



Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
URISMAN I MAGA LAHE
AGANA, GUAM 96910 U.S.A.

Wla
4-03-90

MAR 21 1990

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 486, which I have signed into law this date
as Public Law No. 20-151.

Sincerely,

Joseph F. Ada
JOSEPH F. ADA
Governor

Attachment

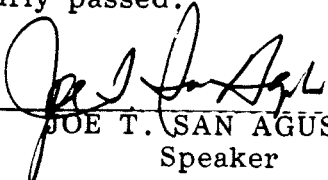


Commonwealth Now!

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

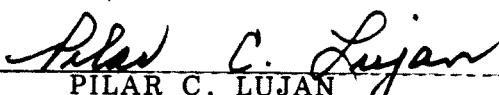
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 486 (LS), "AN ACT TO AMEND SECTIONS 13985.2, 13985.25, 13985.42, 26002, SUBSECTION (d) OF SECTION 13985.19, AND SUBSECTION (g) OF SECTION 26003, TO REPEAL AND REENACT SECTION 13985.21, TO REPEAL PART IV OF CHAPTER XIII OF TITLE XIV, AND SUBSECTIONS (2) AND (3) OF SECTION 13985.23, AND TO ADD NEW SECTIONS 13985.43, 13985.51, 13985.52, 19439, 13985.60 THROUGH 13985.62, 13985.70, AND 26039 THROUGH 26033, ALL OF THE GOVERNMENT CODE, ESTABLISHING A HISTORIC RESOURCES DIVISION WITHIN THE DEPARTMENT OF PARKS AND RECREATION, A HISTORIC PRESERVATION REVIEW BOARD, THE POSITION OF HISTORIC PRESERVATION OFFICER, AND THE GUAM PRESERVATION TRUST," was on the 7th day of March, 1990, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



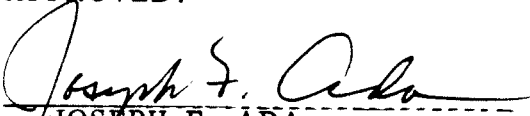
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 9th day of March, 1990,
at 4:52 o'clock p.m.



Theresa J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: MAR 21 1990

Public Law No. 20-151

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 486 (LS)
As substituted by the Author
and as amended by Committee on
Rules

Introduced by:

E. P. Arriola
M. Z. Bordallo
T. S. Nelson

H. D. Dierking
J. T. San Agustin
J. P. Aguon
C. T. C. Gutierrez
P. C. Lujan
G. Mailloux
D. Parkinson
F. J. A. Quitugua
E. D. Reyes
F. R. Santos
M. C. Ruth
J. G. Bamba
D. F. Brooks
E. R. Duenas
E. M. Espaldon
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AMEND SECTIONS 13985.2, 13985.25, 13985.42, 26002, SUBSECTION (d) OF SECTION 13985.19, AND SUBSECTION (g) OF SECTION 26003, TO REPEAL AND REENACT SECTION 13985.21, TO REPEAL PART IV OF CHAPTER XIII OF TITLE XIV, AND SUBSECTIONS (2) AND (3) OF SECTION 13985.23, AND TO ADD NEW SECTIONS 13985.43, 13985.51, 13985.52, 19439, 13985.60 THROUGH 13985.62, 13985.70, AND 26039 THROUGH 26033, ALL OF THE GOVERNMENT CODE, ESTABLISHING A HISTORIC RESOURCES DIVISION WITHIN THE DEPARTMENT OF PARKS AND RECREATION, A HISTORIC PRESERVATION REVIEW BOARD, THE POSITION OF HISTORIC PRESERVATION OFFICER, AND THE GUAM PRESERVATION TRUST.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Intent. The Legislature has determined that
3 the historic preservation program of Guam can be enhanced by making the
4 Guam Historic Preservation Officer a classified position, thereby providing
5 continuity in establishing and carrying out programs that will enrich and
6 protect Guam's historic sites and properties. It has also been determined
7 that the burden of actively preserving Guam's cultural resources must be
8 shared by both government and private resources. It is therefore the
9 purpose of this Act to provide the mechanism necessary to strengthen and
10 improve Guam's historic preservation laws and programs for the benefit of
11 the people of Guam.

12 Section 2. §26030 is hereby added to Chapter I, Title XXVII,
13 Government Code, to read:

14 "§26030. Guam Historic Resources Division created. There is
15 hereby created the Guam Historic Resources Division within the
16 Department of Parks and Recreation, which division shall be
17 responsible for establishing a comprehensive historic preservation
18 program for Guam."

19 Section 3. §26031 is hereby added to Chapter I, Title XXVII,
20 Government Code, to read:

21 "§26031. Guam Historic Preservation Officer. The position of
22 Guam Historic Preservation Officer is hereby created in the classified
23 service under the Department of Parks and Recreation (the
24 "Department"), the holder of which position shall be the State Historic
25 Preservation Officer for federal purposes. The Director of Parks and
26 Recreation (the "Director") shall select a qualified candidate to fill the
27 position based on training, work experience and education pertinent to
28 cultural resources management. The Guam Historic Preservation
29 Officer shall be under the supervision of the Director and shall be the
30 head of the Historical Resources Division of the Department and
31 Executive Director for the Guam Preservation Trust Fund."

32 Section 4. §26032 is hereby added to Chapter I, Title XXVII,
33 Government Code, to read:

1 "\$26032. Guam Historic Preservation Officer: Duties. The Guam
2 Historic Preservation Officer shall administer the comprehensive
3 program for historic preservation, restoration and presentation
4 prescribed by §13985.2 of Chapter XIII of Title XIV of this Code."
5 Section 5. §26033 is hereby added to Chapter I, Title XXVII,
6 Government Code, to read:

7 "\$26033. Guam Historic Preservation Officer: Compensation.
8 The Civil Service Commission shall establish the necessary
9 qualifications and wage standards of the Guam Historic Preservation
10 Officer."

11 Section 6. §13985.2 of the Government Code is hereby amended to
12 read:

13 "\$13985.2 The Department in cooperation with the Territorial
14 Planning Commission and the Territorial Seashore Protection Commission
15 shall establish a comprehensive program for historic preservation,
16 restoration, and presentation, which shall include but not be limited to
17 the following:

18 (1) Plans to acquire, restore, and preserve historic areas,
19 buildings, and site significant to Guam's past;

20 (2) Establish and maintain the Guam Register of Historic
21 Places;

22 (3) Establish regulations on the uses of such areas;

23 (4) Develop a territory wide survey of historic areas,
24 buildings, and sites with a phased preservation and restoration
25 development plan and accompanying budget and land use
26 recommendations;

27 (5) Provide for matching grants-in-aid to private agencies
28 for projects which will fulfill the purposes of this Chapter;

29 (6) Seek assistance for the territorial historic preservation
30 and restoration program by applying for technical assistance and
31 funds from the federal government and private agencies and
32 foundations for the purposes of this Chapter;

33 (7) Employ sufficient professional and technical staff for the
34 purposes of this Chapter;

1 (8) Advise and cooperate with other public and private
2 agencies engaged in similar work;

3 (9) Submit an annual report and budget to the Governor
4 and the Legislature by February 1st of each year, with
5 recommendations for programs of historic preservation and
6 restoration."

7 Section 7. §13985.60 is hereby added to Chapter XIII, Title XIV,
8 Government Code, to read:

9 "§13985.60. Guam Historic Preservation Review Board
10 established. There is hereby created a Guam Historic Preservation
11 Review Board (the "Board"), which Board shall consist of five (5)
12 members, and five (5) alternates appointed by the Governor with the
13 consent of the Legislature. At least one (1) member of the Board
14 shall be knowledgeable in historic preservation and a majority shall be
15 recognized professionals in the disciplines of history, prehistoric and
16 historic archeology, or architecture. At least one (1) member must be
17 knowledgeable of traditional Chamorro society and culture."

18 Section 8. §13985.61 is hereby added to Chapter XIII, Title XIV,
19 Government Code, to read:

20 "§13985.61 Guam Historic Preservation Review Board: Duties.
21 It shall be the duty of the Board to:

22 (1) Enter historic properties into the Guam Register of
23 Historic Places;

24 (2) Evaluate applications for nominating properties to the
25 National Register of Historic Places;

26 (3) Review the Guam survey of the Guam Historic
27 Properties;

28 (4) Review the content of the comprehensive preservation
29 plan established pursuant to §13985.2 of this Code;

30 (5) Serve as the Board of Directors of the Guam
31 Preservation Trust Fund;

32 (6) Serve as the State Historic Review Board for purposes
33 related to the National Historic Preservation Act, Public Law
34 89-665."

1 Section 9. §13985.62 is hereby added to Chapter XIII, Title XIV,
2 Government Code, to read:

3 "§13985.62 Guam Historic Preservation Review Board: (a)
4 Tenure. The members of the Board shall serve for four (4) years;
5 provided, that of the members first appointed, two (2) shall serve for
6 four (4) years, one (1) shall serve for three (3) years, one (1) shall
7 serve for two (2) years, and one (1) shall serve for one (1) year.
8 Replacement terms shall expire at the end of the four (4) years.

9 (b) Compensation. Members shall be compensated Fifty Dollars
10 (\$50) for each Board meeting they attend, not to exceed One Hundred
11 Dollars (\$100) per month. Members traveling on official business shall
12 receive per diem at the established government of Guam rates.

13 (c) Quorum. Four (4) members of the Board shall constitute a
14 quorum for the transaction of official business."

15 Section 10. §13985.52 is hereby added to Chapter XIII, Title XIV,
16 Government Code, to read:

17 "§13985.52. Guam Register of Historic Places. The Department's
18 Historic Resources Division shall maintain a register of places found to
19 be significant in the history, pre-history and culture of Guam. The
20 Department with the advice and consent of the Guam Historic
21 Preservation Review Board shall issue rules, regulations and guidelines
22 to implement the Guam Register of Historic Places in an orderly and
23 effective manner."

24 Section 11. §13985.21 of the Government Code is hereby repealed and
25 reenacted to read:

26 "§13985.21. Territorial monuments. Upon recommendation of the
27 Historic Preservation Review Board, the Governor may declare by
28 executive order historic landmarks, structures or objects located on
29 lands owned or controlled by the government to be territorial
30 monuments."

31 Section 12. §13985.80 is hereby added to Chapter XIII, Title XIV,
32 Government Code, to read:

33 "§13985.80. Guam Preservation Trust. There is hereby
34 established as a non-profit public corporation the Guam Preservation

1 Trust (the "Trust"). The Trust shall have as its purpose and within
2 its power to seek outside grants and donations, to acquire title in fee
3 simple, in leasehold, or by easement, through donation, transfer,
4 dedication, purchase, and eminent domain, of threatened Guam
5 properties for the preservation of their historical value, and support
6 other activities directly related to increasing the public appreciation of
7 and benefit from historical places. Expenditures by the Trust shall be
8 limited to purposes of the Trust and may not be used for any
9 operations of the Department."

10 Section 13. §13985.82 is hereby added to Chapter XIII, Title XIV,
11 Government Code, to read:

12 "§13985.82. Guam Preservation Trust income. Fees collected
13 pursuant to Subsection (a) of §31047 of this Code shall be deposited in
14 the Guam Preservation Trust Fund. Fines collected under §13985.25 of
15 this Code shall be deposited in the Guam Preservation Trust Fund.
16 Guam Preservation Trust funds shall be maintained separate and apart
17 from all other government funds.

