

I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 61 (EC)

Introduced by:

J. A. Lujan

Elom

AN ACT TO AMEND TITLE 4 GUAM CODE ANNOTATED §2103.5,
RELATIVE TO EXECUTIVE NOMINATIONS,
AND TITLE 4 GUAM CODE ANNOTATED CHAPTER 13,
TO ADD DISCLOSURE OF FELONY CONVICTIONS,
TO BE KNOWN AS THE PUBLIC OFFICIAL DISCLOSURE ACT.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan*

3 respects and upholds the concept of minimum qualifications for persons seeking
4 and holding our highest elective public offices, a community standard initially
5 established by the Organic Act and reaffirmed in subsequent local laws. When
6 subordinate boards and commissions, and appointed executive positions, were
7 created by law, the policymaking and administrative power to render decisions
8 involving hundreds of millions of dollars and services affecting the lives of every
9 Guam resident, guest and business devolved into numerous subsidiary hands. A
10 corresponding disqualification of persons convicted of a felony or crimes
11 involving moral turpitude from holding elective or appointed office is expected
12 but formally neither forbidden or consistently respected. It is therefore the intent
13 of this Legislature to promote the highest standards in public leadership by
14 requiring candidates, appointees and other senior office holders to disclose any

1 felony conviction in their personal history as a matter of public record.

2 **Section 2.** Title 4 Guam Code Annotated, §2103.5, is
3 hereby amended as follows:

4 **“§2103.5. Submission for Legislative Advice and Consent.**

5 The appointing authority shall submit to the Speaker of I Liheslaturan
6 Guåhan the name of the nominee to a position in a nomination letter to be hand-
7 delivered to the office of the Speaker. The nomination letter shall include the
8 following: name; position to which the appointment is made; address;
9 citizenship; age; educational background; prior government service whether
10 within or without the government of Guam; information pertinent to the
11 position’s qualifications; police clearance report; a copy of DD Form 214 for those
12 with prior military service; special distinctions and honors; whether the nominee
13 has been found guilty of a felony in any court, whether within or without the
14 United States, and if so, specify in detail the address of the court, the date of
15 conviction and the specific infraction committed; whether the nominee has been
16 declared mentally incompetent by any court, whether within or without the
17 United States, and if so, specify in detail reasons and facts related to such
18 declaration; whether the nominee has been found not guilty or not punishable in
19 any criminal proceedings by reason of insanity; whether the nominee has been
20 confined to a mental institution for any reason, and if so, the reasons why the
21 appointing authority believes the nominee is not suffering from any mental
22 illness or affliction.

23 The applicant shall execute an affidavit under penalty of perjury that the
24 applicant has read and reviewed the information contained in the nomination

1 letter from I Maga'lahaen Guåhan that the matters contained in such nomination
2 letter and all attachments thereto are true and correct. If the applicant cannot, or
3 will not, certify or verify the accuracy of any part of the nomination letter, it shall
4 be so noted in the applicant's affidavit."

5 **Section 3.** Title 4 Guam Code Annotated, Chapter 13, is amended to read
6 as follows:

7 **§13101. Title.** This Chapter shall be known and may be cited as the Public
8 Official ~~Financial~~ Disclosure Act.

9 **§13102. Definitions for Purposes of This Act.**

10 (a) The term official means any person elected to any public office in Guam
11 and any person appointed, with legislative concurrence or by the Guam
12 Legislature, to any public office, to include, but not limited to:

13 (1) all elected officials;

14 (2) officials appointed by the Governor whose appointment is subject to
15 the consent of the Guam Legislature, except ex-officio and student members of
16 Boards and Commissions in their capacity as members of such Boards and
17 Commissions; and

18 (3) the chief executive officers, by whatever title they may be known, of all
19 agencies and instrumentalities of the government of Guam whether or not
20 confirmation by the Guam Legislature is required.

21 (b) The term *candidate* means a candidate to any public office.

22 (c) The term *gift* means something of value voluntarily transferred from one
23 party to another without compensation or monetary consideration.

1 (d) The term *fund* means a sum of money or other material resources available for
2 the use of an official or candidate or anyone acting on his behalf.

3 (e) The term *asset* means an item of value owned or in which exists a beneficial
4 interest.

