

APR 24 2000

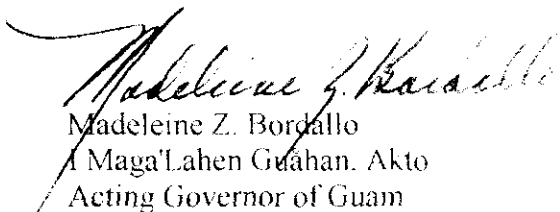
The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Suite 200
130 Aspal Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	Y
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Date	<u>22 APR 2000</u>
Date	<u>24 April 2000</u>

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 1(3-S), "AN ACT *REPEAL AND REENACT* §50 OF P.L. NO. 25-74, TO *AMEND* §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO *AMEND* §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, *SUBJECT* TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS", previously **vetoed** and overridden by *i* Liheslatura, the Legislature, which is now designated as **Public Law No. 25-121**.

Very truly yours,


Madeleine Z. Bordallo
I Maga'Lahen Guåhan, Akto
Acting Governor of Guam

Attachments: copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Antonio R. Unpingco
Speaker

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Bill No. 1(3-S), "AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS," returned without approval of *I Maga'lahaen Guahan*, was reconsidered by *I Liheslaturan Guahan* and after such consideration, did agree, on the 19th day of April, 2000, to pass said bill notwithstanding the veto of *I Maga'lahaen Guahan* by a vote of Twelve (12) members.



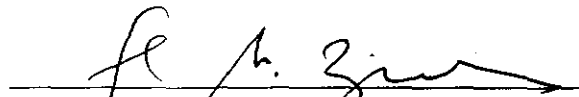
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 19th day of April,
2000, at 4:55 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (THIRD) Special Session

Bill No. 1 (3-S)

As substituted and amended
on the Floor.

Introduced by:

Committee on Rules,
Government Reform,
Reorganization and
Federal Affairs

by request of *I Maga'laha*
Guåhan in accordance with
the Organic Act of Guam

Mark Forbes

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

L. F. Kasperbauer

A.C. Lamorena, V

C. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

J. C. Salas

S. A. Sanchez, II

A. R. Unpingco

AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION

OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, *SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT*; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Intent. Restrictions on non-critical hiring
3 must remain in place.

4 The current debate between the Executive and Legislative Branches
5 regarding the hiring policies of the government of Guam during FY2000 has
6 produced valuable exchanges of information between the two (2) Branches.
7 The preliminary exchange of information reveals the following:

8 An estimated Forty-four Million Dollars (\$44,000,000) in annual
9 payroll reductions was the result of the two (2) early-out programs
10 allowed by law during FY2000. The amount of savings estimated for
11 FY2000 is approximately Thirty-four Million Dollars (\$34,000,000).
12 These savings allowed the Government to avoid a Twenty-seven Million
13 Dollar (\$27,000,000) budget shortfall.

14 Over one thousand two hundred (1,200) government employees
15 chose to leave the government *voluntarily* under the two (2) programs.
16 No employees were laid off. No pay cuts or reduction in work hours
17 was necessary.

1 The general fund budget for personnel is sufficient to cover the
2 regular payroll obligations for FY2000 *if* surpluses from certain agencies
3 are reallocated to other agencies with shortfalls.

4 While regular payroll obligations can be met, *however*,
5 expenditures for over-time pay have exceed the budget ceiling for
6 FY2000. The administration has effectively reduced over-time
7 expenditures from an annual average of Nine Million Dollars
8 (\$9,000,000) annually to Five Million Five Hundred Thousand Dollars
9 (\$5,500,000) this fiscal year. This amount is Three Million Dollars
10 (\$3,000,000) *higher* than the amount originally budgeted by *I Liheslaturan*
11 *Guåhan* for FY2000. The additional overtime expenditures creates a
12 possible Two Million Eight Hundred Thousand Dollar (\$2,800,000)
13 shortfall in Executive Branch payroll for FY2000.

14 Due to the continued downturn in the Island's economy, actual
15 expenditures for various public assistance programs and the Medically
16 Indigent Program ("MIP") for our families most in need continue to rise,
17 and also exceeds projections originally made by the Executive and
18 Legislative Branches. The Executive Branch budget request of Sixty-five
19 Million Dollars (\$65,000,000) for the Department of Public Health and
20 Social Services ("DPHSS") and the Sixty Million Dollar (\$60,000,000)
21 budget adopted by *I Liheslaturan Guåhan* for FY2000 will *not* fully fund
22 the increased demand for assistance to our needy families. The budget
23 shortfall is estimated at Twelve Million to Fifteen Million Dollars
24 (\$12,000,000 - \$15,000,000) for FY2000.

1 *However*, more accurate information is difficult to obtain due to
2 continued problems in implementing the Five Million Five Hundred
3 Thousand Dollar (\$5,500,000) AGUPA benefit management system of
4 DPHSS.

5 The Executive Branch continues to implement the new financial
6 management system ("FMS") to better calculate the current financial
7 status of the government of Guam. *However*, the FMS currently cannot
8 detail actual revenues collected, actual expenditures by budget
9 categories and other important budgetary information necessary for
10 both Branches of government to successfully manage government
11 resources.

12 Until more complete information is exchanged between the Executive
13 and Legislative branches, *I Liheslaturan Guåhan* finds that the current policy to
14 allow hiring for only certain critical positions, such as teachers, medical
15 professionals, public safety officers and social workers is still necessary and
16 prudent at this time. What little money may be available must be saved to
17 hire only the most critically needed personnel in order to protect the most
18 fundamental government services needed. Furthermore, the needs for public
19 assistance and MIP, as well as the over-time obligations of the General Fund
20 must still be addressed.

21 As a result of these significant fiscal challenges facing the government, it
22 is finally determined that it would be premature to lift the General Fund
23 hiring freeze at this time until the financial status of the government of Guam
24 is more accurately determined and it is certain that existing obligations will be
25 met.

1 *I Liheslaturan Guåhan* remains committed to working diligently with the
2 Executive Branch to resolve the financial problems facing the government of
3 Guam this fiscal year. *I Liheslaturan Guåhan* shall continue to exchange
4 information with the Executive Branch and seek meaningful compromises to
5 insure that essential government services are provided without increasing the
6 already heavy burden taxpayers must carry to support their government.

7 *I Liheslaturan Guåhan* further finds the following:

8 Since the issuance of the Attorney General's opinion in January,
9 hiring has nonetheless occurred in the Executive Branch. Nurses,
10 medical technicians and administrative employees were hired at the
11 Guam Memorial Hospital. Teachers and other employees were hired at
12 the Guam Community College. Directors were hired for various
13 agencies. All these hirings violate the interpretation of the hiring freeze
14 opinion of the Attorney General. To date, all these employees remain
15 employed with the government of Guam. No certifying officer has been
16 prosecuted by the Attorney General. These hirings prove that critical
17 positions could be filled by the Executive Branch without fear of
18 prosecution or violation of law. The Executive Branch has always had
19 and continues to have the power to hire.

20 The Courts will soon decide whether the opinion of the Attorney
21 General or *I Liheslaturan Guåhan* with regards to restrictions on hirings
22 shall prevail. *If* the Court sides with the Attorney General, *I Maga'lahen*
23 *Guåhan* can hire critically needed positions, as well as any other position
24 he deems necessary. *If* the Court sides with *I Liheslaturan Guåhan*, *I*
25 *Maga'lahen Guåhan* can hire critically needed positions. Either way the

1 Court decides, *I Maga'lahren Guåhan* can hire critically needed positions
2 immediately.

3 *I Liheslaturan Guåhan* urges *I Maga'lahren Guåhan* to begin hiring
4 critically needed positions while the Court decision remains pending.
5 The legal difference of opinion does *not* justify any action that would
6 threaten the health, education, safety and welfare of the people of
7 Guam.

8 **Section 2. (a) Legislative Intent. Exemption of the Guam**
9 **Memorial Hospital Authority ("GMHA") From Any Restrictions on**
10 **Hiring Needed Personnel to Insure the Safe Provision of Essential**
11 **Hospital Health Care.** The Guam Memorial Hospital Authority
12 ("GMHA") is the Island's only civilian hospital available to the majority
13 of Guam's people. GMHA currently faces a number of critical problems
14 that require legislative action to insure GMHA can provide improved
15 services to the people of Guam.

16 Despite two (2) rate increases in the past twelve (12) months,
17 totaling an estimated Thirteen Million Dollars (\$13,000,000) in additional
18 annual billing revenue, GMHA continues to struggle financially.
19 GMHA continues to collect significantly below actual billings, reducing
20 the amount of dollars actually collected from the two (2) rate increases.
21 Nonetheless, the rate increases add to the already significant burdens
22 for paying customers of GMHA.

23 The preliminary results of the Public Utility Commission ("PUC")
24 management audit required by *I Liheslaturan Guåhan* last year reveal that
25 GMHA can improve its non-clinical and support performance

1 significantly, saving between Two Million Four Hundred Thousand to
2 Three Million Six Hundred Thousand Dollars (\$2,400,000 - \$3,600,000)
3 annually. Despite these findings, most of the recent hires at GMHA
4 were for non-clinical positions.

5 Conversely, the audit revealed a need to increase direct funding
6 for patient care delivery by One Million Two Hundred Thousand
7 Dollars (\$1,200,000). The Three Million Dollars (\$3,000,000) in estimated
8 annual savings from non-clinical services would more than offset the
9 increased costs needed to fund patient care delivery.

10 The audit further revealed that GMHA can generate a one-time
11 savings in inventory and materials management of almost One Million
12 Dollars (\$1,000,000) and as much as Two Million Four Hundred
13 Thousand Dollars (\$2,400,000) by improving receivable management of
14 billings to Medicare and self-paying customers.

15 Clearly, the PUC audit shows key areas that GMHA can save
16 money for direct patient care by reducing administrative inefficiencies.
17 GMHA also continues to remain silent on its intentions to collect the
18 Four Million Five Hundred Thousand Dollars (\$4,500,000) owed to it by
19 the Guam Memorial Health Plan ("GMHP") and affiliated companies for
20 services rendered *prior to 1997*. This settlement amount was reduced
21 from Eleven Million Dollars (\$11,000,000) and agreed to by GMHA and
22 GMHP late last year. *However*, all efforts by GMHA to collect from
23 GMHP ceased at the beginning of the year. Additional amounts are
24 owed by GMHP to GMHA for 1998 and 1999. Meanwhile, hundreds of
25 GMHA patients now are receiving direct billings as a result of GMHA's

1 failure to collect from GMHP. Ironically, GMHA continues to bill the
2 innocent patients, while avoiding action against GMHP.

3 GMHA has also failed to collect an estimated Eight Million Dollars
4 (\$8,000,000) owed by the Medically Indigent Program and Medicaid,
5 despite significant local and Federal funding for these programs in
6 FY2000. According to the Executive Branch, this figure is now in
7 dispute between GMHA and DPHSS and awaits reconciliation.
8 *However*, the Executive Branch has indicated that a substantial amount
9 of MIP payments are nonetheless due for GMHA. Payment of some
10 portion of the disputed amounts at this time could help GMHA
11 significantly at this time.

12 *I Liheslaturan Guåhan* finds that GMHA can significantly improve
13 its financial position in the coming months as a result of the recent rate
14 increases, improved control of non-clinical operations and collecting
15 from MIP, GMHP and other large debtors. GMHA can then re-invest
16 these savings into direct patient care services, thereby improving health
17 care services to the people of Guam.

18 To assist this effort, *I Liheslaturan Guåhan* finds it must provide
19 maximum hiring flexibility to GMHA to hire *all* clinical support
20 positions needed, while reorganizing and streamlining its non-clinical
21 operations. GMHA faces critical shortages in key clinical positions that
22 must be addressed, beyond the positions allowed by Public Law
23 Numbers 25-98, 25-74 and 25-72.

24 (b) Notwithstanding any other provision of law, §50 of Public
25 Law Number 25-74 shall *not* apply to the Guam Memorial Hospital

1 Authority. The Guam Memorial Hospital Authority is hereby
2 authorized to hire employees necessary to insure the delivery of quality
3 health care services, *except* as constrained by its availability of funds and
4 while working towards compliance with the February 17, 2000
5 management audit executive briefing performed by the Public Utility
6 Commission and its management audit consultants.

7 (c) Section 50 of Public Law Number 25-74 is hereby *repealed and*
8 *reenacted* to read as follows:

9 **"Section 50. Hiring Freeze Applies to Autonomous**
10 **Agencies, *Except* for the Guam Memorial Hospital Authority.**

11 Notwithstanding any other provision of law, §19 of Chapter IV of
12 Public Law Number 25-72 shall hereby apply to autonomous
13 agencies of the government of Guam, *except* for the Guam
14 Memorial Hospital Authority, and *except* as provided for in §14 of
15 this Act."