18 Section 14. §13985.25 of the Government Code is hereby amended to
19 read:

20 "§13985.25. Vandalism and unlawful taking of historic properties
21 and sites. It shall be unlawful for any person to take, appropriate,
22 evacuate, injure, or destroy any prehistoric or historic ruin or
23 monument or object of antiquity situated on lands owned or controlled
24 by the territory without the permission of the Department. Any
25 person, firm or contractor who violates this Section shall be guilty of
26 a petty misdemeanor and shall be fined not more than Five Thousand
27 Dollars (\$5,000) or imprisoned not more than sixty (60) days or both.
28 Any prehistorical and historical objects and remains which have been
29 taken without a permit shall be seized, deposited, and preserved in
30 public museums by the Department."

31 Section 15. §13985.51 is hereby added to Chapter XIII, Title XIV,
32 Government Code, to read:

33 "§13985.51. Enforcement and power of arrest. The Director, the
34 Guam Historic Preservation Officer and other designated employees of

1 the Department shall have arresting and citation powers over persons,
2 firms and contractors who are in violation of any of the provisions of
3 this Chapter."

4 Section 16. §13985.70 is hereby added to Chapter XIII, Title XIV,
5 Government Code, to read:

6 "§13985.70. Certificate of approval. (a) A certificate of
7 approval must be issued by the Guam Historic Preservation Officer
8 before any action affecting potential historic sites or objects is
9 undertaken, including, but not limited to:

- 10 (1) Building permits;
- 11 (2) Grading permits;
- 12 (3) Clearing permits;
- 13 (4) Foundation permits;
- 14 (5) Leases and lease renewals of government land;
- 15 (6) Application for surplus federal real estate;
- 16 (7) Government infrastructure improvement projects;
- 17 (8) Government construction, including clearing and
18 grading;
- 19 (9) Submittal of federal grant applications for construction,
20 land use or improvements; and
- 21 (10) Applications to Territorial Planning Commission and
22 Territorial Seashore Protection Commission.

23 (b) The Guam Historic Preservation Officer shall have the
24 authority to prohibit activities listed in subsection (a) and may issue
25 cease work orders on projects when there is evidence of adverse
26 impact or potential destruction of cultural or historical features on the
27 property. In the event that there is no alternate recourse in
28 protecting or salvaging the cultural or historical significance of the
29 property, the decision of the Guam Historic Preservation Officer to
30 deny issuance of a permit or to cease work on projects shall prevail.

31 (c) Higher authority shall not override the decision of the Guam
32 Historic Preservation Officer, except through procedures adopted
33 pursuant to Subsection (d) of this Section. If work has already
34 begun where items of cultural or historical significance have been

1 disturbed, the developer shall be responsible for the restoration of the
2 property to its original form and the burden of expense shall be on
3 the developer.

4 (d) The problems of projects with potential impact on cultural or
5 historic features may be resolved by the Guam Historic Preservation
6 Officer through agreement or mitigation. Such resolution may include,
7 but need not be limited to, project redesign, relocation, curation and
8 display of cultural resources, and land dedication to the Guam
9 Preservation Trust. The Guam Historic Preservation Review Board
10 shall develop the criteria for resolution of any controversial finding in
11 accordance with the Administrative Adjudication Law."

12 Section 17. §13985.62 is hereby added to Chapter XIII, Title XIV,
13 Government Code, to read:

14 "§13985.62. Historic district zones. The Territorial Planning
15 Commission and the Guam Historic Preservation Review Board shall
16 jointly establish zoning controls for all registered historic properties,
17 including but not limited to the Agana Historic District and the
18 Inarajan Architectural Historic District. Nothing in this Section shall
19 affect the powers given the Guam Historic Preservation Review Board
20 in subsection (c) of §13985.19 of this Code."

21 Section 18. §13985.43 is hereby added to Chapter XIII, Title XIV,
22 Government Code, to read:

23 "§13985.43. Treatment of human remains. Human remains shall
24 receive respect and consideration when discovered. Disturbance of
25 burials shall be avoided when possible, but when necessary shall be at
26 the expense of the developers, using procedures and standards
27 acceptable to the Guam Historic Preservation Officer. Anthropological
28 review of human remains shall be at a minimal level and only for the
29 time authorized by the Guam Historic Preservation Officer prior to
30 reburial."

31 Section 19. New position. Upon the effective date of this Act, the
32 full-time equivalency positions of the Department of Parks and Recreation
33 shall be increased by one (1) to include the position of Guam Historic
34 Preservation Officer. The Department of Parks and Recreation is

1 authorized to use available lapses within its current 1990 fiscal year budget
2 to fund the position of Guam Historic Preservation Officer.

3 Section 20. Abolishment of previous board. The Guam Review Board
4 for Historic Preservation established by Executive Order 78-46 shall be
5 terminated ninety (90) days from the effective date of this Act. The
6 Governor shall submit to the Legislature nominees to the Guam Historic
7 Preservation Review Board within thirty (30) days from the effective date
8 of this Act.

9 Section 21. §19439 is hereby added to the Government Code to read:

10 "§19439. Abatement of taxes. The Director of Revenue and
11 Taxation shall grant an abatement of property taxes on private
12 property which is included within a historic preservation easement
13 executed by the private owner and approved by the Guam Preservation
14 Trust's Board of Directors."

15 Section 22. Subsection (g) of §26003 of the Government Code is
16 hereby amended to read:

17 "(g) to be State Liaison Officer for the Bureau of Outdoor
18 Recreation."

19 Section 23. §26002 of the Government Code is hereby amended to
20 read:

21 "§26002. The Department is divided into three divisions, to be
22 known as the Parks Division, the Recreation Division, and the Guam
23 Historic Resources Division."

24 Section 24. Part IV, Chapter 13, Part IV, Title XIV, Government
25 Code, is hereby repealed.

26 Section 25. Subsections (2) and (3) of §13985.23 of the Government
27 Code are hereby repealed.

28 Section 26. Subsection (1) of §13985.42 of the Government Code is
29 hereby amended to read:

30 "(1) Consult the Guam Historic Preservation Officer before
31 demolishing, altering, or transferring any property under the
32 jurisdiction that is potentially of historical, architectural,
33 archaeological, or cultural significance, including, but not limited to,
34 any property listed on the territorial register."

1 Section 27. Subsection (d) of §13985.19 of the Government Code is
2 hereby amended to read:

3 "(d) Inclusion of any historic site structure, building or object
4 on the Guam Register of Historic Places shall be by the majority
5 affirmative vote of the Guam Historic Preservation Review Board."

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 486

Date: 3/7/90

Resolution No. _____

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba		✓		
M. Z. Bordallo	✓			
D. F. Brooks		✓		
H. D. Dierking	✓			
E. R. Duenas			✓	
E. M. Espaldon		✓		
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan		✓		
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth		✓		
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka		✓		
A. R. Unpingco		✓		

13 7 1

MAR 2 '89

Bill No. 486 (LS)
Introduced by:

E.P. Arriola *epa*

**AN ACT TO CREATE A GUAM HISTORIC
PRESERVATION OFFICER, AND FOR OTHER
PURPOSES**

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF GUAM:

Section 1. GUAM HISTORIC PRESERVATION OFFICER. Legislative Intent. The Legislature has determined that the historic preservation program of Guam can be enhanced by making the Guam Historic Preservation Officer a classified position to provide continuity in establishing and carrying out programs that will enrich and protect Guam's historic sites and properties. It has also been determined that the requirement to actively preserve Guam's cultural resources must be shared by both the government and private resources. It is therefore the purpose of this act to provide the mechanism necessary to strengthen and improve Guam's historic preservation laws and programs for the general welfare of the people of Guam.

Section 2. The Guam Historic Preservation Officer. The Guam Historic Preservation Officer shall be a classified position under the Department of Parks and Recreation and shall be the State Historic Preservation Officer for federal purposes. The Director of Parks and Recreation shall be responsible for selecting a candidate to fill the position based on qualifications through training, work experience and education pertinent to cultural resources management. The Guam Historic Preservation Officer shall report and be under the direct supervision of the Director of Parks and Recreation.

1. Duties. The Guam Historic Preservation Officer shall

establish and administer a comprehensive historic preservation program for presentation, restoration, and protection, as prescribed in Title XIV, Chapter XII, Section 13985.2 of the Government Code of Guam.

2. Compensation. It shall be the duty of the Civil Service Commission to establish the necessary qualifications and wage standards of the Guam Historic Preservation Officer.
3. The Guam Historic Preservation Officer shall be the head of the Cultural Resources Division of the Department of Parks and Recreation and Executive Director for the Guam Preservation Trust.

Section 3. Guam Historic Preservation Review Board. The Board shall consist of seven (7) members appointed by the Governor with the consent of the Legislature. Members of the Board shall be knowledgeable in historic preservation and a majority shall be recognized professionals in the disciplines of history, prehistoric and historic archaeology, and architecture. At least one (1) member must be knowledgeable in traditional Chamorro society and culture.

1. Duties. It shall be the duty of the Review Board to:
 - A. Enter historic properties into the Guam Register of Historic Places.
 - B. Evaluate applications for nominating properties to the National Register of Historic Places.
 - C. Review the Guam Survey of the Guam Historic Properties.
 - D. Review the content of the Guam Historic Preservation Plan.
 - E. To serve as the Board of Directors of the Guam Preservation Trust.

2. Tenure. The members of the Review Board shall serve for four (4) years; provided that of the members first appointed, one (1) shall serve for one (1) year; two (2) shall serve for two (2) years; two (2) shall serve for three (3) years; and two (2) shall serve for four (4) years.
3. Compensation. Members shall be compensated Fifty Dollars (\$50.00) for each board meeting that they attend, not to exceed One Hundred Dollars (\$100.00) per month. Members traveling on official business shall receive per diem at the established Government of Guam rates.
4. Quorum. Four (4) members of the Review Board shall constitute a quorum for the transaction of its official business.

Section 4. Historic Property. Historic Property as defined by Government Code Section 13985.1(2) that is significant in Guam's history, architecture, archaeology, or culture may be eligible for listing in the Guam Register of Historic Places. A property may be declared significant if it possesses integrity of location, design, setting, materials, workmanship, feeling, and association, and possesses any of the following characteristics:

1. Property is associated with events that have made a significant contribution to broad patterns of history;
2. property is associated with the lives of persons significant in the past;
3. property embodies distinctive characteristics of a type, period, or method of construction, or represents the work of a master;
4. property has yielded or is likely to yield important

historic information; and

5. property contains important information pertinent to a significant archaeological research.

Section 5. Territorial Monuments. Upon recommendation of the Department of Parks and Recreation, the Governor may declare historic landmarks, structures, or objects located on lands owned or controlled by the government to be territorial monuments.

Section 6. Guam Preservation Trust. There is hereby established a non-profit public corporation, the Guam Preservation Trust. The Guam Preservation Trust shall have as its purposes and power to acquire in fee simple or by easement, real estate by donation, transfer, dedication, purchase, and condemnation of threatened properties listed on the Guam Register of Historic Places and to manage the properties for the preservation of their historical and cultural values. Expenditures by the Guam Preservation Trust shall be limited to the purposes of the Guam Preservation Trust.

