



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM


MAY 02 1997

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Bill No. 62 (COR), "AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION", which was vetoed and subsequently overridden by the Legislature on April 28, 1997. I have designated Bill No. 62 as Public Law No. 24-17.


Very truly yours,



Carl T. C. Gutierrez
Governor of Guam

Attachment

cc: The Honorable Joanne M. S. Brown
Legislative Secretary

00179


OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	3:54pm
Date	5-2-97

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 5/2/97
Time: 1000
Rec'd by: 
Print Name: Chantene Dugan

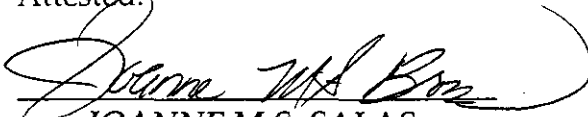
TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

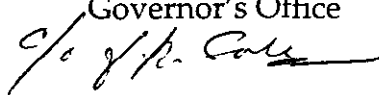
This is to certify that Bill No. 62 (COR), "AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION", returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 28th day of April, 1997, agree to pass said bill notwithstanding the objection of the Governor by a vote of nineteen (19) members.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. SALAS
Senator and Legislative Secretary

This Act was received by the Governor this DAY day of April 30
1997, at 10:56 o'clock P.M.

Assistant Staff Officer
Governor's Office


Public Law No. 24-17

**TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session**

Bill No. 62 (COR)
As amended by the Author
and amended on the floor.

Introduced by :

Mark Forbes
A. C. Lamorena V
J. M.S. Brown
L. F. Kasperbauer
J. WonPat-Borja
T. C. Ada
F. B. Aguon, Jr.
E. Barrett-Anderson
A. C. Blaz
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
W. B.S.M. Flores
C. M. Leon Guerrero
L. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
F. E. Santos
A. R. Unpingco

AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2

OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A
CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF
EDUCATION.

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

2 Section 1. A new §26208 is added to Article 2, Title 11 of the Guam Code
3 Annotated to read:

4 "§26208. **Creation of School Operations Fund.** There is hereby created,
5 separate and apart from other funds of the government of Guam, a fund known as
6 the "School Operations Fund." This fund shall not be commingled with the General
7 Fund and shall be kept in a separate bank account. Eighty-eight percent (88%) of all
8 Gross Receipts Taxes collected in the Territory of Guam shall be deposited in the
9 School Operations Fund and shall be appropriated by the Guam Legislature to cover
10 the operational expenses of the Guam Department of Education and all schools in the
11 Guam Public School System administered by that Department, as well as any use
12 associated with the Guam Public School System, as determined appropriate by the
13 Territorial Board of Education or the laws of the Territory of Guam. The Territorial
14 Board of Education shall conduct public hearings at the public schools prior to the
15 submission of the budget to the Guam Legislature in order to address each school's
16 individual budgetary requirements. The Department of Administration shall deposit
17 on the last day of each month a sum equal to eighty-eight percent (88%) of all Gross
18 Receipts Taxes collected for that month in the School Operations Fund."

19 Section 2. A new §26209 is added to Article 2, Title 11 of the Guam Code
20 Annotated to read:

21 "§26209. **Appropriation of School Operations Fund.** The contents of the
22 School Operations Fund are appropriated to the Department of Education for the
23 operations of the Guam Public School System and for such purposes directly

1 associated with the operation and improvement of the Guam Public School System.
2 inclusive of capital improvements, as may be deemed necessary by the Territorial
3 Board of Education. This appropriation is continuous, contingent on the annual
4 submission of a detailed budget to the Guam Legislature, notwithstanding any other
5 provision of law. Upon the effective date of this Section, all previous appropriations
6 to the Department of Education for fiscal year 1997 are repealed. The Director of
7 Administration shall transfer, on the first day of each month, all funds contained in
8 the School Operations Fund to the Department of Education. Nothing herein shall
9 prohibit the Guam Legislature from appropriating any other supplemental amounts to
10 the Department of Education.”



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAR 21 1997


The Honorable Joanne M. S. Brown
Legislative Secretary
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Madame Legislative Secretary:

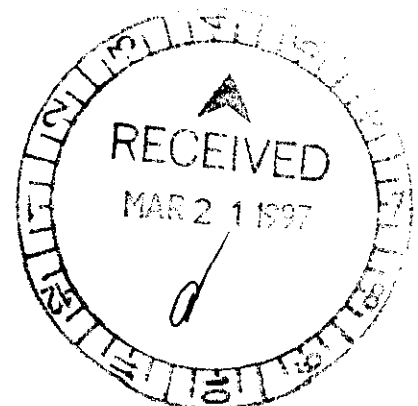
Enclosed please find a copy of Governor's Message and Bill No. 62 (COR), "AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION", which I have vetoed.

Governor's message and the bill have been delivered to the Office of the Speaker.

Very truly yours,


Carl T. C. Gutierrez
Governor of Guam

Attachments





CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAR 21 1997

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Bill No. 62 (COR), "AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION", which I have vetoed.

This legislation creates a separate fund, the "School Operations Fund", which would be a permanent fund separate and apart from the General Fund. Eighty-eight Percent (88%) of all Gross Receipts Taxes (GRT) received by the government would be deposited on a monthly basis into this fund at the end of each month. The entire contents of the fund are alleged to be "appropriated" to the Department of Education.

