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I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

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

This is to certify that **Substitute Bill No. 103-31 (COR), "AN ACT TO APPROPRIATE SIXTY MILLION EIGHTY EIGHT THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS ($60,088,935) TO THE GUAM DEPARTMENT OF EDUCATION FOR ONGOING AND CONTINUING CAPITAL IMPROVEMENT PROJECTS (CIPs), TECHNOLOGY UPGRADES AND EQUIPMENT PROJECTS, "** was on the 2nd day of May, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 5th day of May, 2011, at 09:55 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 103-31 (COR)
As substituted by Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land, and amended on the Floor.

Introduced by: v. c. pangelinan
Judith T. Won Pat, Ed.D.
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Dueñas
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AN ACT TO APPROPRIATE SIXTY MILLION EIGHTY EIGHT THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS ($60,088,935) TO THE GUAM DEPARTMENT OF EDUCATION FOR ONGOING AND CONTINUING CAPITAL IMPROVEMENT PROJECTS (CIPs), TECHNOLOGY UPGRADES AND EQUIPMENT PROJECTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Statement and Intent. The 111th United States Congress enacted the American Recovery and Reinvestment Act (ARRA) of 2009

for the purpose of providing economic stimulus and relief to states and taxpayers. In enacting ARRA, the primary goal of its framers was to provide a quick infusion of cash to state and local governments for the preservation and creation of jobs, thus stimulating the economy. *I Liheslaturan Guåhan* agrees with the economic basis of the following approach and seeks to promote the principles and objectives of this federal legislation at the local level.

I Liheslaturan Guåhan finds that the U.S. Department of Education (USDOE) approved the Guam Department of Education (GDOE) State Fiscal Stabilization Fund (SFSF) Phase I and Phase II application which budgets Forty One Million Seventy Three Thousand Three Hundred Seventy Dollars ($41,073,370) for the modernization, renovation and repair of public educational facilities used primarily for classroom instruction that are most in need of modernization, renovation and repair; Twenty Six Million Three Hundred Nineteen Thousand Four Hundred Fourteen Dollars ($26,319,414) for Technology Upgrades, Financial Management Information System (FMIS) and Consultant Services; and Eight Million Three Hundred Fifty Thousand Dollars ($8,350,000) for administrative services of a Third Party Fiduciary Agent (TPFA) required by the USDOE. The GDOE, which was awarded the SFSF funds two (2) years ago, has experienced difficulty in obligating and expending the funds prior to the September 2011 deadline. In failing to obligate and expend the funds, the GDOE shall forfeit the funds earmarked to improve the physical infrastructure of our educational institutions and other projects.

The management of the GDOE cites the legal review of procurement contracts, applicable to all government of Guam entities, as a bottleneck in the obligation and the expenditure of the funds. In citing the following provision, the GDOE has requested exemption to the legal review requirement within the

procurement statutes and to preclude the legal right of bidders to protest bid awards.

I Liheslaturan Guåhan affirms that the GDOE has *not* presented a compelling reason to merit exemption from the procurement statutes, which were crafted to protect the public interest in contractual negotiations. Furthermore, *I Liheslaturan Guåhan* finds that the following solution to GDOE's difficulties to expend the funds represents a dangerous precedent whereby legislative remedies are sought for administrative issues.

I Liheslaturan Guåhan wherever possible seeks a win-win approach to problems facing our community and thus finds that the difficulty of the GDOE to expend ARRA SFSF funds presents an opportunity for such a solution. *I Liheslaturan Guåhan* recognizes that the following approach is consistent with the spirit of *Inafa'maolek* and is an example of a bi-partisan approach to solving problems because *"the greatness of Guam transcends all political lines."*

In granting the following budgetary mechanisms, *I Liheslaturan Guåhan* is providing a solution and creating the opportunity for the chief executive and GDOE to request the USDOE to reprogram Sixty Million Eighty Eight Thousand Nine Hundred Thirty Five Dollars ($60,088,935) of the ARRA SFSF grant earmarked for Capital Improvement Projects, Technology Upgrades, Science, Technology, Engineering & Math (STEM) CIPs and Equipment for the payment of personnel cost for FY 2011.

The following approach will *not* reduce or redirect funds due to the GDOE for repairs of educational institutions and other projects. Rather, the approach seeks to guarantee that the GDOE *not* lose ARRA SFSF funds due to failure to expend the funds by December 2011, and ensure that GDOE complies with local procurement laws. In doing so, the approach merely utilizes the ARRA SFSF funds for salaries and benefits of school-based teachers, administrators and support

staff and appropriates and reserves the funds transferred for Technology Upgrades, Equipment and Capital Improvement Projects as they become shovel ready.