Section 7. Guam Preservation Trust Income. All Government of Guam fees for building, clearing, grading, and planning, shall be deposited in the account of the Guam Preservaion Trust. Fines collected under Section 26708 of this act shall be payable to the Guam Preservaion Trust. Payment shall be made directly to the Guam Preservation Trust. All Guam Preservation Trust funds shall be maintained separate and apart from other government funds.

Section 8. Vandalism and Unlawful Taking of Historic Properties and Sites. It shall be unlawful for any person to take, appropriate, excavate, injure, or destroy any prehistoric or historic ruin or monument or object of antiquity, situated on lands owned or controlled by the Territory without the permission of the Department. Any person who violates this section shall be guilty of a petty misdemeanor and shall be fined not more that Five Hundred dollars (\$500.00) or imprisoned not more

that Sixty (60) Days or both.

Section 9. Enforcement and Power of Arrest. The Director of Parks and Recreation and the Guam Historic Preservation Officer and delegated employees of the Department of Parks and Recreation shall have the arresting and citation powers on persons who are in violation of this act and Sections 13985.25, 13985.26, 13985.28, and 13985.35 of Title XIV, Chapter XIII of the Government Code of Guam.

Section 10. Certificate of Approval. A certificate of Approval must be issued by the Guam Historic Preservation Officer before any of the following is issued:

- a. Building permits
- b. Grading permits
- c. Clearing permits
- d. Leases and lease renewals of government land
- e. Applications for surplus federal real estate
- f. Land use permits and their renewal
- g. Agricultural leases and their renewal
- h. Government constructing, clearing, and grading
- i. Submittal of federal grant applications for construction, land use or improvements
- j. Applications to Territorial Planning Commission and Territorial Seashore Protection Commission.

Section 11. Historical Survey. Developers of land either public or private shall conduct a historical survey on the land to be developed at their own expense ninety (90) days prior to undertaking an activity stated in Section 9. The developer shall submit an impact statement to the Department with the results of the survey. Activities, such as home improvements and projects not exceeding One Hundred Thousand Dollars (\$100,000.00) are exempted from the provision under this Section.

Section 12. Authority.

1. The Guam Historic Preservation Officer shall have the statutory authority to deny the issuance of certificate of approval and cease work on projects when there is evidence of adverse impact or potential destruction of cultural or historical features on the property or discovery of cultural resources. In the event that there is no alternate recourse in protecting or salvaging the cultural or historical significance of the property, the decision of the Guam Historic Preservation Officer to deny issuance of a certificate of approval or cease work on projects shall prevail.
2. Higher authority shall not override the decision of the Guam Historic Preservation Officer. If work has already begun where cultural or historical significance has been disturbed, the developer shall be responsible for the restoration of the property to its original form and the burden of expense shall be on the developer.
3. Projects with potential impact on cultural or historic features may be resolved by the Guam Historic Preservation Officer through agreement or mitigation that may, but need not be limited to, project redesign, relocation, curation and display of cultural resources, cash donation to the Guam Preservation Trust, and land dedication to the Guam Preservation Trust.

Section 13. Historic District Zone. The Territorial Planning Commission and the Guam Historic Preservation Review Board shall jointly establish zoning controls for historic districts including the Inarajan Architectural Historic District.

Section 14. Treatment of Human Remains. Human remains shall

receive respect and consideration when discovered. Reburials shall be avoided and when necessary shall be at the expense of the developers and satisfactory to the Guam Historic Preservation Officer. Anthropological review of human remains shall be at the minimal level and time frame as authorized by the Guam Historic Preservation Officer prior to reburial.

Section 15. The full time equivalency positions for the Department of Parks and Recreation are increased by one (1) to include the position of Guam Historic Preservation Officer upon the effective date of this Act. The Department of Parks and Recreation is authorized to use available lapses within its current FY1989 budget to fund the Guam Historic Preservation Officer.

Section 16. The Guam Review Board for Historic Preservation established by Executive Order 78-46 shall be abolished upon the effective date of this Act.

Section 17. A new Section 19439 is hereby added to the Government Code of Guam to read as follows:

"Section 19439. The Director of Revenue and Taxation shall grant a rebate of property taxes on private property when such rebate is part of a historic preservation easement entered into by the private owner and the Guam Preservation Trust."

SENATOR ELIZABETH P. ARRIOLA

Chairperson

Committee on Youth, Senior Citizens,
Cultural Affairs and Human Resources



Twentieth
Guam Legislature

August 24, 1989

The Honorable Joe T. San Agustin
Speaker
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

VIA: Chairman, Committee on Rules

Dear Mr. Speaker:

The Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources to which was referred **BILL No. 486, "AN ACT TO CREATE A GUAM HISTORIC PRESERVATION OFFICER, AND FOR OTHER PURPOSES."** has had the same under consideration and now wishes to report back its recommendation **TO DO PASS AS SUBSTITUTED.**

Committee votes received:

<u>TO DO PASS</u>	<u>TO NOT PASS</u>	<u>REPORT OUT</u>	<u>OTHER</u>
<u>13</u>	<u>0</u>	<u>0</u>	<u>0</u>

Attached herewith are the Committee Report and other pertinent documents for your perusal.

Sincerely,

Elizabeth P. Arriola
ELIZABETH P. ARRIOLA

Attachments

VOTE SHEET
 THE COMMITTEE ON YOUTH, SENIOR CITIZENS,
 CULTURAL AFFAIRS AND HUMAN RESOURCES

On Bill No.486 (LS)
**AN ACT TO CREATE A GUAM HISTORIC
 PRESERVATION OFFICER, AND FOR OTHER PURPOSES.**

Chairperson:	To Pass	Not To Pass	Report Out	Inactive File
<u><i>Elizabeth P. Arriola</i></u> Elizabeth P. Arriola	✓	_____	_____	_____
Members:				
<u><i>Frank R. Santos</i></u> Frank R. Santos	✓	_____	_____	_____
<u><i>J. George Bamba</i></u> J. George Bamba	✓	_____	_____	_____
<u><i>Madeleine Bordallo</i></u> Madeleine Bordallo	✓	_____	_____	_____
<u><i>Herminia Dierking</i></u> Herminia Dierking	✓	_____	_____	_____
<u><i>Edward Duenas</i></u> Edward Duenas	✓	_____	_____	_____
<u><i>Ernesto Espaldon</i></u> Ernesto Espaldon	✓	_____	_____	_____
<u><i>Pilar C. Lujan</i></u> Pilar C. Lujan	✓	_____	_____	_____
<u><i>Gordon Mailoux</i></u> Gordon Mailoux	✓	_____	_____	_____
<u><i>Ted S. Nelson</i></u> Ted S. Nelson	✓	_____	_____	_____
<u><i>Edward D. Reyes</i></u> Edward D. Reyes	✓	_____	_____	_____
<u><i>Martha C. Ruth</i></u> Martha C. Ruth	✓ 8/24/89	_____	_____	_____
<u><i>Joe T. San Agustin</i></u> Joe T. San Agustin	✓	_____	_____	_____

Committee Report
of the
Committee on Youth, Senior Citizens, Cultural Affairs and Human
Resources
on
Bill No. 486 (LS)

**AN ACT TO CREATE A GUAM HISTORIC
PRESERVATION OFFICER, AND FOR OTHER
PURPOSES.**

PREFACE

The Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources held a public hearing in the Legislative Session Hall on Thursday, March 2, 1989, to receive testimony on Bill Nos. 486 and 485. The hearing was conducted by Committee Chairperson, Senator Elizabeth P. Arriola and attended by Senators G. Mailloux, E. R. Duenas, J. G. Bamba and M. C. Ruth.

BACKGROUND

Bill Nos. 485 and 486 propose as a matter of public policy the preservation of Guam's cultural resources that would preserve, restore, and protect Guam's historic sites and properties. Both bills are somewhat identical, except that Bill No. 485 intends to place the historic preservation program within the current organizational structure of the Division of Parks. Bill No. 486 proposes to create a separate division within the Department of Parks and Recreation which will be responsible in administering comprehensive historic preservation program.

SUMMARY OF TESTIMONY

Anthony C. Mariano, Director of Parks and Recreation, and Wilfred P. Leon Guerrero, President of the University of Guam, testified on Bill Nos. 485 and 486.

The Guam Chapter, American Institute of Architects submitted written comments. The Chapter supports establishment of a classified position for the Historic Preservation Officer to ensure continuity and objectivity in the administration of historic preservation laws and programs. The Chapter recommends that the present laws should be reinforced to adequately provide clearer responsibility for public and private development to complete historical research, study and protection prior to the start of activities which may distribute historical and cultural resources.

Mr. Mariano testified that the concept in Bill No. 486 is "superior" to the one in Bill No. 485. He prefers to see Bill No. 486 be enacted because it would establish a division within the Department of Parks and Recreation which will administer a comprehensive historic preservation program. Bill No. 486 would give extraordinary powers to the Guam Historic Preservation Officer in implementing and enforcing historic preservation laws and programs.

Mr. Leon Guerrero told the Committee panel that Bill No. 486 would "enhance the continuity in leadership and the effectiveness of the Guam Historic Preservation Officer, and would improve the management and execution of historic preservation endeavors."

Attorney Andrew Gayle, testifying as a private citizen, commented that Bill No. 486 would give extraordinary powers to the historic Preservation Officer because his decision in denying certificate of approval on projects that may have adverse impact or potential destruction of cultural to historical features on the property cannot be overridden by higher authority.

With no further testimony, Chairperson Arriola concluded the hearing on Bill Nos. 485 and 486.

ANALYSIS

Subsequent to the hearing, the Chairperson of the Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources held meetings with representatives from the Department of Parks and Recreation, Library, UOG, Bureau of Planning, Department of Public Works, and the Guam Chapter, American Institute of Architects to discuss concerns raised at the public hearing regarding Bill Nos. 486. Some of the recommendations and suggestions by the participants are incorporated in substitute Bill No. 486.

The following are section by section analysis:

- Section 1. Declares the purpose of the Bill.
- Section 2. This section creates the Guam Historic Resources Division within the Department of Parks and Recreation. The division will be responsible in administering comprehensive historic preservation program.
- Section 3. This section creates the Guam Historic Preservation Officer position in the classified service. It describes the duties of the position.
- Section 4. This section amends §13985.2 of the Government Code of Guam regarding the duties of the Department of Parks and Recreation on the historic preservation and restoration program. The Territorial Planning Commission and the Territorial Seashore Protection Commission will coordinate with the Department of Parks and Recreation in establishing a comprehensive program for historic preservation and restoration.
- Section 5. This section creates the Guam Historic Preservation Review Board within the Department of Parks and Recreation. The Board shall consist of five (5) members, and five (5) alternates appointed by the Governor with the consent of the Legislature. It describes the duties of the Board.

