

JAN 04 '93

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 3 (LS)

Introduced by:


C.T.C. Gutierrez

AN ACT TO AMEND SUBSECTION (a) OF §8136, §§8146, 8154, 8156, AND 8137, AND TO REPEAL AND REENACT §§8151 AND 8157, ALL OF CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO GOVERNMENT OF GUAM RETIREMENT FUND INVESTMENTS AND GOVERNMENT AND EMPLOYEE CONTRIBUTIONS TO THE FUND, AND TO APPROPRIATE FIVE MILLION DOLLARS (\$5,000,000) TO THE DEPARTMENT OF ADMINISTRATION FOR THE PURPOSE OF PAYING GOVERNMENT OF GUAM RETIREMENT FUND CONTRIBUTIONS ONLY.

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

2 **Section 1.** §8146 of Chapter 8 of Title 4, Guam Code Annotated, is
3 amended to read;

4 "§8146. General Investment Limitations. No investment shall be
5 made if, after such investment, the Fund would own:

6 (a) Any combination of obligations of any one political
7 subdivision, corporation or other single issuing entity in excess of five
8 percent (5%) of Fund assets at cost. This limitation shall not apply to
9 general obligations of the United States[, ~~The Dominion of Canada~~] or
10 the territory of Guam.

11 ~~[(b) Obligations of the Dominion of Canada, together with its~~
12 ~~political subdivisions and corporations organized under its laws or the~~
13 ~~laws of its provinces, in excess of ten percent (10%) of the Fund assets~~
14 ~~at cost]~~

1 **(b)** Any combination of investment instruments as covered by
2 Section 8151, Subsection (b) of §8154, Subsection (b) of §8156, and
3 Subsection (b) of §8157 in excess of Thirty Percent (30%) of Fund
4 assets at cost.

5 **(c)** Obligations or other investments issued or guaranteed by
6 the territory of Guam in excess of Ten Percent (10%) of Fund assets at
7 cost, provided however, that this limitation shall not apply to such
8 obligations or other investments that are unconditionally guaranteed as
9 to principal and interest by, or supported by lease assignment from,
10 another entity whose principal business is outside of said Territory and
11 whose obligations are authorized investments under §§8143 through
12 8159, inclusive.

13 **Section 2.** §8151 of Chapter 8 of Title 4, Guam Code Annotated,
14 is repealed and reenacted to read:

15 “§8151. Same: Bonds Issued by National Governments Other Than The
16 United States. Bonds and other evidences of indebtedness which are
17 direct obligations of, or secured by, the full faith and credit of national
18 governments other than the United States, where there exists the
19 power to levy taxes for the prompt payment of the principal and interest
20 of such bonds or evidences of indebtedness, provided that:

21 (a) The issuer shall not be in default in the payment of
22 principal or interest on any bonds or other evidences of indebtedness;
23 and

24 (b) The Investment Agent determines that such an investment
25 would be employed by a prudent man acting in a like capacity and
26 familiar with such matters would use in the investment of a fund with
27 like character and with like aims; and

1 (c) No investment shall be made in any one (1) issue described
2 in this Section in an amount in excess of ten percent (10%) of such
3 issues.”

4 **Section 3.** §8154 of Chapter 8 of Title 4, Guam Code Annotated,
5 is amended to read:

6 “§8154. Same: Bonds of Domestic and Foreign Corporations. (a)
7 Domestic Corporations. Bonds, debentures, notes and other evidences
8 of indebtedness of any corporation or corporations created or existing
9 under the laws of the United States, or of any of the states or territories
10 of the United States or the District of Columbia ~~for the Dominion of~~
11 ~~Canada or any of its provinces,]~~ which are not in default either as to
12 principal or interest, provided that such bonds or other evidences of
13 indebtedness carry investment grade or better rating.

14 (1) Such bonds or other evidences of indebtedness are
15 rated within the four (4) highest categories by two (2) nationally
16 recognized and published rating services which have been
17 approved by the Board and the Investment Agent; or

18 (2) In case such bonds or other evidence of indebtedness
19 are not so rated by two (2) such services, the net earnings
20 available for fixed charges over a prior of five (5) fiscal years next
21 preceding the date of investment have averaged per year and
22 during either of the last two (2) years have been, after
23 depreciation and after taxes, not less than:

24 (a) Two (2) times its average annual fixed charges
25 over the same period, in the case of any public utility
26 company;

1 (b) One and one-half (1-1/2) times its average
2 annual fixed charges over the same period, in the
3 case of any finance company; or

4 (c) Three (3) times its average annual fixed
5 charges over the same period, in the case of any
6 other company.