16 (d) Notwithstanding any other provision of law, §28 of Public
17 Law Number 25-98 shall *not* apply to the Guam Memorial Hospital
18 Authority.

19 **Section 3. Legislative Intent. Requesting Approval of Above Step**
20 **Recruitment Authorization as Submitted by the Guam Memorial Hospital**
21 **Authority ("GMHA") to the Civil Service Commission.** For many years it
22 has been the policy of the government of Guam to allow an agency to recruit
23 above step for certain critical position titles that regularly lack a pool of
24 qualified candidates. This policy is incorporated into the general powers of

1 the Civil Service Commission and above step recruitment is a limited time
2 incentive that lasts only as long as the specific position(s) shortage remains.

3 It also has been policy to allow certain critical positions within the
4 government of Guam, such as nurses or teachers, to be filled by retired
5 persons who possess the expertise and experience to qualify for vacant
6 positions in the absence of enough qualified employees already employed.

7 Both of these policies can be changed through the merit system when a
8 government entity no longer has difficulty attracting enough qualified labor.
9 GMHA has utilized both of these policies to attract sufficient qualified health
10 professionals.

11 Unfortunately, it has become evident that recruitment difficulties
12 continue to threaten GMHA's ability to improve and maintain the quality of
13 health care deserved by the people of Guam.

14 In January of this year, GMHA submitted a request for "difficulty of
15 recruitment above-step-pay" authorization to the Civil Service Commission.
16 To date the Commission has *not* acted on the request.

17 The shortage of nurses has reached a crisis state and requires immediate
18 action from *I Liheslaturan Guåhan* in order to protect the public's healthcare
19 interests. *I Liheslaturan Guåhan* finds that GMHA requires emergency
20 approval of their request still pending before the Civil Service Commission in
21 order to address their critical shortage of nurses.

22 *I Liheslaturan Guåhan* requests immediate action by the Civil Service
23 Commission on the submission by the Guam Memorial Hospital request for
24 above step recruitment pay for Staff Nurse I and Staff Nurse II positions.

1 **Section 4. Adoption of the "Health Care Professional Hourly Per**
2 **Diem Pay Policy"** as Part of the Administrative Manual of the Guam
3 **Memorial Hospital Authority. (a) Legislative Intent.** The Guam
4 Memorial Hospital Authority ("GMHA") faces a chronic and critical
5 shortage of medical professionals. *I Liheslaturan Guåhan* intends to allow
6 GMHA the maximum flexibility in attracting and retaining qualified
7 employees to insure that the highest quality health care is available to
8 the people of Guam at all times.

9 As part of its Administrative Manual, GMHA has developed a
10 "Health Care Professional Hourly Per Diem Policy." The intent of this
11 policy is to allow the recruitment of medical professionals to
12 supplement its existing manpower resources in the clinical care areas,
13 and to pay these professionals on an hourly *per diem* basis.

14 While this payment policy has been presented to the Civil Service
15 Commission for approval, *I Liheslaturan Guåhan* finds that immediate
16 approval of GMHA's hourly *per diem* policy will serve the public interest
17 if it is enacted into law.

18 **(b) Adoption.** The proposed Guam Memorial Hospital
19 Authority's "Health Care Professional Hourly Per Diem Pay Policy" as
20 contained as **Attachment 1** is hereby adopted by *I Liheslaturan*
21 *Guåhan* for immediate implementation by the Guam Memorial Hospital
22 Authority.

23 **Section 5.** Section 5151(a) of Part F, Article 2, Chapter 5, Division 1 of
24 Title 5 of the Guam Code Annotated is hereby *amended* to read as follows:

1 **"(a) General Authority.** For the purpose of procuring the
2 services of accountants, physicians, lawyers, dentists, licensed nurses,
3 other licensed health professionals and other professionals, any
4 governmental body of Guam may act as a purchasing agency and
5 contract on its own behalf for such services, *subject to* this Chapter and
6 regulations promulgated by the Policy Office, but this Subsection shall
7 *not* authorize the procuring of such services where any given
8 governmental body is otherwise prohibited from procuring such
9 services."

10 **Section 6.** Section 16 of Chapter V of Public Law Number 25-72, as
11 repealed and reenacted by §14 of Public Law Number 25-74 and further
12 repealed and reenacted by §21 of Public Law Number 25-98, is hereby *amended*
13 to read as follows:

14 **"Section 16. Filling of Teaching, School Health Counselors,
15 Nursing and License Health Care Professional Vacancies.**

16 Notwithstanding the provisions of §§19 and 24 of Chapter IV of this Act,
17 all funds appropriated for the teaching, school health counselor and
18 nursing positions listed in 'Attachment B' of this Act, and for positions
19 of certified registered or licensed health care professional ancillary
20 service personnel employed at the Guam Memorial Hospital Authority,
21 the Department of Mental Health and Substance Abuse and the
22 Department of Public Health and Social Services, that become vacant
23 after the enactment hereof shall *not* be automatically de-appropriated.
24 Such funds may be used by the appointing authority to fill these vacant

1 positions. *However*, during the period of time that a position remains
2 vacant, all unspent funds shall be deposited into the Rainy Day Fund as
3 provided in §§23-25 of Public Law Number 25-72. To the extent that
4 public law allows the re-employment of retired employees who retired
5 from the Government of Guam Retirement Fund to be hired for nursing,
6 and certified registered or licensed health care professional ancillary
7 service positions, all such retired persons hired hereafter shall be hired
8 at entry level Step 4 for the applicable vacancy."

ATTACHMENT 1
GUAM MEMORIAL HOSPITAL AUTHORITY
ADMINISTRATIVE MANUAL

APPROVED	RESPONSIBILITY Nursing Administration Personnel Dept.	ORIGINATION DATE 1/25/2000	NUMBER 6301-17	PAGE 1 of 3
TITLE: Health Care Professional Hourly Per Diem Pay Policy				

PURPOSE:

To establish pay policy and the administrative procedures for the compensation and employment of Hourly Per Diem Health Care Professionals. This will allow GMH to establish a pool of qualified professionals willing to work limited hours to supplement the Guam Memorial Hospital's full time and part-time workforce.

POLICY:

The Guam Memorial Hospital has established a health care professional pool to allow for the supplemental coverage of open shifts in the clinical care work environment which will augment the pool of professionals available for work at GMH as well as provide opportunity for health care professionals to remain active and current in their clinical skills.

Eligibility to Participate:

Health Care Professionals are defined as Registered Nurses, Technologists, Therapists, Pharmacists or other licensed professionals as defined by the Dictionary of Occupational Titles as "0" or "1" classifications.

Hours:

Per Diem Health Care Professionals participating in the pool may work a minimum of 4 hours daily, up to a maximum of 30 hours per pay period.

Compensation:

Compensation of the Health Care Professionals participating in the pool shall be in accordance with the established all-inclusive hourly rate compensation schedule attached hereto as Schedule A.

No benefits are provided.

Hourly compensation will be provided with compensation set a 1.5 times the hourly rate for work on Government of Guam established holidays.

No additional compensation such as certification pay, on-call pay, call-back pay, weekend or shift differentials will be paid.

Employment Requirements:

Current or temporary Guam License.

Physician certification of physical fitness.

Successful completion of GMH drug screen and TB testing.

Proof of current certification in ACLS/BCLS or PALS/NALS as required.

Attendance of GMH Orientation (Hours in orientation will be paid).

Participants may not be a current full time or part time employee of the Guam Memorial Hospital or

the Government of Guam.

PROCEDURE:

1. Applicant completes an employment application.
2. Personnel Department arranges for an interview as appropriate.
3. Applicant is scheduled for orientation.
4. Applicant executes a Letter of Agreement regarding terms and conditions of Per Diem Employment.
5. Applicant's name and work hours are submitted for immediate scheduling.
6. After initial scheduling, applicants may sign up for uncovered shifts as desired. Listing of available shifts will be posted and can be faxed to Per Diem Employees.
7. Per Diem Employees are to contact the Staffing Coordinator at least once a month to coordinate any desired changes in scheduling.
8. Per Diem Employees who are unable to work scheduled times must give four (4) hours notice to the scheduling supervisor.
9. Per Diem Employees with Military obligations who are working when recalled will immediately notify the Head/Charge Nurse who will arrange for immediate endorsement of clinical information and the immediate release of the employee. Military employees scheduled to work and recalled to duty will notify the scheduling supervisor or nursing supervisor on duty.
10. Per Diem Employees can obtain paychecks from the Nursing Administration Office between 3:30pm and 5:00pm on Payday.

Schedule A
Compensation Schedule

Job Title	Pay Grade Compensation Rate/Hour
Staff Nurse I	K 19.05
Staff Nurse II	M 22.15
Hospital Radiological Technologist I	K 19.05
Hospital Radiologic Technologist II	L 20.49
Nuclear Medicine Technologist	M 22.15
Ultrasound Technologist	M 22.15
Hospital Physical Therapist I	L 20.49
Hospital Physical Therapist II	M 22.15
Medical Laboratory Technologist I	L 20.49
Medical Laboratory Technologist II	M 22.15
Hospital Respiratory Therapist I	K 19.05
Hospital Respiratory Therapist II	M 22.15
Clinical Dietician I	L 20.49
Clinical Dietician II	M 22.15
Pharmacist	N 27.54

Compensation is set at step 12 for all job classifications except Pharmacists who will be paid at step 16 due to shortage determination compensation previously set by CSC.

Attachment "B" - Personnel

Department/Agency	General Fund	Special Fund	Note	Federal Fund Match	Total
Department of Education	\$37,608,188				\$37,608,188
Public Health and Social Services	\$3,707,097			\$1,920,013	\$5,627,110
Guam Fire Department	\$5,477,164				\$5,477,164
Guam Police Department	\$5,117,710	\$123,846	1		\$5,241,556
Department of Public Works	\$4,748,052	\$793,113	2		\$5,541,165
DPW - Solid Waste	\$0	\$1,175,167	3		\$1,175,167
Superior Court	\$4,111,491			\$35,306	\$4,146,797
Department of Corrections	\$3,061,170				\$3,061,170
Department of Revenue and Taxation	\$2,054,544				\$2,054,544
Department of Administration	\$1,968,062				\$1,968,062
Department of Law	\$1,563,370			\$230,262	\$1,793,632
Dept. of Mental Health & Subst. Abuse	\$1,382,451				\$1,382,451
Department of Youth Affairs	\$1,026,106				\$1,026,106
Department of Land Management	\$821,219				\$821,219
Department of Agriculture	\$672,471	\$321,448	4	\$128,646	\$1,122,565
Public Defender	\$592,254				\$592,254
Department of Labor	\$569,905			\$57,082	\$626,987
DISID	\$215,016				\$215,016
Supreme Court	\$492,915				\$492,915
Department of Commerce	\$405,030				\$405,030
Dept. of Parks and Recreation	\$917,259				\$917,259
Bureau of Budget & Mangmt Research	\$406,509				\$406,509
Guam Library	\$253,063				\$253,063
Civil Service Commission	\$311,459				\$311,459
Guam EPA	\$230,413			\$359,510	\$589,923
Bureau of Planning	\$239,179				\$239,179
Department of Chamorro Affairs	\$185,456				\$185,456
Department of Military Affairs	\$179,145			\$97,377	\$276,522
Public Auditor	\$100,497				\$100,497
Chamorro Land Trust Commission	\$128,745				\$128,745
Ancestral Lands Commission	\$124,022				\$124,022
CAHA	\$89,174				\$89,174
Guam Educational Telecomm. Corp	\$110,901				\$110,901
Guam Election Commission	\$42,209				\$42,209
Commission on Self-Determination	\$51,322				\$51,322
Chamorro Registry Advisory Board	\$0				\$0
Chief Medical Examiner	\$71,535				\$71,535
State Council on Vocational Ed.	\$47,669				\$47,669
Guam Planning Council	\$45,024				\$45,024
AHRD	\$36,027				\$36,027
Guam Finance Commission	\$27,328				\$27,328
Guam Mass Transit Authority		\$164,631	2		\$164,631
Customs & Quarantine		\$488,478	4		\$488,478
PEALS Board		\$0			\$0
Guam Contractors License Board		\$82,696	5		\$82,696
GRAND TOTAL	\$79,191,151	\$3,149,379		\$2,828,196	\$85,168,726

Notes

- 1 - Police Services Fund
- 2 - Territorial Highway Fund
- 3 - Solid Waste Operations Fund
- 4 - Customs, Agricultural and Quarantine Inspection Services Fund
- 5 - Contractors License Board Fund

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (SECOND) Regular Session

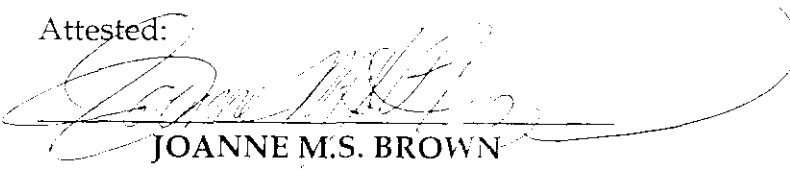
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Bill No. 1(3-S), "AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS," returned without approval of *I Maga'lahaen Guahan*, was reconsidered by *I Liheslaturan Guahan* and after such consideration, did agree, on the 19th day of April, 2000, to pass said bill notwithstanding the veto of *I Maga'lahaen Guahan* by a vote of Twelve (12) members.



ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this _____ day of _____
2000, at _____ o'clock _____ M.

Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: _____

Public Law No. _____

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I Maga'lahen Guahan

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (THIRD) Special Session

Bill No. 1 (3-S)

As substituted and amended
on the Floor.

Introduced by:

Committee on Rules,
Government Reform,
Reorganization and
Federal Affairs

by request of *I Maga'lahaen*
Guåhan in accordance with
the Organic Act of Guam
Mark Forbes

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

L. F. Kasperbauer

A.C. Lamorena, V

C. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

J. C. Salas

S. A. Sanchez, II

A. R. Unpingco

AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION

OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Intent. Restrictions on non-critical hiring
3 must remain in place.

4 The current debate between the Executive and Legislative Branches
5 regarding the hiring policies of the government of Guam during FY2000 has
6 produced valuable exchanges of information between the two (2) Branches.
7 The preliminary exchange of information reveals the following:

8 An estimated Forty-four Million Dollars (\$44,000,000) in annual
9 payroll reductions was the result of the two (2) early-out programs
10 allowed by law during FY2000. The amount of savings estimated for
11 FY2000 is approximately Thirty-four Million Dollars (\$34,000,000).
12 These savings allowed the Government to avoid a Twenty-seven Million
13 Dollar (\$27,000,000) budget shortfall.

14 Over one thousand two hundred (1,200) government employees
15 chose to leave the government *voluntarily* under the two (2) programs.
16 No employees were laid off. No pay cuts or reduction in work hours
17 was necessary.

1 The general fund budget for personnel is sufficient to cover the
2 regular payroll obligations for FY2000 *if* surpluses from certain agencies
3 are reallocated to other agencies with shortfalls.

4 While regular payroll obligations can be met, *however*,
5 expenditures for over-time pay have exceed the budget ceiling for
6 FY2000. The administration has effectively reduced over-time
7 expenditures from an annual average of Nine Million Dollars
8 (\$9,000,000) annually to Five Million Five Hundred Thousand Dollars
9 (\$5,500,000) this fiscal year. This amount is Three Million Dollars
10 (\$3,000,000) *higher* than the amount originally budgeted by *I Liheslaturan*
11 *Guåhan* for FY2000. The additional overtime expenditures creates a
12 possible Two Million Eight Hundred Thousand Dollar (\$2,800,000)
13 shortfall in Executive Branch payroll for FY2000.

14 Due to the continued downturn in the Island's economy, actual
15 expenditures for various public assistance programs and the Medically
16 Indigent Program ("MIP") for our families most in need continue to rise,
17 and also exceeds projections originally made by the Executive and
18 Legislative Branches. The Executive Branch budget request of Sixty-five
19 Million Dollars (\$65,000,000) for the Department of Public Health and
20 Social Services ("DPHSS") and the Sixty Million Dollar (\$60,000,000)
21 budget adopted by *I Liheslaturan Guåhan* for FY2000 will *not* fully fund
22 the increased demand for assistance to our needy families. The budget
23 shortfall is estimated at Twelve Million to Fifteen Million Dollars
24 (\$12,000,000 - \$15,000,000) for FY2000.

1 *However*, more accurate information is difficult to obtain due to
2 continued problems in implementing the Five Million Five Hundred
3 Thousand Dollar (\$5,500,000) AGUPA benefit management system of
4 DPHSS.

5 The Executive Branch continues to implement the new financial
6 management system ("FMS") to better calculate the current financial
7 status of the government of Guam. *However*, the FMS currently cannot
8 detail actual revenues collected, actual expenditures by budget
9 categories and other important budgetary information necessary for
10 both Branches of government to successfully manage government
11 resources.

12 Until more complete information is exchanged between the Executive
13 and Legislative branches, *Liheslaturan Guåhan* finds that the current policy to
14 allow hiring for only certain critical positions, such as teachers, medical
15 professionals, public safety officers and social workers is still necessary and
16 prudent at this time. What little money may be available must be saved to
17 hire only the most critically needed personnel in order to protect the most
18 fundamental government services needed. Furthermore, the needs for public
19 assistance and MIP, as well as the over-time obligations of the General Fund
20 must still be addressed.

21 As a result of these significant fiscal challenges facing the government, it
22 is finally determined that it would be premature to lift the General Fund
23 hiring freeze at this time until the financial status of the government of Guam
24 is more accurately determined and it is certain that existing obligations will be
25 met.

1 *I Liheslaturan Guåhan* remains committed to working diligently with the
2 Executive Branch to resolve the financial problems facing the government of
3 Guam this fiscal year. *I Liheslaturan Guåhan* shall continue to exchange
4 information with the Executive Branch and seek meaningful compromises to
5 insure that essential government services are provided without increasing the
6 already heavy burden taxpayers must carry to support their government.

7 *I Liheslaturan Guåhan* further finds the following:

8 Since the issuance of the Attorney General's opinion in January,
9 hiring has nonetheless occurred in the Executive Branch. Nurses,
10 medical technicians and administrative employees were hired at the
11 Guam Memorial Hospital. Teachers and other employees were hired at
12 the Guam Community College. Directors were hired for various
13 agencies. All these hirings violate the interpretation of the hiring freeze
14 opinion of the Attorney General. To date, all these employees remain
15 employed with the government of Guam. No certifying officer has been
16 prosecuted by the Attorney General. These hirings prove that critical
17 positions could be filled by the Executive Branch without fear of
18 prosecution or violation of law. The Executive Branch has always had
19 and continues to have the power to hire.

20 The Courts will soon decide whether the opinion of the Attorney
21 General or *I Liheslaturan Guåhan* with regards to restrictions on hirings
22 shall prevail. *If* the Court sides with the Attorney General, *I Maga'lahaen*
23 *Guåhan* can hire critically needed positions, as well as any other position
24 he deems necessary. *If* the Court sides with *I Liheslaturan Guåhan*, *I*
25 *Maga'lahaen Guåhan* can hire critically needed positions. Either way the

1 Court decides, *I Maga'lahen Guåhan* can hire critically needed positions
2 immediately.

3 *I Liheslaturan Guåhan* urges *I Maga'lahen Guåhan* to begin hiring
4 critically needed positions while the Court decision remains pending.
5 The legal difference of opinion does *not* justify any action that would
6 threaten the health, education, safety and welfare of the people of
7 Guam.

8 **Section 2. (a) Legislative Intent. Exemption of the Guam**
9 **Memorial Hospital Authority ("GMHA") From Any Restrictions on**
10 **Hiring Needed Personnel to Insure the Safe Provision of Essential**
11 **Hospital Health Care.** The Guam Memorial Hospital Authority
12 ("GMHA") is the Island's only civilian hospital available to the majority
13 of Guam's people. GMHA currently faces a number of critical problems
14 that require legislative action to insure GMHA can provide improved
15 services to the people of Guam.

16 Despite two (2) rate increases in the past twelve (12) months,
17 totaling an estimated Thirteen Million Dollars (\$13,000,000) in additional
18 annual billing revenue, GMHA continues to struggle financially.
19 GMHA continues to collect significantly below actual billings, reducing
20 the amount of dollars actually collected from the two (2) rate increases.
21 Nonetheless, the rate increases add to the already significant burdens
22 for paying customers of GMHA.

23 The preliminary results of the Public Utility Commission ("PUC")
24 management audit required by *I Liheslaturan Guåhan* last year reveal that
25 GMHA can improve its non-clinical and support performance

1 significantly, saving between Two Million Four Hundred Thousand to
2 Three Million Six Hundred Thousand Dollars (\$2,400,000 - \$3,600,000)
3 annually. Despite these findings, most of the recent hires at GMHA
4 were for non-clinical positions.

5 Conversely, the audit revealed a need to increase direct funding
6 for patient care delivery by One Million Two Hundred Thousand
7 Dollars (\$1,200,000). The Three Million Dollars (\$3,000,000) in estimated
8 annual savings from non-clinical services would more than offset the
9 increased costs needed to fund patient care delivery.

10 The audit further revealed that GMHA can generate a one-time
11 savings in inventory and materials management of almost One Million
12 Dollars (\$1,000,000) and as much as Two Million Four Hundred
13 Thousand Dollars (\$2,400,000) by improving receivable management of
14 billings to Medicare and self-paying customers.

15 Clearly, the PUC audit shows key areas that GMHA can save
16 money for direct patient care by reducing administrative inefficiencies.
17 GMHA also continues to remain silent on its intentions to collect the
18 Four Million Five Hundred Thousand Dollars (\$4,500,000) owed to it by
19 the Guam Memorial Health Plan ("GMHP") and affiliated companies for
20 services rendered *prior to* 1997. This settlement amount was reduced
21 from Eleven Million Dollars (\$11,000,000) and agreed to by GMHA and
22 GMHP late last year. *However*, all efforts by GMHA to collect from
23 GMHP ceased at the beginning of the year. Additional amounts are
24 owed by GMHP to GMHA for 1998 and 1999. Meanwhile, hundreds of
25 GMHA patients now are receiving direct billings as a result of GMHA's

1 failure to collect from GMHP. Ironically, GMHA continues to bill the
2 innocent patients, while avoiding action against GMHP.

3 GMHA has also failed to collect an estimated Eight Million Dollars
4 (\$8,000,000) owed by the Medically Indigent Program and Medicaid,
5 despite significant local and Federal funding for these programs in
6 FY2000. According to the Executive Branch, this figure is now in
7 dispute between GMHA and DPHSS and awaits reconciliation.
8 *However*, the Executive Branch has indicated that a substantial amount
9 of MIP payments are nonetheless due for GMHA. Payment of some
10 portion of the disputed amounts at this time could help GMHA
11 significantly at this time.

12 *I Liheslaturan Guåhan* finds that GMHA can significantly improve
13 its financial position in the coming months as a result of the recent rate
14 increases, improved control of non-clinical operations and collecting
15 from MIP, GMHP and other large debtors. GMHA can then re-invest
16 these savings into direct patient care services, thereby improving health
17 care services to the people of Guam.

18 To assist this effort, *I Liheslaturan Guåhan* finds it must provide
19 maximum hiring flexibility to GMHA to hire *all* clinical support
20 positions needed, while reorganizing and streamlining its non-clinical
21 operations. GMHA faces critical shortages in key clinical positions that
22 must be addressed, beyond the positions allowed by Public Law
23 Numbers 25-98, 25-74 and 25-72.

24 (b) Notwithstanding any other provision of law, §50 of Public
25 Law Number 25-74 shall *not* apply to the Guam Memorial Hospital

1 Authority. The Guam Memorial Hospital Authority is hereby
2 authorized to hire employees necessary to insure the delivery of quality
3 health care services, *except* as constrained by its availability of funds and
4 while working towards compliance with the February 17, 2000
5 management audit executive briefing performed by the Public Utility
6 Commission and its management audit consultants.

7 (c) Section 50 of Public Law Number 25-74 is hereby *repealed and*
8 *reenacted* to read as follows:

9 **"Section 50. Hiring Freeze Applies to Autonomous**
10 **Agencies, *Except* for the Guam Memorial Hospital Authority.**

11 Notwithstanding any other provision of law, §19 of Chapter IV of
12 Public Law Number 25-72 shall hereby apply to autonomous
13 agencies of the government of Guam, *except* for the Guam
14 Memorial Hospital Authority, and *except* as provided for in §14 of
15 this Act."

16 (d) Notwithstanding any other provision of law, §28 of Public
17 Law Number 25-98 shall *not* apply to the Guam Memorial Hospital
18 Authority.

19 **Section 3. Legislative Intent. Requesting Approval of Above Step**
20 **Recruitment Authorization as Submitted by the Guam Memorial Hospital**
21 **Authority ("GMHA") to the Civil Service Commission.** For many years it
22 has been the policy of the government of Guam to allow an agency to recruit
23 above step for certain critical position titles that regularly lack a pool of
24 qualified candidates. This policy is incorporated into the general powers of

1 the Civil Service Commission and above step recruitment is a limited time
2 incentive that lasts only as long as the specific position(s) shortage remains.

