

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

Bill No. 61 (EC)

As amended.

Introduced by:

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**AN ACT TO AMEND TITLE 4 GUAM CODE ANNOTATED
§2103.5, RELATIVE TO EXECUTIVE NOMINATIONS; AND
TO AMEND CHAPTER 13 OF TITLE 4 GUAM CODE
ANNOTATED TO REQUIRE 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 standard initially established by
5 the Organic Act and reaffirmed in subsequent local laws. When Boards,
6 Commissions and appointed executive positions were created by law, the
7 policymaking and administrative powers to make decisions involving hundreds of

1 millions of dollars and services affecting the lives of every Guam resident, guest
2 and business devolved into numerous subsidiary hands. A corresponding
3 disqualification of persons convicted of a felony *or* crimes involving moral
4 turpitude from holding elective *or* appointed office is expected, but formally
5 neither required *or* consistently respected. It is therefore, the intent of this
6 Legislature to promote the highest standards in public leadership by requiring
7 candidates, appointees and other senior office holders to disclose any felony
8 conviction in their personal history as a matter of public record.

9 **Section 2.** Title 4 Guam Code Annotated §2103.5 is *amended* to read:

10 “**§2103.5. Submission for Legislative Advice and Consent.** The
11 appointing authority *shall* submit to the Speaker of *I Liheslaturan Guåhan*
12 the name of the nominee to a position in a nomination letter to be hand-
13 delivered to the office of the Speaker. The nomination letter *shall* include
14 the following: name; position to which the appointment is made; address;
15 citizenship; age; educational background; prior government service whether
16 within or without the government of Guam; information pertinent to the
17 position’s qualifications; police clearance report; a copy of DD Form 214 for
18 those with prior military service; special distinctions and honors; whether
19 the nominee has been found guilty of a felony in any court, whether within
20 *or* without the United States, and if so, *shall* specify in detail the address of
21 the court, the date of conviction and the specific infraction committed;
22 whether the nominee has been declared mentally incompetent by any court,
23 whether within *or* without the United States, and if so, specify in detail
24 reasons and facts related to such declaration; whether the nominee has been
25 found not guilty *or* not punishable in any criminal proceedings by reason of
26 insanity; whether the nominee has been confined to a mental institution for

1 any reason, and if so, the reasons why the appointing authority believes the
2 nominee is not suffering from any mental illness *or* affliction.

3 The applicant *shall* execute an affidavit under penalty of perjury that the
4 applicant has read and reviewed the information contained in the nomination letter
5 from *I Maga'lahaen Guåhan* that the matters contained in such nomination letter
6 and all attachments thereto are true and correct. *If* the applicant cannot, *or* will not,
7 certify *or* verify the accuracy of any part of the nomination letter, it *shall* be so
8 noted in the applicant's affidavit."

9 **Section 3.** Title 4 Guam Code Annotated, Chapter 13, is *amended* to read:

10 "§13101. **Title.** This Chapter *shall* be known and may be cited as the
11 Public Official Disclosure Act.

12 **§13102. Definitions for Purposes of This Act.**

13 (a) The term *official* means any person elected to any public
14 office in Guam and any person appointed, with legislative
15 concurrence *or* by the Guam Legislature, to any public office, to
16 include, but *not* limited to:

17 (1) all elected officials;

18 (2) officials appointed by *I Maga'lahi* whose
19 appointment is subject to the consent of *I Liheslaturan Guåhan*,
20 except ex-officio and student members of Boards and
21 Commissions in their capacity as members of such Boards and
22 Commissions; and

23 (3) the chief executive officers, by whatever title they
24 may be known, of all agencies and instrumentalities of the
25 government of Guam whether *or* not confirmation by *I*
26 *Liheslaturan Guåhan* is required.

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

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

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

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

11 **§13103. Reports to be filed With the Election Commission.** (a)

12 Each official *shall* file with the Election Commission, on *or* before April 22
13 of each calendar year, a written report containing the financial information
14 required by this Chapter covering the preceding calendar year (or other year
15 *if* the individual official files a Guam Income Tax Return covering a period
16 other than the calendar year). Each official *shall* also file a written felony
17 conviction report within thirty (30) days of conviction of a felony in court,
18 *or* within thirty (30) days of enactment hereof, regardless of whether an
19 appeal may be *or* has been filed, and regardless of whether the case has been
20 sealed. Each candidate who is not an official *shall* file with the Election
21 Commission on the date he files his petition for candidacy, a written report
22 containing the financial information required by this Chapter covering the
23 preceding calendar year (or other year *if* the individual official files a Guam
24 Income Tax Return covering a period other than the calendar year), and a
25 written report itemizing any and all of his felony convictions, whether public
26 *or* under seal, that have not been dismissed upon successful appeal, vacated