7 (3) No more than Five Percent (5%) of the Fund at cost
8 shall be invested in the obligations of any one (1) domestic
9 corporation or other single domestic issuing entity described in
10 this Subsection.

11 (b) Foreign Corporations. Bonds, debentures, notes and other
12 evidences of indebtedness of any corporation or corporations created or
13 existing under the laws of nations other than the United States which
14 are not in default either as to principal or interest, provide that the
15 Investment Agent in its informed opinion, determines that such an
16 investment would be employed by a prudent man acting in a like
17 capacity and familiar with such matters would use in the investment of a
18 fund of like character and with like aims. No more than One and One-
19 Half Percent (1-1/2%) of the Fund at cost shall be invested in the
20 obligations of any one (1) foreign corporation or other single issuing
21 foreign entity described in this Subsection.

22 ~~{(b)}~~ (c) No investment shall be made in any one (1) issue
23 described in this Section in an amount in excess of Ten Percent (10%)
24 of such issues.”

25 **Section 4.** §8156 of Chapter 8 of Title 4, Guam Code Annotated,
26 is amended to read:

1 “§8156. Same: Domestic and Foreign Preferred Stock. (a)
 2 Domestic Preferred Stock. Domestic ~~{P}~~ preferred or guaranteed stock
 3 or shares of any institution created or existing under the laws of the
 4 United States or of any state, district or territory thereof or the District
 5 of Columbia, ~~{or the Dominion of Canada or any of its provinces}~~ provided
 6 that:

7 (1) All publicly held prior obligations and prior preferred stock, if
 8 any, of such institution at the date of acquisition are eligible as
 9 investments under §§8143 through 8160; and

10 (2) The net earnings of the institution available for fixed charges
 11 over a period of five (5) fiscal years next preceding the date of
 12 investment have averaged per year, and during either of the last two (2)
 13 years have been, after depreciation and after income taxes. no less than:

14 ~~{(a)}~~ (i) Two (2) times its average annual fixed charges,
 15 maximum contingent interest and preferred dividend requirements
 16 over the same period, in the case of any public utility company; or

17 ~~{(b)}~~ (ii) Three (3) times its average annual fixed charges,
 18 maximum contingent interest and preferred dividend requirements
 19 over the same period, in the case of any other company.

20 ~~{(b)}~~ For purposes of this Subsection, the term ‘preferred dividend
 21 requirements’ shall mean cumulative and noncumulative dividends on all
 22 preferred stock of the issuer, whether paid or not.

23 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or
 24 shares of any institution created or existing under the laws of nations
 25 other than the United States which are not in default either as to
 26 principal or interest, provided that the Investment Agent in its
 27 informed opinion, determines that such an investment would be

1 employed by a prudent man acting in a like capacity and familiar with
 2 such matters would use in the investment of a fund of like character and
 3 with like aims.

4 (c) Limitations:

5 (1) No investment shall be made in any one issue described in
 6 ~~{Subsection (1)}~~ Item (1) of Subsection (a) of this Section in an amount
 7 in excess of ten percent (10%) of such issues.

8 (2) No more than [two percent (2%)] five percent (5%) of the
 9 Fund at cost shall be invested in the preferred stock of any one issuing
 10 domestic company.

11 (3) No more than two percent (2%) of the Fund at cost shall be
 12 invested in the preferred stock of any one issuing foreign company.

13 ~~{3}~~ (4) The aggregate of all investments authorized under this
 14 Section shall not exceed fifteen percent (15%) of Fund Assets at cost.”

15 **Section 5.** §8157 of Chapter 8 of Title 4, Guam Code
 16 Annotated, is repealed and reenacted to read:

17 “§8157. Same; Common Stock. (a) Common or capital stock of any
 18 institution or entity created or existing under the laws of the United
 19 States or any state, district, or territory thereof, or the District of
 20 Columbia. No more than Five Percent (5%) of the Fund shall be invested
 21 in the common or capital stock of any one issuing domestic company
 22 described in this Section.

23 (b) Common or capital stock of any institution or entity
 24 created or existing under the laws of nations other than the United
 25 States provided that the Investment Agent determines that such an
 26 investment would be employed by a prudent man acting in a like
 27 capacity and familiar with such matters would use in the investment of a

1 fund with like character and with like aims. No more than One and One-
 2 Half Percent (1-1/2%) of the Fund at cost shall be invested in the
 3 common or capital stock of any one issuing foreign company described
 4 in this Section.

5 (c) No investment shall be made in any one (1) issue described in
 6 this Section in an amount in excess of ten percent (10%) of such issues.

7 (d) The aggregate of all investments under this Section shall not
 8 exceed fifty percent (50%) of the Fund at cost.

