

I. OVERVIEW

The Committee on Education and Housing held a public hearing on Tuesday, October 21, 2003 at 4:00 pm at the Guam Legislature Public Hearing Room in Hagatna, Guam. Notice of public hearing was printed in the Pacific Daily News (see attached) and disseminated throughout all local media.

Senators present were:

Senator Carmen Fernandez, Chair
Vice Speaker Frank B. Aguon, Committee Member
Senator Larry F. Kasperbauer, Committee Member
Senator Jesse A. Lujan, Committee Member
Senator Mark Forbes
Senator Joanne Brown
Senator Robert Klitzkie
Senator Tina Muna-Barnes
Senator Toni Sanford
Senator Ray Tenorio

II. SUMMARY OF TESTIMONY

The following bill was heard at the public hearing in which the following individual(s) presented oral as well as written testimony:

AN ACT TO ADD NEW ITEMS 11, 12, 13, AND 14, TO 1GCA §715; TO AMEND 5 GCA §1302; TO AMEND 5 GCA §1303; TO AMEND 5GCA §3101; TO AMEND 5 GCA §3107; TO AMEND GCA §4109; TO AMEND 5 GCA §22203; TO ADD NEW §7116 TO 7 GCA; TO ADD NEW §1116 TO 19 GCA; TO AMEND §11307 OF 7 GCA; TO ADD NEW §12108.1 to 7 GCA; TO ADD NEW §26603.1 to 7 GCA; TO AMEND 17 GCA § 3103 (j); TO AMEND 17 GCA §3112(a) 14; TO ADD NEW §3210 TO 17 GCA; TO ADD NEW §15136 TO 20 GCA PART 4; TO ENACT EVERY CHILD IS ENTITLED TO AN ADEQUATE PUBLIC EDUCATION ACT

Senator Klitzkie's remarks:

Sen. Klitzkie outlined the definition, purpose and intent of Bill 162. Klitzkie described Bill 162 as designed to allow children, through their parents, the ability to hold the government accountable if a child does not receive an adequate education as defined in the bill. The key word is "accountability."

1. Mr. Moe Cotton, Managing Director, National Institute for Continuing Education

Mr. Cotton presented oral testimony in favor of Bill 162. He stated “he would usually call a bill such as this “extreme,” but something extreme is needed right now to provide Guam’s children with the education they deserve and get Guam out of this embarrassing education situation.”

2. Mr. Matt Rector, Teacher, Guam Federation of Teachers

Mr. Rector presented oral testimony in favor of Bill 162. “It is a shame that we have come to this.” States in the mainland have had lawsuits filed against them for failing to provided an adequate education. Where those suits fell apart was the definition of “adequate education.” This bill defines “adequate education.” Would like to add “1.) school health counselor in every school and 2.) different type of penalty. Someone who fails to provide adequate education should be terminated.”

3. Ms. Neeti Prakash, Guam Federation of Teachers

Ms. Prakash presented oral testimony in favor of Bill 162. Would like to see school guidance counselors added to the bill.

4. Ms. Tamie Jacobs, JFK High School Japanese teacher

Ms. Jacobs presented oral testimony in favor of Bill 162. “This is my last year teaching. All of my colleagues must speak up about the state of schools.”

5. Ms. Cheryl King, Librarian, Agana Heights Elementary

Ms. King presented oral testimony in favor of Bill 162. She stated that “for the majority of students, the prime source of books is the school library. If students do not have access to the school library on a regular basis, the students will not read as much and will not make the same reading gains as students who have access to the library.”

6. Mr. Steve Cohen,

Mr. Cohen presented oral testimony in favor of Bill 162. “Without an adequate and flourishing school system, Guam is doomed. Everyone knows it. Bill 162 is an opportunity to correct this situation.” Had a technical change in respect to attorney’s fees.

7. Mr. Robert Foley, Teacher, Inarajan Middle School

Mr. Foley presented oral testimony in favor of Bill 162 but said he was “ambivalent” about the bill, stating he would like to see the points that define adequate education expanded to include more educational knowledge and skills. The points in Bill 162 should already be done.