3 It also has been policy to allow certain critical positions within the
4 government of Guam, such as nurses or teachers, to be filled by retired
5 persons who possess the expertise and experience to qualify for vacant
6 positions in the absence of enough qualified employees already employed.

7 Both of these policies can be changed through the merit system when a
8 government entity no longer has difficulty attracting enough qualified labor.
9 GMHA has utilized both of these policies to attract sufficient qualified health
10 professionals.

11 Unfortunately, it has become evident that recruitment difficulties
12 continue to threaten GMHA's ability to improve and maintain the quality of
13 health care deserved by the people of Guam.

14 In January of this year, GMHA submitted a request for "difficulty of
15 recruitment above-step-pay" authorization to the Civil Service Commission.
16 To date the Commission has *not* acted on the request.

17 The shortage of nurses has reached a crisis state and requires immediate
18 action from *I Liheslaturan Guåhan* in order to protect the public's healthcare
19 interests. *I Liheslaturan Guåhan* finds that GMHA requires emergency
20 approval of their request still pending before the Civil Service Commission in
21 order to address their critical shortage of nurses.

22 *I Liheslaturan Guåhan* requests immediate action by the Civil Service
23 Commission on the submission by the Guam Memorial Hospital request for
24 above step recruitment pay for Staff Nurse I and Staff Nurse II positions.

1 Section 4. Adoption of the “Health Care Professional Hourly Per
2 Diem Pay Policy” as Part of the Administrative Manual of the Guam
3 Memorial Hospital Authority. (a) Legislative Intent. The Guam
4 Memorial Hospital Authority (“GMHA”) faces a chronic and critical
5 shortage of medical professionals. *I Liheslaturan Guåhan* intends to allow
6 GMHA the maximum flexibility in attracting and retaining qualified
7 employees to insure that the highest quality health care is available to
8 the people of Guam at all times.

9 As part of its Administrative Manual, GMHA has developed a
10 “Health Care Professional Hourly Per Diem Policy.” The intent of this
11 policy is to allow the recruitment of medical professionals to
12 supplement its existing manpower resources in the clinical care areas,
13 and to pay these professionals on an hourly *per diem* basis.

14 While this payment policy has been presented to the Civil Service
15 Commission for approval, *I Liheslaturan Guåhan* finds that immediate
16 approval of GMHA’s hourly *per diem* policy will serve the public interest
17 if it is enacted into law.

18 (b) Adoption. The proposed Guam Memorial Hospital
19 Authority’s “Health Care Professional Hourly Per Diem Pay Policy” as
20 contained as **Attachment 1** is hereby adopted by *I Liheslaturan*
21 *Guåhan* for immediate implementation by the Guam Memorial Hospital
22 Authority.

23 Section 5. Section 5151(a) of Part F, Article 2, Chapter 5, Division 1 of
24 Title 5 of the Guam Code Annotated is hereby *amended* to read as follows:

1 "(a) **General Authority.** For the purpose of procuring the
2 services of accountants, physicians, lawyers, dentists, licensed nurses,
3 other licensed health professionals and other professionals, any
4 governmental body of Guam may act as a purchasing agency and
5 contract on its own behalf for such services, *subject to* this Chapter and
6 regulations promulgated by the Policy Office, but this Subsection shall
7 *not* authorize the procuring of such services where any given
8 governmental body is otherwise prohibited from procuring such
9 services."

10 **Section 6.** Section 16 of Chapter V of Public Law Number 25-72, as
11 repealed and reenacted by §14 of Public Law Number 25-74 and further
12 repealed and reenacted by §21 of Public Law Number 25-98, is hereby *amended*
13 to read as follows:

14 "**Section 16. Filling of Teaching, School Health Counselors,**
15 **Nursing and License Health Care Professional Vacancies.**

16 Notwithstanding the provisions of §§19 and 24 of Chapter IV of this Act,
17 all funds appropriated for the teaching, school health counselor and
18 nursing positions listed in 'Attachment B' of this Act, and for positions
19 of certified registered or licensed health care professional ancillary
20 service personnel employed at the Guam Memorial Hospital Authority,
21 the Department of Mental Health and Substance Abuse and the
22 Department of Public Health and Social Services, that become vacant
23 after the enactment hereof shall *not* be automatically de-appropriated.
24 Such funds may be used by the appointing authority to fill these vacant

1 positions. *However*, during the period of time that a position remains
2 vacant, all unspent funds shall be deposited into the Rainy Day Fund as
3 provided in §§23-25 of Public Law Number 25-72. To the extent that
4 public law allows the re-employment of retired employees who retired
5 from the Government of Guam Retirement Fund to be hired for nursing,
6 and certified registered or licensed health care professional ancillary
7 service positions, all such retired persons hired hereafter shall be hired
8 at entry level Step 4 for the applicable vacancy."

ATTACHMENT 1

**GUAM MEMORIAL HOSPITAL AUTHORITY
ADMINISTRATIVE MANUAL**

APPROVED	RESPONSIBILITY	ORIGINATION DATE	NUMBER	PAGE
	Nursing Administration Personnel Dept.	1/25/2000	6301-17	1 of 3
TITLE: Health Care Professional Hourly Per Diem Pay Policy				

PURPOSE:

To establish pay policy and the administrative procedures for the compensation and employment of Hourly Per Diem Health Care Professionals. This will allow GMH to establish a pool of qualified professionals willing to work limited hours to supplement the Guam Memorial Hospital's full time and part-time workforce.

POLICY:

The Guam Memorial Hospital has established a health care professional pool to allow for the supplemental coverage of open shifts in the clinical care work environment which will augment the pool of professionals available for work at GMH as well as provide opportunity for health care professionals to remain active and current in their clinical skills.

Eligibility to Participate:

Health Care Professionals are defined as Registered Nurses, Technologists, Therapists, Pharmacists or other licensed professionals as defined by the Dictionary of Occupational Titles as "0" or "1" classifications.

Hours:

Per Diem Health Care Professionals participating in the pool may work a minimum of 4 hours daily, up to a maximum of 30 hours per pay period.

Compensation:

Compensation of the Health Care Professionals participating in the pool shall be in accordance with the established all-inclusive hourly rate compensation schedule attached hereto as Schedule A.

No benefits are provided.

Hourly compensation will be provided with compensation set at 1.5 times the hourly rate for work on Government of Guam established holidays.

No additional compensation such as certification pay, on-call pay, call-back pay, weekend or shift differentials will be paid.

Employment Requirements:

Current or temporary Guam License.

Physician certification of physical fitness.

Successful completion of GMH drug screen and TB testing.

Proof of current certification in ACLS/BCLS or PALS/NALS as required.

Attendance of GMH Orientation (Hours in orientation will be paid).

Participants may not be a current full time or part time employee of the Guam Memorial Hospital or

the Government of Guam.

PROCEDURE:

1. Applicant completes an employment application.
2. Personnel Department arranges for an interview as appropriate.
3. Applicant is scheduled for orientation.
4. Applicant executes a Letter of Agreement regarding terms and conditions of Per Diem Employment.
5. Applicant's name and work hours are submitted for immediate scheduling.
6. After initial scheduling, applicants may sign up for uncovered shifts as desired. Listing of available shifts will be posted and can be faxed to Per Diem Employees.
7. Per Diem Employees are to contact the Staffing Coordinator at least once a month to coordinate any desired changes in scheduling.
8. Per Diem Employees who are unable to work scheduled times must give four (4) hours notice to the scheduling supervisor.
9. Per Diem Employees with Military obligations who are working when recalled will immediately notify the Head/Charge Nurse who will arrange for immediate endorsement of clinical information and the immediate release of the employee. Military employees scheduled to work and recalled to duty will notify the scheduling supervisor or nursing supervisor on duty.
10. Per Diem Employees can obtain paychecks from the Nursing Administration Office between 3:30pm and 5:00pm on Payday.

Schedule A
Compensation Schedule

Job Title	Pay Grade Compensation Rate/Hour
Staff Nurse I	K 19.05
Staff Nurse II	M 22.15
Hospital Radiological Technologist I	K 19.05
Hospital Radiologic Technologist II	L 20.49
Nuclear Medicine Technologist	M 22.15
Ultrasound Technologist	M 22.15
Hospital Physical Therapist I	L 20.49
Hospital Physical Therapist II	M 22.15
Medical Laboratory Technologist I	L 20.49
Medical Laboratory Technologist II	M 22.15
Hospital Respiratory Therapist I	K 19.05
Hospital Respiratory Therapist II	M 22.15
Clinical Dietician I	L 20.49
Clinical Dietician II	M 22.15
Pharmacist	N 27.54

Compensation is set at step 12 for all job classifications except Pharmacists who will be paid at step 16 due to shortage determination compensation previously set by CSC.

Attachment "B" - Personnel

Department/Agency	General Fund	Special Fund	Note	Federal Fund Match	Total
Department of Education	\$37,608,188				\$37,608,188
Public Health and Social Services	\$3,707,097			\$1,920,013	\$5,627,110
Guam Fire Department	\$5,477,164				\$5,477,164
Guam Police Department	\$5,117,710	\$123,846	1		\$5,241,556
Department of Public Works	\$4,748,052	\$793,113	2		\$5,541,165
DPW - Solid Waste	\$0	\$1,175,167	3		\$1,175,167
Superior Court	\$4,111,491			\$35,306	\$4,146,797
Department of Corrections	\$3,061,170				\$3,061,170
Department of Revenue and Taxation	\$2,054,544				\$2,054,544
Department of Administration	\$1,968,062				\$1,968,062
Department of Law	\$1,563,370			\$230,262	\$1,793,632
Dept. of Mental Health & Subst. Abuse	\$1,382,451				\$1,382,451
Department of Youth Affairs	\$1,026,106				\$1,026,106
Department of Land Management	\$821,219				\$821,219
Department of Agriculture	\$672,471	\$321,448	4	\$128,646	\$1,122,565
Public Defender	\$592,254				\$592,254
Department of Labor	\$569,905			\$57,082	\$626,987
DISID	\$215,016				\$215,016
Supreme Court	\$492,915				\$492,915
Department of Commerce	\$405,030				\$405,030
Dept. of Parks and Recreation	\$917,259				\$917,259
Bureau of Budget & Mangmt Research	\$406,509				\$406,509
Guam Library	\$253,063				\$253,063
Civil Service Commission	\$311,459				\$311,459
Guam EPA	\$230,413			\$359,510	\$589,923
Bureau of Planning	\$239,179				\$239,179
Department of Chamorro Affairs	\$185,456				\$185,456
Department of Military Affairs	\$179,145			\$97,377	\$276,522
Public Auditor	\$100,497				\$100,497
Chamorro Land Trust Commission	\$128,745				\$128,745
Ancestral Lands Commission	\$124,022				\$124,022
GAHA	\$89,174				\$89,174
Guam Educational Telecomm. Corp	\$110,901				\$110,901
Guam Election Commission	\$42,209				\$42,209
Commission on Self-Determination	\$51,322				\$51,322
Chamorro Registry Advisory Board	\$0				\$0
Chief Medical Examiner	\$71,535				\$71,535
State Council on Vocational Ed.	\$47,669				\$47,669
Guam Planning Council	\$45,024				\$45,024
AHRD	\$36,027				\$36,027
Guam Finance Commission	\$27,328				\$27,328
Guam Mass Transit Authority		\$164,631	2		\$164,631
Customs & Quarantine		\$483,478	4		\$483,478
PEALS Board		\$0			\$0
Guam Contractors License Board		\$82,696	5		\$82,696
GRAND TOTAL	\$79,191,151	\$3,149,379		\$2,828,196	\$85,168,726

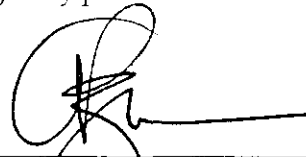
Notes

- 1 - Police Services Fund
- 2 - Territorial Highway Fund
- 3 - Solid Waste Operations Fund
- 4 - Customs, Agricultural and Quarantine Inspection Services Fund
- 5 - Contractors License Board Fund

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (THIRD) Special Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 1 (3-S) "AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS," was on the 14th day of April 2000, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this _____ day of _____, 2000,
at _____ o'clock _____.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (THIRD) Special Session

Bill No. 1 (3-S)

As substituted and amended
on the Floor.

Introduced by:

Committee on Rules,
Government Reform,
Reorganization and
Federal Affairs

by request of *I Maga'laha*
Guåhan in accordance with
the Organic Act of Guam

Mark Forbes

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

L. F. Kasperbauer

A.C. Lamorena, V

C. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

J. C. Salas

S. A. Sanchez, II

A. R. Unpingco

AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION

OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, *SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT*; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS.