1) Department of Education would be underfunded for Fiscal Year 1997. This legislation, although appearing to provide substantial ongoing funding for the Department of Education, would result instead in severe financial restrictions and cash shortfalls for the remainder of Fiscal Year 1997. The funds which are projected to be received by the Department of Education would be well below that needed for the department.

The bill was passed in the middle of Fiscal Year 1997, and repeals all **previous** appropriations to the department for Fiscal Year 1997. This reduces the amount of funding that would be available to the department over the entire fiscal year. If all previous appropriations are repealed, and a new source of funding (88% of GRT) is substituted for the prior source of funding (General Fund), this means that only 6 months worth of 88% of the GRT will be available to the Department of Education throughout the entire Fiscal Year 1997. This requires the Department of Education to pay back to the General Fund an amount equal to the appropriations released to the department for the months October, 1996 through March, 1997. In exchange, the department would receive different amounts from the GRT than would have been received from the prior appropriation from the General Fund. There is no transition language in the bill to make this shift in cash flow operational for this fiscal year.

An opinion from the Attorney General's Office on this point is attached.

2) Carving out GRT from the General Fund constitutes as misrepresentation to bond holders. Should this bill become law, there would be a serious misrepresentation made to the bond holders on the status of the General Fund, which is liable for the payment of our bonds. During the presentations made by government officials to bond counsel and bond underwriters, facts and figures were put forth concerning the sources and amount of money which is placed into the General Fund -- what is expected to be collected in the General Fund which would be available to pay back the bonds as well as operate the government. The GRT is part of the General Fund and is part of the revenue stream. Should the GRT be carved out as a component of the General Fund, the bond holders would lose confidence in the representations of the government of Guam concerning credit-worthiness. Additionally, what would prevent carving out a variety of components of the revenue stream, diverting them to various agencies and programs, and essentially depleting and gutting the General Fund?

Should the government deplete the General Fund at whim, after contracting with bond holders, Guam will not have dealt in good faith in the bond market. Chipping away at the General Fund will give the government's bond raters, Standard & Poors, the perception that Guam is an unreliable player in the world financial market. It will mean that further borrowing by the government would never be at such favorable

rates as the 4.5% that was obtained in the recent bond issue. Borrowing money for Guam would become much more expensive, requiring the purchase of insurance to cover increased risk.

The bond counsel to the government of Guam, Orrick, Herrington & Sutcliffe, has written an opinion to the Guam Economic Development Authority stating that transfers required by Bill No. 62 may not violate bond obligations, so long as sufficient money remains in the General Fund for the payment of the general obligation bonds. However, the bond counsel also points out that there may be a potential ". . . impact of the segregation and dedication of these tax revenues upon Standard & Poors' perception of the loss of flexibility to the General Fund with respect to the sources of revenue available to pay the general obligation bonds."

Copy of bond counsel's letter is attached.

Alex. Brown, a rating agency, has also written an analysis of Bill No. 62 to a financial advisor to the Guam Economic Development Authority, stating that ". . . depending on the degree of revenue loss to the government's general fund, we believe a significant loss would appear to have a negative impact on the general obligation credit."

Copy of Alex. Brown memorandum is attached.


3) "Automatic", self-actualizing statutory language does not result in "real" appropriations. From the legal point of view, the concept contained in Bill No. 62 is essentially the same as that which was ruled inorganic on Subsection (i) of §3102 of Title 17, Guam Code Annotated, contained in Public Law No. 22-42. That code section allowed the Department of Education to submit their budget to the Guam Legislature each year, and if the legislature did not act by a certain date, the budget was automatically appropriated. The Superior Court of Guam has ruled this section inorganic because money would be spent by the Department of Education without the type of approval which is essential to the passage of legislation, which is, that an appropriation bill be introduced, a public hearing held, and the bill be debated and voted upon by the members of the legislature as is all legislation. Without voting on a bill, an appropriation has not been made.

Bill No. 62 operates in a similar way as Subsection (i) of §3102 of Title 17, Guam Code Annotated, contained in Public Law No. 22-42. Under Bill No. 62, the money would be placed in a separate fund, unexamined by the legislature or any other body or agency, and spent at the discretion of the Board of Education, every month of every year. The spending would be "automatic", every month of every year, without scrutiny or appropriation.

A copy of the court's opinion on this point is attached.

4) Governor has control of the cash management of the government under the Organic Act of Guam. Under the Organic Act of Guam, the Governor is charged with the cash management of the government. He has supervision and control over the departments and agencies of the Executive Branch of the government, specifically the departments and agencies collecting revenues: the Department of Revenue and Taxation, and the Department of Administration which contains the Treasurer of Guam. These agencies have custody and control over all cash receipts. The Governor is charged with the overall financial planning for the cash that is available for all government operations, and the Bureau of Budget and Management Research makes allocations of funds based on the availability of cash and the projected availability of cash. This bill would remove a considerable percentage of the revenues of the government, ordinarily received into the General Fund, from any cash management of the Governor, the Chief Executive of the government.

Very truly yours,



Carl T. C. Gutierrez
Governor of Guam



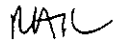
Attachment



GOVERNMENT OF GUAM
AGANA, GUAM 96910

March 18, 1997

Memorandum (Intra-Office)

To: Attorney General 
Via: Deputy Attorney General 
Deputy Solicitor 
From: Assistant Attorney General
Subject: Bill 62 (COR)

Hafa Adai!

