

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) REGULAR SESSION

Bill No. 238-30(COR)

Introduced by:

v.c. pangelinan

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AN ACT TO ADD A NEW SECTION 3133 OF 17
GCA, CHAPTER 3 RELATIVE TO THE CREATION
OF THE DEPARTMENT OF EDUCATION
FINANCIAL SUPERVISORY COMMISSION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds
2 the Guam Department of Education (GDOE) is allocated approximately one-third of the
3 annual government of Guam budget. The GDOE has experienced adversity at the highest
4 level of leadership due to high turnover rates of key positions such as the Superintendent
5 and Deputy Superintendent of Finance. Such adversity has contributed to recent fiscal
6 mismanagement resulting in the closure of public schools and in certain instances, caused
7 adverse impact on the continuity, efficiency and effectiveness of delivering the highest
8 quality of instructional services for Guam's public school students.

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

15 The EFSC's primary role is to monitor the financial health of the GDOE by
16 developing and supervising a financial status designation of GDOE finances. The main
17 purpose of EFSC is to identify in advance any signs of financial distress that may put the

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

5 *I Liheslaturan Guahan* further finds that the EFSC is in a position to effectively
6 review the various federal programs of which GDOE is currently participating and make
7 recommendations to both the Superintendent of Education and the GEPB on financial
8 integration and administration of both funding sources into a twelve month expenditure
9 operations plan.

10 In an effort to establish and maintain a culture of financial leadership and
11 financial stability in the island’s only public educational system, it is the intent of *I*
12 *Liheslaturan Guahan* to remove the constant threat of school closures, restore public
13 confidence in the system, provide technical assistance and any other financial supervisory
14 assistance helpful to the GDOE through the passage of this Act.

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

19 **Section 2. A new Section 3133 of 17 GCA, Chapter 3 is hereby added to**
20 **read:**

21 “§ 3133. Establishment and Composition Guam Department of Education
22 Financial Supervisory Commission.

23 a). The Guam Department of Education Financial Supervisory Commission
24 (EFSC) shall consist of five (5) regular voting members and one (1) alternate member
25 who shall be allowed to cast a vote only in the event a regular voting member is absent.
26 The EFSC shall be comprised of the following members:

- 27 1) The Director of the Department of Administration or designated
28 representative who shall be member of the Senior Management Staff;
- 29 2) The Director of the Bureau of Budget, Management and Research
30 or designated representative who shall be member of the Senior
31 Management Staff;

- 1 3) The Director of the Office of Finance and Budget or designated
2 representative;
- 3 4) The Public Auditor or designated representative;
- 4 5) A parent of a child currently enrolled in a public school appointed
5 by the Chairperson of the Committee on Education of the Guam
6 Legislature with at least five (5) years experience in the public or private
7 sector in the management of business or financial expertise, public
8 accounting, or similar professional activity;
- 9 6) General Accounting Supervisor of the Department of
10 Administration (Alternate);
- 11 7) The Superintendent of Education shall serve as the Executive
12 Secretary of the EFSC in an exofficio, nonvoting capacity;
- 13 8) The Deputy Superintendent of Finance of GDOE shall serve as an
14 exofficio member in a nonvoting capacity.

15 b). EFSC Structure

- 16 1) The Director of the Bureau of Budget and Management
17 Research shall serve as Chairperson for the EFSC;
- 18 2) The Director of the Office of Finance and Budget shall
19 serve as the Vice Chairperson;
- 20 3) The EFSC shall meet at least once per month using a
21 generally accepted set of parliamentary procedures to
22 govern meetings;
- 23 4) Three members (3) shall constitute a quorum for the
24 transaction of any EFSC business. In the absence of a
25 quorum, all meetings shall be cancelled and rescheduled
26 within three (3) working days of the cancelled meeting;
- 27 5) Failure of the EFSC to meet in any month shall result in a
28 Two-Hundred and Fifty Dollar (\$250.00) fine for each
29 member, which shall be deposited into the GDOE
30 Interscholastic Sports Program.