- Section 6. This section designates the Historic Resources Division to maintain a register of places found to be significant in the history, pre-history and cultures of Guam.
- Section 7. This section allows the Governor, upon recommendation of the Historic Preservation Review Board, to declare historic landmarks, structures or objects on land owned or controlled by the government to be territorial monuments.
- Section 8. This section establishes the Guam Preservation Trust, a non-profit public corporation. The Guam Preservation Trust has the power to acquire in fee simple or by easement, real estate by donation, transfer, dedication, purchase and eminent domain of threatened properties listed on the Guam Register of Historic Places and to manage properties for the preservation of their historical value.
- Section 9. This section establishes the Guam Preservation Trust Funds to be maintained separate and apart from other funds. Building permit fees and fines collected under Section 10 of the Act are deposited in the Preservation Trust Fund.
- Section 10. This section imposes penalty for vandalism and unlawful taking of historic properties and sites.
- Section 11. This section gives the Director of Parks and Recreation and employees of the Department enforcement and power of arrest for violation of certain sections of the Criminal Procedures Code of Guam pertaining to the removal, destruction, or disturbance of prehistoric or historic objects.
- Section 12. This section will require certificate of approval from the Guam Historic Preservation Officer before Government of Guam licenses or approvals relating to land use is granted.
- Section 13. This section gives statutory authority to the Guam Historic Preservation Officer to deny approval of certificates under Section 12, or issue cease work orders on projects when there is evidence of adverse impact or potential destruction of cultural or historical features on the property.
- Section 14. This section designates the Territorial Planning Commission and Guam Historic Preservation Review Board to jointly establish controls for historic district and all designated historic properties.
- Section 15. This section declares it a public policy that human remains shall receive respect and consideration when discovered.

- Section 16. This section authorizes the Department of Parks and Recreation two (2) additional positions, including the Guam Historic Preservation Officer, in FY1990.
- Section 17. This section abolishes the Guam Review Board for Historic Preservation established by Executive Order 78-46 upon the enactment of this Act. It also requires the Governor to submit to the Legislature nominees to the Guam Historic Preservation Review Board within Thirty (30) days from the effective date of this Act.
- Section 18. This section adds a new section to the tax code which would grant a "rebate of property taxes on private property when such rebate is part of a historic preservation easement entered into by the private owner and the Guam Preservation Trust."
- Section 19. This section amends the Code of Guam deleting the designation of State Liaison Officer for Historic Preservation Officer from the Director of Parks and Recreation. This title is delegated to the Guam Historic Preservation Officer under this Act.
- Section 20. This section amends the Code of Guam adding the Guam Historic Resources Division within the Department of Parks and Recreation.
- Section 21. This section repeals sections on the never-implemented Guam Institute of Spanish-Chamorro Culture. The powers and duties of the Institute would be delegated to the Guam Historic Preservation Review Board, and Historic Preservation Officer.
- Section 22. This section repeals subsections of Section 13985.23 pertaining to cooperation of other governmental units with the Department of Parks and Recreation in the preservation, protection, excavation, and evaluation of historical or archaeological specimens and sites. The process of certificates of approval and appeals through the Historic Preservation Review Board in the Act replaces the repealed subsections.
- Section 23. This section would replace the Guam Institute of Spanish-Chamorro Culture by the Guam Historic Preservation Office in implementing Section 13985.42 of the Code of Guam.

COMMITTEE RECOMMENDATIONS

The Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources recommends that Bill No. 486 (LS) "AN ACT TO CREATE A GUAM HISTORIC PRESERVATION OFFICER, AND FOR OTHER PURPOSES" as substituted has had the same under consideration, and now wishes to report back with recommendation **TO DO PASS AS SUBSTITUTED BY THE AUTHOR.**

ATTACHMENTS

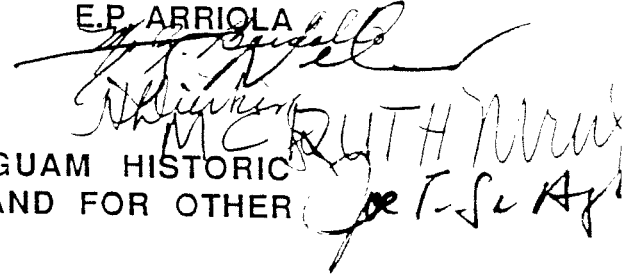
1. Written testimony from Mr. Tony C. Mariano, Director of Parks and Recreation.
2. Written testimony from President, University of Guam, Dr. Wilfred P. Leon Guerrero.
3. Written testimony from Mr. H. Mark Ruth, AIA, President, Guam Chapter, American Institute of Architects.
4. Fiscal Note from Bureau of Budget and Management Research.
5. Executive Order 78-46.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 486(LS)
As Substituted by the Author

Introduced By:

E.P. ARRIOLA



AN ACT TO CREATE A GUAM HISTORIC
PRESERVATION OFFICER, AND FOR OTHER
PURPOSES.

- 1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. GUAM HISTORIC PRESERVATION OFFICER. Legislative
3 Intent. The Legislature has determined that the historic preservation program
4 of Guam can be enhanced by making the Guam Historic Preservation Officer
5 a classified position to provide continuity in establishing and carrying out
6 programs that will enrich and protect Guam's historic sites and properties. It
7 has also been determined that the requirement to actively preserve Guam's
8 cultural resources must be shared by both the government and private
9 resources. It is therefore the purpose of this act to provide the mechanism
10 necessary to strengthen and improve Guam's historic preservation laws and
11 programs for the general welfare of the people of Guam.
12 Section 2. Guam Historic Resources Division; created: There is
13 hereby created The Guam Historic Resources Division within the Department
14 of Parks and Recreation which shall be responsible for establishing a
15 comprehensive historic preservation program for the Territory of Guam.
16 Section 3. Guam Historic Preservation Officer; created. The Guam
17 Historic Preservation Officer position is hereby created in the classified
18 service under the Department of Parks and Recreation and shall be the State
19 Historic Preservation Officer for federal purposes. The Director of Parks and
20 Recreation shall be responsible for selecting a candidate to fill the position
21 based on qualifications through training, work experience and education
22 pertinent to cultural resources management. The Guam Historic Preservation
23 Officer shall report to and be under the direct supervision of the Director of

1 Parks and Recreation.

- 2 1. Duties: The Guam Historic Preservation Officer shall establish
3 and administer a comprehensive historic preservation program
4 for presentation, restoration, and protection, as prescribed in
5 Title XIV, Chapter XIII, Section 13985.2 of the Government Code
6 of Guam.
- 7 2. Compensation: The Civil Service Commission shall establish
8 the necessary qualifications and wage standards of the Guam
9 Historic Preservation Officer.
- 10 3. The Guam Historic Preservation Officer shall be the head of the
11 Historical Resources Division of the Department of Parks and
12 Recreation and Executive Director for the Guam Preservation
13 Trust.

14 **Section 4.** Section 13985.2 of the Government Code of Guam is
15 amended to read: "The Department in cooperation with the [Central Planning
16 Council] Territorial Planning Commission and the Territorial Seashore
17 Protection Commission shall establish a comprehensive program for historic
18 preservation, restoration, and presentation, which shall include but not be
19 limited to the following:

- 20 (1) Plans to acquire, restore, and preserve historic areas, buildings,
21 and sites significant to Guam's past;
- 22 (2) Establish and maintain the Guam Register of Historic Places;
- 23 (3) Establish regulations on the uses of such areas;
- 24 (4) Develop a territory wide survey of historic areas, buildings, and
25 sites with a phased preservation and restoration development
26 plan and accompanying budget and land use
27 recommendations;
- 28 (5) Provide for matching grants-in-aid to private agencies for
29 projects which will fulfill the purposes of this Chapter;
- 30 (6) Seek assistance for the territorial historic preservation and
31 restoration program by applying for technical assistance and
32 funds from the Federal Government and private agencies and
33 foundations for the purposes of this Chapter;
- 34 (7) Employ sufficient professional and technical staff for the

- 1 purposes of this Chapter;
- 2 (8) Advise and cooperate with other public and private agencies
- 3 engaged in similar work;
- 4 (9) Submit an annual report and budget to the Governor and
- 5 Legislature by February 1 of each year, with recommendations
- 6 for programs of historic preservation and restoration."

7 **Section 5.** There is hereby created the Guam Historic Preservation

8 Review Board within the Department of Parks and Recreation. The Board

9 shall consist of five (5) members, and five (5) alternates appointed by the

10 Governor with the consent of the Legislature. At least one (1) member of the

11 Board shall be knowledgeable in historic preservation and a majority shall be

12 recognized professionals in the disciplines of history, prehistoric and historic

13 archeology, and architecture. At least one (1) member must be

14 knowledgeable in traditional Chamorro society and culture.

- 15 1. Duties. It shall be the duty of the Review Board to:
- 16 A. Enter historic properties into the Guam Register of
- 17 Historic Places.
- 18 B. Evaluate applications for nominating properties to the
- 19 National Register of Historic Places.
- 20 C. Review the Guam Survey of the Guam Historic
- 21 Properties.
- 22 D. Review the content of the Guam Historic Preservation
- 23 Plan.
- 24 E. To serve as the Board of Directors of the Guam
- 25 Preservation Trust.
- 26 F. To serve as the State Historic Review Board for purposes
- 27 related to the National Historic Preservation Act, Public
- 28 Law 89-665.
- 29 2. Tenure. The members of the Review Board shall serve for four
- 30 (4) years; provided that the members first appointed, two (2)
- 31 shall serve for four (4) years; one (1) shall serve for three (3)
- 32 years; one (1) shall serve for two (2) years; and one (1) shall
- 33 serve for one (1) year. Replacement terms expire at the original
- 34 appointment date.

1 3. Compensation. Members shall be compensated Fifty Dollars
2 (\$50.00) for each board meeting that they attend, not to exceed
3 One Hundred Dollars. (\$100.00) per month. Members traveling
4 on official business shall receive per diem at the established
5 Government of Guam rates.

6 4. Quorum. Four (4) members of the Review Board shall constitute
7 a quorum for the transaction of its official business.

8 **Section 6.** Guam Register of Historic Places. The Department of Parks
9 and Recreation Historic Resources Resources Division shall maintain a
10 register of places found to be significant in the history, pre-history and
11 cultures of Guam. The Department with advice and consent from the Guam
12 Historic Preservation Review Board shall issue rules, regulations and
13 guidelines to implement the Guam Register of Historic Places in an orderly
14 and effective manner.

15 **Section 7.** Section 13985.21 of the Government Code of Guam is
16 repealed and reenacted to read:

17 "§13985.21. Territorial Monuments. Upon recommendation of
18 the Historic Preservation Review Board, the Governor may declare by
19 executive order historic landmarks, structures or objects located on
20 lands owned or controlled by the government through ownership; fee
21 ownership; less than fee ownership; lease; easement; to be territorial
22 monuments."

23 **Section 8.** Guam Preservation Trust. There is hereby established a
24 non-profit public corporation, the Guam Preservation Trust (GPT). The GPT
25 shall have as its purposes and power to seek outside grants and donations,
26 to acquire in fee simple or by easement, real estate by donation, transfer,
27 dedication, purchase, and eminent domain of threatened properties for the
28 preservation of their historical value, and support of other activities directly
29 related to increasing the public appreciation and benefit from historical
30 places. Expenditures by the Guam Preservation Trust shall be limited to
31 purposes of the Guam Preservation Trust and may not be used for operations
32 of the Department of Parks and Recreation.