You asked that I review and comment on the operational meaning of Bill 62 with specific regard to the problem pointed out by the Governor's Legal Counsel in her letter to you dated March 16, 1997. Her specific question is whether Bill 62 would require the Department of Education ("DOE") to repay the General Fund the funds DOE received between October 1, 1996 and March 31, 1997.

The question is based on language in the bill which would repeal all previous FY97 appropriations to DOE, and which would replace future appropriations to DOE with 88% of the amounts collected monthly as gross receipts taxes, but the replacement appropriations would only be from the date that the bill is enacted into law. Thus, if all previous appropriations for the period between October 1, 1996 and September 30, 1997 are repealed, but the replacement appropriations from gross receipts taxes are to begin on April 1, 1997 (based on the Governor's action being due no later than March 24, 1997), then the bill as written leaves a gap in DOE's funding for the period between October 1, 1996 and March 31, 1997.

The answer is in the rules on statutory construction. The underlying principle behind statutory construction is that construction is allowed only where the language of a statute may be reasonably considered ambiguous. Ambiguity exists if the meaning is uncertain, or if reasonable persons would understand the statute in at least two different senses. 73 Am.Jur.2d Statutes §194; Sutherland Stat. Const. §45.02 (5th Ed).

If no ambiguity appears, then the presumed conclusion is that the clear and explicit terms of the statute express the intent of the legislature. Thus, a statute that is plain and unambiguous speaks for itself, and should be literally applied without being subjected



to interpretation. This is known as the plain meaning rule, and the basis upon which all statutory construction begins. Sutherland Stat. Const. §46.01 (5th Ed).

The language of Bill 62 is unmistakable. Clearly, all prior FY97 appropriations to DOE were repealed, leaving the period from October 1, 1996 to the time the DOE funding in Bill 62 takes effect, a period during which there were no appropriations to DOE. No other meaning of the bill is possible, even if the bill causes a problem in application. (The release of funding allotments to agencies or on their behalf by the Bureau of Budget and Management Research on a quarterly or monthly basis cannot be considered quarterly or monthly appropriations. The act of appropriating is solely a legislative act.)

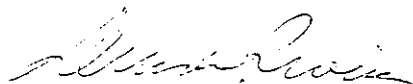
Indeed, in prior similar situations where a later appropriation was made and a prior appropriation for the same matter was repealed, the legislature took care to provide a savings clause for the period up to the new and later appropriation. See, e.g., P.L. 23-128, Chapter V, Section 19.

Thus, since DOE is not appropriated any funds for the period beginning October 1, 1996 to March 31, 1997, then the Department of Administration ("DOA") would have been without authority to transfer to or use the General Fund on behalf of DOE for such period, and the funds applied on behalf of DOE's purposes or spent by DOE must be credited back to the General Fund in order for DOA to be in technical compliance with Bill 62.

However, there cannot be any credit to the General Fund without a payment to it. Returning to the original question then, if Bill 62 becomes law, must DOE somehow repay back into the General Fund the sums it has used or which were spent on its behalf under the prior appropriations law for FY97?

If Bill 62 becomes law and the legislature does not act to correct its apparent mistake in leaving a glitch in DOE's funding for the subject period, then the answer is yes -- DOE is obligated to reimburse the General Fund, however absurd the situation is, and however impossible for DOE to do so. Please note also, that based on the language of Bill 62, DOA may not offset what will be due from DOE by what is due to DOE from the collection of gross receipts taxes.

Dangkolo na Agradesimiento!



DEBORAH RIVERA
Assistant Attorney General

**ORRICK, HERRINGTON
& SUTCLIFFE LLP**

March 14, 1997

(415) 773-5828

David H. Sasai
Economics and Public Finance Manager
Guam Economic Development Authority
FTC Building
590 South Marine Drive
Tamuning, Guam 96911

Re: Bill No. 62

Dear Mr. Sasai:

This letter is in response to your fax memo of March 14, 1997 requesting my comments on Bill No. 62. Once again, I apologize for the informality of this response.

Nothing in the bond proceedings relating to the Government's various general obligation bonds (or, for that matter, its various limited obligation bonds) would prohibit the implementation of the transfers required by Bill No. 62, so long as sufficient money remained in the General Fund for the payment of the general obligation bonds.

However, I would suggest that you obtain separate advice on the potential impact of the segregation and dedication of these tax revenues upon Standard & Poors' perception of the loss of flexibility to the General Fund with respect to the sources of revenue available to pay the general obligation bonds.

Very truly yours,


Stanley J. Dirks



ALEX. BROWN

To: Margaret Guarino
From: Debra Hontz, Municipal Credit Analyst
Date: March 18, 1997

Re: Impact of Bills Passed by Guam Legislature

Diversion of 22% of the Gross Recalots Tax Into the School Operations Fund

Assuming that the fund would be restricting the revenues solely for educational uses, we believe such a diversion would negatively impact the creditworthiness of Guam's general obligation debt.

Standard & Poor's published a credit report April 15, 1996, affirming their 'BBB' rating on Guam's G.O. bonds and giving them a negative outlook, reflecting the overall weak financial position. The rating agency stated in their outlook, "Standard & Poor's will continue to monitor the progress achieved under the government's new financial plan. Any significant deviation from the results envisioned under the plan would lead to a rating downgrade." As a result, depending on the degree of revenue loss to the government's general fund, we believe a significant loss would appear to have a negative impact on the general obligation credit. In an attempt to maintain current ratings, it would behoove the Territory of Guam to not add additional restrictions to the general fund.