5 **§ 13103. Reports to be Filed With the Election Commission.**

6 (a) Each official shall file with the Election Commission, on or before
7 April 22 of each calendar year, a written report containing the financial
8 information required by this Chapter covering the preceding calendar year (or
9 other year if the individual official files a Guam Income Tax Return covering a
10 period other than the calendar year). Each official shall file a written felony
11 conviction report within 30 days of pronouncement by a court or within 30 days
12 of enactment hereof, regardless of whether an appeal may be or has been filed,
13 and regardless of whether the case has been sealed. Each candidate who is not an
14 official shall file with the Election Commission on the date he files his petition for
15 candidacy, a written report containing the financial information required by this
16 Chapter covering the preceding calendar year (or other year if the individual
17 official files a Guam Income Tax Return covering a period other than the
18 calendar year), and a written report itemizing any and all felony convictions
19 whether public or under seal, that have not been dismissed upon successful
20 appeal, vacated by a court, or cleared by a grant of executive pardon. The felony
21 conviction report is a statement describing each offense for which a felony
22 conviction was entered in a court of law within or without the United States,
23 sealed or not, including the address of the court, date of conviction, and sentence
24 imposed. The Executive Officer of the Election Commission shall grant

1 extensions for the filing of financial reports herein required by officials;
2 provided, however, that such extension shall not exceed one hundred eighty
3 (180) days beyond April 22 of each calendar year.

4 (b) The reports required to be filed under Subsection (a) of this Section shall be
5 verified in the manner permitted by 6 GCA § 4308 (Unsworn Declaration Under
6 Penalty of Perjury).

7 (c) All reports ~~required to be maintained under~~ filed in conformance with this
8 Section shall be maintained by the Election Commission as public records
9 available for inspection. Copies of the reports shall be furnished to the public,
10 upon the payment of reasonable copying fees. The Executive Officer of the
11 Election Commission shall issue a certificate certifying that an official or
12 candidate has filed his reports as required by this Chapter.

13 (d) If an official or candidate dies after he has been granted an extension for filing
14 the financial disclosure report, the Executive Director of the Election Commission
15 shall have a statement placed in the file of the official or candidate that states:
16 'Unable to file Financial Disclosure Report as a result of death on _____
17 (date of death)'.

18 **§13104. Contents of Financial Report.**

19 (a) The financial report of the official or candidate as required in this Chapter
20 shall include a complete account of the official's or candidate's gross income and
21 that of his spouse and dependent children. For the purpose of this Chapter, gross
22 income shall be defined as set forth in §61 of the Internal Revenue Code of 1954,
23 as amended (26 U.S.C 61). The report of income shall specifically indicate,

1 though not to the exclusion of other items listed in §61, the following
2 information:

3 (1) The names and addresses of all persons and organizations from whom
4 was received by the official or candidate or on his behalf with his knowledge and
5 consent, any honorarium or compensation for services, including fees,
6 commissions, salaries, and similar items, and the amount of such honorarium or
7 compensation for services, if not money, the substance of the honorarium or
8 compensation and the appraised value thereof;

9 (2) Gross income derived from business enterprises including the amount
10 thereof, the nature of his interest in the business, and the names and addresses of
11 such business;

12 (3) An itemization of all gains derived from dealings in real property,
13 including the names and addresses of seller and purchaser and a brief
14 description of the transaction which took place;

15 (4) The sources from which were derived income from interest and the
16 amounts thereof.

17 (5) The sources from which rents were derived and the amount thereof;

18 (6) The sources from which royalties were derived and the amounts
19 thereof;

20 (7) The sources from which dividends were derived and the amounts
21 thereof;

22 (8) The names and addresses of all persons and organizations from whom
23 he received assistance in the discharge of indebtedness and the aggregate
24 amount of appraised value thereof;

1 (9) Itemization of income or benefits derived from distribution of the
2 official's or candidate share in any partnership or professional group, and the
3 names and addresses of all persons and organizations from whose payments
4 such distributions are made; provided, however, that no such names and
5 addresses need be furnished when the distribution to the official or candidate
6 from any such person or organization in said year is less than One Thousand
7 Dollars (\$1,000), or when said disclosure is derogation of a privilege granted by
8 law.

9 (10) Itemization of income derived from an estate or trust in which the
10 official or candidate has an interest and the nature of that interest.