33 **Section 9.** Guam Preservation Trust Income. All fees collected
34 pursuant to Subsection (a) of Section 31047 of the Government Code of

1 Guam shall be deposited in the Guam Preservation Trust Fund. Fines
2 collected under Section 10 of this Act shall be payable to the Guam
3 Preservation Trust Fund. All Guam Preservation Trust funds shall be
4 maintained separate and apart from all other government funds.

5 **Section 10.** Section 13985.25 of the Government Code of Guam is
6 hereby amended to read: "§ 13985.25. Vandalism and Unlawful Taking of
7 History Properties and Sites. It shall be unlawful for any person to take,
8 appropriate, evacuate, injure, or destroy any prehistoric or historic ruin or
9 monument or object of antiquity, situated on lands owned or controlled by the
10 Territory without the permission of the Department. Any person, firm or
11 contractor who violates this Section shall [be fined not more than One
12 Thousand Dollars (\$1000.00) or imprisoned not more than Ninety (90) days
13 or both] be guilty of a petty misdemeanor and shall be fined not more than
14 FiveThousand Dollars (\$5000.00) or imprisoned not more than Sixty (60)
15 days, or both. Any prehistorical and historical objects and remains which
16 have been taken without a permit shall be seized, deposited, and preserved
17 in public museums by the Department."

18 **Section 11.** Enforcement and Power of Arrest. The Director of Parks
19 and Recreation and the Guam Historic Preservation Officer and delegated
20 employees of the Department of Parks and Recreation shall have the
21 arresting and citation powers on persons who are in violation of this Act and
22 Sections 114, 115, 116, 117, 118 and 119 of P.L. 13-187., Criminal
23 Procedures Code of the Guam Code Annotated.

24 **Section 12.** Certificate of Approval. A certificate of Approval must be
25 issued by the Guam Historic Preservation Officer before any of the following is
26 issued, but not limited to:

- 26 a. Building permits
- 27 b. Grading permits
- 28 c. Clearing permits
- 29 d. Foundation permits
- 30 e. Leases and Lease renewals of Government land
- 31 f. Application for surplus federal real estate
- 32 g. Government infrastructure improvement projects
- 33 h. Government constructing, clearing and grading

- 1 i. Submittal of federal grant applications for construction, land use
- 2 or improvements
- 3 j. Applications to Territorial Planning Commission and Territorial
- 4 Seashore Protection Commission.

5 **Section 13. Authority.**

- 6 1. The Guam Historic Preservation Officer shall have the
- 7 statutory authority to deny the approval of activities under
- 8 Section 12 of this Act and may issue cease work orders on
- 9 projects when there is evidence of adverse impact or potential
- 10 destruction of cultural or historical features on the property. In the
- 11 event that there is no alternate recourse in protecting or
- 12 salvaging the cultural or historical significance of the property,
- 13 the decision of the Guam Historic Preservation Officer to deny
- 14 issuance of an approval or cease work on projects shall prevail.
- 15 2. Higher authority shall not override the decision of the Guam
- 16 Historic Preservation Officer, except through procedures
- 17 adopted pursuant to Section 13.3 of this Act. If work has already
- 18 begun where cultural or historical significance has been
- 19 disturbed, the developer shall be responsible for the restoration
- 20 of the property to its original form and the burden of expense
- 21 shall be the developer.
- 22 3. Projects with potential impact on cultural or historic features may
- 23 be resolved by the Guam Historic Preservation Officer through
- 24 agreement or mitigation they may, but need not be limited to,
- 25 project redesign, relocation, curation and display of cultural
- 26 resources, and land dedication to the Guam Preservation Trust.
- 27 The Guam Historic Preservation Review Board shall develop the
- 28 criteria for resolution of any finding against matters related to this
- 29 Section in accordance with the Administrative Adjudication Act.

30 **Section 14. Historic District Zone.** The Territorial Planning
31 Commission and Guam Historic Preservation Review Board shall jointly
32 establish zoning controls for all registered historic properties including the
33 Agana Historic District and Inarajan Architectural Historic District. These
34 controls shall apply to such properties in addition to subsection (c) of Section

1 13985.19 of the Government Code.

2 **Section 15.** Treatment of Human Remains. Human remains shall
3 receive respect and consideration when discovered. Disturbance of burials
4 shall be avoided when possible, but when necessary shall be at the expense
5 of the developers using procedures and standards acceptable to the Guam
6 Historic Preservation Officer. Anthropological review of human remains shall
7 be at the minimal level and time frame as authorized by the Guam Historic
8 Preservation Officer prior to reburial.

9 **Section 16.** The full time equivalency positions for the Department of
10 Parks and Recreation are increased by two (2) to include the position of
11 Guam Historic Preservation Officer upon the effective date of this Act. The
12 Department of Parks and Recreation is authorized to use available lapses
13 within its current FY 1990 budget to fund the Guam Historic Preservation
14 Officer.

15 **Section 17.** The Guam Review Board for Historic Preservation
16 established by Executive Order 78-46 shall be abolished Ninety (90) days
17 from the effective date of this Act. The Governor is required to submit to the
18 Legislature nominees to the Guam Historic Preservation Review Board within
19 Thirty (30) days from the effective date of this Act.

20 **Section 18.** A new Section 19439 is hereby added to the Government
21 Code of Guam to read as follows:

22 "Section 19439. The Director of Revenue and Taxation shall
23 grant a rebate of property taxes on private property when such rebate is
24 part of a historic preservation easement entered into by the private
25 owner and the Guam Preservation Trust."

26 **Section 19.** Section 26003 (g) of the Government Code of Guam is
27 hereby amended to read:

28 "(g) to be State Liaison Officer for the Bureau of Outdoor
29 Recreation."

30 **Section 20.** Section 26002 of the Government Code of Guam is
31 hereby amended to read:

32 "the Department is divided into [two] three divisions, to be known as the
33 Parks Division [and] the Recreation Division[.], and the Guam Historic
34 Resources Division.

1 **Section 21.** Title XIV, Chapter 13, Part IV of the Government Code is
2 repealed in its entirety.

3 **Section 22.** Subsections (2) and (3) of Section 13985.23 of the Code
4 of Guam are hereby repealed in its entirety.

5 **Section 23.** Subsection (1) of Section 13985.42 is amended to read:
6 "(1) Consult the [Guam Institute of Spanish-Chamorro Culture] Guam Historic
7 Preservation Office before demolishing, altering, or transferring any property
8 under the jurisdiction that is potentially of historical, including, but not limited
9 to, any property listed on the territorial register."*/

486
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Twentieth Guam Legislature
1989 (First) Regular Session

Introduced

MAR 2 '89

Bill No. 486 (LS)
Introduced by:

E.P. Arriola *epa*

AN ACT TO CREATE A GUAM HISTORIC
PRESERVATION OFFICER, AND FOR OTHER
PURPOSES

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF GUAM:

Section 1. GUAM HISTORIC PRESERVATION OFFICER. Legislative Intent. The Legislature has determined that the historic preservation program of Guam can be enhanced by making the Guam Historic Preservation Officer a classified position to provide continuity in establishing and carrying out programs that will enrich and protect Guam's historic sites and properties. It has also been determined that the requirement to actively preserve Guam's cultural resources must be shared by both the government and private resources. It is therefore the purpose of this act to provide the mechanism necessary to strengthen and improve Guam's historic preservation laws and programs for the general welfare of the people of Guam.

Section 2. The Guam Historic Preservation Officer. The Guam Historic Preservation Officer shall be a classified position under the Department of Parks and Recreation and shall be the State Historic Preservation Officer for federal purposes. The Director of Parks and Recreation shall be responsible for selecting a candidate to fill the position based on qualifications through training, work experience and education pertinent to cultural resources management. The Guam Historic Preservation Officer shall report and be under the direct supervision of the Director of Parks and Recreation.

Duties. The Guam Historic Preservation Officer shall

establish and administer a comprehensive historic preservation program for presentation, restoration, and protection, as prescribed in Title XIV, Chapter XII, Section 13985.2 of the Government Code of Guam.

2. Compensation. It shall be the duty of the Civil Service Commission to establish the necessary qualifications and wage standards of the Guam Historic Preservation Officer.
3. The Guam Historic Preservation Officer shall be the head of the Cultural Resources Division of the Department of Parks and Recreation and Executive Director for the Guam Preservation Trust.

Section 3. Guam Historic Preservation Review Board. The Board shall consist of seven (7) members appointed by the Governor with the consent of the Legislature. Members of the Board shall be knowledgeable in historic preservation and a majority shall be recognized professionals in the disciplines of history, prehistoric and historic archaeology, and architecture. At least one (1) member must be knowledgeable in traditional Chamorro society and culture.

1. Duties. It shall be the duty of the Review Board to:
 - A. Enter historic properties into the Guam Register of Historic Places.
 - B. Evaluate applications for nominating properties to the National Register of Historic Places.
 - C. Review the Guam Survey of the Guam Historic Properties.
 - D. Review the content of the Guam Historic Preservation Plan.
 - E. To serve as the Board of Directors of the Guam Preservation Trust.

2. Tenure. The members of the Review Board shall serve for four (4) years; provided that of the members first appointed, one (1) shall serve for one (1) year; two (2) shall serve for two (2) years; two (2) shall serve for three (3) years; and two (2) shall serve for four (4) years.
3. Compensation. Members shall be compensated Fifty Dollars (\$50.00) for each board meeting that they attend, not to exceed One Hundred Dollars (\$100.00) per month. Members traveling on official business shall receive per diem at the established Government of Guam rates.
4. Quorum. Four (4) members of the Review Board shall constitute a quorum for the transaction of its official business.

Section 4. Historic Property. Historic Property as defined by Government Code Section 13985.1(2) that is significant in Guam's history, architecture, archaeology, or culture may be eligible for listing in the Guam Register of Historic Places. A property may be declared significant if it possesses integrity of location, design, setting, materials, workmanship, feeling, and association, and possesses any of the following characteristics:

1. Property is associated with events that have made a significant contribution to broad patterns of history;
2. Property is associated with the lives of persons significant in the past;
3. Property embodies distinctive characteristics of a type, period, or method of construction, or represents the work of a master;
4. Property has yielded or is likely to yield important

historic information; and

5. property contains important information pertinent to a significant archaeological research.

Section 5. Territorial Monuments. Upon recommendation of the Department of Parks and Recreation, the Governor may declare historic landmarks, structures, or objects located on lands owned or controlled by the government to be territorial monuments.

Section 6. Guam Preservation Trust. There is hereby established a non-profit public corporation, the Guam Preservation Trust. The Guam Preservation Trust shall have as its purposes and power to acquire in fee simple or by easement, real estate by donation, transfer, dedication, purchase, and condemnation of threatened properties listed on the Guam Register of Historic Places and to manage the properties for the preservation of their historical and cultural values. Expenditures by the Guam Preservation Trust shall be limited to the purposes of the Guam Preservation Trust.

Section 7. Guam Preservation Trust Income. All Government of Guam fees for building, clearing, grading, and planning, shall be deposited in the account of the Guam Preservation Trust. Fines collected under Section 26708 of this act shall be payable to the Guam Preservation Trust. Payment shall be made directly to the Guam Preservation Trust. All Guam Preservation Trust funds shall be maintained separate and apart from other government funds.