Assessment on Authorities

Without having the time to thoroughly analyze the consequences of a requirement for the four government authorities to pay any assessment, our initial reaction would be that such a move could negatively impact the creditworthiness of the four authorities. Although it may help the general obligation credit, we still would caution any change which would alert any of the rating agencies to come and thoroughly re-examine these authorities.

We understand that the assessment would be \$3.5 million a year for five years for each authority - without the ability for the authorities to raise rates to offset the assessments. Using financial projections for 1998 from a Standard & Poor's credit report dated 4/15/96 on Guam Power Authority, the impact of \$3.5 million would appear to reduce the debt service coverage ratio from a projected 1.86x to a 1.74x. Although, in this particular case, there is not a significant reduction, it is recommended that each authority's debt service coverage ratios be reviewed in such a manner. Further caution would be advised to make sure that the loss of revenue wouldn't create any technical defaults on the authorities' rate covenants, if they have any. In our opinion, a bill should not be passed until there is more time to analyze the actual impacts.

Additional Information Available Upon Request

This opinion is based on data and information from sources Alex. Brown considers to be reliable, but is not guaranteed as to accuracy and does not purport to be complete. Alex. Brown has been engaged as a financial advisor to the Territory of Guam, and is currently advising Guam with respect to certain municipal financings. Alex. Brown also makes a market in Guam bonds.

1 IN THE SUPERIOR COURT OF GUAM

2 TERRITORY OF GUAM

3 IGNACIO T. TAINATONGO)

4 Petitioner,)

5 vs.)

6 TERRITORIAL BOARD OF EDUCATION,)

7 Respondent,)

8 LAWRENCE KASPERBAUER, GLORIA)
9 NELSON, IONE WOLF, MARK MARTINEZ,)
10 JUDITH GUTHERTZ, VICENTE MENO,)
11 CELESTINE BABAUTA, MARY GUTIERREZ)
and JACKIE MADARANG,)

12 Real Parties-In-Interest.)

13 CALVIN E. HOLLOWAY, SR.)
14 Attorney General of Guam,)

15 Petitioner-In-Intervention,)

16 vs.)

17 IGNACIO T. TAINATONGO,)
18 TERRITORIAL BOARD OF EDUCATION,)
19 LAWRENCE KASPERBAUER, GLORIA)
20 NELSON, IONE WOLF, MARK MARTINEZ,)
21 JUDITH GUTHERTZ, VICENTE MENO,)
22 CELESTINE BABAUTA, MARY GUTIERREZ)
and JACKIE MADARANG,)

23 Respondents-In-Intervention.)

24 CARL T.C. GUTIERREZ,)
25 Governor of Guam and)
26 CALVIN E. HOLLOWAY, Sr., Attorney)
27 General of Guam, and the)
28 GOVERNMENT OF GUAM,)

29 Plaintiffs,)

30 vs.)

31 TERRITORIAL BOARD OF EDUCATION,)
32 and GLORIA NELSON, MARY)
33 GUTIERREZ, JUDITH GUTHERTZ,)

SEP 11 8 43 AM '95
SPECIAL PROCEEDINGS CASE
NO. SP114-95

DECISION AND ORDER

1. Petitioner's (Ignacio Tainatongo) Motion for Summary Judgment
2. Petitioner-In-Intervention's (Attorney General Calvin E. Holloway, Sr.) Motion for Summary Judgment
3. Respondent's (Territorial Board of Education) Motion for Summary Judgment
4. Petitioner-In-Intervention's (Attorney General Calvin E. Holloway, Sr.) Motion for Reconsideration of Court's October 23, 1995 Decision on the Disqualification of Michael F. Phillips as Counsel to the Territorial Board of Education

CIVIL CASE NO. CV1383-95

DECISION AND ORDER

5. Plaintiffs' (Governor Carl T.C. Gutierrez, Attorney General Calvin E. Holloway Sr., and the Government of Guam) Motion for Judgment on the Pleadings

RECEIVED

SEP 12 1996

Barb 8:16
ATTORNEY GENERAL'S OFFICE

1 CELESTINE BABAUTA, LAWRENCE
2 KASPERBAUER, ERIC MERFALEN, MARK
3 MARTINEZ, VICENTE MENO, IONE
4 WOLF, and DONALD SCHONEBOOM,
5 individually and in their capacities
6 as members of the Territorial
7 Board of Education, and MARY
8 TORRES, in her capacity as a member of
9 the Territorial Board of Education,

10 Defendants.

11 **CARL T.C. GUTIERREZ,**
12 Governor of Guam and **CALVIN E.**
13 **HOLLOWAY, SR.,** Attorney General of
14 Guam, on behalf of the Government
15 of Guam,

16 Plaintiffs,

17 vs.

18 **TERRITORIAL BOARD OF EDUCATION,**
19 **JOSEPH L. DeTORRES,** in his
20 capacity as Director of the
21 Department of Education and
22 **WILFRED G. AFLAGUE,** in his capacity
23 as Deputy Director of the
24 Department of Education,

25 Defendants.

26 **TERRITORIAL BOARD OF EDUCATION**
27 and **GLORIA B. NELSON, CELESTIN**
28 **C. BABAUTA, MARY A. GUTIERREZ,**
29 **JUDITH P. GUTHERTZ, LAWRENCE F.**
30 **KASPERBAUER, ERIC J. MERFALEN,**
31 **MARK K. MARTINEZ, VICENTE C. MENO,**
32 and **IONE M. WOLF,** on behalf of and
33 in their capacities as members of,
34 the **TERRITORIAL BOARD**
35 **OF EDUCATION,**

36 Petitioners,

37 vs.