1 by a court, *or* cleared by a grant of executive pardon. The felony conviction
2 report is a statement describing each offense for which a felony conviction
3 was entered in a court of law, within *or* without the United States, sealed *or*
4 not, including the address of the court, date of conviction, and sentence
5 imposed. The Executive Director of the Election Commission *shall* grant
6 extensions for the filing of financial reports herein required by officials;
7 provided, however, that such extension shall *not* exceed one hundred eighty
8 (180) days beyond April 22 of each calendar year.

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

12 (c) All reports filed pursuant to this Section *shall* be maintained by the
13 Election Commission as public records available for inspection. Copies of
14 the reports *shall* be furnished to the public, upon the payment of reasonable
15 copying fees. The Executive Director of the Election Commission *shall* issue
16 a certificate certifying that an official *or* candidate has filed his reports as
17 required by this Chapter.

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

23 **§13104. Contents of Financial Report.** (a) The financial report of
24 the official *or* candidate as required in this Chapter *shall* include a complete
25 account of the official's *or* candidate's gross income and that of his spouse
26 and dependent children. For the purpose of this Chapter, gross income *shall*

1 be defined as set forth in Section 61 of the Internal Revenue Code of 1954,
2 as amended (26 U.S.C 61). The report of income *shall* specifically indicate,
3 though not to the exclusion of other items listed in Section 61, the following
4 information:

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

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

15 (3) An itemization of all gains derived from dealings in real
16 property, including the names and addresses of seller and purchaser
17 and a brief description of the transaction which too place;

18 (4) The sources from which were derived income from interest
19 and the amounts thereof;

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

22 (6) The sources from which royalties were derived and the
23 amounts thereof;

24 (7) The sources from which dividends were derived and the
25 amounts thereof;

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

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

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

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

24 (c) The report *shall* list assets held by the official *or* candidate, by his
25 spouse *or* dependent children, *or* by any of them jointly. The list *shall*

1 include the value of each asset and a brief description thereof, but household
2 furnishings and personal effects need *not* be reported.

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

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

14 **§13104.1. Contents of Financial Reports Filed by Appointees to *or***
15 **Members of Boards and Commissions.** Notwithstanding any other
16 provision of Public Law, all appointees to Boards and Commissions of the
17 government of Guam, as defined by §13102(5) of this Chapter, *shall* be
18 required to disclose and submit a financial report containing only
19 information where conflicts of interest or possible conflicts of interest exist
20 at the time of appointment *or* as may be expected to exist during their tenure
21 of service on the Board *or* Commission to which they are being appointed.
22 Such information *shall* include conflicts of interest *or* possible conflicts of
23 interests with the appointee's *or* member's place of employment, any entity
24 in which the appointee *or* member serves as a director *or* consultant to and
25 any entity to which the appointee *or* member *or* a family member of the
26 appointee *or* member owns an interest of five percent (5%) *or* more in. A

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

18 **§13105. Election Commission.** On *or* before May 1, of every
19 calendar year, the Election Commission *shall* cause to have published in a
20 newspaper of local circulation for a period of three (3) consecutive days a
21 report containing therein the names of all officials who have not filed their
22 reports as required by this Chapter at least fifteen (15) days preceding the
23 election for which the candidate has filed.

24 **§13106. Failure to File: Punishment.** (a) Any official *or* candidate
25 who fails to file a financial report required by this Chapter, *or* who
26 knowingly and willfully files a false financial report under this Chapter *shall*

1 be guilty of a misdemeanor. The Election Commission *shall* report to the
2 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
4 in its professional judgment has knowingly filed a false report. This Section
5 *shall* not be construed to permit prosecution of a person who unintentionally
6 filed an erroneous report, which report *shall* be subject to correction.

7 (b) Any official *or* candidate who fails to file a felony conviction
8 report required by this Chapter, *or* who knowingly and willingly files a
9 felony conviction report that contains false *or* misleading information, *shall*
10 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
12 maximum fine of Five Thousand Dollars (\$5,000) for each non-disclosed
13 felony conviction. The statute of limitations for this offense *shall* be five (5)
14 years from the end of the pertinent period of government service *or*
15 candidacy.”