8. Ms. Suzanne Bell, Librarian, University of Guam

Ms. Bell presented oral testimony in favor of Bill 162. She stated “education professionals acknowledge that a well run library has extensive impact on reading skills, academic accomplishment, and the developing of curious minds that ultimately enrich the entire community. Access to current and appropriate materials will benefit both teachers and students.”

9. Prof. Ron McNinch, University of Guam

Prof. McNinch presented oral testimony in favor of Bill 162. Pleased to see the majority and minority work together in the Legislature to hear these issues in the community. Like seeing senators asking public for additional comment. “This policy area involves everyone. Public education is in everyone’s interest.”

10. Juan Flores, Superintendent of Instruction

Mr. Flores presented oral testimony in favor of Bill 162. “I favor bills that are advocacy provisions for kids in school. Hope is that litigation aspects will be precedent setting. It clearly identifies those factors that can influence student learning. This bill is a format for preparing, defending and hoping for support for next year’s budget. If bill is law, a budget proposal can be produced for the Legislature that says we are entitled to the funding because it is mandated in the law. I would like other agencies to feels responsible for the conditions of the schools.” Must no longer respond to questions with “that is the way things have always been.” Must now respond, “this is the way things should be,” and stop accepting the status quo.

11. Mr. John Robertson, President, Guam Contractors Association

Mr. Robertson presented oral testimony in favor of Bill 162. He feels Bill 162 is a major step in the right direction. Also, “the legislation will be setting the stage for excellence in education and will establish motivation and reason for other necessary changes in the way the school system is managed.”

12. Ms. Christine Scott-Smith, Director, Learning Resources, University of Guam

Ms. Scott-Smith presented oral testimony in favor of Bill 162. She quoted studies and reports stating that well-supported school libraries play an important role in student achievement. “Many studies show that students scores on standardized tests are ten to eighteen percent higher at schools with outstanding library media programs and staff.”

13. Ms. Trini T. Torres, Chamoru Cultural Development and Research Institute

Ms. Torres presented oral testimony in opposition to Bill 162. While she agrees that each and every child is entitled to a decent and good quality public education, the word “adequate” differs in degrees for every person. She believes the ability for the child, through a parent, to sue the government would open all sorts of possibilities for the minors to sue whenever something is

not provided or adequate to the child. She asks, “will government employees live in fear of being finger-pointed for a lawsuit?” Also, “suing here and suing everywhere, goes against the fabric of our Chamoru culture in the way we value family life, love and respect for everybody.”

14. Mr. Mark "Paps" Martinez

Mr. Martinez presented oral testimony in favor of Bill 162. He was glad the Committee on Education Chair supported the bill and hopes the majority party will bring Bill 162 to the floor for a vote. He called the legislation “historic.”

15. Mr. Monty McDowell, Businessman

Mr. McDowell presented oral testimony in favor of Bill 162. He stated the “act recognizes providing an adequate education is a civil right and protects this right by allowing education customers, the students, the ability to access courts for legal relief. He said the points in Bill 162 are simple building blocks. Education should be priority number one and that is what Bill 162 does

16. Ms. Lorraine Okada, Chair of Chamber of Commerce Education Committee

Ms. Okada presented oral testimony in favor of Bill 162. Education is essential to the progress of individuals. Since in Guam the government is the only vendor of public education, there must be something to hold it accountable. Bill 162 empowers children and parents and expedites many of the long overdue reforms to the education system.

17. Ms. Rosa Salas Palomo, Education Policy Board member from the Katan District

Ms. Salas Palomo presented oral testimony in favor of Bill 162. Adequate public education is everyone’s responsibility. Bill would make that not just on paper a reality, but government wide a reality. She agrees with this legislation and is also very sad we’ve had to come this far to make it a necessary act. Wants to add to the list of nine: “public transportation.” She has seen children not go to school because of lack of buses, or stand waiting for buses in the rain for long periods of time. Guam needs more math and science teachers. Recommend amending point concerning certified teachers. Feels salary must be increased to attract more teachers to Guam to compete with the rest of the nation. Concerned about litigation process. “Not afraid of being sued personally; afraid of department spending more time on lawsuits rather than on instruction in the classroom.”