38 **JOSEPH E. RIVERA,** Acting Director,
39 Bureau of Budget and Management,

40 Respondent.

CIVIL CASE NO. CV1856-95

DECISION AND ORDER

6. Plaintiffs' (Governor Carl T.C. Gutierrez, Attorney General Calvin E. Holloway, Sr., and the Government of Guam) Request for Declaratory and Injunctive Relief on the Employment Contracts of the Director and Deputy Director of the Department of Education

SPECIAL PROCEEDINGS CASE NO. SP24-96

DECISION AND ORDER

7. Petitioner's (Territorial Board of Education) Preserved Issue Remaining from its Alternative and Peremptory Writ of Mandate Petition Involving the Organicity of Public Law 22-42 and the Employment Contracts of the Director Deputy Director of the Department of Education.

1 48 U.S.C. §1423b states:

2 No bill shall become a law unless it shall have been passed at a meeting, at which a quorum
3 [of the Legislature] was present by the affirmative vote of a majority of the members present
4 and voting, which vote shall be by yeas, and nays.

4 48 U.S.C. §1423i states:

5 Every bill passed by the Legislature shall, before it becomes a law, be entered upon the
6 journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall,
7 except as hereinafter provided, return it, with his objections, to the Legislature within ten
8 days (Sundays excepted) after it shall have been presented to him. If he does not return it
9 within such period, it shall be a law in like manner as if he had signed it, unless the
10 Legislature by adjournment prevents its return, in which case it shall be a law if signed by
11 the Governor within thirty days after it shall have been presented to him; otherwise it shall
12 not be a law. When a bill is returned by the Governor to the Legislature with his objections,
13 the legislature shall enter his objection at large on its journal and, upon motion of a member
14 of the Legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds
15 of all the members of the Legislature pass the bill, it shall be a law. If any bill presented to
16 the Governor contains several items of appropriation of money, he may object to one or more
17 of such items, or any part or parts, portion or portions thereof, while approving the other
18 items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of
19 signing it, a statement of the items, or parts or portions thereof, to which he objects, and the
20 items, or parts or portions thereof, so objected to shall not take effect. All laws enacted by
21 the Legislature shall be reported by the Governor to the head of the department or agency
22 designated by the President under section §1421a of this chapter. The Congress of the United
23 States reserves the power and authority to annul the same.

15 48 U.S.C. §1423j states:

16 Appropriations, except as otherwise provided in this chapter, and except such appropriations
17 as shall be made from time to time by the Congress of the United States, shall be made by
18 the legislature.

18 17 G.C.A. §3102i states that Territorial Board of Education shall:

19 Develop an annual budget to fund the Department's operations, which shall be for an amount
20 no less than the average budget for the preceding three (3) years to be submitted to the
21 Legislature not later than July 30th of each fiscal year; within forty-five (45) days from the
22 date of such submission the Legislature may either approve or disapprove in whole or in part
23 such budget and if the Legislature does not act upon such budget within such period, the
24 budget shall be deemed approved and appropriated from the General Fund. (Emphasis
25 added).

24 b. **Public Law 22-42 §3102i Interferes with the Legislative Process of
25 Passing a Bill.**

25 The Attorney General contends 17 G.C.A. §3102i violates 48 U.S.C. §1423b and 48 U.S.C.
26 §1422 and moves the Court to declare it null and void. (*Petitioner-In-Intervention's Motion for*
27 *Summary Judgment, in SP114-95, filed January 24, 1996, p.11*). The Court agrees with their
28 arguments for several reasons.

1 First, 48 U.S.C. §1423b of the Organic Act provides that no bill shall become law unless it shall
2 have been passed at a meeting at which a quorum of the Legislature was present. Yet, 17 G.C.A.
3 §3102i, in effect, allows the Department of Education's budget to become law without a vote by the
4 Legislature in violation of 48 U.S.C. §1423b. 17 G.C.A. §3102i, specifically states that if the
5 Legislature fails to act upon the budget, the budget shall be deemed approved and appropriated from
6 the General Fund. These few words clearly interfere with the legislative process of passing a bill and
7 is inorganic.

8 Second, pursuant to 48 U.S.C. §1423j, appropriations shall be made by the Guam Legislature.
9 Yet, under 17 G.C.A. §3102, appropriations can be automatically approved without legislative
10 action. This no doubt, also, contravenes 48 U.S.C. §1423j.

11 Finally, 48 U.S.C. §1423i, provides that "every bill passed by the Legislature shall, before it
12 becomes a law, be entered upon the journal and presented to the Governor." 48 U.S.C. §1422
13 authorizes the Governor to veto any legislation. The provision under 17 G.C.A. §3102i, which
14 automatically triggers an approval and appropriation of the Education Budget from the General Fund,
15 clearly bypasses the Guam Legislature's and the Governor's role in participating in the legislation
16 of an appropriation bill in violation of 48 U.S.C. §1423i.

17 Based on the foregoing, the language of 17 G.C.A. §3102i discussed above, clearly is inorganic.
18 This Court declares the section in part, null and void.