11 (b) The report shall list all gifts to the official or candidate which in aggregate
12 value exceed One Hundred Dollars (\$100) in the year from a particular source.
13 Included in the report shall be the name and address of the donor, the amount or
14 value of his gifts, and a description thereof. The report shall also contain the
15 name and address of a donor to the official or candidate, his spouse and/or his
16 dependent children when the amounts or values of such gifts given in the course
17 of a calendar year from a particular source exceed Five Hundred Dollars (\$500),
18 and shall describe each such gift and the value thereof;

19 (c) The report shall list assets held by the official or candidate, by his spouse or
20 dependent children, or by any of them jointly. The list shall include the value of
21 each asset and a brief description thereof, but household furnishings and
22 personal effects need not be reported.

1 (d) The report shall include the names and addresses of each person and
2 organization to whom the official or candidate, his wife, or dependent children,
3 or any of them jointly owe an aggregate amount in excess of Five
4 Thousand Dollars (\$5,000), and include a statement of the total aggregate
5 indebtedness of the official or candidate and such family members.

6 (e) The report shall include a statement of any funds established by the official or
7 candidate or on his behalf, to assist him in defraying expenses which may be
8 incurred by reason of his being an official or candidate. The
9 report shall set forth the names and addresses of all persons contributing to the
10 funds, the amount of each contribution, the amount of each expenditure from
11 such funds, and the purpose of each such expenditure.

12 **§13104.1. Contents of Financial Reports Filed by Appointees to or**
13 **Members of Boards and Commissions.**

14 Notwithstanding any other provision of Public Law, all appointees to Boards and
15 Commissions of the government of Guam, as defined by §13102(5) of this
16 Chapter, shall be required to disclose and submit a financial report containing
17 only information where conflicts of interest or possible conflicts of interest exist
18 at the time of appointment or as may be expected to exist during their tenure of
19 service on the board or commission to which they are being appointed. Such
20 information shall include conflicts of interest or possible conflicts of interests
21 with the appointee's or member's place of employment, any entity in which the
22 appointee or member serves as a director or consultant to and any entity to
23 which the appointee or member or a family member of the appointee or member
24 owns an interest of five percent (5%) or more in. A family member shall be

1 defined as any relative by blood or marriage or cohabitation in lieu of marriage;
2 within two (2) degrees of consanguinity. In the event that any conflicts of
3 interests, as defined herein, arise subsequent to a member's appointment, the
4 member shall, within thirty (30) days of the knowledge of such conflicts of
5 interest, file an amended report with the Guam Election Commission or by the
6 next filing deadline, whichever is sooner. For purposes of this Subsection,
7 'conflicts of interest' shall be defined under the provisions of §15205 of Title 4,
8 Guam Code Annotated. In the event that no conflicts of interests or possible
9 conflicts of interest exist, the report shall state that 'no conflicts of interest exists.'
10 The Election Commission shall prepare separate disclosure reports specifically
11 for board and commission members. In the event that any Board or Commission
12 is required to approve the purchase of any item from any SOURCE in which any
13 of its members may have a conflict of interest as described herein, such member
14 shall disclose for the record, the nature of such conflict and shall append a copy
15 of the minutes of such meeting to the financial disclosure report.

16 **§13105. Election Commission.**

17 On or before May 1, of every calendar year, the Election Commission shall cause
18 to have published in a newspaper of local circulation for a period of three (3)
19 consecutive days a report containing therein the names of all officials who have
20 not filed their reports as required by this Chapter at least fifteen (15) days
21 preceding the election for which the candidate has filed.

22 **§13106. Failure to File: Punishment.**

23 (a) Any official or candidate who fails to file a financial report required by this
24 Chapter, or who knowingly and willfully files a false financial report under this

1 Chapter shall be guilty of a misdemeanor. The Election Commission shall report
2 to the Attorney General for appropriate action the name of any official or
3 candidate who fails to file a financial report required by this Chapter, or who in
4 its professional judgment has knowingly filed a false report. This Section shall
5 not be construed to permit prosecution of a person who unintentionally filed an
6 erroneous report, which report shall be subject to correction.

7 (b) Any official, or candidate who fails to file a felony conviction disclosure
8 report as required by this Chapter, or who knowingly and willingly files a felony
9 conviction disclosure statement which contains false or misleading information,
10 shall be guilty of a third degree felony, punishable by a period of incarceration of
11 not less than ninety (90) days and not more than three (3) years, with a maximum
12 fine of five thousand dollars (\$5,000.00) for each non-disclosed felony conviction.
13 The statute of limitations for this offense shall be five (5) years from the end of
14 the covered period of government service or candidacy.