I Liheslaturan Guåhan finds that the use of ARRA SFSF funds for GDOE's payroll will provide the following advantages to GDOE, as well as the General Fund:

- Approximately fourteen (14) pay periods of salaries and benefits for the GDOE will be covered;
- Reporting requirements for expenditures of GDOE payroll will be less burdensome to the administrative infrastructure of the department;
- The GDOE will be able to preserve and retain jobs, consistent with the overarching principle of ARRA;
- The GDOE will *not* need to seek an exemption from the procurement statutes;
- The risk of losing ARRA SFSF funds due to inability to expend funds or due to procurement challenges will be abated;

Many of the priorities set forth by *I Liheslaturan Guåhan* and *I Maga'låhen Guåhan* enacted into law through the General Appropriations Act of 2011 remain unfulfilled due to redirecting budgeted cash collections for other purposes. *I Liheslaturan Guåhan shall* require stringent conditions of depositing reimbursements from USDOE into a trust account in order to ensure and reaffirm its commitment to education by providing safeguards to the funds transferred to be used in FY 2011 and beyond.

The USDOE has required that Guam obligate the funds for the proposed projects no later than September 2012, or Guam DOE risks being ordered to reimburse ARRA/SFSF funds for failure of maintenance of effort. Following the appropriation of funds in this Act, it will be beyond the Organic Act authority of *I*

Liheslaturan Guåhan (the Guam Legislature) to ensure the funds are obligated for the authorized projects on time. In light of the extreme hardship that reimbursement of Sixty Million Dollars ($60,000,000) will impose on all the people of Guam, *I Liheslatura* (the Legislature) must emphasize and caution the Guam Education Board and the Executive Branch as to the huge risk of loss Guam faces if the improvements are not made by the deadline and consistent with all other terms of the agreement.

Section 2. Creation of the Adequate Education Act Trust Account.

(a) There is hereby created, separate and apart from all other funds of the government of Guam, a trust account known as the Adequate Education Act Trust Account (Trust Account). The Trust Account *shall not* be commingled with the General Fund or any other funds of the government of Guam, and it *shall* be maintained in a separate bank account, administered by a trustee that is selected in accordance with the government of Guam procurement rules and regulations. The Trust Account's interest and investment earnings *shall* be continuously appropriated to the Department of Administration for the payment of the GDOE-Guam Power Authority Promissory Note. Upon full payment of the Promissory Note, succeeding interest and investment earnings *shall* be continuously appropriated to the GDOE for maintenance and repair of its facilities.

(b) Monies deposited into the Trust Account *shall* be invested or reinvested into interest bearing instruments, United States treasury notes, investment grade and insured corporate notes, and other like instruments which are readily convertible to cash needed to pay for projects approved in the ARRA SFSF Phase I and Phase II grant application, including any subsequent amendments approved by USDOE in accordance with the appropriation in Section 3(a) of this Act.

(c) Monies deposited into the Trust Fund *shall not* be subject to any transfer authority of *I Maga'lahen Guåhan* or any representative of the Guam Department of Education.

Section 3. Appropriation. Upon USDOE approval to amend the Phase I and Phase II ARRA SFSF grant application, whereby, the amount of Sixty Million Eighty Eight Thousand Nine Hundred Thirty Five Dollars ($60,088,935) of federal funds originally allocated for Capital Improvement Projects, Technology Upgrades and Science, Technology, Engineering & Math (STEM) CIPs and Equipment is reprogrammed to Salaries and Benefits resulting in a reimbursement of funds appropriated and expended in Section 2 of Chapter II, Part I of Public Law 30-196, the reimbursement of Sixty Million Eighty Eight Thousand Nine Hundred Thirty Five Dollars ($60,088,935) from the SFSF grant authorized by the USDOE pursuant to the expenditure of local funds and certified by the TPFA *shall* be deposited to the Trust Account. The use of the reimbursed funds in the Trust Account *shall* be pursuant to the following amounts and requirements:

(a) Sixty Million Eighty Eight Thousand Nine Hundred Thirty Five Dollars ($60,088,935) is appropriated from the Adequate Education Act Trust Account to the Guam Department of Education in Object Classes 230, 250 and 450 as follows: object class 230 (Contracts) - Thirty Five Thousand Dollars ($35,000); object class 250 (Equipment) - Three Million Fifty Thousand Dollars ($3,050,000); and object class 450 (Capital Outlay) - Fifty Seven Million Three Thousand Nine Hundred Thirty Five Dollars ($57,003,935).

(b) the appropriation to Object Classes 230, 250 and 450 in this Section *shall* be continuing appropriations for the GDOE and *shall* be earmarked for Capital Improvement Projects, Technology Upgrades and Science, Technology, Engineering & Math (STEM) CIPs and Equipment

approved by USDOE contained in the ARRA SFSF Phase I and Phase II grant application, including any subsequent amendments approved by USDOE; provided, that all these appropriations *shall* expire if *not* obligated by September 30, 2012.

(c) GDOE *shall* report *to I Maga'lahi* and *I Liheslatura* on a monthly basis as to the obligation and expenditure of the funds from the Trust Fund and the completion of the ARRA/SFSF projects.

Section 4. §3108 of Title 17, Guam Code Annotated, is hereby *enacted* to read:

"§3108. Attorney for the Board. The Board may employ an attorney(s) to assist and represent it in all matters that concern the Board and the GDOE."

Section 5. Severability. *If* any provision of this Law or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.