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

2 **Section 1. Legislative Intent.** Restrictions on non-critical hiring
3 must remain in place.

4 The current debate between the Executive and Legislative Branches
5 regarding the hiring policies of the government of Guam during FY2000 has
6 produced valuable exchanges of information between the two (2) Branches.
7 The preliminary exchange of information reveals the following:

8 An estimated Forty-four Million Dollars (\$44,000,000) in annual
9 payroll reductions was the result of the two (2) early-out programs
10 allowed by law during FY2000. The amount of savings estimated for
11 FY2000 is approximately Thirty-four Million Dollars (\$34,000,000).
12 These savings allowed the Government to avoid a Twenty-seven Million
13 Dollar (\$27,000,000) budget shortfall.

14 Over one thousand two hundred (1,200) government employees
15 chose to leave the government *voluntarily* under the two (2) programs.
16 No employees were laid off. No pay cuts or reduction in work hours
17 was necessary.

1 The general fund budget for personnel is sufficient to cover the
2 regular payroll obligations for FY2000 *if* surpluses from certain agencies
3 are reallocated to other agencies with shortfalls.

4 While regular payroll obligations can be met, *however*,
5 expenditures for over-time pay have exceed the budget ceiling for
6 FY2000. The administration has effectively reduced over-time
7 expenditures from an annual average of Nine Million Dollars
8 (\$9,000,000) annually to Five Million Five Hundred Thousand Dollars
9 (\$5,500,000) this fiscal year. This amount is Three Million Dollars
10 (\$3,000,000) *higher* than the amount originally budgeted by *I Liheslaturan*
11 *Guåhan* for FY2000. The additional overtime expenditures creates a
12 possible Two Million Eight Hundred Thousand Dollar (\$2,800,000)
13 shortfall in Executive Branch payroll for FY2000.

14 Due to the continued downturn in the Island's economy, actual
15 expenditures for various public assistance programs and the Medically
16 Indigent Program ("MIP") for our families most in need continue to rise,
17 and also exceeds projections originally made by the Executive and
18 Legislative Branches. The Executive Branch budget request of Sixty-five
19 Million Dollars (\$65,000,000) for the Department of Public Health and
20 Social Services ("DPHSS") and the Sixty Million Dollar (\$60,000,000)
21 budget adopted by *I Liheslaturan Guåhan* for FY2000 will *not* fully fund
22 the increased demand for assistance to our needy families. The budget
23 shortfall is estimated at Twelve Million to Fifteen Million Dollars
24 (\$12,000,000 - \$15,000,000) for FY2000.

1 *However*, more accurate information is difficult to obtain due to
2 continued problems in implementing the Five Million Five Hundred
3 Thousand Dollar (\$5,500,000) AGUPA benefit management system of
4 DPHSS.

5 The Executive Branch continues to implement the new financial
6 management system ("FMS") to better calculate the current financial
7 status of the government of Guam. *However*, the FMS currently cannot
8 detail actual revenues collected, actual expenditures by budget
9 categories and other important budgetary information necessary for
10 both Branches of government to successfully manage government
11 resources.

12 Until more complete information is exchanged between the Executive
13 and Legislative branches, *I Liheslaturan Guåhan* finds that the current policy to
14 allow hiring for only certain critical positions, such as teachers, medical
15 professionals, public safety officers and social workers is still necessary and
16 prudent at this time. What little money may be available must be saved to
17 hire only the most critically needed personnel in order to protect the most
18 fundamental government services needed. Furthermore, the needs for public
19 assistance and MIP, as well as the over-time obligations of the General Fund
20 must still be addressed.

21 As a result of these significant fiscal challenges facing the government, it
22 is finally determined that it would be premature to lift the General Fund
23 hiring freeze at this time until the financial status of the government of Guam
24 is more accurately determined and it is certain that existing obligations will be
25 met.

1 *I Liheslaturan Guåhan* remains committed to working diligently with the
2 Executive Branch to resolve the financial problems facing the government of
3 Guam this fiscal year. *I Liheslaturan Guåhan* shall continue to exchange
4 information with the Executive Branch and seek meaningful compromises to
5 insure that essential government services are provided without increasing the
6 already heavy burden taxpayers must carry to support their government.

7 *I Liheslaturan Guåhan* further finds the following:

8 Since the issuance of the Attorney General's opinion in January,
9 hiring has nonetheless occurred in the Executive Branch. Nurses,
10 medical technicians and administrative employees were hired at the
11 Guam Memorial Hospital. Teachers and other employees were hired at
12 the Guam Community College. Directors were hired for various
13 agencies. All these hirings violate the interpretation of the hiring freeze
14 opinion of the Attorney General. To date, all these employees remain
15 employed with the government of Guam. No certifying officer has been
16 prosecuted by the Attorney General. These hirings prove that critical
17 positions could be filled by the Executive Branch without fear of
18 prosecution or violation of law. The Executive Branch has always had
19 and continues to have the power to hire.

20 The Courts will soon decide whether the opinion of the Attorney
21 General or *I Liheslaturan Guåhan* with regards to restrictions on hirings
22 shall prevail. *If the Court sides with the Attorney General, I Maga'lahaen*
23 *Guåhan* can hire critically needed positions, as well as any other position
24 he deems necessary. *If the Court sides with I Liheslaturan Guåhan, I*
25 *Maga'lahaen Guåhan* can hire critically needed positions. Either way the

1 Court decides, *I Maga'lahren Guåhan* can hire critically needed positions
2 immediately.

3 *I Liheslaturan Guåhan* urges *I Maga'lahren Guåhan* to begin hiring
4 critically needed positions while the Court decision remains pending.
5 The legal difference of opinion does *not* justify any action that would
6 threaten the health, education, safety and welfare of the people of
7 Guam.

8 **Section 2. (a) Legislative Intent. Exemption of the Guam**
9 **Memorial Hospital Authority ("GMHA") From Any Restrictions on**
10 **Hiring Needed Personnel to Insure the Safe Provision of Essential**
11 **Hospital Health Care.** The Guam Memorial Hospital Authority

12 ("GMHA") is the Island's only civilian hospital available to the majority
13 of Guam's people. GMHA currently faces a number of critical problems
14 that require legislative action to insure GMHA can provide improved
15 services to the people of Guam.

16 Despite two (2) rate increases in the past twelve (12) months,
17 totaling an estimated Thirteen Million Dollars (\$13,000,000) in additional
18 annual billing revenue, GMHA continues to struggle financially.
19 GMHA continues to collect significantly below actual billings, reducing
20 the amount of dollars actually collected from the two (2) rate increases.
21 Nonetheless, the rate increases add to the already significant burdens
22 for paying customers of GMHA.

23 The preliminary results of the Public Utility Commission ("PUC")
24 management audit required by *I Liheslaturan Guåhan* last year reveal that
25 GMHA can improve its non-clinical and support performance

1 significantly, saving between Two Million Four Hundred Thousand to
2 Three Million Six Hundred Thousand Dollars (\$2,400,000 - \$3,600,000)
3 annually. Despite these findings, most of the recent hires at GMHA
4 were for non-clinical positions.

5 Conversely, the audit revealed a need to increase direct funding
6 for patient care delivery by One Million Two Hundred Thousand
7 Dollars (\$1,200,000). The Three Million Dollars (\$3,000,000) in estimated
8 annual savings from non-clinical services would more than offset the
9 increased costs needed to fund patient care delivery.

10 The audit further revealed that GMHA can generate a one-time
11 savings in inventory and materials management of almost One Million
12 Dollars (\$1,000,000) and as much as Two Million Four Hundred
13 Thousand Dollars (\$2,400,000) by improving receivable management of
14 billings to Medicare and self-paying customers.

15 Clearly, the PUC audit shows key areas that GMHA can save
16 money for direct patient care by reducing administrative inefficiencies.
17 GMHA also continues to remain silent on its intentions to collect the
18 Four Million Five Hundred Thousand Dollars (\$4,500,000) owed to it by
19 the Guam Memorial Health Plan ("GMHP") and affiliated companies for
20 services rendered *prior to* 1997. This settlement amount was reduced
21 from Eleven Million Dollars (\$11,000,000) and agreed to by GMHA and
22 GMHP late last year. *However*, all efforts by GMHA to collect from
23 GMHP ceased at the beginning of the year. Additional amounts are
24 owed by GMHP to GMHA for 1998 and 1999. Meanwhile, hundreds of
25 GMHA patients now are receiving direct billings as a result of GMHA's

1 failure to collect from GMHP. Ironically, GMHA continues to bill the
2 innocent patients, while avoiding action against GMHP.

3 GMHA has also failed to collect an estimated Eight Million Dollars
4 (\$8,000,000) owed by the Medically Indigent Program and Medicaid,
5 despite significant local and Federal funding for these programs in
6 FY2000. According to the Executive Branch, this figure is now in
7 dispute between GMHA and DPHSS and awaits reconciliation.
8 *However*, the Executive Branch has indicated that a substantial amount
9 of MIP payments are nonetheless due for GMHA. Payment of some
10 portion of the disputed amounts at this time could help GMHA
11 significantly at this time.

12 *I Liheslaturan Guåhan* finds that GMHA can significantly improve
13 its financial position in the coming months as a result of the recent rate
14 increases, improved control of non-clinical operations and collecting
15 from MIP, GMHP and other large debtors. GMHA can then re-invest
16 these savings into direct patient care services, thereby improving health
17 care services to the people of Guam.

18 To assist this effort, *I Liheslaturan Guåhan* finds it must provide
19 maximum hiring flexibility to GMHA to hire *all* clinical support
20 positions needed, while reorganizing and streamlining its non-clinical
21 operations. GMHA faces critical shortages in key clinical positions that
22 must be addressed, beyond the positions allowed by Public Law
23 Numbers 25-98, 25-74 and 25-72.

24 (b) Notwithstanding any other provision of law, §50 of Public
25 Law Number 25-74 shall *not* apply to the Guam Memorial Hospital

1 Authority. The Guam Memorial Hospital Authority is hereby
2 authorized to hire employees necessary to insure the delivery of quality
3 health care services, *except* as constrained by its availability of funds and
4 while working towards compliance with the February 17, 2000
5 management audit executive briefing performed by the Public Utility
6 Commission and its management audit consultants.

7 (c) Section 50 of Public Law Number 25-74 is hereby *repealed and*
8 *reenacted* to read as follows:

9 **"Section 50. Hiring Freeze Applies to Autonomous**
10 **Agencies, *Except* for the Guam Memorial Hospital Authority.**

11 Notwithstanding any other provision of law, §19 of Chapter IV of
12 Public Law Number 25-72 shall hereby apply to autonomous
13 agencies of the government of Guam, *except* for the Guam
14 Memorial Hospital Authority, and *except* as provided for in §14 of
15 this Act."

16 (d) Notwithstanding any other provision of law, §28 of Public
17 Law Number 25-98 shall *not* apply to the Guam Memorial Hospital
18 Authority.

19 **Section 3. Legislative Intent. Requesting Approval of Above Step**
20 **Recruitment Authorization as Submitted by the Guam Memorial Hospital**
21 **Authority ("GMHA") to the Civil Service Commission.** For many years it
22 has been the policy of the government of Guam to allow an agency to recruit
23 above step for certain critical position titles that regularly lack a pool of
24 qualified candidates. This policy is incorporated into the general powers of

1 the Civil Service Commission and above step recruitment is a limited time
2 incentive that lasts only as long as the specific position(s) shortage remains.

3 It also has been policy to allow certain critical positions within the
4 government of Guam, such as nurses or teachers, to be filled by retired
5 persons who possess the expertise and experience to qualify for vacant
6 positions in the absence of enough qualified employees already employed.

7 Both of these policies can be changed through the merit system when a
8 government entity no longer has difficulty attracting enough qualified labor.
9 GMHA has utilized both of these policies to attract sufficient qualified health
10 professionals.

11 Unfortunately, it has become evident that recruitment difficulties
12 continue to threaten GMHA's ability to improve and maintain the quality of
13 health care deserved by the people of Guam.

14 In January of this year, GMHA submitted a request for "difficulty of
15 recruitment above-step-pay" authorization to the Civil Service Commission.
16 To date the Commission has *not* acted on the request.

17 The shortage of nurses has reached a crisis state and requires immediate
18 action from *I Liheslaturan Guåhan* in order to protect the public's healthcare
19 interests. *I Liheslaturan Guåhan* finds that GMHA requires emergency
20 approval of their request still pending before the Civil Service Commission in
21 order to address their critical shortage of nurses.

22 *I Liheslaturan Guåhan* requests immediate action by the Civil Service
23 Commission on the submission by the Guam Memorial Hospital request for
24 above step recruitment pay for Staff Nurse I and Staff Nurse II positions.