1 **Section 3. EFSC Scope of Authority, Duties and Responsibilities**

2 **Granted.** The scope of authority, duties, and responsibilities granted in this section shall
3 be for the purpose of organizing and assembling government of Guam resources to:

- 4 a) Make recommendations on policies and practices related to the presentation
5 and preparation of the operating budget request;
- 6 b) Make recommendations on budget request priorities;
- 7 c) Review and approve a fiscal year twelve month expenditure operations plan
8 based on the appropriation of local funds and expected funds from other
9 sources by September 25 for the next fiscal year;
- 10 d) Review and approve a fiscal year twelve month human resources management
11 plan by September 25 for the next fiscal year, inclusive of merit increases,
12 promotions and hiring that directly supports the plan outlined in (c) of this
13 section;
- 14 e) Review GDOE internal hiring policies, procedures and controls and make
15 recommendations to the Superintendent of Education;
- 16 f) Develop financial performance indicators that produce a monthly financial
17 status designation as outlined in Section 4 of this Act;
- 18 g) Review GDOE financial reports for conformity with annual budget objectives;
- 19 h) Monitor expenditures that materially exceed (or will exceed on an annualized
20 basis) the approved budget amount for any given expense category;
- 21 i) Review and approve all contracts/expenditures in excess of One Million
22 Dollars (\$1,000,000) prior to issuance of purchase orders and bid awards to
23 verify fund expenditures conform to the plan outlined in (c) of this section;
- 24 j) Monitor all contracts and renewal dates for food service, school maintenance,
25 office reproduction equipment, solid waste disposal and telecommunication;
- 26 k) Develop a needs assessment of the GDOE accounting department and
27 recommend a training plan to the Superintendent of Education;
- 28 l) Review GDOE internal accounting procedures and controls and make
29 recommendations to the Superintendent of Education;

1 m) Review all information technology purchases and upgrades related to the
2 financial management of GDOE and provide recommendations to the
3 Superintendent of Education.

4 **Section 4. Financial Status Designations.**

- 5 a) **CODE “A”** means *Stable* indicating that the GDOE has positive variance
6 reports in all budgeted expense categories at the time of reporting;
- 7 b) **CODE “B”** means *Warning* indicating that the GDOE has a negative
8 variance report exceeding ten percent (10%) of the year-to-date budgeted
9 amount in an expense category or five percent (5%) in aggregate at the time
10 of reporting;
- 11 c) **CODE “C”** means *Watch* indicating that the GDOE has a negative variance
12 report exceeding two percent (2%) of the approved budget amount when
13 combining year-to-date actual and annualized projections at the time of
14 reporting;
- 15 d) **CODE “RED”** indicating *Emergency* whereby there is a failure to
16 implement a corrective financial recovery plan within fifteen (15) working
17 days of submission to EFSC as outlined in Section 5(c) of this Act. An
18 emergency may also be declared by a unanimous vote of all EFSC members
19 should the GDOE and GEPB fail to submit a corrective financial recovery
20 plan that is acceptable to address conditions which caused the financial status
21 *watch* designation.

22 **Section 5. Financial Status Designations Actions**

- 23 a) **CODE A-*Stable***. No action required;
- 24 b) **CODE B-*Warning***. Superintendent of Education in conjunction with the
25 Deputy Superintendent of Finance *shall* submit an explanation of variance
26 within five (5) working days of an EFSC *Warning* to the GEPB and EFSC
27 that explains each expenditure category above the approved budget amount
28 as outlined in Section 3(c) of this act;
- 29 c) **CODE C-*Watch***. Superintendent of Education in conjunction with the
30 Deputy Superintendent of Finance *shall* submit a corrective financial
31 recovery plan to eliminate watch conditions within twenty (20) working days

1 of an EFSC issued *Watch* to the GEPB. The GEPB *shall* review, modify and
2 approve by resolution the corrective financial recovery plan and submit it to
3 EFSC within fifteen (15) working days of receipt from the Superintendent of
4 Education;

- 5 d) *CODE RED-Emergency*. Under an emergency declaration, EFSC may
6 assume all or part of the decision making powers of the Superintendent of
7 Education and the GEPB until a corrective financial recovery plan is
8 developed, implemented and successful in alleviating the conditions which
9 caused the financial status *watch* designation.”