**Written testimony only for Bill 162 public hearing
was provided by the following:**

1. Dr. Gregg San Nicolas

Dr. San Nicolas submitted written testimony in favor of Bill 162. He stated: “While our educational leadership has become complacent in their responsibilities to our children, I believe that a law such as this will make these leaders accountable in the their positions of authority.”

2. Mr. David Hendricks

Mr. Hendricks submitted written testimony in favor of Bill 162. He stated that school health counselors were very important to the education of children and are needed in every school.

3. Mr. Fred Garcia

Mr. Garcia submitted written testimony in favor of Bill 162. He stated he agrees with issues that are addressed in the bill and hopes the committee will do what benefits future generations.

4. Mr. Gabe Lombard

Mr. Lombard submitted written testimony in favor of Bill 162. He stated Bill 162 “incorporates the requirements for the essential services of health and public safety, as well as education. All of us are aware that with the worsening of Guam’s economic crisis, we may soon be required to prioritize scarce funds towards these three essential services.”

5. Mrs. Rosie L.G. Sgambelluri

Mrs. Sgambelluri submitted written testimony in favor of Bill 162. She stated that “this proposed legislation will provide a wake-up call for those schools within Guam DOE ... and for and toward the public officials of the executive branch of the government of Guam to insure for an adequate public educational system.”

6. Mr. Jim Maher

Mr. Maher submitted written testimony in favor of Bill 162. He stated “the legislature needs to address in a meaningful way the abject state of public education in Guam.”

7. Mr. Jerry Caruso

Mr. Caruso submitted written testimony in favor of Bill 162. He stated he supports Bill 162 because “the future of Guam is in serious jeopardy because we are not taking care of the education of our future leaders.”

8. Gregory A. Mamay

Mr. Mamay submitted written testimony in favor of Bill 162. He stated “the future of our island rests on an educated population, and this bill will do much to address Guam’s failed attempts at educating the children of this precious island.”

9. Mr. Oliver W. (Pete) Shiling

Mr. Shiling submitted written testimony in favor of Bill 162. He stated Bill 162 “is a single small step toward demanding the real accountability we need in our education system if we are ever to be proud of the education our children are receiving.”

10. Mr. James Pascarella

Mr. Pascarella submitted written testimony in favor of Bill 162. He stated “Bill 162 is the necessary first step in providing our kids the education they need.”

11. Ms. Lorraine Bird Porter

Ms. Porter submitted written testimony in favor of Bill 162. She stated “Bill 162 has unfortunately become an absolute necessity on Guam ... Without it, children and parents will continue to feel helpless in the face of the huge bureaucracy known as DOE.”

12. Mr. William D. Pesch, Esq.

Mr. Pesch submitted written testimony in favor of Bill 162. He stated he wishes to express his support for this innovative bill.

13. Dr. Heidi San Nicolas, Ph.D.

Dr. San Nicolas submitted written testimony in favor of Bill 162. She stated she sees “Bill 162 as a necessary ‘third leg’ of a sturdy stool supporting the foundation of access to an adequate education for children and young adults on Guam.”

14. Mr. Ignacio C. Aguiqui, Esq.

Mr. Aguiqui submitted written testimony in favor of Bill 162. He stated “Bill 162 ... is a highly commendable effort on the part of its sponsors ... to empower Guam students to receive what they are entitled to under the federal Organic Act.”

15. Dr. Aline A. Yamashita, Ph.D.

Dr. Yamashita submitted written testimony in favor of Bill 162. She stated “Bill 162 strengthens our educational communities’ ability to provide adequate learning environments.”

16. Mr. Tom Barcinas

Mr. Barcinas submitted written testimony in favor of Bill 162. He stated he supported “the intent of the bill,” with a few suggestions to consider.

17. Dr. Judith Paulette Guthertz

Dr. Guthertz submitted written testimony in favor of Bill 162. She stated she endorses “Bill 162 because of the necessity to finally help set a direction towards accountability and performance standards in the management of the Department of Education.”

III. FINDINGS AND RECOMMENDATION

The legislature finds that the Organic Act requires the government of Guam to provide an adequate system of public education. The Organic Act Bill of Rights mandates compulsory education for children between six (6) and sixteen (16). The interplay of these provisions creates a right to an adequate public education for children that is analogous to a constitutional civil right.