1 **Section 4. Adoption of the “Health Care Professional Hourly Per**
2 **Diem Pay Policy” as Part of the Administrative Manual of the Guam**
3 **Memorial Hospital Authority. (a) Legislative Intent.** The Guam

4 Memorial Hospital Authority (“GMHA”) faces a chronic and critical
5 shortage of medical professionals. *I Liheslaturan Guåhan* intends to allow
6 GMHA the maximum flexibility in attracting and retaining qualified
7 employees to insure that the highest quality health care is available to
8 the people of Guam at all times.

9 As part of its Administrative Manual, GMHA has developed a
10 “Health Care Professional Hourly Per Diem Policy.” The intent of this
11 policy is to allow the recruitment of medical professionals to
12 supplement its existing manpower resources in the clinical care areas,
13 and to pay these professionals on an hourly *per diem* basis.

14 While this payment policy has been presented to the Civil Service
15 Commission for approval, *I Liheslaturan Guåhan* finds that immediate
16 approval of GMHA’s hourly *per diem* policy will serve the public interest
17 if it is enacted into law.

18 **(b) Adoption.** The proposed Guam Memorial Hospital
19 Authority’s “Health Care Professional Hourly Per Diem Pay Policy” as
20 contained as **Attachment 1** is hereby adopted by *I Liheslaturan*
21 *Guåhan* for immediate implementation by the Guam Memorial Hospital
22 Authority.

23 **Section 5.** Section 5151(a) of Part F, Article 2, Chapter 5, Division 1 of
24 Title 5 of the Guam Code Annotated is hereby *amended* to read as follows:

1 **"(a) General Authority.** For the purpose of procuring the
2 services of accountants, physicians, lawyers, dentists, licensed nurses,
3 other licensed health professionals and other professionals, any
4 governmental body of Guam may act as a purchasing agency and
5 contract on its own behalf for such services, *subject to* this Chapter and
6 regulations promulgated by the Policy Office, but this Subsection shall
7 *not* authorize the procuring of such services where any given
8 governmental body is otherwise prohibited from procuring such
9 services."

10 **Section 6.** Section 16 of Chapter V of Public Law Number 25-72, as
11 repealed and reenacted by §14 of Public Law Number 25-74 and further
12 repealed and reenacted by §21 of Public Law Number 25-98, is hereby *amended*
13 to read as follows:

14 **"Section 16. Filling of Teaching, School Health Counselors,
15 Nursing and License Health Care Professional Vacancies.**

16 Notwithstanding the provisions of §§19 and 24 of Chapter IV of this Act,
17 all funds appropriated for the teaching, school health counselor and
18 nursing positions listed in '**Attachment B**' of this Act, and for positions
19 of certified registered or licensed health care professional ancillary
20 service personnel employed at the Guam Memorial Hospital Authority,
21 the Department of Mental Health and Substance Abuse and the
22 Department of Public Health and Social Services, that become vacant
23 after the enactment hereof shall *not* be automatically de-appropriated.
24 Such funds may be used by the appointing authority to fill these vacant

1 positions. *However*, during the period of time that a position remains
2 vacant, all unspent funds shall be deposited into the Rainy Day Fund as
3 provided in §§23-25 of Public Law Number 25-72. To the extent that
4 public law allows the re-employment of retired employees who retired
5 from the Government of Guam Retirement Fund to be hired for nursing,
6 and certified registered or licensed health care professional ancillary
7 service positions, all such retired persons hired hereafter shall be hired
8 at entry level Step 4 for the applicable vacancy."

ATTACHMENT 1

**GUAM MEMORIAL HOSPITAL AUTHORITY
ADMINISTRATIVE MANUAL**

APPROVED	RESPONSIBILITY	ORIGINATION DATE	NUMBER	PAGE
	Nursing Administration Personnel Dept.	1/25/2000	6301-17	1 of 3
TITLE: Health Care Professional Hourly Per Diem Pay Policy				

PURPOSE:

To establish pay policy and the administrative procedures for the compensation and employment of Hourly Per Diem Health Care Professionals. This will allow GMH to establish a pool of qualified professionals willing to work limited hours to supplement the Guam Memorial Hospital's full time and part-time workforce.

POLICY:

The Guam Memorial Hospital has established a health care professional pool to allow for the supplemental coverage of open shifts in the clinical care work environment which will augment the pool of professionals available for work at GMH as well as provide opportunity for health care professionals to remain active and current in their clinical skills.

Eligibility to Participate:

Health Care Professionals are defined as Registered Nurses, Technologists, Therapists, Pharmacists or other licensed professionals as defined by the Dictionary of Occupational Titles as "0" or "1" classifications.

Hours:

Per Diem Health Care Professionals participating in the pool may work a minimum of 4 hours daily, up to a maximum of 30 hours per pay period.

Compensation:

Compensation of the Health Care Professionals participating in the pool shall be in accordance with the established all-inclusive hourly rate compensation schedule attached hereto as Schedule A.

No benefits are provided.

Hourly compensation will be provided with compensation set a 1.5 times the hourly rate for work on Government of Guam established holidays.

No additional compensation such as certification pay, on-call pay, call-back pay, weekend or shift differentials will be paid.

Employment Requirements:

Current or temporary Guam License.

Physician certification of physical fitness.

Successful completion of GMH drug screen and TB testing.

Proof of current certification in ACLS/BCLS or PALS/NALS as required.

Attendance of GMH Orientation (Hours in orientation will be paid).

Participants may not be a current full time or part time employee of the Guam Memorial Hospital or

the Government of Guam.

PROCEDURE:

1. Applicant completes an employment application.
2. Personnel Department arranges for an interview as appropriate.
3. Applicant is scheduled for orientation.
4. Applicant executes a Letter of Agreement regarding terms and conditions of Per Diem Employment.
5. Applicant's name and work hours are submitted for immediate scheduling.
6. After initial scheduling, applicants may sign up for uncovered shifts as desired. Listing of available shifts will be posted and can be faxed to Per Diem Employees.
7. Per Diem Employees are to contact the Staffing Coordinator at least once a month to coordinate any desired changes in scheduling.
8. Per Diem Employees who are unable to work scheduled times must give four (4) hours notice to the scheduling supervisor.
9. Per Diem Employees with Military obligations who are working when recalled will immediately notify the Head/Charge Nurse who will arrange for immediate endorsement of clinical information and the immediate release of the employee. Military employees scheduled to work and recalled to duty will notify the scheduling supervisor or nursing supervisor on duty.
10. Per Diem Employees can obtain paychecks from the Nursing Administration Office between 3:30pm and 5:00pm on Payday.

**Schedule A
Compensation Schedule**

Job Title	Pay Grade Compensation Rate/Hour
Staff Nurse I	K 19.05
Staff Nurse II	M 22.15
Hospital Radiological Technologist I	K 19.05
Hospital Radiologic Technologist II	L 20.49
Nuclear Medicine Technologist	M 22.15
Ultrasound Technologist	M 22.15
Hospital Physical Therapist I	L 20.49
Hospital Physical Therapist II	M 22.15
Medical Laboratory Technologist I	L 20.49
Medical Laboratory Technologist II	M 22.15
Hospital Respiratory Therapist I	K 19.05
Hospital Respiratory Therapist II	M 22.15
Clinical Dietician I	L 20.49
Clinical Dietician II	M 22.15
Pharmacist	N 27.54

Compensation is set at step 12 for all job classifications except Pharmacists who will be paid at step 16 due to shortage determination compensation previously set by CSC.

Attachment "B" - Personnel					
Department/Agency	General Fund	Special Fund	Note	Federal Fund Match	Total
Department of Education	\$37,608,188				\$37,608,188
Public Health and Social Services	\$3,707,097			\$1,920,013	\$5,627,110
Guam Fire Department	\$5,477,164				\$5,477,164
Guam Police Department	\$5,117,710	\$123,846	1		\$5,241,556
Department of Public Works	\$4,748,052	\$793,113	2		\$5,541,165
DPW - Solid Waste	\$0	\$1,175,167	3		\$1,175,167
Superior Court	\$4,111,491			\$35,306	\$4,146,797
Department of Corrections	\$3,061,170				\$3,061,170
Department of Revenue and Taxation	\$2,054,544				\$2,054,544
Department of Administration	\$1,968,062				\$1,968,062
Department of Law	\$1,563,370			\$230,262	\$1,793,632
Dept. of Mental Health & Subst. Abuse	\$1,382,451				\$1,382,451
Department of Youth Affairs	\$1,026,106				\$1,026,106
Department of Land Management	\$821,219				\$821,219
Department of Agriculture	\$672,471	\$321,448	4	\$128,646	\$1,122,565
Public Defender	\$592,254				\$592,254
Department of Labor	\$569,905			\$57,082	\$626,987
DISID	\$215,016				\$215,016
Supreme Court	\$492,915				\$492,915
Department of Commerce	\$405,030				\$405,030
Dept. of Parks and Recreation	\$917,259				\$917,259
Bureau of Budget & Mangmt Research	\$406,509				\$406,509
Guam Library	\$253,063				\$253,063
Civil Service Commission	\$311,459				\$311,459
Guam EPA	\$230,413			\$359,510	\$589,923
Bureau of Planning	\$239,179				\$239,179
Department of Chamorro Affairs	\$185,456				\$185,456
Department of Military Affairs	\$179,145			\$97,377	\$276,522
Public Auditor	\$100,497				\$100,497
Chamorro Land Trust Commission	\$128,745				\$128,745
Ancestral Lands Commission	\$124,022				\$124,022
CAHA	\$89,174				\$89,174
Guam Educational Telecomm. Corp	\$110,901				\$110,901
Guam Election Commission	\$42,209				\$42,209
Commission on Self-Determination	\$51,322				\$51,322
Chamorro Registry Advisory Board	\$0				\$0
Chief Medical Examiner	\$71,535				\$71,535
State Council on Vocational Ed.	\$47,669				\$47,669
Guam Planning Council	\$45,024				\$45,024
AHRD	\$36,027				\$36,027
Guam Finance Commission	\$27,328				\$27,328
Guam Mass Transit Authority		\$164,631	2		\$164,631
Customs & Quarantine		\$488,478	4		\$488,478
PEALS Board		\$0			\$0
Guam Contractors License Board		\$82,696	5		\$82,696
GRAND TOTAL	\$79,191,151	\$3,149,379		\$2,828,196	\$85,168,726
Notes					
1 - Police Services Fund					
2 - Territorial Highway Fund					
3 - Solid Waste Operations Fund					
4 - Customs, Agricultural and Quarantine Inspection Services Fund					
5 - Contractors License Board Fund					

Overridden

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

2000 (THIRD) Special Session

Date: 4/19/00

VOTING SHEET

VETOED Bill No. 1(3-S)

Resolution No. _____

Question: Notwithstanding the objections of the Governor, should Substitute Bill 1(3-S) be overridden?

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
AGUON, Frank B., Jr.		✓			
BERMUDES, Eulogio C.		✓			
BLAZ, Anthony C.		✓			
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

12 3

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



OFFICE OF THE GOVERNOR
GUAM

APR 17 2000

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>4:32 pm</u>
Date	<u>17 APRIL 2000</u>

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 1(3-S), "AN ACT REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS", which I have vetoed.

I am very, very disappointed in what happened during the Special Session called by the Executive Branch for the purpose of allowing for the proper management of the government of Guam. Instead of lifting the general hiring freeze and providing for the needed appropriations of the government throughout the agencies, I Liheslatura, the Legislature, passed another piece of legislation which is just as inorganic as the prior provisions passed in Public Law Nos. 25-72 and 25-74. Those prior provisions try to specify that only certain positions can be hired within the government. Now, in this most recent legislation, I Liheslatura has concentrated on only one agency. The government as a whole is ignored.

To restate our legal situation, it is simply not within the power of the Legislative body to specify day-to-day operations of the Executive Branch, either position by position, or agency by agency. This was spelled out specifically in the opinion of the Attorney General dated January 2, 2000 and forwarded to the legislative branch together with the bill, which was considered at this past Special Session.

Attached please find a copy of another opinion, recently delivered to the University of Guam, in which the question of whether or not the Legislature has the power to exempt an entire agency from a general hiring freeze is answered. The Attorney General opines:

00880

“We have considered the matter and conclude that under separation of power principles as embodied in the Organic Act the Legislature may not exempt entire agencies from a general hiring freeze. In making such an exemption from a general hiring freeze the Legislature has assumed the spending power that properly belongs to the executive branch alone.”

