 17, GUAM CODE ANNOTATED, AND TO REPEAL SECTION 3103.1, OF CHAPTER 3, ARTICLE 1, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO ALLOWING I MAGA' LAHEN GUAHAN, THE GOVERNOR OF GUAM, TO APPOINT THE SUPERINTENDENT OF EDUCATION.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Findings and Intent.** *I Liheslaturan Guahan* finds that
3 Public Law No. 31- 21 made the Superintendent of Education a cabinet
4 member of *I Maga' Lahen Guahan*, the Governor of Guam. The Guam
5 Department of Education is the largest public agency and collaboration and
6 cooperation among the three government branches is necessary to ensure the
7 education department receives needed resources. *I Liheslatura* further finds
8 that the Governor, as Chief Executive Officer, has the right and
9 responsibility to ensure that every student is given necessary resources.
10 Therefore, *I Liheslatura*, intends to provide policy that returns the
11 appointing authority of the Superintendent of Education to *I Maga' Lahi*,
12 subject to the advice and consent of *I Liheslatura*.

13 **Section 2. Section 3102.1 of Chapter 3, Article 1, Title 17, Guam**
14 **Code Annotated is amended to read:**

1 **“§ 3102.1. Duties of the Guam Education Board.**

2 The Guam Education Board *shall* be responsible for all policies that govern
3 the Department of Education (hereinafter “Department”). The Board *shall*
4 have the authority to delegate such of its powers as it may deem appropriate,
5 but *shall* retain the ultimate responsibility for the exercise of its powers.

6 The Board, among other duties, *shall* perform the following in accordance
7 with applicable law:

8 ~~(a) select and appoint a Superintendent and support him/her in the~~
9 ~~discharge of his/her duties;~~

10 (a) ~~(b)~~ receive, evaluate and act upon the recommendations and reports of
11 the Superintendent;

12 (b) ~~(c)~~ adopt an annual budget and control expenditures accordingly; review
13 periodic financial reports and modify the budget if and when necessary;

14 (c) ~~(d)~~ adopt student performance standards and assessment models;

15 (d) ~~(e)~~ ensure that the Superintendent addresses the proper administration of
16 all mandated responsibilities;

17 (e) ~~(f)~~ adopt attendance areas and school boundaries;

18 (f) ~~(g)~~ sue and/or defend itself in suits at law;

19 (g) ~~(h)~~ report routine complaints and concerns related to the Department’s
20 operations directly to the Superintendent for appropriate investigation and
21 response;

22 (h) ~~(i)~~ have *no* business or pecuniary interest which will conflict with the
23 activities of the Board;

24 (i) ~~(j)~~ establish student discipline policy;

25 (j) ~~(k)~~ establish a school calendar;

26 (k) ~~(l)~~ establish graduation standards;

27 (l) ~~(m)~~ periodically review established policies for refinement and

1 improvement;

2 (m) ~~(h)~~ serve as Guam's State Education Policy/Governing Board for
3 Federal programs where such a board is required by Federal law, to include,
4 but *not* be limited to, the Head Start Program;

5 (n) ~~(g)~~ act as the approving authority on behalf of the Department for
6 collective bargaining agreements;

7 (o) ~~(f)~~ make recommendations to *I Maga'lahaen Guåhan* or *I Liheslaturan*
8 *Guåhan* for changes, additions or deletions to Guam Education Laws;

9 (p) ~~(e)~~ each newly elected or appointed Board member *shall* complete,
10 during the first year of that member's first term, a training program to be
11 prepared and offered by the University of Guam and the Department,
12 regarding the skills and knowledge necessary to serve as a local school
13 board member. The training program *shall* include:

14 (1) review of the Guam Code Annotated and other laws pertaining to DOE;

15 (2) Roberts Rules of Order;

16 (3) the budgeting procedures and guidelines of the government of Guam and
17 the Department; and

18 (4) difference(s) between policy making and micromanagement of the
19 affairs of the Department; and

20 (r) the role of the Board, as with any legislative body, is to act collectively,
21 not individually. Any Board member shall report to *I Liheslaturan Guåhan*
22 any potential or alleged violation of this Subsection. The Board *shall not*:

23 (1) interfere in or micro-manage the affairs of the Department, or schools
24 within the Department; or

25 (2) involve itself with student discipline cases, *unless* expressly authorized
26 by public law, and *only* to the extent authorized by public law.”

