

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

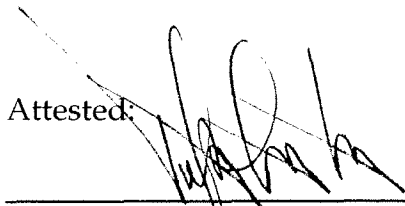
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 238-30 (COR)**, "AN ACT TO ADD A NEW §3133 TO ARTICLE 1 OF CHAPTER 3 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF THE DEPARTMENT OF EDUCATION FINANCIAL SUPERVISORY COMMISSION; AND TO AMEND §3112 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 17, GUAM CODE ANNOTATED ", was on the 2nd day of July, 2010, duly and regularly passed.



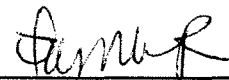
Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 6th day of July, 2010, at 5 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 238-30 (COR)

As amended on the Floor.

Introduced by:

v. c. pangelinan
Judith T. Won Pat, Ed.D.
T. C. Ada
F. B. Aguon, Jr.
V. Anthony Ada
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Telo Taitague
Ray Tenorio

AN ACT TO *ADD* A NEW §3133 TO ARTICLE 1 OF CHAPTER 3 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF THE DEPARTMENT OF EDUCATION FINANCIAL SUPERVISORY COMMISSION; AND TO *AMEND* §3112 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 17, GUAM CODE ANNOTATED.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 the Guam Department of Education (GDOE) is allocated approximately one-third
4 of the annual government of Guam budget. The GDOE has experienced adversity

1 at the highest level of leadership due to high turnover rates of key positions, such
2 as the Superintendent and Deputy Superintendent of Finance. Such adversity has
3 contributed to recent fiscal mismanagement, resulting in the closure of public
4 schools and in certain instances, caused adverse impact on the continuity,
5 efficiency and effectiveness of delivering the highest quality of instructional
6 services for Guam’s public school students.

7 *I Liheslaturan Guåhan* further finds that to ensure public school children of
8 Guam are afforded their educational entitlement without adverse delays due to
9 financial *or* administrative negligence, it is necessary to create the Guam
10 Department of Education Financial Supervisory Commission (EFSC) as an
11 independent body to assist the GDOE and the Guam Education Policy Board
12 (GEPB) with the task of monitoring and managing all public education financial
13 resources.

14 The EFSC’s primary role is to monitor the financial health of the GDOE by
15 developing and supervising a financial status designation of GDOE finances. The
16 main purpose of EFSC is to identify in advance any signs of financial distress that
17 may put the operations of the public school system in danger of operational deficits
18 and to advise the GDOE and GEPB to implement corrective measures.

19 It is also imperative that the interaction of the federal and local programs be
20 compatible to deliver the mandates of the “Every Child Is Entitled to an Adequate
21 Education Act”. Federal grants must be reviewed, accepted, and utilized by the
22 GDOE as a means to accomplish this goal.

23 *I Liheslaturan Guåhan* further finds that the EFSC is in a position to
24 effectively review the various federal programs of which GDOE is currently
25 participating and make recommendations to both the Superintendent of Education
26 and the GEPB on financial integration and administration of both funding sources
27 into a twelve (12)-month Expenditure Operations Plan.

1 In an effort to establish and maintain a culture of financial leadership and
2 financial stability in the island’s only public educational system, it is the intent of *I*
3 *Liheslaturan Guâhan* to remove the constant threat of school closures, restore
4 public confidence in the system, provide technical assistance and any other
5 financial supervisory assistance helpful to the GDOE through the passage of this
6 Act.

7 It is further the intent of *I Liheslaturan Guâhan* to finally lift the “high risk
8 grantee” designation, which had been placed on GDOE since September 2003. In
9 order to achieve this, the Superintendent of Education and the GEPB must avail
10 themselves of the management and financial experience offered by the members of
11 EFSC.

