I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	STATUS
59-32 (COR)	V.C. Pangelinan	AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.	3/1/13	**3/4/13**	Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future Generations			

2013 MAR -1 PM 3:14

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) REGULAR SESSION

Bill No. 59-32(COR)

Introduced by: **V.C. Pangelinan**

AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

BE IT ENACTED BY THE PEOPLE OF GUAM:

SECTION 1. Chapter 162 is hereby *added* to Title 11 of the Guam Code Annotated to read as follows:

"**CHAPTER 162**

Collective Investment Funds Act

§ 162101. Definitions.

§ 162102. Establishment of Collective Investment Funds.

§ 162103. Plans for Operation of Funds.

§ 162104. Management of the Fund.

§ 162105. Internal Controls.

§ 162106. Rights and Interests of Participating Accounts and Contributors to the Participating Accounts.

§ 162107. Interests of a Financial Institution,

§ 162108. Annual Financial Reports.

§ 162109. Management Fees.

§ 162110. Mistakes in administration of funds.

§ 162101. Definitions. As used in this chapter, unless the context otherwise requires:

(a) *"Collective investment fund"* means a fund maintained by a financial institution that consists solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income tax.

(b) *"Commissioner"* means the Commissioner of Banking and Insurance, appointed under Title 11, Section 103102 of the Guam Code Annotated.

(e) *"Fiduciary"* means a financial institution or other person acting in the capacity of guardian, conservator, personal representative, or trustee, either solely or together with others, or custodian under a uniform gifts or transfer to minors act of any state or territory.

(f) *"Financial institution"* means a territorial bank, a state bank, a national bank, a state or federally chartered savings and loan association, or a trust company under the Guam-Based Trust Companies Act that, in each case, is authorized to act in a fiduciary capacity in Guam.

(g) *"Fund"* means a collective investment fund.

(h) *"Participating Account"* means a trust or other fiduciary account that has contributed assets to a collective investment fund.

(i) *"Plan"* means the written plan for a fund described in Section 162104.

§ 162102. Establishment of Collective Investment Funds. A financial institution may establish and maintain collective investment funds for the investment of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income tax and may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts exempt from federal income tax and that the financial institution holds in any capacity (including agent) in such collective investment funds.

§ 162103. Written Plan.

(a) A financial institution shall establish and maintain a fund in accordance with a written plan approved by resolution by the board of directors of the financial institution or by a committee authorized by the board. The plan's provisions shall be consistent with the provisions of this chapter, as well as the rules and regulations of the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor provision), and such rules and regulations as may from time to time be promulgated by the Commissioner, to the extent that such respective rules and regulations are not inconsistent with the provisions of this chapter.

(b) The plan shall contain appropriate provisions as to the manner in which the financial institution will operate the fund, including, but not limited to, provisions relating to all of the following:

(1) Investment powers and policies with respect to the fund;

(2) Allocation of income, profits, and losses;

(3) Fees and expenses that will be charged to the fund and to participating accounts and the individuals contributing to the participating accounts;

(4) Terms and conditions governing the admission and withdrawal of participating accounts;

(5) Audits of participating accounts;

(6) Basis and method of valuing assets in the fund;

(7) Expected frequency of income distribution from the fund to participating accounts;

(8) Minimum frequency of valuation of fund assets;

(9) Amount of time following a valuation date in which a valuation of fund assets must be made;

(10) Bases upon which the financial institution may terminate the funds;

(11) Any other matters necessary to define clearly the rights of participating accounts and contributors to the participating accounts.

(c) The financial institution shall make a copy of the plan available at its principal office for inspection during all regular business hours and shall provide a copy of the plan to any person who requests it.

(d) The financial institution shall submit a copy of the written plan, and any amendments made to the written plan, to the Commissioner upon adoption of such amendments.

§ 162104. Management of the Fund. The financial institution shall have the exclusive management and control of each fund administered by it, and the sole right at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the assets comprising within the fund, except as a prudent person might delegate responsibilities to others. The ownership of the fund's assets shall be solely in the financial institution as fiduciary and shall be considered as assets held by it as fiduciary.

§162105. Internal Controls. A financial institution shall implement and maintain effective operational controls to ensure:

(a) The fund is valued regularly. For a fund that holds investments with daily valuations, such as mutual funds and publicly traded stocks, bonds, and exchange-traded funds, values shall be updated each business day. Values shall in any case be determined no less often than quarterly, except that for a fund that holds assets that are not readily marketable, such as real estate, values shall be determined no less often than annually.

(b) Contributions and withdrawals are executed on a timely basis, as specified by the terms of the plan.

(c) Each participating account is eligible and authorized to participate in the fund.

(d) An annual audit and fund report are completed in a timely manner.

(e) Assets are invested in accordance with the plan and the fund's written investment policy.

(f) Fund documents are maintained in a central repository.

(g) A formal process is in place for the board of director of the bank, or a committee appointed by the board, to approve and oversee major fund decisions and the operation of the fund.

§162106. Rights and Interests of Participating Accounts and Contributors to the Participating Accounts.

(a) All participating accounts *in a* fund shall have a proportionate undivided interest in all the fund's assets, which shall be reported in units of beneficial interest. No participating account shall have individual ownership of any asset in the fund.

(b) A hardcopy or electronic statement of participation shall be issued to each participating account and contributors to the participating accounts at least quarterly. The statement of participation shall indicate that the statement valuation is not guaranteed by the financial institution; that the units of beneficial interest held by the participating account are not negotiable or assignable; and that the statement is a representation of the participating account's undivided interest in the fund and does not represent individual ownership of any asset in the fund.

§162107. Interests of a Financial Institution. A financial institution administering a fund shall not have an interest in that fund other than in its fiduciary capacity. If, because of a creditor relationship or otherwise, the bank acquires an interest in a participating account, the participating account must be withdrawn on the next withdrawal date. However, a financial institution may invest assets that it holds as fiduciary for its own employees in a fund.

§ 162108. Annual Financial Reports.

(a) At least once during each 12-month period, the financial institution administering a fund shall arrange for an audit of the fund by auditors responsible only to the board of directors of the financial institution.

(b) At least once during each 12-month period, the financial institution shall prepare an annual financial report based on the audit required by subsection (a) and containing the following information:

(1) The fund's fees and expenses.

(2) A list of the investments in the fund with their costs and market values on the date of closing of the report.

(3) A statement summary of transactions for the year, organized by type of investment, including the following transactions:

(i) A summary of purchases, including costs.

(ii) A summary of sales including profit or loss and any other investment changes.

(iii) Income to and disbursements from the fund.

(iv) A description of any investments in default.

(c) The financial institution may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. The financial institution may not publish in the financial report any predictions or representations as to future performance.

(d) The financial institution shall provide a copy of the annual report (or provide notice that a copy of the report is available upon request or online) to each person or entity who would ordinarily receive a regular periodic accounting statement.

(e) A copy *of* the annual financial report shall be filed with the Commissioner.

§ 162109. Management Fees. The financial institution administering a collective investment fund may charge a reasonable fund management fee only if the amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

§ 162110. Mistakes in Administration of Funds. A mistake made in good faith and in the exercise of due care in connection with the administration of a fund is not a violation of this chapter or any rules or regulations issued under this chapter, if promptly after discovery of the mistake the financial institution takes whatever action is reasonable under the circumstances to remedy the mistake and reports the mistake to the Commissioner and appropriate federal regulatory agencies as required by this Act."

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