9 **Section 6.** Subsection (a) of § 8136 of Title 4 of the Guam Code
 10 Annotated is amended, and item (6) of that same Subsection is redesignated to be
 11 Subsection (b), to read:

12 "(a) Each member of the Fund shall contribute the following:

13 (1) Six percent (6%) of salary earned and accruing to such member
 14 from the operative date of July 1, 1973;

15 (2) Six and one-half percent (6.5%) of salary earned and accruing to
 16 such member subsequent to July 1, 1973;

17 (3) Seven and one-half percent (7.5%) of the base pay earned and
 18 accruing to such member subsequent to October 1, 1981;

19 (4) Eight and one-half percent (8.5%) of the base pay earned and
 20 accruing to such member to be effective on the first full pay period after
 21 the date of enactment of this Section, which enactment date is subsequent
 22 to October 1, 1992;

23 (5) Nine and one-half percent (9.5%) of the base pay earned and
 24 accruing to such member subsequent to October 1, 1993; and

25 [(4)] (b) Non-Base Pay. At the written [~~option~~] election of the member
 26 prior to October 1, 1992, eight and one-half percent (8.5%); from October 1,
 27 1992 through September 30, 1993, nine and one-half percent (9.5%); and

1 ten and one-half percent (10.5%) thereafter of the following non-base pay
2 of such members: Overtime, bonuses, hazardous duty pay, night
3 differential pay, lump sum annual leave, summer school pay, extra
4 teaching assignments pay, and other salary for services rendered paid to
5 members by the government. A new member shall exercise in writing his
6 or her option to contribute for such non-base pay within sixty (60) days of
7 joining the Fund, failing which such member shall be deemed to have
8 permanently waived the right to exercise such option. All current
9 members shall have until May 15, 1989 to exercise such option. After a
10 member exercises such option the contribution of such member shall be
11 based on such member's base and non-base pay. To complete a current
12 member's exercise of such option, such a member shall pay into the Fund
13 such member's share, plus regular interest to the date such deposit is
14 completed, of the total contribution required for such non-base pay for
15 such period for which such member wishes to make a retroactive
16 contribution up to the effective date of this subitem, but not to exceed any
17 period prior to October 1, 1983. In addition, any annual leave for which a
18 member has received a lump sum payment (lump sum annual leave) and
19 for which the member makes a contribution as herein provided shall be
20 credited to the member in the same manner as unused accumulated
21 annual leave is treated by §8116 of this Title. The Board shall report to the
22 Legislature by July 1, 1989, (i) the number of members who have exercised
23 the option to contribute for their non-base pay, (ii) the amounts necessary
24 to constitute the employer's share of such contribution so as to maintain
25 the integrity of the Fund so that the necessary amount shall be
26 appropriated, authorization for which is given. A current member
27 exercising his or her option shall have up to forty-eight (48) months in

1 which to pay the contribution required for the non-base pay for which
2 retroactive credit is sought, at regular interest, under such rules as to such
3 extended payment plans as are promulgated by the Board; provided,
4 however, that all such contributions shall be paid in by a member before
5 such a member's retirement."

6 **Section 7.** § 8137 of Title 4 of the Guam Code Annotated is amended to read:

7 "§ 8137. Contribution by the Government. The Government
8 shall make contributions to the Fund each year on an actuarial funded
9 basis, toward the annuities and benefits herein provided. These
10 contributions shall be equal to the sum of the following:

11 (a) Government Normal Cost. An annual amount
12 resulting from the application of a rate percent of total salaries of all
13 members representing the present value of the actuarial reserve
14 requirement for membership service, for such year, for service
15 retirement annuity, disability retirement annuity, and annuities to
16 widows and children, and the one-year term premium for the
17 Government's liability for death benefits, after taking credit for the
18 contributions. From July 1, 1955 to August 30, 1972, the rate of
19 contributions shall be seven and two hundred eighty-seven thousandths
20 percent (7.287%) of the total salaries of the members participating in the
21 Fund. From September 1, 1972, the rate of contribution shall be seven
22 and six hundred ninety-seven thousandths percent (7.697%) of the total
23 salaries of the members participating in the Fund. From July 1, 1976, the
24 rate of contribution shall be eight and six hundred ninety-seven
25 thousandths percent (8.697%) of the total salaries of the members
26 participating in the Fund. From October 1, 1981, the rate of contribution
27 shall be ten and six hundred ninety-nine thousandths percent (10.699%)

1 of the total base pay of the members participating in the Fund and ten
2 and six hundred ninety-nine thousandths percent (10.699%) of the pay
3 for which members opted to contribute eight and one-half percent (8.5%)
4 as provided in item [(4)] (6) of Section 8136(a) of this Chapter. From
5 October 1, 1992, the rate of contribution shall be six and ten-thousandths
6 percent (6.010%) with respect to both pay and base pay for which
7 members opted to contribute as provided in item (6) of Section 8136(a) of
8 this Chapter. From October 1, 1993, the rate of contribution with respect
9 to both base pay and the pay for which members opted to contribute as
10 provided in item (6) of Section 8136(a) of this Chapter shall be equal to
11 the Government Normal Cost rate percent determined in the latest
12 completed actuarial valuation prepared for the Board of Trustees by the
13 actuary appointed by the Board.