12 **Section 2.** A new §3133 of Article 1, Chapter 3 of Title 17, Guam Code
13 Annotated, is hereby *added* to read:

14 **“§3133. Establishment and Composition Guam Department of**
15 **Education Financial Supervisory Commission.**

16 (a) The Guam Department of Education Financial Supervisory
17 Commission (EFSC) *shall* consist of five (5) regular voting members and
18 one (1) alternate member, who *shall* be allowed to cast a vote *only* in the
19 event a regular voting member is absent. The EFSC *shall* be comprised of
20 the following members:

21 (1) The Director of the Department of Administration, *or*
22 designated representative, who *shall* be member of the Senior
23 Management Staff;

24 (2) The Director of the Bureau of Budget and Management
25 Research, *or* designated representative, who *shall* be member of the
26 Senior Management Staff;

1 (3) The Director of the Office of Finance and Budget, *or*
2 designated representative;

3 (4) The Public Auditor, *or* designated representative;

4 (5) A parent of a child currently enrolled in a public school,
5 appointed by the Chairperson of the Committee on Education of *I*
6 *Liheslaturan Guåhan*, with *at least* five (5) years experience in the
7 public or private sector in the management of business *or* financial
8 expertise, public accounting, *or* similar professional activity;

9 (6) The General Accounting Supervisor of the Department of
10 Administration (Alternate);

11 (7) The Superintendent of Education *shall* serve as the
12 Executive Secretary of the EFSC in an ex-officio, nonvoting capacity;
13 and

14 (8) The Deputy Superintendent of Finance of GDOE *shall*
15 serve as an ex-officio member in a nonvoting capacity.

16 (b) **EFSC Structure:**

17 (1) The Director of the Bureau of Budget and Management
18 Research *shall* serve as the Chairperson of the EFSC;

19 (2) The Director of the Office of Finance and Budget *shall*
20 serve as the Vice Chairperson;

21 (3) The EFSC *shall* meet *at least* once per month using a
22 generally accepted set of parliamentary procedures to govern
23 meetings;

24 (4) Three (3) members *shall* constitute a quorum for the
25 transaction of any EFSC business. In the absence of a quorum,
26 all meetings *shall* be cancelled and rescheduled within three (3)
27 working days of the cancelled meeting;

1 (5) Failure of the EFSC to meet in any month *shall* result in
2 a Two Hundred Fifty Dollars (\$250) fine for each member,
3 which *shall* be deposited into the GDOE Interscholastic Sports
4 Program.

5 **(c) EFSC Scope of Authority, Duties and Responsibilities Granted.**

6 The scope of authority, duties, and responsibilities granted in this Subsection
7 *shall* be for the purpose of organizing and assembling government of Guam
8 resources to:

9 (1) make recommendations on policies and practices related to the
10 presentation and preparation of the operating budget request;

11 (2) make recommendations on budget request priorities;

12 (3) review and approve a fiscal year twelve (12)-month
13 Expenditure Operations Plan based on the appropriation of local funds and
14 expected funds from other sources by September 25 for the next Fiscal Year;

15 (4) review and approve a fiscal year twelve (12)-month Human
16 Resources Management Plan by September 25 for the next Fiscal Year,
17 inclusive of merit increases, promotions and hiring that directly supports the
18 plan outlined in (3) of this Subsection;

19 (5) review GDOE internal hiring policies, procedures and controls
20 and make recommendations to the Superintendent of Education;

21 (6) develop financial performance indicators that produce a
22 monthly financial status designation as outlined in Subsection (d) of this
23 Section;

24 (7) review GDOE financial reports for conformity with annual
25 budget objectives;

1 (8) monitor expenditures that materially exceed (or will exceed on
2 an annualized basis) the approved budget amount for any given expense
3 category;

4 (9) review and approve all contracts/expenditures in excess of One
5 Million Dollars (\$1,000,000) prior to issuance of purchase orders and bid
6 awards to verify fund expenditures conform to the plan outlined in (3) of this
7 Subsection;

8 (10) monitor all contracts and renewal dates for food service, school
9 maintenance, office reproduction equipment, solid waste disposal and
10 telecommunication;

11 (11) develop a needs assessment of the GDOE Accounting
12 Department and recommend a training plan to the Superintendent of
13 Education;

14 (12) review GDOE internal accounting procedures and controls and
15 make recommendations to the Superintendent of Education; and

16 (13) review all information technology purchases and upgrades
17 related to the financial management of GDOE and provide recommendations
18 to the Superintendent of Education.