Bill 162 recognizes that civil right and gives school children access to the courts to vindicate that right with the parent of a child empowered to conduct litigation on behalf of the child.

Since the Organic Act assigns the responsibility of providing an adequate public educational system to the entire government and all government officials, the scope of the act is government-wide. Years of mismanagement have created a public school system that is unable or unwilling to provide an adequate education. Media reports constantly remind Guam residents of the state of its schools: non-certified, untrained teachers in crowded classrooms; unventilated classrooms that often exceed a temperature of 90 degrees; lack of potable water; lack of reliable electricity; unclean bathrooms and dining areas; lack of textbooks; substandard libraries; and less than the minimum of 180 days of instruction each year.

The adequate education of Guam's children must be a priority of the entire Government of Guam. Each department director whose responsibilities concern the operation of the Department of Education must be held accountable for providing an adequate public educational system.

While the term adequate public education is not easily defined, the legislature finds that a working definition dealing with the tangible aspects of the educational process is necessary to secure and protect at least the minimal right of children to an adequate education and to the end has defined that term. Adequate public education means public schools which at the minimum provide:

- a) certified teachers for every class in a ratio established by relevant collective bargaining agreements,
- b) properly ventilated classrooms in which the sensible air temperature is no greater than 78° F.,
- c) a supply of potable water sufficient to provide each student a daily ration of drinking and washing water,
- d) a reliable source of electricity
- e) proper sanitation to include flushable toilets, clean restrooms, dining areas and classrooms,
- f) adopted textbooks and workbooks issued to each public school student for the classes in which he or she is enrolled,
- g) libraries, which meet the standards of the American Association of School Librarians, at each school, operated by certified librarians
- h) a healthful, safe, sanitary learning environment
- i) 180 instructional days each school year with school years ending no later than June 10.

Having further considered the needs of the children in light of the testimony provided at the public hearing the committee finds that additional elements are required in the definitional section of bill 162 in order to provide an adequate public education. Children denied timely transportation to and from school. Therefore the committee recommends that

“m) regular, timely transportation to and from the school for his attendance area as established by 17 GCA §6102 for every child in accordance with policies adopted by the Education Policy Board” be added to the definitional section of the bill.”

The committee also finds that in addition to certified teachers an adequate public education also requires certified administrators, guidance counselors and school health counselors. Therefore the committee recommends that items a), b) and c) be added to the definitional section of the bill to read:

- a) certified professional administrators
- b) a certified guidance counselor for each school
- c) a certified school health counselor for every school

Bill 162 provides a concrete legal remedy for children who are denied an adequate public education. As desirable as the recognition of a cause of action residing in such children is, it is the sense of the committee that the bill be changed so that it is clear that only remedies *e.g.* mandamus and injunction are available to children who sue. It must be clear that no monetary damages either from the Claims Fund or from government officials in their personal capacity are available. Therefore the committee recommends that § 13 of the bill be changed to read:

Section 13. Standing to Sue. A new §12108.1 is added to 7 GCA to read:

§12108.1. Public school student: Standing to sue. A public school student shall have a claim and standing to sue the government of Guam and any officer of the Executive Branch of the government of Guam in his official capacity only for the purpose of enjoining such officer from failing to provide an adequate public education to that public school student but not for money damages.

and §15 be amended to read:

Section 15. Minors May Sue. A new §1116 is added to 19 GCA to read:

§ 1116. Minors May Sue.

~~(a)~~ Except as otherwise provided by subsection (b) ~~A~~ a minor may enforce his rights by civil action or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

(b) A parent of a public school student may conduct a civil action for injunctive relief, mandate, prohibition or other legal remedy but not money damages on behalf of the public school student to secure or maintain the public school student’s right to an adequate public education.

Additionally the committee finds that claims arising under the act should be promptly resolved. Thus a six month statute of limitation is more appropriate than the one year limitation provided in bill 162 as introduced.