Section 8. Vandalism and Unlawful Taking of Historic Properties and Sites. It shall be unlawful for any person to take, appropriate, excavate, injure, or destroy any prehistoric or historic ruin or monument or object of antiquity, situated on lands owned or controlled by the Territory without the permission of the Department. Any person who violates this section shall be guilty of a petty misdemeanor and shall be fined not more than Five Hundred dollars (\$500.00) or imprisoned not more

that Sixty (60) Days or both.

Section 9. Enforcement and Power of Arrest. The Director of Parks and Recreation and the Guam Historic Preservation Officer and delegated employees of the Department of Parks and Recreation shall have the arresting and citation powers on persons who are in violation of this act and Sections 13985.25, 13985.26, 13985.28, and 13985.35 of Title XIV, Chapter XIII of the Government Code of Guam.

Section 10. Certificate of Approval. A certificate of Approval must be issued by the Guam Historic Preservation Officer before any of the following is issued:

- a. Building permits
- b. Grading permits
- c. Clearing permits
- d. Leases and lease renewals of government land
- e. Applications for surplus federal real estate
- f. Land use permits and their renewal
- g. Agricultural leases and their renewal
- h. Government constructing, clearing, and grading
- i. Submittal of federal grant applications for construction, land use or improvements
- j. Applications to Territorial Planning Commission and Territorial Seashore Protection Commission.

Section 11. Historical Survey. Developers of land either public or private shall conduct a historical survey on the land to be developed at their own expense ninety (90) days prior to undertaking an activity stated in Section 9. The developer shall submit an impact statement to the Department with the results of the survey. Activities, such as home improvements and projects not exceeding One Hundred Thousand Dollars (\$100,000.00) are exempted from the provision under this Section.

Section 12. Authority.

1. The Guam Historic Preservation Officer shall have the statutory authority to deny the issuance of certificate of approval and cease work on projects when there is evidence of adverse impact or potential destruction of cultural or historical features on the property or discovery of cultural resources. In the event that there is no alternate recourse in protecting or salvaging the cultural or historical significance of the property, the decision of the Guam Historic Preservation Officer to deny issuance of a certificate of approval or cease work on projects shall prevail.
2. Higher authority shall not override the decision of the Guam Historic Preservation Officer. If work has already begun where cultural or historical significance has been disturbed, the developer shall be responsible for the restoration of the property to its original form and the burden of expense shall be on the developer.
3. Projects with potential impact on cultural or historic features may be resolved by the Guam Historic Preservation Officer through agreement or mitigation that may, but need not be limited to, project redesign, relocation, curation and display of cultural resources, cash donation to the Guam Preservation Trust, and land dedication to the Guam Preservation Trust.

Section 13. Historic District Zone. The Territorial Planning Commission and the Guam Historic Preservation Review Board shall jointly establish zoning controls for historic districts including the Inarajan Architectural Historic District.

Section 14. Treatment of Human Remains. Human remains shall

receive respect and consideration when discovered. Reburials shall be avoided and when necessary shall be at the expense of the developers and satisfactory to the Guam Historic Preservation Officer. Anthropological review of human remains shall be at the minimal level and time frame as authorized by the Guam Historic Preservation Officer prior to reburial.

Section 15. The full time equivalency positions for the Department of Parks and Recreation are increased by one (1) to include the position of Guam Historic Preservation Officer upon the effective date of this Act. The Department of Parks and Recreation is authorized to use available lapses within its current FY1989 budget to fund the Guam Historic Preservation Officer.

Section 16. The Guam Review Board for Historic Preservation established by Executive Order 78-46 shall be abolished upon the effective date of this Act.

Section 17. A new Section 19439 is hereby added to the Government Code of Guam to read as follows:

"Section 19439. The Director of Revenue and Taxation shall grant a rebate of property taxes on private property when such rebate is part of a historic preservation easement entered into by the private owner and the Guam Preservation Trust."

SENATOR HERMINIA D. DIERKING
CHAIRPERSON, COMMITTEE ON RULES

TWENTIETH GUAM LEGISLATURE
163 Chalan Santo Papa
Agana, Guam 96910
(671) 472-3438/39

3-8-89

March 7, 1989

3/9/89
✓
G. Reyes

MEMORANDUM


TO: Chairperson, Committee on Youth, Human Resources, Senior
Citizens and Cultural Affairs
Committee on Ways & Means
Committee on General Governmental Operations
Committee on Housing and Community
Development

FROM: Chairperson, Committee on Rules

SUBJECT: Referral - Bill No. 486

The above Bill is referred to your Committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting.

It is recommended that a joint hearing be coordinated with the Committees involved.


EDWARD D. REYES
Acting

Enclosure



DEPARTMENT OF PARKS AND RECREATION



JOSEPH F. ADA
Governor

GOVERNMENT OF GUAM
400 Naval Hospital Road
Agana Heights, Guam 96910
Telephone: (671) 477-9620/1

FRANK F. BLAS
Lt. Governor

ANTHONY C. MARIANO
Director

DENNIS M. ZERMENO
Deputy Director

APR 25 1989

Honorable Elizabeth P. Arriola
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Madam Chairperson:

As the Director of the Department of Parks and Recreation, I would like to thank you for the opportunity to offer comments on these bills now before your committee.

The Department of Parks and Recreation has, over the past several years, consistently supported proposals to make comprehensive reforms in the preservation laws. It is our hope that from the bills and proposals now being developed, constructive and long-term improvements in the program can be put in place. I would also like to take this opportunity to inform you that the Governor has completed a review of the needs of the program in the wake of the controversies at the Hotel Nikko project, and has issued a new Executive Order No. 89-9. This executive order strengthens the review authority of the Territorial Planning Commission (TPC) and the Territorial Seashore Planning Commission (TSPC) with respect to historic places, requires uses of consistent standards for identification and evaluation of historic places, and provides a public forum for appeals of decisions regarding protection for historic places.

Several of the bills now before the legislature also address these topics. I hope that with the comments offered below, a comprehensive reform and improvement can be implemented. I would also like to offer the time and expertise of the staff of the historic preservation section in this department as a resource for use in formulating further drafts.

Since both bills are substantially similar, many comments can be consolidated by topic. Following these are comments that address each bill specifically and then some suggestions for expanding the provisions to provide more comprehensive reform and upgrading of the preservation program.

Items Addressed By Both Bills

1. Designation of a civil service "Guam Historic Preservation Officer"

Both bills would accomplish this, but in very different ways. Bill 485 would strip this designation from the current duties of the Director of the Department

COMMENTS ON BILL NOS. 485 AND 486
PAGE 2

of Parks and Recreation and place it on the head of the Parks Division, who is currently also charged with administering several other major programs, including park maintenance, cemeteries, Land and Water conservation fund grants, and park vendor operations.

Bill 486 would create a new division within the department and allow recruitment of a qualified person in a new position to head the division. That division's duties would be directed solely at running all of the aspects of a comprehensive historic preservation program, without distraction and conflict with various other responsibilities.

As the Director of the Department of Parks and Recreation, I have stated on numerous occasions that I favor having a full-time Guam Historic Preservation Officer, and I have stated that the program needs the stability and continuity of a civil service position. Too much time and effort is used up in orientation of a new Historic Preservation Officer (HPO) at each change of director. The program is complex and takes professionally trained personnel to adequately run it. It also needs full time, not part time attention from its administrator. I think that the plan embodied in bill 486 is much superior to the one in bill 485.

2. Guam Review Board for Historic Preservation

Both bills would change the current Guam Review Board for Historic Preservation, and introduce changes in the number and qualification of its membership. The major change is in the appointing authority, though. The new Board will be appointed by the Governor with consent from the legislature. This new procedure is consonant with the expanded duties and responsibilities of the Board envisioned in these laws.

Both bills should specifically cite the intent that this board be the body to act with respect to the duties of a qualified Preservation Review Board under the National Historic Preservation Act, and to direct the Governor to select appointees with the intention of satisfying the requirements imposed by that law, too.

I would also recommend allowing the Department of Parks and Recreation to give the Board other duties through the issuance of regulations implementing these new sections of law. A prime possibility for additional duties would be to serve as a public appeal forum for decisions found inadequate or unworkable by the Guam Historic Preservation Officer. Another possible duty would be to investigate the circumstances of future controversies and to make reports on them to the Governor and to the Legislature.

Since the Review Board will be an independent entity, it would also be of interest to have the board make reports to both the Governor and to the Legislature on the state of the Preservation Program and its needs on a periodic basis.

3. Definition of Historic Properties, Significance.

EXECUTIVE ORDER NO. 73-46

GUAM REVIEW BOARD FOR HISTORIC PRESERVATION

WHEREAS, the Federal government by virtue of the Historic Preservation Program managed by the Heritage Conservation and Recreation Service encourages historic preservation in Guam; and

WHEREAS, a professional review board is required as part of the process of nominating historical and cultural resources for inclusion in the National Register of Historic Places; and

WHEREAS, by virtue of P.L. 12-209, the Director of the Department of Parks and Recreation is the State Historic Preservation Officer; and

WHEREAS, it is desirable for the people of Guam to preserve their historical and cultural heritage in the form of protected sites, buildings, structures and objects; and

WHEREAS, the Guam Review Board for Historic Preservation was created by Executive Order 73-27; and

WHEREAS, the Guam Register of Historic Places was created by P.L. 12-126; and

WHEREAS, recent changes in Federal regulations requires amendment of Executive Order 73-26;

NOW, THEREFORE, it is hereby order as follows:

1. Executive Order 73-27 is hereby repealed in its entirety.
2. The Guam Review Board for Historic Preservation is hereby established.
3. The functions shall be to assist the State Historic Preservation Officer in nominating properties for the National Register of Historic Places, to place sites on the Guam Register of Historic Places and any other function deemed necessary for historic preservation by the State Historic Preservation Officer.
4. The Board shall consist of five (5) members and five (5) alternates, one (1) each having professional qualifications in the respective disciplines of architecture, archaeology, community planning, history and Chamorro culture.
5. The Board shall be appointed by the State Historic Preservation Officer as required by Title 36, Part 62-4 Code of Federal regulations. Members appointed shall meet the required qualifications under the Federal guidelines.
6. The terms of appointment shall be for four (4) years except that of the five (5) members, two (2) shall be for four (4) years, one (1) shall be for three (3) years, one (1) shall be for two (2) years and one (1) shall be for one (1) year.
7. Each appointed member shall be sworn in and sign an oath of office prior to assuming his duties.
8. The Board shall meet at such times and places deemed necessary by the State Historic Preservation Officer, the concurrence of three (3) members being necessary to the transaction of business.
9. The State Historic Preservation Officer shall act as Secretary to the Board.
10. To insure continuity of the function of this Board, members appointed by virtue of Executive Order 73-27 shall continue their respective terms of office.
11. The requirements of Title 36, Part 61.4 Code of Federal Regulations are hereby incorporated as part of this Executive Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of Guam to be affixed in the city of Agana, this 29th day of December in the year of Our Lord nineteen hundred and seventy-eight.

/s/ Ricardo J. Bordallo
RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:

/s/ Rudolph G. Sablan
RUDOLPH G. SABLAN
Lieutenant Governor of Guam

COMMENTS ON BILL NOS. 485 AND 486
PAGE 4

Act for federal agencies, by which federal permit applicants are often asked to respond to preservation concerns. Review should be required of government projects and actions as well as those of private property owners needing government license or permits.