19 (d) **Financial Status Designations.**

20 (1) **CODE A** means *Stable*, indicating that the GDOE has positive
21 variance reports in all budgeted expense categories at the time of reporting;

22 (2) **CODE B** means *Warning*, indicating that the GDOE has a
23 negative variance report exceeding ten percent (10%) of the year-to-date
24 budgeted amount in an expense category *or* five percent (5%) in aggregate at
25 the time of reporting;

26 (3) **CODE C** means *Watch*, indicating that the GDOE has a
27 negative variance report exceeding two percent (2%) of the approved budget

1 amount when combining year-to-date actual and annualized projections at
2 the time of reporting; and

3 (4) **CODE RED** indicates *Emergency*, whereby there is a failure to
4 implement a corrective financial recovery plan within fifteen (15) working
5 days of submission to EFSC as outlined in Subsection (e)(3) of this Section.
6 An emergency may also be declared by a unanimous vote of all EFSC
7 members should the GDOE and GEPB fail to submit a Corrective Financial
8 Recovery Plan that is acceptable to address conditions which caused the
9 financial status *Watch* designation.

10 (e) **Financial Status Designations; Actions.**

11 (1) *CODE A-Stable.* No action required;

12 (2) *CODE B-Warning.* The Superintendent of Education, in
13 conjunction with the Deputy Superintendent of Finance, *shall* submit an
14 explanation of variance within five (5) working days of an EFSC *Warning* to
15 the GEPB and EFSC that explains each expenditure category above the
16 approved budget amount as outlined in Subsection (c)(3) of this Section;

17 (3) *CODE C-Watch.* The Superintendent of Education, in
18 conjunction with the Deputy Superintendent of Finance, *shall* submit a
19 Corrective Financial Recovery Plan to eliminate *Watch* conditions within
20 twenty (20) working days of an EFSC-issued *Watch* to the GEPB. The
21 GEPB *shall* review, modify and approve by resolution the corrective
22 Financial Recovery Plan and submit it to the EFSC within fifteen (15)
23 working days of receipt from the Superintendent of Education; and

24 (4) *CODE RED-Emergency.* Under an emergency declaration,
25 EFSC may assume all *or* part of the decision making powers of the
26 Superintendent of Education and the GEPB until a corrective financial

1 recovery plan is developed, implemented and successful in alleviating the
2 conditions which caused the financial status *Watch* designation.”

3 **Section 3.** §3112 of Article 1 of Chapter 3 of Title 17, Guam Code
4 Annotated (“**Same: Duties and Responsibilities**”), is hereby *amended* to read:

5 “(a) The duties and responsibilities of the Guam Education Policy
6 Board *shall* include, *unless* prohibited by Subsection (b) hereof, the
7 following:

8 (1) establish curriculum goals and policy;

9 (2) establish student performance standards and a
10 mechanism for standardized assessment of each student based upon
11 the adopted standards;

12 (3) establish policy for interscholastic sports;

13 (4) establish and approve a textbook list;

14 (5) establish student discipline policy;

15 (6) establish a school calendar;

16 (7) establish graduation standards;

17 (8) periodically review established policies for refinement
18 and improvement;

19 (9) serve as Guam’s State Education Policy/Governing
20 Board for federal programs where such a Board is required by Federal
21 Law to include, but *not be limited to*, the Head Start Program; the
22 Guam Education Policy Board *shall* have *no* involvement with federal
23 programs that *do not* require a governing Board *except* that all federal
24 grant applications must be presented to the Board *at least* fifteen (15)
25 days prior to final transmittal to the federal government. In the event
26 of an emergency, the Board may reduce *or* waive said fifteen (15) day
27 presentation requirement;

1 (10) make recommendations to *I Maga'lahaen Guåhan* and *I*
2 *Lihselaturan Guåhan* for changes, additions *or* deletions to public
3 law;

4 (11) approve *or* revoke a school's decentralization status for
5 purposes of school-based management;

6 (12) act as the approving authority on behalf of the GDOE for
7 collective bargaining agreements;