10 **Section 6. 17 GCA § 3112. "Same: Duties and Responsibilities", is**
11 **hereby amended to read:**

12 “(a) The duties and responsibilities of the Guam Education Policy Board shall
13 include, unless prohibited by subsection (b) hereof, the following:

- 14 (1) establish curriculum goals and policy;
15 (2) establish student performance standards and a mechanism for
16 standardized assessment of each student based upon the adopted standards;
17 (3) establish policy for interscholastic sports;
18 (4) establish and approve a textbook list;
19 (5) establish student discipline policy;
20 (6) establish a school calendar;
21 (7) establish graduation standards;
22 (8) periodically review established policies for refinement and
23 improvement;
24 (9) serve as Guam’s State Education Policy/Governing Board for Federal
25 programs where such a board is required by Federal Law to include, but not be
26 limited to, the Head Start Program; the Guam Education Policy Board shall have
27 *no* involvement with federal programs that do not require a governing board
28 except that all federal grant applications must be presented to the board at least
29 fifteen (15) days prior to final transmittal to the federal government. In the event
30 of an emergency, the Board may reduce or waive said fifteen (15) day
31 presentation requirement;

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

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

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

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

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

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

21 (A) Board Operations;

22 (B) Board Skills and Service;

23 (C) Review of the Guam Code Annotated and other laws
24 pertaining to GPSS;

25 (D) Roberts Rules of Order;

26 (E) Guam Public School System/government of Guam budgeting
27 procedures and guidelines; and

28 (F) Difference(s) between policy making and micromanagement of
29 the affairs of GPSS;

30 (G) Review of specific areas of existing Federal Programs where
31 the Board has purview.

1 (16) Privatization of GPSS services or operations must be authorized by
2 the Board and executed by:

3 (A) directing the Superintendent of Education to issue a Request
4 for Proposal (RFP) or an Invitation for Bid (IFB) for the privatization of
5 services within the Guam Public School System and implementing the
6 privatization of services within the budgeted allocation level approved by
7 the Board;

8 (B) the issuance of an RFP or an IFS and the award thereof shall be
9 in conformance with all applicable procurement laws and regulations of
10 Guam;

11 (C) the disposition of any employee of the GPSS, affected or
12 displaced by such action, shall follow all applicable laws and regulations
13 of Guam; and

14 (D) For all Guam Public School System privatized food services,
15 cafeterias, or cafeteria services, contractors operating GPSS cafeterias and
16 food services shall comply with 5 GCA §5001(e) and Chapter 68 of Title
17 5, Guam Code Annotated, relative to the procurement of local products, in
18 place and stead of the Guam Public School System. The Guam Public
19 School System shall require compliance with these provisions as part of its
20 contracts for privatization subsequent to the enactment of this Subsection;

21 (17) Review and approve by Board resolution the spending priorities as
22 outlined in the fiscal year budget for the GPSS DOE before submission to the
23 Guam Legislature as required in 17 GCA, Chapter 3, § 3121.

24 (18) Review and approve a fiscal year twelve month expenditure
25 operations plan based on the appropriation of local funds and expected funds from
26 other sources by September 15 for the next fiscal year consistent with
27 appropriations made to DOE by law for that fiscal year;

28 (19) Review and approve a fiscal year twelve month human resources
29 management plan by September 15 for the next fiscal year, inclusive of merit
30 increases, promotions and hiring that directly supports the plan outlined in
31 (18) of this section;

- 1 (b) The Board shall *not* collectively or individually:
2 (1) exert influence in the hiring, transfer, discipline or termination of any
3 employee of the GPSS, unless expressly authorized by public law;
4 (2) interfere in or micro-manage the affairs of the GPSS or schools within
5 the GPSS;
6 (3) involve itself with student discipline cases, unless expressly authorized
7 by public law, and only to the extent authorized by public law;
8 (4) involve itself in *operational* matters related to the *administration* of
9 federal funds and federal grants.

10 Any Board member shall report to *I Liheslaturan Guåhan* any potential or alleged
11 violation of this subsection (b).”

12 **Section 7. Effective Date.** This Act shall become effective upon enactment.

13 **Section 8. Severability.** If any provisions of this Act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect any other
15 provision or application of this Act which can be given effect without the invalid
16 provision or application, and to this end the provisions of this Act are severable.