1 **Section 3. Section 3103 of Chapter 3, Article 1, Title 17, Guam**

2 **Code Annotated is amended to read:**

3 **“§ 3103. Superintendent of Education.**

4 *I Maga’Lahen Guahan*, the Governor of Guam, *shall* appoint ~~the~~
5 Superintendent of Education (the Superintendent), subject to the advice and
6 consent of *I Liheslaturan Guahan*, who *shall* be the Chief Executive Officer
7 of the internal operating organization of the Department of Education and
8 *shall* be responsible for the administration of the academic and services
9 activities thereof. The Superintendent *shall* be responsible for implementing
10 the policies adopted by the Board. ~~The Board *shall* appoint the~~
11 ~~Superintendent of Education by an affirmative vote of *at least* six (6)~~
12 ~~members. Notwithstanding any other provision of law, the employment of~~
13 ~~the Superintendent *shall* be by contract term of four (4) years, which~~
14 ~~contract *shall* contain a provision that the Superintendent’s employment may~~
15 ~~only be terminated for cause, as defined in this Chapter.~~ In the case of the
16 temporary absence of the Superintendent, the Superintendent may, after
17 consultation with *I Maga’Lahi*, ~~Chairperson of the Board~~, appoint among
18 any of the Associate Superintendents, or their equivalents, an acting
19 Superintendent.

20 The Superintendent *shall*:

- 21 (1) administer the day-to-day activities of the Department of Education;
- 22 (2) enforce and implement the education policies of the Board and rules and
- 23 regulations of the Department;
- 24 (3) administer federal funds/programs on behalf of the Department;
- 25 (4) serve as the Department’s approving authority for the expenditure of
- 26 funds;
- 27 (5) serve as the appointing authority for all personnel employed by the

1 Department;

2 (6) be the Executive Secretary of the Board in an *ex-officio*, non- voting

3 capacity;

4 (7) *shall* submit to the Board, *I Maga 'lahen Guåhan*, and *I Liheslaturan*

5 *Guåhan*, no later than thirty (30) days following the end of the fiscal year, a

6 detailed “Annual State of Public Education Report,” which shall discuss the

7 public educational issues on Guam, and other subjects the Superintendent

8 may deem appropriate, and *shall* also submit such fiscal, instructional,

9 academic progress, and other information as may be required by the Board

10 to reflect the quality of public education;

11 (8) develop and present to the people of Guam, the Board, *I Maga 'lahen*

12 *Guåhan*, and *I Liheslaturan Guåhan* a “School Performance Report Card” of

13 each school, which *shall* be given in conjunction with the Annual Report;

14 (9) to perform other duties as may be required by public law to provide an

15 adequate public educational system;

16 (10) to advise the Board on the current operations and status of the public

17 schools and on other educational matters;

18 (11) to supply the Board with such information as it may require and prepare

19 the Board to make recommendations to *I Maga 'lahen Guåhan* and *I*

20 *Liheslaturan Guåhan* for changes, additions, or deletions to public law;

21 (12) prepare a feasibility/impact/cost savings analysis for the Guam

22 Education Board recommending the potential privatization of existing

23 services for the Department.

24 (13) With the concurrence of the Board and subject to the availability of

25 funds, have the authority to hire maintenance, custodial/janitorial, and

26 cafeteria personnel.

1 (14) Notwithstanding any other provision of law or personnel rules and
2 regulations, the Superintendent *shall* have the authority to assign, detail, or
3 transfer employees to various physical locations within the Department. The
4 Superintendent *shall* exercise such authority only in accordance with a
5 policy adopted by the Board and *shall not* (1) cause a change in position title
6 or job duties, or (2) contradict the provisions of any collective bargaining
7 agreement in effect at the time of the transfer nor violate any employee’s
8 rights thereunder;

9 (15) Adequate Public Education Reporting Requirements. The
10 Superintendent of Education *shall* submit a monthly budget status report of
11 all local and federal funds available to the Department, whether or not their
12 resources require appropriations by *I Liheslaturan Guåhan*. The monthly
13 budget status report *shall* be designed by the Educational Financial
14 Supervisory Commission and at a minimum contain all appropriations,
15 transfers and adjustments, revised appropriations, expenditures to date,
16 outstanding encumbrances and unencumbered balances. The data for the
17 monthly budget status report *shall* be provided *no later than* fifteen (15)
18 calendar days after the end of each month, and be used by the Educational
19 Financial Supervisory Commission for its monthly Financial Status
20 Designation Reports. The Educational Financial Supervisory Commission
21 *shall* design an Adequate Public Education Report to reorganize the
22 expenditures in the monthly budget status report to the criteria established in
23 Title 1, GCA §715, and the status of compliance with the Adequate
24 Education Act. The Monthly Budget Status report and Adequate Public
25 Education reports are to be completed *no later than* twenty five (25)
26 calendar days after the end of each month and *shall* be certified by the
27 Superintendent, acknowledging compliance or non-compliance with Title 1,

1 GCA § 715 and in meeting the objectives of § 3125 of this Chapter. The
2 reports *shall* be submitted to the Board, the Speaker of *I Liheslaturan*
3 *Guåhan*, and *I Maga'lahen Guåhan*.