8 (13) establish rates and fees necessary for programs,
9 including, but *not* limited to, the school lunch program;

10 (14) perform other duties and responsibilities as required by
11 public law to provide an adequate public educational system;

12 (15) The University of Guam *shall* adopt and implement a
13 professional training development program for the members of the
14 Board. The Guam Department of Education (GDOE) *shall* pay the
15 cost of the professional training and development program from the
16 appropriations made to the DOE Operations Fund. This professional
17 training and development program *shall* be mandatory for Board
18 members to complete within thirty (30) days of taking office for the
19 purpose of improving, expanding and refining their individual and
20 collective policy making skills. Some specific areas that will be
21 covered by such professional training and development program *shall*
22 include, but *not* be limited to:

23 (A) Board Operations;

24 (B) Board Skills and Service;

25 (C) Review of the Guam Code Annotated, and other
26 laws pertaining to GDOE;

27 (D) Roberts Rules of Order;

1 (E) Guam Department of Education/government of
2 Guam budgeting procedures and guidelines;

3 (F) Difference(s) between policy making and
4 micromanagement of the affairs of GDOE; and

5 (G) Review of specific areas of existing federal
6 programs where the Board has purview.

7 (16) Privatization of GDOE services *or* operations must be
8 authorized by the Board and executed by:

9 (A) directing the Superintendent of Education to issue
10 a Request for Proposal (RFP) *or* an Invitation for Bid (IFB) for
11 the privatization of services within the Guam Department of
12 Education, and implementing the privatization of services
13 within the budgeted allocation level approved by the Board;

14 (B) the issuance of an RFP *or* an IFS and the award
15 thereof *shall* be in conformance with all applicable procurement
16 laws and regulations of Guam;

17 (C) the disposition of any employee of the GDOE,
18 affected or displaced by such action, *shall* follow all applicable
19 laws and regulations of Guam; and

20 (D) For all Guam Department of Education privatized
21 food services, cafeterias, *or* cafeteria services, contractors
22 operating GDOE cafeterias and food services *shall* comply with
23 §5001(e), Title 5, Guam Code Annotated and Chapter 68 of
24 Title 5, Guam Code Annotated, relative to the procurement of
25 local products, in place and stead of the Guam Department of
26 Education. The Guam Department of Education *shall* require

1 compliance with these provisions as part of its contracts for
2 privatization subsequent to the enactment of this Subsection;

3 (17) Review and approve by Board resolution the spending
4 priorities as outlined in the fiscal year budget for the GDOE before
5 submission to *I Liheslaturan Guåhan* as required in §3121 of Chapter
6 3, Title 17, Guam Code Annotated.

7 (18) Review and approve a fiscal year twelve (12)-month
8 Expenditure Operations Plan based on the appropriation of local funds
9 and expected funds from other sources by September 15 for the next
10 fiscal year consistent with appropriations made to GDOE by law for
11 that fiscal year; and

12 (19) Review and approve a fiscal year twelve (12)-month
13 Human Resources Management Plan by September 15 for the next
14 fiscal year, inclusive of merit increases, promotions and hiring that
15 directly supports the Plan outlined in (18) of this Subsection.

16 (b) The Board *shall not* collectively *or* individually:

17 (1) exert influence in the hiring, transfer, discipline *or* termination
18 of any employee of the GDOE, *unless* expressly authorized by public law;

19 (2) interfere in *or* micro-manage the affairs of the GDOE *or*
20 schools within the GDOE;

21 (3) involve itself with student discipline cases, *unless* expressly
22 authorized by public law, and *only* to the extent authorized by public law;
23 and

24 (4) involve itself in operational matters related to the
25 administration of federal funds and federal grants.

26 Any Board member *shall* report to *I Liheslaturan Guåhan* any potential *or*
27 alleged violation of this Subsection (b).”

1 **Section 4. Effective Date.** This Act *shall* become effective upon
2 enactment.

3 **Section 5. Severability.** *If* any provisions of this Act or the application
4 thereof to any person or circumstance is held invalid, such invalidity shall *not*
5 affect any other provision or application of this Act which can be given effect
6 without the invalid provision or application, and to this end the provisions of this
7 Act are severable.