Bill No. 1 (3-S) was vetoed in order to quickly communicate to the legislative branch that, unless the Executive Branch is allowed to function in its proper role in handling government-wide problems, that our problems will continue. The provisions of the bill are illegal, whether the bill is eventually enacted into law or not. A certifying officer at our hospital still could not certify funds to hire in the face of a general hiring freeze throughout the government.

The legislature needs to address the government's deepening problems throughout the government and lift the hiring restrictions on proper management. It is imperative that these problems be resolved. I transmitted all of the budget information requested by the members of the Legislature. After repeatedly asking senators if there is anything else they need, and being assured that all information was provided, Bill No. 1 (3-S) still complains that the legislature doesn't have enough information. The Executive Branch has done all that it can. The legislature's job cannot continue to be left undone; please continue working until the problems are resolved.

Attached also to this veto message is a copy of a notice of levy of approximately \$7.6 Million by the Department of Revenue and Taxation against Guam Memorial Hospital Authority. This levy attaches funds that are due to the Guam Memorial Hospital Authority, and directs that these funds be paid to the Department of Revenue and Taxation. Unfortunately, this levy points out the financial distress our hospital is experiencing, since taxes have not been paid. While the Legislature, in the enclosed vetoed legislation, directed that hiring be done at the GMHA, and determined that only personnel need to be hired to solve this agency's problems, the Legislature acts as if it is completely unaware of GMHA's true financial condition. The Legislature has taken no action to solve this problem, as well as other funding shortfalls throughout the government.

In order to properly get a grip on our government's problems, the Legislature needs to provide the policy direction, and eliminate unnecessary mandates and government functions it deems less important. This is the job of a legislature: to make policy; and to pass appropriations sufficient for the operations of the Executive Branch for an entire fiscal year. Neither of these has happened.

Attached to this veto message, also, is information from the Guam Memorial Hospital Authority that specifies the financial condition of GMH. This indicates that all hiring that could have been done at the hospital, has already been done. The hospital does not have the finances to hire any additional personnel at this time.


Guam Memorial Hospital is operating in the red now. It owes the Retirement Fund \$2.2 Million on current payments to the defined contribution and defined benefit retirement plans. It currently owes \$11.2 Million in withholding taxes to the government of Guam which every employer, government or private, is legally required to pay by law. It owes \$4.0 Million to government

vendors such as the Guam Power Authority. It owes \$3.5 Million to other vendors who supply pharmaceuticals, laundry, computers, and other items. It owes \$1.2 Million to physicians. In Bill No. 1 (3-S), the Legislature instructs hiring at GMHA, yet the Legislature apparently will not deal with the financial condition within this agency. This is just one example. While hiring at this one agency is promoted, other government hiring and funding situations are completely ignored.

To eliminate the hospital's tax liability, the Legislature needs to identify a funding source and appropriate the necessary funds to pay approximately \$14 Million in tax debt. GMHA must be authorized to pay over this withholding tax amount in order to allow the government to reimburse the hospital for liabilities of welfare, Medicaid, and Medically Indigent Program (MIP). In addition to an appropriation to clear tax liability, and in order to allow GMHA to operate in a normal fashion, including the hiring of appropriate personnel, an appropriation of at least \$5 Million is necessary. Should the Legislature truly desire to put the hospital on a sound footing, the \$5 Million needed appropriation must be raised to \$8 Million. This would bring down the accounts payable to past due dates of 60 days or less.

I know that we all want the best for our people and our island. The Legislature has to eliminate the general hiring freeze and appropriate the needed funds.

Very truly yours,


Madeleine Z. Bordallo
I Maga'Lahen Guahan, Akto
Acting Governor of Guam

Attachments: 1) copy attached for signed bill or overridden bill
original attached for vetoed bill

2) AG's opinion Ref: UOG 00-0389

3) levy

4) letter from hospital controller

5) letter from hospital administrator

cc: The Honorable Antonio R. Unpingco
Speaker

00880

CARL T.C. GUTIERREZ
Maga'láhi
Governor

MADELEINE Z. BORDALLO
Tifente Gubethadora
Lt. Governor



Ufisinan Hinirát Abugao
Hagátña, Guáhan
Office of the Attorney General
Hagátña, Guam

JOHN F. TARANTINO
Hinirát Abugao
Attorney General

ROBERT H. KONO
Atkádi Sigundo
Chief Deputy

KATHLEEN E. MAHER
Sigundo, Sibit Administrat
Civil Administrative Deputy

April 10, 2000

Memorandum (Opinion)

Ref: UOG 00-0389

To: Vice Chairman, Board of Regents
University of Guam

From: Attorney General *JKL*

Subject: Exemptions from the Hiring Freeze

Håfa Adai! We are in receipt of your letter of March 17, 2000, in which you request information on the legal operation of the hiring freeze with respect to certain positions within the University of Guam. The short answer to each of your four questions will be stated, followed by a restatement of the relevant statutes and a discussion of the reasons for our answers.

REQUEST NO. 1: Is the University of Guam exempt from the hiring freeze by virtue of its autonomous status?

ANSWER: No, the University is not exempt on the grounds of autonomy. The statute that gives the University its autonomous status with respect to employment of personnel was impliedly amended by Section 11 of Guam P. L. 25-72 for the limited purposes of P.L. 25-72

REQUEST NO. 2: The University of Guam hires part-time instructors on a semester-basis and regularly rehires them the subsequent semester. Does the hiring freeze prohibit hiring these instructors on a semester-basis?



Commonwealth Now!

ANSWER: The hiring freeze prohibits the hiring of part-time instructors. Section 12 of P. L. 25-72, which exempts the personnel of the University of Guam with respect to temporary limited-term appointments, is inorganic.

REQUEST NO. 3: Is the employment contract of the UOG President, which was entered into on December 29, 1999, invalid as having been entered into in violation of the hiring freeze?

ANSWER: The exemption from the hiring freeze law for Directors by analogy may allow for the appointment of the UOG President.

REQUEST NO. 4: Are employment contracts for the Deans of two colleges within UOG, the comptroller, and the Public Relations Officer, in violation of the hiring freeze if entered into before January 3, 2000?

ANSWER: The appointments of the Dean, the Assistant Dean, the comptroller, and the public relations officer are in violation of the hiring freeze. However, please see the discussion.

STATEMENT OF FACTS:

Certain laws are so relevant to the discussion that they should be quoted in full. Section 12 of Guam Public Law 25-72, effective September 30, 1999, (hereinafter "Section 12") provides:

Notwithstanding any other provisions of law to the contrary, no funds shall be expended for any position filled subsequent to this Act, *except* for such exceptions noted in §11 of this Chapter, as well as a director or deputy director of an agency or department of the government of Guam.

Section 11 of Guam Public Law 25-72, as amended by Section 40 of Public Law 25-74, effective October 27, 1999, (hereinafter referred to as "Section 11") provides:

Notwithstanding any other provision of law, all temporary and limited-term appointments shall *not* be renewed, and new appointments are hereby prohibited in Fiscal Year 2000. Teacher positions, and guidance and health counselors, within the Department of Education and personnel employed by the University of Guam, the Guam Community College, and employment survey workers in the Department of Labor, and census survey workers of the Department of Commerce, are *exempted* from this prohibition. This Section shall *not* apply to positions which are fully Federally funded.

Section 16111 of Title 17, Guam Code Annotated, provides:

Insofar as the provisions of this Chapter are inconsistent with the provisions of any other law, the provisions of this Chapter shall be controlling; and in particular but not by way of limitation, except as may be provided in this Chapter, no provision of any law with respect to employment of personnel, shall be applicable to the University unless the Legislature shall specifically so state; provided, however, that the University may utilize in its operations the procedures and facilities provided by any such law or by the executive agencies of the government of Guam.

DISCUSSION:

In Attorney General Opinion GOV 00-0001, dated January 3, 2000, it was opined that the provisions of Guam P. L. 25-72 and 25-74 which purport to exempt certain specified positions within the government of Guam from the general government-wide hiring freeze were inorganic. We have concluded that the inorganic exceptions are severable from the law imposing the hiring freeze and thus a general government-wide hiring freeze with no exceptions for specific positions within the executive branch has been put into place as of September 30, 1999.

We interpret your first question as asking whether the University might not be exempt from the hiring freeze simply because it is autonomous or is an autonomous agency. Based upon our reading of the law, we do not believe that being autonomous excepts an agency from the general hiring freeze. A review of the laws relating to the personnel of autonomous agencies leads us to conclude that the Legislature has the power to freeze the hiring of new employees by autonomous agencies and the hiring freeze law was intended to and does freeze new appointments at autonomous agencies.

Although by law UOG has some of the properties of an autonomous agency, a review of the Guam Code Annotated shows that unlike such agencies as Guam Power Authority etc. there is no statute that specifically classifies the University of Guam as an "autonomous agency." The claim of the University respecting its autonomy in connection with the hiring freeze undoubtedly originates in 17 G.C.A. § 16111, the provision that no law with respect to employment of personnel shall apply to the University unless the Legislature shall specifically so state.

As you know, the laws respecting employment of university personnel are found in Chapter 16, Title 17, the "charter" of the University of Guam. Academic personnel are employed under rules and regulations enacted by the Board of Regents, 17 G.C.A. § 16112. Non-academic personnel are employed under the merit system of Title 4, Guam Code Annotated, 17 G.C.A. § 16113. Section 16111 protects this hiring system from legislative amendment unless the law "specifically states" that it applies to the University. In judging the effect of Sections 11 and 12 upon the employment powers of the University, they must be read together to ascertain their meaning. Section 12 does not expressly state that it applies to the University but does make express reference to Section 11. In

Section 11 the Legislature makes express reference to the University with respect to temporary and limited-term appointments. Therefore, we read Section 12 as "specifically stating" that it applies to the University of Guam. Having made an exception in Section 11 with respect to temporary and limited-term employment at the University, the Legislature must have been aware that the effect of its choice of language in Section 12 would be to prohibit the hiring of all non-temporary employment at the University. In answer to your first question then, we conclude that the University is subject to the hiring freeze as to all non-temporary employment.

As noted above, we have issued an official opinion that under the Organic Act the Legislature may not impose a government-wide hiring freeze and may not make exceptions for specified positions within the agencies of the executive department. Your next three questions raise the legal issue of the authority of the Legislature to exempt an entire agency rather than specified positions within an agency from a general hiring freeze.

We have considered the matter and conclude that under separation of power principles as embodied in the Organic Act the Legislature may not exempt entire agencies from a general hiring freeze. In making such an exemption from a general hiring freeze the Legislature has assumed the spending power that properly belongs to the executive branch alone.

In support of our position we cite the case of Opinion of the Justices to the Governor, 341 N.E.2d 254 (Mass. 1976). In this case the Massachusetts General Court, which is the legislature for the state of Massachusetts, enacted a general freeze upon the hiring of new public employees except for vacancies "for which there exists a critical need." The law empowered a committee of the General Court with the function of making the judgment as to whether a critical need existed for the filling of a vacancy. The Court noted:

We think the Legislature, in the exercise of its power of appropriation, could thus limit the expenditure of funds it was appropriating to pay State officers and employees, that it could make an exception for cases of "critical need," and that it could delegate to appropriate officers the power to determine when a "critical need" exists.

The power so delegated is not the legislative power of appropriation but the executive power of expenditure of appropriated funds.

...

Thus to entrust the executive power of expenditure to legislative officers is to violate art. 30 by authorizing the legislative department to exercise executive powers.

The Guam hiring freeze law contains the same flaw as the Massachusetts hiring law, namely, the usurpation by the legislative branch of the executive function of determining the existence of need for exemptions. The Guam Legislature has made a determination that only some out of all the agencies of the executive branch may engage in filling vacancies. Although the Guam law unlike the Massachusetts law contains no explicit reference to need and the agency vested with the power to determine its presence, its exercise by the legislative branch of the executive power of expenditure of appropriated funds is implicit in the law.

In rendering the opinion that the university became subject to the hiring freeze effective September 30, 1999, we are not recommending that appointments that have been made by the university after that date should be rescinded. In the interest of order and fairness to persons hired after the effective date of the hiring freeze but before the Attorney General's opinion of January 3, 2000, the Governor has made the decision to acquiesce in such appointments. But as long as the hiring freeze law remains unrepealed or unamended, the positions may not be filled if they should become vacant in the future.

This letter is issued as an official opinion of the Attorney General. For faster response to any questions that you may have about this letter, please use the above reference number in your correspondence.

Put Respetu.