4 (16) Conduct periodic assessments and management and curriculum audits
5 of the Department for the following purposes:

6 (A) to ascertain whether the Department is providing an adequate public
7 education as defined by Title 1 GCA §715;

8 (B) to evaluate the effectiveness of Department administrators in
9 implementing board policy and directives and in fulfilling assigned
10 objectives;

11 (C) to evaluate the effectiveness of Department
12 instructional personnel and their ability to meet curriculum goals; and

13 (D) to recommend alternatives to correct systemic deficiencies and to
14 improve the ability of the Department personnel to fulfill assigned
15 objectives.

16 Said audits *shall* also identify and assess deficiencies in the Department's
17 organizational structure; compliance with federal and local laws and with
18 board policies; physical and operational security; workflow designs and
19 management; internal controls; staffing levels and competencies;
20 management levels and competencies; management practices; training
21 standards and practices; adequacy of facilities; physical plant management;
22 technical and administrative infrastructure; redundancy of systems and
23 procedures; productivity and quality standards; recruitment and certification
24 training of teachers; and recruitment, training, and staff development. Said
25 audits *shall* be conducted at intervals determined by the Board of *not less*
26 *than* three (3) years and *no more than* five (5) years.

27 The Guam Education Policy Board *shall* solicit audit proposals for said

1 audits both locally and nationally. The Board *shall* create and maintain a list
2 of qualified auditing firms that specialize in management and curriculum
3 audits of schools and school districts. The Board *shall* transmit Requests for
4 Proposals to all known qualified auditing firms and solicit through local and
5 national publications.

6 (17) Promulgate rules and regulations for the implementation and operation
7 of §§ 3127 through 3131 of this Title as necessary.”

8 **Section 4. Section 3103.1 of Chapter 3, Article 1, Title 17, Guam**
9 **Code Annotated is repealed:**

10 ~~§ 3103.1. Termination of Superintendent.~~

11 ~~(a) Only the following constitute cause for the discharge of the~~
12 ~~Superintendent or Deputy Superintendent:~~

13 ~~(1) Failure to meet performance standards as defined by a performance~~
14 ~~evaluation outline established and adopted by the Board;~~

15 ~~(2) Holding financial interests that conflict with the conscientious~~
16 ~~performance of his or her duties;~~

17 ~~(3) Engaging in financial transactions using confidential or non-public~~
18 ~~Department information or allowing the improper use of such information to~~
19 ~~further any private interests;~~

20 ~~(4) except as permitted by statute or regulation, the solicitation or~~
21 ~~acceptance of any item of value from any person or entity seeking official~~
22 ~~action from, doing business with, or conducting activities regulated by the~~
23 ~~Department, or from persons whose interest may be substantially affected by~~
24 ~~the performance or nonperformance of the Superintendent's duties, or the~~
25 ~~duties of the Department;~~

26 ~~(5) Knowingly making commitments or promises of any kind purporting to~~
27 ~~bind the Department except as permitted by law;~~

- 1 ~~(6) Use of his or her official position for private gain or that of others;~~
- 2 ~~(7) Failure to disclose waste, abuse, and corruption to the appropriate~~
- 3 ~~authorities;~~
- 4 ~~(8) Failure to respect the rights and privacy of others and the use of his or~~
- 5 ~~her official position, authority, or other means to injure another person for~~
- 6 ~~personal reasons or malicious purposes;~~
- 7 ~~(9) Fraud or misrepresentation in securing his or her appointment;~~
- 8 ~~(10) Refusal or failure to perform duties and responsibilities as defined by~~
- 9 ~~law;~~
- 10 ~~(11) Unlawful use, possession, or sale of illicit drugs and alcohol; (12)~~
- 11 ~~Criminal acts involving moral turpitude;~~
- 12 ~~(13) Political activity prohibited by law;~~
- 13 ~~(14) Misuse, misappropriation, or theft of government property or funds;~~
- 14 ~~(15) Prohibited acts of discrimination, including sexual~~
- 15 ~~harassment; or~~
- 16 ~~(16) Abandonment of his or her position.~~