While the sense of the committee is that the statute of limitation should be shorter, the committee concludes the opposite with respect to the periods between the bill's enactment and the effective dates of various sections. Therefore the committee finds that some sections of the bill should be effective October 1, 2004 and other on the same date in 2005. The appropriate effective dates are set out in tabular form in appendix I attached hereto.

The committee finds that Guam Public School System will not be able to provide an adequate public education unless appropriations to it are systematically released. Therefore §6 needs to be "tightened up" to read:

Section 6. 5 GCA §1303 is amended to read:

§ 1303. Management of Allotments.

In the release of monthly or quarterly allotments by the Bureau of Budget & Management Research from appropriation acts, the Director thereof shall base such allotments on anticipated cash receipts so that the obligations incurred pursuant to such release of periodic allotments shall have sufficient cash for their payment, provided that no cash may be released until sufficient cash has been released to the Guam Public School System to provide an adequate public education to every public school student.

Along the same lines the committee recommends that the sanctity of its cash allotments be abundantly clear. Therefore the committee recommends that 5 GCA §4109 (a) be changed to read:

Section 9. Program Execution. 5 GCA §4109 is amended to read:

§ 4109. Program Execution.

(a) Except as limited by policy decisions of the Governor, appropriations by the Legislature, and other provisions of law, the territorial agencies shall have full authority for administering their program service assignments, and shall be responsible for their proper management, provided that the governor's policy decisions shall not limit the authority of the Guam Public School System.

The committee recommends that a substitute bill be prepared incorporating the findings and recommendations of the committee. That substitute bill is submitted herewith. As an aid to interpretation an annotated copy of the substitute bill is also included in this report.

It is the intent of the *I Mina' Bente Siete Na Liheslaturan Guahan* to require government accountability and responsibility, increase parental involvement in the education of their children, and to provide the children of Guam with clean, safe and healthful learning environments in which they can further their education.

Accordingly, the Committee on Education and Housing does hereby submit its findings and recommendation to *I Mina’Bente Siete Na Liheslaturan Guahan* **TO DO PASS BILL 162 (CORJAS SUBSTITUTED BY THE COMMITTEE ON EDUCATION AND HOUSING: AN ACT TO ADD NEW ITEMS 11, 12, 13, AND 14, TO 1GCA §715; TO AMEND 5 GCA §1302; TO AMEND 5 GCA §1303; TO AMEND 5GCA §3101; TO AMEND 5 GCA §3107; TO AMEND GCA §4109; TO AMEND 5 GCA §22203; TO ADD NEW §7116 TO 7 GCA; TO ADD NEW §1116 TO 19 GCA; TO AMEND §11307 OF 7 GCA; TO ADD NEW §12108.1 to 7 GCA; TO ADD NEW §26603.1 to 7 GCA; TO AMEND 17 GCA § 3103 (j); TO AMEND 17 GCA §3112(a) 14; TO ADD NEW §3210 TO 17 GCA; TO ADD NEW §15136 TO 20 GCA PART 4; TO ENACT EVERY CHILD IS ENTITLED TO AN ADEQUATE PUBLIC EDUCATION ACT**

Appendix I Effective dates

Upon enactment	30 days after enactment	October 1, 2004	October 1, 2005
<p>Section 1. Short title.</p> <p>Section 2. Declaration of Policy.</p> <p>Section 3. Statement of legislative findings and purpose.</p> <p>Section 4. Definitions.</p> <p>Section 17. Duties of the Superintendent</p> <p>Section 18. Duties and Responsibilities of the Guam Education Policy Board</p> <p>Section 19. Construction with Other Laws 20and 21</p>	<p>Section 10. Duties of Director of Administration</p>	<p>Section 5. Duties and Responsibilities of BBMR.</p> <p>Section 6. 5 GCA §1303 is amended to read: § 1303. Management of Allotments.</p> <p>Section 7. Department of Administration.</p> <p>Section 8. Guam Public School System.</p> <p>Section 9. Program Execution.</p>	<p>Section 11. Expedited Schedule of Discovery.</p> <p>Section 12. Limitation of Actions.</p> <p>Section 13. Standing to Sue.</p> <p>Section 14. Attorney’s fees.</p> <p>Section 15. Minors May Sue</p> <p>Section 16. Attorney’s fees</p>