19 The Court further finds, that this sentence is severable. Pursuant to §18 of Public Law 22-42,
20 which states in pertinent part: "If any provision of this Act or its application to any person-or
21 circumstance is found to be invalid or contrary to law, such invalidity does not affect other
22 provisions or applications of this Act which can be given effect without the invalid provisions or
23 application, and to this end the provisions of this Act are severable." (Emphasis added).

24 The Governor, Attorney General and the Government of Guam proffer that the Department of
25 Education, BBMR and Governor Gutierrez work together to prepare and submit the Department's
26 budget in accordance with the procedures outlined in 5 G.C.A. §§4106 and 4107. (*Petitioner-In-*
27 *Intervention's Motion for Summary Judgment, filed September 28, 1995, pp. 10-11*). This Court
28 will leave that decision to the parties to resolve.

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

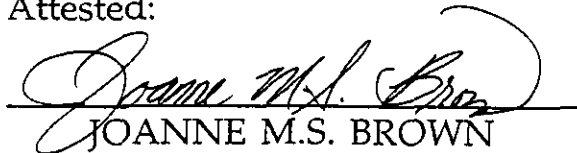
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 62 (COR), " AN ACT TO ADD A NEW §26208 TO ARTICLE 2, TITLE 11 OF THE GUAM CODE ANNOTATED TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM; AND TO ADD A NEW §26209 TO ARTICLE 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION," was on the 8th day of March, 1997, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:



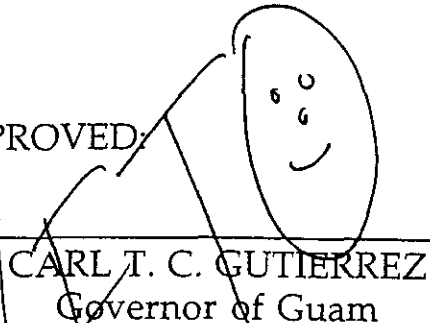
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 12th day of March,
1997, at 8:40 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: _____

Public Law No. _____

PL 24-17



TWENTY-FOURTH GUAM LEGISLATURE

Office of the Vice-Speaker

ANTHONY C. BLAZ

March 4, 1997

LEGISLATIVE
COMMITTEE
MEMBERSHIP

Chairman
Finance & Taxation

Vice-Chairman
Rules,
Government Reform
& Federal Affairs

Education

Natural Resources

Health &
Human Services

Tourism, Economic
Development & Cultural
Affairs

Judiciary,
Public Safety &
Consumer Protection

Transportation,
Telecommunications, &
Micronesian Affairs

MEMBERSHIP

Guam Finance
Commission

Commission on Self
Determination

**Honorable Antonio R. Unpingco
Speaker,
Twenty-Fourth Guam Legislature
155 Hesler St.
Agana, Guam 96910**

Dear Speaker Unpingco:

The Committee on Finance & Taxation now reports its findings on Bill No. 62, **an act to add a new §2608 to article 2, 11 GCA to create the school operations fund, earmark a portion of gross receipts tax to that fund, and establish an independent funding source for Guam's Public School System, and to add a new §26209 to article 2,11 GCA to make a continuous appropriation to the Department of Education to the full legislature with a recommendation to pass.**

Votes for the Committee members are as follows:

To Pass:	<u>7</u>
Not to Pass:	<u>0</u>
Abstain:	<u>0</u>
Inactive File:	<u>0</u>
Off-Island:	<u>0</u>
Unavailable:	<u>0</u>
Report out only:	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely yours,

Anthony C. Blaz

Committee on Finance & Taxation

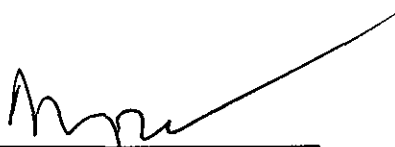
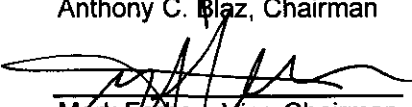
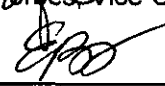
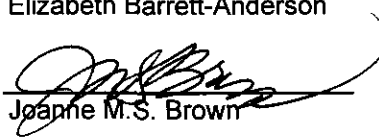
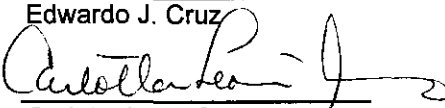

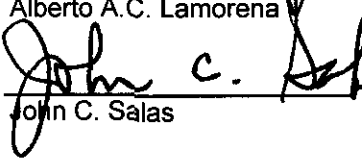
TWENTY-FOURTH GUAM LEGISLATURE

Vice-Speaker Anthony C. Blaz, Chairman

Voting Sheet

Bill No. 62:

An act to add a new §2608 to article 2, 11 GCA to create the school operations fund, earmark a portion of gross receipts tax to that fund, and establish an independent funding source for Guam's Public School System, and to add a new §26209 to article 2,11.

	<u>To Pass</u>	<u>Not to Pass</u>	<u>Abstain</u>	<u>Inactive File</u>
 Anthony C. Blaz, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Mark Fornes, Vice-Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Elizabeth Barrett-Anderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Joanne M.S. Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Edwardo J. Cruz	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Carlotta Leon Guerrero	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawrence F. Kasperbauer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Alberto A.C. Lamorena	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 John C. Salas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thomas C. Ada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark C. Charfauros	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William B.S.M. Flores	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Francis E. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Twenty Fourth Guam Legislature
Committee on Finance & Taxation
Vice-Speaker Anthony C. Blaz, Chairman
155 Hesler St.
Agana, Guam 96910

Committee Report on

Bill No. 62

An act to add a new §2608 to article 2, 11 GCA to create the school operations fund, earmark a portion of gross receipts tax to that fund, and establish an independent funding source for Guam's Public School System, and to add a new §26209 to article 2,11 GCA to make a continuous appropriation to the Department of Education.