- ✓Second, the Department should be given authority to issue regulations implementing the review process and issuance of the certificates. Such regulations should set up a fair review process and an appeal process for decisions which one party or another finds unfair. Such regulations can state when the agency or applicant has a right to a certificate and when the Guam Historic Preservation Office (GHPO) has a right to deny that preserves fairness. As mentioned before, the Guam Review Board could serve a very useful purpose in hearing these appeals. The language of the statute should more clearly indicate that the GHPO may issue a certificate of approval with enforceable conditions instead of categorical issuances or denials.
- ✓Third, the language requiring developers to submit an historical survey 90 days prior to undertaking an activity does not adequately serve the intent of the bill. What would serve more readily is for the developers to submit adequate identification surveys **along with** any application for any of the items which need a certificate of approval from the GHPO. Then such applications can be considered in terms of the impacts or effects on historic properties and appropriate responses decided.
- ✓Fourth, penalties for impacting historic properties without a certificate of approval should be levied against both private property owners and government agencies. Such penalties could include fines for violations of procedure, and also the burden of repairing the damages done. In many cases repair of damage at the site of violation is not possible (for example, an archaeological site that has been entirely bulldozed away). In these cases violators should be required to support work equivalent to what would have been needed for a certificate of approval but applied to some other site or contributed to the GPT.

6. Historic District Zoning controls

This section as written applies only to designated historic districts, and will miss all properties which are individually listed in the Guam Register. The public expectation quite reasonably is that all registered properties should receive some degree of protection. The joint TPC/Preservation Review Board should establish controls that would apply to all designated historic properties, including districts, and perhaps implement these through controls placed in all zoning designations.

Whatever these controls are, they should also be coordinated with the requirements for receiving a certificate of approval under the other review requirements.

7. Penalties for vandalism/taking, government property

The substantial increase of the maximum penalty is welcome. Recent federal legislation has also found the need to consider this offense a felony and to establish a fairly low threshold of damage for it to be considered a felony rather than a misdemeanor. Violators should also be subject to confiscation of equipment used in the commission of the crime, and be subject to reimbursement of the costs of repairing the damages to the significant sites. Penalty provisions of the Archaeological Resource Protection Act as recently amended can serve as a model for this section.

8. Power of Arrest

In granting power of arrest to certain employees of the Department of Parks and Recreation, the law should also clearly allow arrest by any other duly certified enforcement officer such as the conservation officers at Agriculture and at EPA who may be in a position to observe such infractions.

9. Tax Rebates

It is our understanding that any property owner who donates preservation or conservation easement that diminishes the commercial value of their property may already receive a tax adjustment for the amount by which the value has been diminished.

The language in the tax rebate sections of these bills is very vague and could be construed to require rebate of the entire property tax upon donation of even partial easements. While the idea is excellent, the wording should be more specific as to the intent.

10. Treatment of Human Remains

Recommended policy is:

- a. That burials be left in place undisturbed to the extent possible.
- b. That all government agencies and developers make reasonable and good faith efforts in consultation with the GHPO to locate all burials that may be affected by their actions/developments early in the planning process.
- c. That where burials cannot be left undisturbed, removal shall be done with proper archaeological methods and documentation.
- d. Scientific, medical or other study shall be restricted to the minimum necessary to address significant research questions and must be done expeditiously in a time frame established by the GHPO.
- e. In the absence of an expressed preference otherwise by persons with specific relationships to the remains, reburial in an appropriate and respectful manner is to be considered the normal treatment of human remains removed from their original burial locations.

Both bills define the significance of historic properties by quoting from criteria that appear in federal regulations. These regulations have been subject to debate and proposals for changes have been common. These criteria were developed to apply primarily to historic buildings. On the national level, applying these criteria to archaeological sites and to places of traditional cultural value have been awkward indeed. I would recommend that the legislature require the newly appointed review board and the Department of Parks and Recreation to establish criteria of significance by regulation within 90 days of the effective date of the new law. Such regulations can incorporate the results of public hearings and will also be reviewed again by the legislature. Unsatisfactory or awkward portions can then be improved through the same process.

4. Guam Preservation Trust

Both bills establish a Guam Preservation Trust, in lieu of the never-implemented Institute of Spanish Chamorro Culture. The purposes listed for the Guam Preservation Trust (GPT) are too narrow, limiting it basically to real-estate transactions. Such a non-profit organization should also be able to participate in and to originate a much wider range of preservation related activities, including applying for grants, contracting to carry out preservation enhancing projects, and fostering community involvement in preservation. Limiting it to using its funds only on acquiring and restoring property will lose the opportunity to foster an organization which can get involved in a wide range of preservation activities including public education, and special grant or contract projects as well as serving as a revolving fund for renovating houses.

The GPT should be explicitly allowed to seek outside funds from sources such as grants and contracts relating to preservation activities, and to engage preservation related activities which do not pose conflict of interest problems for its members as government appointees or employees.

5. Certificate of Approvals

Both bills will require approval from the Guam Historic Preservation Officer before practically all government of Guam licenses or approvals relating to land use. It does not provide any guidance regarding when issuance of a certificate of approval should be done, and when its should be denied. This decision is left, in both versions to the discretion of a single individual with no stated limits to that discretion.

I believe that the effectiveness of this section can be improved immensely with the following additional considerations.

- ✓ The list should be made one of "including but not limited to" rather than a set one that would exclude review of any other governmental undertakings that might affect historic properties. The more general obligation would then parallel the requirements of "Section 106" of the National Historic Preservation

f. Expenses of examination and reburial or other treatment of remains is to be at the expense of the developers or agencies whose actions necessitate the reburial.

The Department of Parks and Recreation should have authority to issue regulations to implement these policies through the certificate of approval and other review processes.

11. Territorial Monuments

(The two bills differ in respect to this provision.) Bill 485 would give Department of Parks and Recreation (DPR) the authority to appropriate especially significant areas as "Historical Parks". Bill 486 gives the Governor authority to declare areas as "Territorial Monuments". Neither bill specifies any additional measures of protection for areas given such designation. The designation of "Territorial Monument" could apply to property owned by any government entity, not just to units of the Territorial Park system, and therefore may be a more flexible designation.

I believe that it is highly appropriate to create a special designation for properties of exceptionally great significance. But this special designation should also carry greater than usual protection for the properties so designated. These higher than usual protection could include requiring review of proposed actions affecting them by the Review Board as well as by the GHPO, and mandates for avoidance of any adverse effect unless no feasible or prudent alternative exists.

12. Underwater Historic Properties

Bill 485 specifically addresses underwater historic properties. Historic Shipwrecks only were transferred unambiguously to the government of Guam by the Abandoned Shipwrecks Act (P.L. 100-298). Guam's jurisdiction over any underwater historic property other than shipwrecks has been upheld by recent decisions of the 9th circuit court of appeals. Our authority to manage and regulate these resources for the larger public benefit is now firmly established with the exceptions of areas reserved for federal jurisdiction and an area where disputes arising prior to the passage of the Shipwrecks act have not yet reached a final court order.

The proposed language of bill 485 is restrictive enough to forbid even the most stringent of academic research proposals in which all items recovered and treated remain the property of the government of Guam.

Miscellaneous recommendations

The following items are not contained in either bill, but would help in strengthening the historic preservation program.

1. The Department of Parks and Recreation should be given authority to issue regulations implementing any new legislation. Along with the authority, the

bills could require that draft regulations be submitted under the Administrative Adjudication Act within 6 months of the effective date of the bill. If provisions similar to those proposed above are passed, the legislature should consider a requirement that regulations define an appeals process for decisions regarding certificates of approval and any conditions placed on them. Procedures for hearing appeals should provide for public input as well as for review of points raised by agencies or individuals involved.

2. Penalties need to be assessed against government agencies who neglect their responsibilities under the law as well as against vandals who take items from government property. I would suggest that an agency found not in compliance with their responsibilities be required to fund the restoration of any damages sustained to historic places as a result of their non-compliance, or to transfer equivalent resources to the Guam Preservation Trust for use at other significant properties.
3. A thorough review of the existing statute should be undertaken to remove language that will conflict with or confuse the intent of the new provisions. While Bill 485 does some of this work, it does not remedy all of the procedural conflicts. For instance, the issuance of certificates of approval will perhaps conflict with the existing sections regarding cooperation of government agencies and notice procedures. (13985.23).
4. Two proposed provisions will extend some governmental authority over private property. These are the proposed zoning controls, and the denial of certificates of approval to permits applied for by those wanting to make some use of their property. We think that the general public should be specifically advised of the intent of these provisions and given opportunity to comment on them before they are enacted.

Sincerely,



ANTHONY C. MARIANO
State Historic Preservation Officer



University of Guam

OFFICE OF THE PRESIDENT
U.O.G. Station, Mangilao, Guam 96923
Cable: "UnivGuam" * Telex: 721-6275 * Fax: 734-3118


April 24, 1989

The Honorable
Elizabeth Arriola
Chairperson, Committee on
Youth, Senior Citizens,
Cultural Affairs & Human Resources
Twentieth Guam Legislature
Agana, Guam 96910

Dear Senator Arriola:

The University of Guam supports the passage of Bill 486 (LS), which would make the Guam Historic Preservation Officer a classified position. This Bill would enhance the continuity in leadership and the effectiveness of the Guam Historic Preservation Office, and would improve the management and execution of historic preservation endeavors. The University of Guam pledges to continue its support of the work of the Guam Historic Preservation Review Board, and to assist, whenever appropriate, the Guam Historic Preservation Office.

Sincerely yours,


WILFRED P. LEON GUERRERO
President

cc: Board of Regents

american institute of architects guam & micronesia chapter

post office box 24392 / GMF. guam 96921

April 25, 1989

Senator Elizabeth P. Arriola, Chairman
Committee on Youth, Senior Citizens,
Cultural Affairs and Human Resources
20th Guam Legislature
Government of Guam
Agana, Guam 96910

Subj: Proposed Bills 485 and 486

Dear Senator Arriola;

The Guam Chapter, American Institute of Architects appreciates the recent recognition given the chapter for its support of historical preservation goals for Guam.

The Chapter believes that present laws should be reinforced to establish a clearer responsibility for public and private development to complete adequate historical research, study and protection prior to the start of activities which will disturb historical and cultural resources.

The Chapter also supports establishment of a classified position for the SHPO to ensure continuity and objectivity in the administration of our historical resource presentation plans. The SHPO should be a person trained in preservation and not a person drawn from either the parks or the recreation elements of the Department.

Relative to bills 485 and 486, we agree with their intent but believe they are imprecisely worded and occasionally are overly strict.

The Chapter is willing to assist in the process of rewriting the legislation and propose the following principals:

- a. Penalties shall be severe enough to discourage willful destruction. (There have been land owners in the past who find it easier to "knock down and bury" resources quickly rather than submit to a bureaucratic process.) Penalties should apply to both public and private properties.
- b. The Guam Historic Preservation Board Review Board as presently constituted with 5 principal and 5 alternate members works well and does not require change.