14 (b) Government Unfunded Liability Amortization Cost. An
15 amount resulting from the application of a rate percent of total salaries
16 of all members which will amortize the remaining liability for prior
17 service over the remainder of a specified period, as determined by the
18 Board upon recommendation of the actuary, but not to exceed a period
19 of eighty (80) years following the operative date. From July 1, 1955 to
20 August 30, 1972 the rate of contribution shall be not less than one and
21 three hundred seventeen thousandths percent (1.317%) of the total
22 salaries of the members participating in the Fund. From September 1,
23 1972 the rate of contributions shall be not less than one and four
24 hundred and seven thousandths percent (1.407%) of the total salaries of
25 the members participating in the Fund. From October 1, 1992, the rate of
26 contribution shall be equal to thirteen and six hundred sixty-five
27 thousandths percent (13.665%) of the total salaries of the members

1 participating in the Fund. From October 1, 1993 the rate of contribution
2 shall be equal to the Government Unfunded Liability Amortization Cost
3 rate percent determined in the latest completed actuarial valuation
4 prepared for the Board of Trustees by the actuary appointed by the Board.

5 The amount of contributions by the Government shall be
6 determined by applying the applicable percentage rate of contributions as
7 hereinabove prescribed to the total salaries paid to the members during
8 each payroll period, and all such amounts shall be paid into the Fund
9 following the close of each payroll period, concurrently with the
10 contributions made to the Fund by the members.

11 (c) An amount resulting from the application of a rate equal to
12 average rate of return on the investment of retirement funds in the
13 preceding fiscal year of total delinquent payments during the period
14 when such payments are delinquent. In addition an amount equal to
15 one percent (1%) per year of delinquent payments shall be paid over the
16 Fund as penalty for late payment. As used in this Section, delinquent
17 payments means payments due the Fund pursuant to 4 GCA Section
18 8136 and Subsections (a) and (b) of this Section which are not paid over
19 to the Fund within ten (10) working days after issuance of payroll checks.

20 (d) In addition to all other contributions made by the
21 government to the Retirement Fund pursuant to this chapter, the
22 government shall pay as a an additional contribution to the Fund one
23 percent (1%) of the total salaries of all members, effective October 1, 1988
24 through September 30, 1992. These payments shall be first applied
25 towards any unfunded liability of the Fund, if there be any.

26 (e) From October 1, 1992, the Government rate of contribution
27 shall equal Seventy Percent (70%) of the sum of the contribution rates

1 required under Section 8137(a) and Section 8137(b). From October 1,
2 1993, the Government rate of contribution shall equal eighty percent
3 (80%) of the sum of the contribution rates required under Section 8137(a)
4 and Section 8137(b). From October 1, 1994, the government rate of
5 contribution shall equal Ninety Percent (90%) of the sum of the
6 contribution rates required under Section 8137(a) and Section 8137(b).
7 From October 1, 1995, the government rate of contribution shall equal
8 One Hundred Percent (100%) of the sum of the contribution rates
9 required under Section 8137(a) and Section 8137(b).

10 **Section 8.** Five Million Dollars (\$5,000,000) are appropriated from the
11 General Fund to the Department of Administration for the purpose of paying
12 contributions to the Retirement Fund for the Judicial Branch, Legislative Branch and
13 Executive Branch departments, authorities and agencies for which appropriations
14 from the General Fund are made in the General Appropriation Act of 1992, for their
15 operations, in order to implement the amendment to § 8137 of Title 4 of the Guam
16 Code Annotated made in Section 9 of this Act. This appropriation shall be utilized
17 for no other purpose than that stated in this Section, and funds authorized by this
18 Section shall not be transferred, encumbered, or in any way earmarked for any other
19 purpose than to implement § 8137 of Title 4 of the Guam Code Annotated as
20 amended in Section 9 of this Act. Should the appropriation in this Section exceed
21 that which is necessary in Fiscal Year 1993 for the stated purpose, the excess shall be
22 utilized in Fiscal Year 1994. Should the appropriation in this Section exceed that
23 which is necessary in Fiscal Year 1994 for the stated purpose, the excess shall be
24 utilized in Fiscal Year 1995.

25