I. Overview

The Committee on Finance & Taxation held a public hearing on Monday, February 24, 1997 at 2:30 p.m. to hear public testimony on Bill No. 62 at the Legislative Public Hearing Room. Public Notice was announced in the February 20th and February 24th, 1997 issues of the Pacific Daily News.

Committee Members Present:

Vice-Speaker Anthony C. Blaz, Chairman
Senator Mark Forbes, Vice-Chairman
Senator Elizabeth Barret-Anderson
Senator Edwardo Cruz
Senator Carlotta Leon Guerrero
Senator Tom Ada
Senator William B.S.M. Flores
Senator Francis Santos

Non-Members Present:

Senator Frank B. Aguon Jr.
Senator Vicente C. Pangelinan
Senator Lou Leon Guerrero

Providing Public Testimony on the Bill:

Mayor Paul M. McDonald, Mayor of Agana Heights, (written)
Roland L.G. Taimanglo, Director of Education, (written)

II. Summary of Testimony

The Chairman of the Finance & Taxation Committee requested that any individuals interested in providing public testimony, please step forward. Although no oral presentations were given, written testimonies were provided to the committee.

Mayor Paul McDonald, Municipality of Agana Heights in his written testimony commend the proponents of the bill for seeking avenues to provide a more permanent source of funding for education. However, a restriction of eighty-five percent (85%) of GRT, according to McDolald, will jeopardize and limit the flexibility to fund other government services such as health programs and public safety. Mayor McDonald also highlighted a possible alternative of a raise in GRT taxes by one percent (1%) with a sunset provision of one (1) or two (2) years to earmark the revenues of such raise specifically for use in education.

Roland Taimanglo, Director, Department of Education, expressed his welcome of Bill 62, however noted several provisions of the bill that the department is concerned about such as fluctuating GRT collections, specific language within sections of the bill, and the overall mechanics for implementing Bill 62.

Finding & Recommendation

Based on submitted written testimony on Bill 62, the committee presents its findings with a recommendation to do pass.

Attachments to this report:

- Written Testimony, Mayor Paul McDonald, Municipality of Agana Heights
- Written Testimony, Roland Taimanglo, Director, Department of Education
- Public Hearing Notices



MUNICIPALITY OF AGANA HEIGHTS
Mayors' Council of Guam

Kansehelon Mahot Suahan

P.O. Box 786 Agana, Guam 96932

TESTIMONY ON BILL NO. 62
FEBRUARY 24, 1997
MAYOR PAUL M. McDONALD
MUNICIPALITY OF AGANA HEIGHTS

The Honorable Anthony C. Blaz
Chairman, Committee on Finance and Taxation

Mr. Chairman:

I regret that I am unable to appear before your committee and personally present my testimony on Bill No. 62, however, because of the possible adverse impact it may have on my constituents, it behooves me to forward my views in written form.

Although I commend the proponents of this bill, for seeking avenues to provide a more permanent source of funding for education, it is my opinion that restricting eighty-five percent (85%) of Gross Receipt Tax will jeopardize and limit the flexibility to fund other government services such as health programs and public safety. Mindful of the present condition of the General Fund and the grim outlook of our cash projection, limiting any revenue to the confines of one service would have negative impact on critical government services which are already suffering as a result of the



OFFICE OF THE MAYOR

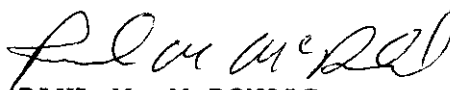
Office: (671) 472-8285/8286/6393 Fax: (671) 472-6124

FY '97 budgetary constraints. As an alternative, it will be more prudent to raise the Gross Receipt Tax by one percent (1%) with a sunset provision of maybe one (1) or two (2) years and earmark the revenues, derived from such a raise, for the use in educational, health and public safety related programs. Although I am not totally certain of the exact dollar figure which will be realized from this approach it is projected somewhere in the neighborhood of fifty million dollars (\$50,000,000) per year.

When making reference to Gross Receipt Tax in Bill No. 62, I am suspect that this very revenue has already been factored into the FY '97 cash projection which in turn was used as a revenue base for the GovGuam FY '97 budget. If I assume correctly, then it stands to reason that the monies we speak off are established revenue and do not constitute any new source of income. The proposed approach which I put before you will produce a new and untaped source of revenue which can offset unfunded liabilities. In view of this, I am respectfully requesting that your committee consider looking into this concept and determine its viability as a positive alternative.

Mr. Chairman with that I will close and thank you and your committee for allowing me this time to submit my views.