/AIA/BILLS
HMR/gen - p. 1/3

- c. The SHPO should be provided authority to issue rules and regulations relative to resource protection and clearance procedures. The proposed rules and regulations shall have a public hearing and be approved by the Guam Historic Preservation Board.
- d. The SHPO should sign-off on all activities which lead to or result in land clearing or construction.
- e. The SHPO should determine when identification surveys or monitoring is required based on the situation of each site or proposed project. The SHPO should have the authority to require further surveys, detailed investigation or excavation, salvage of resources, preparation of reports and measured drawings, and other work necessary. The SHPO should be given the authority to establish the extent of effort needed to protect, mitigate or research the significance of each site. Such costs should be borne by the Applicant or property owner. No exclusions should be included in law for particular properties or types of development such that the SHPO can make a determination for each and every site.
- f. The zoning law should be amended to include overlay zones for properties within the Inarajan Architectural Historic District, Agana Historic Homes District and all properties on the Guam Register of Historic Sites. The overlay zones should require satisfaction of SHPO requirements prior to use of the land for the activities allowed by the zoning code.
- g. Underwater historic resources should be treated the same as land-based historic resources.
- h. Reasonable standards for disinterment, research, and reinterment should be established by the Guam Historic Preservation Board. Such standards should reflect the benefits to the general community derived from scientific investigation upon skeletal remains. Remains from periods of our past for which little is still known should be made available for the investigation necessary to provide answers to important research questions.
- i. An organization such as the Guam Preservation Trust should be given broader activities beyond collecting fees and fines and holding land. It should be given authority to utilize such funds to perform preservation and advocacy functions.

The AIA believes that the law must be revised to apply strict provisions fairly, equitably and in sufficient time. When revised, the law should be precise in granting authority to the SHPO and Historic Preservation Board but should allow them to use their knowledge and understanding of the overall picture to establish and carry out the day to day management policies.

Thankyou for this opportunity to present the Chapter views on this subject.

Very truly yours,

AMERICAN INSTITUTE OF ARCHITECTS
GUAM/MICRONESIA CHAPTER



H. Mark Ruth, AIA
President

/AIA/BILLS
HMR/gen - p. 3/3

~~REPRODUCED BY GOVERNMENT OF GUAM~~

EXECUTIVE ORDER NO. 73-46

GUAM REVIEW BOARD FOR HISTORIC PRESERVATION

WHEREAS, the Federal government by virtue of the Historic Preservation Program managed by the Heritage Conservation and Recreation Service encourages historic preservation in Guam; and

WHEREAS, a professional review board is required as part of the process of nominating historical and cultural resources for inclusion in the National Register of Historic Places; and

WHEREAS, by virtue of P.L. 12-209, the Director of the Department of Parks and Recreation is the State Historic Preservation Officer; and

WHEREAS, it is desirable for the people of Guam to preserve their historical and cultural heritage in the form of protected sites, buildings, structures and objects; and

WHEREAS, the Guam Review Board for Historic Preservation was created by Executive Order 73-27; and

WHEREAS, the Guam Register of Historic Places was created by P.L. 12-126; and

WHEREAS, recent changes in Federal regulations requires amendment of Executive Order 73-26;

NOW, THEREFORE, it is hereby order as follows:

1. Executive Order 73-27 is hereby repealed in its entirety.
2. The Guam Review Board for Historic Preservation is hereby established.
3. The functions shall be to assist the State Historic Preservation Officer in nominating properties for the National Register of Historic Places, to place sites on the Guam Register of Historic Places and any other function deemed necessary for historic preservation by the State Historic Preservation Officer.
4. The Board shall consist of five (5) members and five (5) alternates, one (1) each having professional qualifications in the respective disciplines of architecture, archaeology, community planning, history and Chamorro culture.
5. The Board shall be appointed by the State Historic Preservation Officer as required by Title 36, Part 62-4 Code of Federal regulations. Members appointed shall meet the required qualifications under the Federal guidelines.
6. The terms of appointment shall be for four (4) years except that of the five (5) members, two (2) shall be for four (4) years, one (1) shall be for three (3) years, one (1) shall be for two (2) years and one (1) shall be for one (1) year.
7. Each appointed member shall be sworn in and sign an oath of office prior to assuming his duties.
8. The Board shall meet at such times and places deemed necessary by the State Historic Preservation Officer, the concurrence of three (3) members being necessary to the transaction of business.
9. The State Historic Preservation Officer shall act as Secretary to the Board.
10. To insure continuity of the function of this Board, members appointed by virtue of Executive Order 73-27 shall continue their respective terms of office.
11. The requirements of Title 36, Part 61.4 Code of Federal Regulations are hereby incorporated as part of this Executive Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of Guam to be affixed in the city of Agana, this 29th day of December in the year of Our Lord nineteen hundred and seventy-eight.

/s/ Ricardo J. Bordallo
RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:
/s/ Rudolph G. Sablan
RUDOLPH G. SABLAN
Lieutenant Governor of Guam



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.

EXECUTIVE ORDER NO. 89-9

ADOPTING PROCEDURES FOR
PRESERVING HISTORIC SITES

- WHEREAS, under Government code Section 13985.23 the Territorial Planning Commission and Territorial Seashore Protection Commission are required to cooperate with the Department of Parks and Recreation in the preservation and protection of significant sites; and
- WHEREAS, under Government Code Section 13985.42 the Territorial Planning Commission and Territorial Seashore Protection Commission are required to institute procedures to assure that their programs contribute to the preservation of significant sites; and
- WHEREAS, the Guam Institute for Spanish Chamorro Culture has never been established; and
- WHEREAS, the Department of Parks and Recreation shall be the primary enforcement agency for historic preservation concerns; and
- WHEREAS, the Guam Review Board for Historic Preservation is constituted to determine the eligibility of sites for inclusion in the Guam Register of Historic Places and to advise the Department of Parks and Recreation on all aspects the historic preservation program; and
- WHEREAS, the criteria for inclusion in the Guam Register of Historic Places and for inclusion in the National Register of Historic Places are substantially the same; and
- WHEREAS, other preservation references developed by the federal government use terminology compatible with the preservation requirements set forth in the laws of the Territory of Guam.

NOW, THEREFORE, I, JOSEPH F. ADA, Governor of the Territory of Guam, by the authority vested in me, by the Organic Act of Guam, do hereby order:

1. The Territorial Planning Commission and Territorial Seashore Protection Commission shall impose conditions to protect the integrity or significance of sites which are either listed on the Guam Register of Historic Places, or eligible for such inclusion as a part of their review of all applications placed before them.



EXECUTIVE ORDER NO. 89-9
PAGE TWO

2. In imposing such conditions, the Territorial Planning Commission and Territorial Seashore Protection Commission shall use standard procedures adopted by the Department of Parks and Recreation and the Guam Review Board for Historic Preservation for the purpose of ensuring consistent identification and treatment of significant sites affected by development projects.
3. When a preservation condition is imposed on a project, the Department of Parks and Recreation shall use the Secretary of Interior's Standard and Guidelines for Archaeology and Historic Preservation to ensure consistent standards of performance in meeting the conditions so imposed.
4. Where significant sites are reasonably expected to occur but have not yet been identified or documented, an applicant shall be required to both fully identify such significant sites that may be affected by the proposed project, and to consult with the Department of Parks and Recreation after completion of such identification in order to devise appropriate and feasible measures to avoid or mitigate any adverse effects to the significant sites.
5. Where mitigation measures are undertaken to record information of importance to scientific study of historic sites, these mitigation measures shall be devised in accord with principles stated in "Treatment of Archaeological Sites: A Handbook", a guideline published by the Advisory Council on Historic Preservation.
6. Avoidance or mitigation of adverse effects shall, to the highest degree possible, also take into account non-scientific aspects of historic significance, including but not limited to the associations with important events, people and traditional practices and beliefs.
7. All Government of Guam agencies, departments, bureaus and commissions shall conform to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation in carrying out their historic preservation responsibilities under laws of Guam.



EXECUTIVE ORDER NO. 89-9
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8. In the absence of the Guam Institute for Spanish-Chamorro Culture, Government of Guam agencies, departments, bureaus and commissions shall consult with the Department of Parks and Recreation to carry out the responsibilities of Government Code Section 13985.42.

9. In the event that either the Department of Parks and Recreation, the applicant to the Territorial Planning Commission, or Territorial Seashore Protection Commission, or members of the public feel that any condition imposed by the TPC with respect to historic preservation, or any action in fulfillment of that condition is inadequate or will not provide appropriate protection for the historical significance of affected sites, that party may appeal for a hearing of a joint board composed of a quorum of the Territorial Planning Commission and a quorum of the Guam Review Board of Historic Preservation.

This joint board will hear the complaint, be empowered to call witnesses and to review records of any relevant government agency, and to hear statements from interested parties.

On review of the complaint and the subsequent materials, the joint board may either re-affirm the condition or action taken, or may make recommendations to the full TPC for changes with a statement of reasons for the changes.

Enactment of changes in a condition shall require separate action by the full Territorial Planning Commission or Territorial Seashore Protection Commission.

SIGNED AND PROMULGATED at Agana, Guam this 24th day of April 1989.

Joseph F. Ada
JOSEPH F. ADA
Governor of Guam

COUNTERSIGNED:

FRANK F. BLAS
Lieutenant Governor of Guam

FISCAL NOTE
BUREAU OF BUDGET & MANAGEMENT RESEARCH

BBMR-F7

Bill No. 486 (LS) Date Received 4/24/89

Amendatory Bill Yes No Date Reviewed 4/24/89

Department/Agency Affected: Department of Parks & Recreation

Department/Agency Head: Tony Mariano

Total Fiscal Year Appropriation: \$3,421,546

Bill Title (concise): AN ACT TO CREATE A GUAM HISTORIC PRESERVATION OFFICER,
AND FOR OTHER PURPOSES.

Change in Law: Yes

Bill Attempts to: Bill is for:

<input type="checkbox"/> Increase Program Funding	<input checked="" type="checkbox"/> Operations
<input type="checkbox"/> Decrease Program Funding	<input type="checkbox"/> Capital Improvement
<input type="checkbox"/> Reallocate Present Program Funding	<input checked="" type="checkbox"/> Other

FINANCIAL/PROGRAM IMPACT

<u>PROGRAM CATEGORIES</u>	<u>Minimum Estimated Required Funds (For Five Years)</u>		
	<u>GENERAL FUND</u>	<u>FEDERAL</u>	<u>OTHER</u>
<u>Natural Resources, Recreation & Arts</u>	<u>See Comments</u>	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
GRAND TOTAL	_____	_____	_____

ESTIMATED MULTI-YEAR FUND REQUIREMENTS

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
<u>General Fund</u>	<u>See Comments</u>	_____	_____	_____	_____
<u>Federal Fund</u>	_____	_____	_____	_____	_____
<u>Other Fund</u>	_____	_____	_____	_____	_____
GRAND TOTAL	_____	_____	_____	_____	_____

ESTIMATED MULTI-YEAR REALIZED REVENUES

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
<u>General Fund</u>	<u>See Comments</u>	_____	_____	_____	_____
<u>Federal Fund</u>	_____	_____	_____	_____	_____
<u>Other Fund</u>	_____	_____	_____	_____	_____
GRAND TOTAL	_____	_____	_____	_____	_____

Catherine U. Leon Guerrero
Catherine U. Leon Guerrero
PROGRAM ANALYST

Joseph E. Reidy
for: MICHAEL J. REIDY
DIRECTOR

Date Review Terminated: 4/24/89