Sincerely,


PAUL M. McDONALD
Mayor of Agana Heights

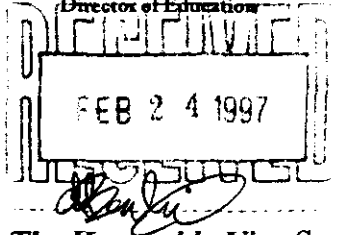


OFFICE OF THE DIRECTOR
GUAM DEPARTMENT OF EDUCATION
 P.O. Box DE Agana, Guam 96932
 Phone: (671) 475-0457 Fax: (671) 472-5003



Roland L. G. Taimanglo
 Director of Education

Aline A. Yamashita, Ph. D.
 Deputy Director of Education



February 24, 1997

The Honorable Vice Speaker Anthony C. Blaz
 Chairman, Committee on Finance & Taxation
 24th Guam Legislature
 155 Hessler Street Agana Guam 96910

Dear Senator Blaz:

The Department of Education welcomes Bill No. 62 entitled ' An Act to add a new section 26208 to Article 2, 11 GCA to create the school operations fund, earmark a portion of gross receipts tax to that fund, and establish an independent funding source for Guam's Public School System, and to add a new section 26209 to article 2, GCA to make a continuous appropriation to the Department of Education'.

The concept of an independent funding source for the Department holds many promises not only for developing and improving the Guam public schools and instituting genuine fiscal accountability in the system but also for laying the groundwork for the Department's vision of site-based management in our public schools. There are, however, provisions of the bill that the Department is concerned about. They are as follows:

1. Definition of 'operational expenses'

Will this 'operating expense' include personnel costs such as salaries and benefits for employees, or will this 'operating expense' include only those under the budget categories 'Travel and Transportation', 'Contractual Services', 'Office Space Rental', 'Supplies and Materials', 'Equipment', 'Miscellaneous', and 'Utilities', as proposed in Bill no. 133?

2. Fluctuating GRT collections

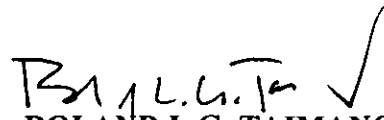
It is known that GRT collections fluctuate monthly; the same is true of DOE expenditure. The Department is currently conducting a time series analysis to determine whether its monthly fiscal demands can withstand the fluctuating behavior of GRT collection. If we determine that GRT collections and DOE expenditure demands are synchronous, the Department stands ready to fully support Bill 62. Otherwise, I propose the following:

'Prior to the 'effective date' specified in section 2 of Bill 62, which is when '...all previous appropriations to the Department of Education for Fiscal Year 1997 are repealed' (lines 23-24), a 'School Operations Leveraging Fund' be created which will initially be funded to an amount adequate to manage the GRT cash flow fluctuation. This 'School Operations Leveraging Fund' will be deposited in a DOE bank prior to the effective date of Section 2 of the Bill. Policies for how this leveraging fund can be accessed by the Department will be established by the Board of Education.

3. Overall mechanics for implementing Bill 62

The Department will appreciate further discussions and analysis of the mechanics for implementing Bill 62. The concept of an independent funding source for the Department is thoroughly exciting.

Thank you Honorable Senator for having this visionary solution so that education can be financially independent.


ROLAND L.G. TAIMANGLO
Director of Education

**FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH**

BBMR-F7

Bill Number: 62 Date Received: February 14, 1997
 Amendatory Bill: No Date Reviewed: February 25, 1997

Department/Agency Affected: Department of Revenue & Taxation
 Department/Agency Head: Joseph Duenas, Director
 Total FY Appropriation to Date: \$10,530,201

Bill Title (preamble): AN ACT TO ADD A NEW SUBSECTION 26208 TO ARTICLE 2, GCA TO CREATE THE SCHOOL OPERATIONS FUND, EARMARK A PORTION OF GROSS RECEIPTS TAX TO THAT FUND, AND ESTABLISH AN INDEPENDENT FUNDING SOURCE FOR GUAM'S PUBLIC SCHOOL SYSTEM, AND TO ADD A NEW SUBSECTION 26209 TO ARTICLE 2, 11 GCA TO MAKE A CONTINUOUS APPROPRIATION TO THE DEPARTMENT OF EDUCATION.

Change in Law: N/A

Bill's Impact on Present Program Funding:
 Increase _____ Decrease _____ Reallocation XXX No Change _____

Bill is for:
 Operations XXX Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Finance & Taxation	11		

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL	11					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? N/A -- IF NO, ADD'L AMOUNT REQUIRED \$ _____

AGENCY/PERSON/DATE CONTACTED: Department of Rev. & Tax./Joe Bamba/February 26, 1997

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	11					
OTHER						
TOTAL						

ANALYST Md DATE 2/26/97 DIRECTOR Francis Balaguer DATE _____
 M. Dizon for Joseph E. Rivera, Acting

FOOTNOTES: See attached.

11

Bill Number 62 proposes to create the school operations fund earmarking 85% of gross receipts tax into that fund. According to Joseph Bamba of the Department of Revenue & Taxation for FY 1996 \$180,606,281 was collected in gross receipts. Assuming that that amount was to be collected in GRT in forthcoming years, approximately \$153,514,463 will go directly into the school operations fund (and not the General Fund) to fund the Guam Public School System's operation.

Furthermore there are administrative consequences that are attached to a measure such as this. For instance, the Department of Education currently must seek legislative and administrative approval in terms of its fiscal responsibility. Bill 62 will release both the Legislature and the Governor from that responsibility.

Additionally, given that Guam's primary industry is tourism, it is subject to trends in the industry that is uncontrollable and for the most part is unpredictable. Collections of gross receipts tax is directly attached to trends in tourism. When the industry is doing well, GRT collections increases; and conversely when the industry experiences a down swing, collections decrease.