OFFICE OF THE ATTORNEY GENERAL

By: 
MONTY R. MAY
Assistant Attorney General

The taxpayer named at the bottom of this notice owes the Government of Guam \$ 7,786,541.97

Notice of Levy

To
STAYWELL INSURANCE
430 WEST SOLEDAD
HAGATNA, GUAM 96910

Date : 4/06/2000

Levy No: 000400013

TIN FOR GUAM MEMORIAL HOSPITAL AUTHORITY: 960001695

Kind of Tax	Tax Period Ended	Date of Assessment	Taxpayer Identification Number	Unpaid Balance of Assessment	Statutory Additions	Total
W-1	12/1995	5/03/1996	960001695	359134.75	28841.93	387976.68
W-1	3/1996	5/03/1996	960001695	376493.73	31907.75	408401.48
W-1	6/1996	7/31/1996	960001695	409625.25	32148.52	441773.77
W-1	9/1996	10/30/1996	960001695	292016.20	21445.76	313461.96
W-1	12/1996	1/31/1997	960001695	313188.55	20334.57	333523.12
W-1	3/1997	4/30/1997	960001695	208955.06	11277.29	220232.35
W-1	9/1997	4/21/1998	960001695	112006.00	17704.30	129710.30
W-1	6/1997	4/21/1998	960001695	154983.37	24497.56	179480.93
See attachment for additional liabilities.					Total Amount Due	7786541.97

Interest and penalty (statutory additions) have been figured to 5/06/2000. Additional interest and applicable penalty will continue to be charged until the liability is fully paid. Chapter 64 of the Guam Territorial Income Tax Law imposes a lien for the above tax and statutory additions. Demand has been made on the taxpayer for the above amount. The taxpayer has neglected or refused to pay. The amount is still due, owing, and unpaid. All property, rights to property, money, credits, and bank deposits now in your possession and belonging to this taxpayer (or for which you are obligated) and all money or other obligations owing from you to this taxpayer, are levied upon for payment of the tax plus all additions provided by law. Demand is made on you for the amount necessary to pay this tax liability or for any smaller sum that you owe this taxpayer, to be applied as a payment on this tax liability. Checks and money orders should be made payable to the Treasurer of Guam and mailed to the Department of Revenue and Taxation.

Signature

[Handwritten Signature]
Maria D Mesa
SUPERVISOR, COLLECTION BRANCH

P.O. Box 23607
Barrigada, Guam 96921

Telephone number
(671) 475-1855

Name and address of taxpayer:

GUAM MEMORIAL HOSPITAL AUTHORITY
850 GOVERNOR CAMACHO ROAD
TAMUNING, GUAM 96911

4/11/2000 Certified Mail
P. 057 512-632
By CMB

This Notice of Levy, Form 668-A, attaches funds due the taxpayer named on it. We would appreciate your following these instructions.

1. In the space to the right of the name and address of the taxpayer, please sign, date, and note the time received.

2. Make a reasonable effort to identify all property and rights to property belonging to this taxpayer. At a minimum, search your records using any combination of the taxpayer's name(s), address, and identifying number(s) shown on this form.

3. If you have funds due the taxpayer, please make your check or money order payable to the Treasurer of Guam. Write the taxpayer's name, identifying number(s), kind of tax and tax period shown on this form, and 'LEVY PROCEEDS' on your check or money order (not on a detachable stub). Mail the check with the original of this form to the Department of Revenue and Taxation. Keep a copy of this levy for your records and give a copy of the levy and a copy of the Excerpts from the Guam Territorial Income Tax Law to the taxpayer within 2 working days.

4. If you do not have funds due this taxpayer, please so indicate on the original of this form, fill in the information requested below, and return to the Department of Revenue and Taxation.

Thank you for your cooperation.

Taxpayer's telephone number		Present address of taxpayer if different from below
Last date you paid funds to the taxpayer	Amount	
Date next funds are due	Amount	Additional information which you believe may assist us (if more space is needed, continue on the back)
Name and address where funds are sent		
Name and address of taxpayer GUAM MEMORIAL HOSPITAL AUTHORITY 850 GOVERNOR CAMACHO ROAD TAMUNING, GUAM 96911		

John P. De Norcey

Certified Public Accountant
P.O. Box 27002
Barrigada, Guam 96921

April 14, 2000

Eloy Hara
Administrator
Guam Memorial Hospital Authority

Dear Mr. Hara:

At the Board of Trustees' monthly meeting scheduled for Wednesday, April 19, 2000 certain matters affecting the Hospital's financial condition should be presented to the Trustees' attention, for their discussion and, hopefully, adoption.

The following standard reports will be available their review:

1. Hospital's Statement of Financial Position, March 31, 2000;
2. Statement of Revenues, Expenses by Department and Changes in Fund Balance, Six Months Ended March 31, 2000
3. Statement of Revenues, Expenses by Function and Changes in Fund Balance, Six Months Ended March 31, 2000
4. Budget Variance Reports, March 31, 2000
5. Monthly Write-off Proposal, March, 2000

The Trustees will also be presented with the following:

6. Hospital Cash Flow Statement and Projections, Fiscal Year 2000 (Actual Through Six Months Ended March 31, 2000).
7. Draft Board Resolution, to stabilize and improve the Hospital's finances.
8. Copy of Department of Revenue and Taxation's (DRT) Tax Levy served upon the Hospital's major payors.

The Board should be apprised that the most recent event, relating to the tax levy served upon the Hospital's payors, became known to me only today. I was not aware by either direct contact from DRT, collection notice from DRT to Hospital accounting staff, or any levy served upon the Hospital's bank prior to today.

John P. De Norcey
Certified Public Accountant

Letter to Mr. Eloy Hara
April 14, 2000
Page 2

The levy, if enforced, will deprive the Hospital of its ability to operate, by taking away a significant part of the Hospital's cash flow. The remaining cash available to the Hospital at day's end today is approximately \$800,000. This amount will permit the Hospital to continue operating AT ITS PRESENT LEVEL, for only five days. You must decide if the present cash will be committed to paying suppliers and payroll deductions or withholding it to cover the net payroll due April 26.

I can begin discussion with DRT Monday to discuss payment terms, but given the Hospital's cash flow and projections, the Hospital will only be compelled to look at other resources since its cash flow cannot support any amount agreed upon and costs presently paid. I await your instructions on this matter.

The tax levy is purported to be \$7.6 Million. I am assuming it is less than the Hospital's recorded \$11.2 Million liability as the levy does not include the most recent tax periods, but also may be the consequence of DRT offsetting previous amounts due the Hospital and not yet acknowledged and recorded by the Hospital.

The Hospital's other current payables aggregate another \$8.9 Million. \$3.9 Million is owed to government accounts, with Retirement Fund leading the list at \$2.2 Million, GPA at \$1.1 Million (the last two months not yet billed or recorded); \$3.5 Million for supply vendors. Many accounts are aging at 90+ days, and \$1.5 Million for professional fees and other services (medical providers are still owed approximately \$700,000 from last fiscal year).

The Hospital requires \$5.4 Million monthly from its cash collections, but is averaging only \$4.3 Million. The cash deficiency this fiscal year will likely exceed \$14 Million. The Board Resolution we have previously discussed identifies some immediate, intermediate and long-term solutions. The sum of these solutions must be considered collectively if the Hospital is to work at minimize the of a future reoccurrence of its present financial dilemma.

The immediate solutions take on even more urgency given the tax levy. I cannot overemphasize that a solution to restore the Hospital's cash lifeline must be immediate.

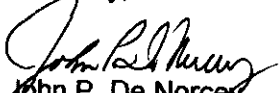
John P. De Norcey
Certified Public Accountant

Letter to Mr. Eloy Hara
April 14, 2000
Page 3

To summarize the enclosures to the Board, the following solutions and timelines are crucial, given the conditions existing at April 13, 2000.

	<u>Recommended Completion Date</u>
Board approval for collections program	04/19/2000
Subsidy to cover tax liabilities	04/25/2000
Board adopts budget cap for FY 2001	05/15/2000
Legislation to adopt changes in 1992 rate model assumptions	05/31/2000
Subsidy to cover other current liabilities	06/15/2000
Renegotiation of HMO Payor Agreements	06/30/2000
Legislation to adopt a mandatory hospital insurance premiums among employers, effective October 1, 2000	07/01/2000
Board adopts budget for FY 2001	07/10/2000
Board Approval for Fee Increases in FY 2001	07/20/2000
Submit Rate Proposals to PUC	07/31/2000
Approval of Rate Proposals by Public Utilities Commission	09/15/2000

Sincerely,


John P. De Norcey
As Interim Comptroller



Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



850 GOV. CARLOS CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL: 647-2444 or 647-2330
FAX: (671) 649-0145

April 16, 2000

Honorable Madeleine Z. Bordallo
Acting Governor
P.O. Box 2950
Hagatna, Guam 96932

RE: Hospital Financial Status

While the staffing situation at Guam Memorial Hospital Authority has been a major concern for several weeks, and remains so, this is to advise you that the hospital is now facing an extreme fiscal emergency as well.

The GMHA has never, in its 40 year history, been able to collect the money it is owed. For Example, the Hospital presently requires \$5.4 million monthly in collections to support its operating and improvement plans. GMHA in the first six months of the fiscal year has only averaged \$4.3 million per month in cash collections, resulting in a year-to-date shortfall of \$6.7 million. Projections through September 30, 2000 show \$13.3 million less than what's needed for operating and improvement costs.

On Friday April 14, 2000 the hospital administration learned from one of its vendors that **a \$7.6 million tax levy has been filed against GMHA.** The effect of the levy is that any money, from any source, that would normally be used to pay for hospital operations must first be applied to the \$7.6 million before it can be put to any other use. Madam Governor, the effect of this levy will essentially bankrupt GMHA.

The Hospital's current liabilities which must be addressed immediately are significant and are presented below:

1.	Rev & Tax	--	\$11.2 million
2.	GovGuam	--	\$ 4.0 million
3.	Supply vendors	--	\$ 3.5 million
4.	Physicians/Others	--	\$ 1.2 million

TOTAL: \$19.9 million

As you are well aware, as the community is well aware, the staffing shortages faced by GMH are critical. **Obviously the financial information above makes it impossible for the hospital to afford hiring more staff.** On the other hand GMH needs staff to provide services that generate the income we need to stay in business. It is a classic "catch 22."

2

We have seen the legislation that was passed by the 25th Guam Legislature on April 14, 2000. We support the intent of the Legislature's action as they are approving the hiring of personnel for hospital operations. However, they failed to identify or provide for any funding to pay for that hiring.

The Board of Trustees (BOT) supports legislation providing for:


- \$14 million negative impact subsidy for withholding tax liabilities to September 30, 2000.
- amending the current restrictions on rate adjustments, and;
- providing for mandatory employer hospital insurance premiums for employer who do not participate in health insurance programs.

Furthermore, the Board respectfully requests that your administration request from the Legislature an immediate \$8 million cash subsidy of which \$5 million will guarantee operations through the end of FY 2000 (September 30) and \$3 million to be used to reduce outstanding payables to sixty days.

Your prompt assistance in this most important matter will be greatly appreciated.

We remain,

Sincerely yours;


ANNIE M. MAKEPEACE,
Acting Chairperson
GMHA Board of Trustees


ELOY P. HARA,
Administrator

Cc: GMHA Board of Trustees

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (THIRD) Special Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 1 (3-S) "AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS," was on the 14th day of April 2000, duly and regularly passed.



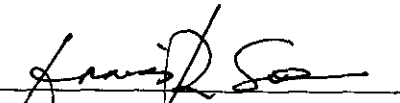
ANTONIO R. UNPINGCO
Speaker

Attested:



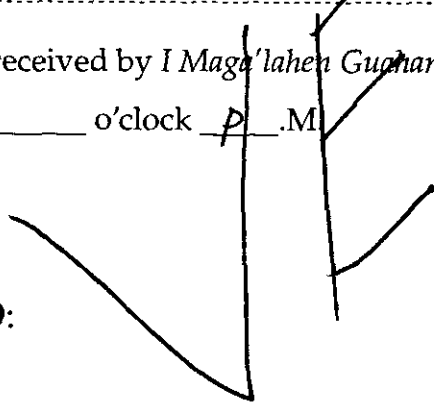
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 14 day of April, 2000,
at 11:10 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



MADELEINE Z. BORDALLO
I Maga'lahen Guahan, Akto

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (THIRD) Special Session

Bill No. 1 (3-S)

As substituted and amended
on the Floor.

Introduced by:

Committee on Rules,
Government Reform,
Reorganization and
Federal Affairs

by request of *I Maga'lahaen*
Guåhan in accordance with
the Organic Act of Guam

Mark Forbes

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

L. F. Kasperbauer

A.C. Lamorena, V

C. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

J. C. Salas

S. A. Sanchez, II

A. R. Unpingco

AN ACT TO REPEAL AND REENACT §50 OF P.L. NO. 25-74, TO AMEND §5151(a) OF PART F, ARTICLE 2, CHAPTER 5, DIVISION 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, AND TO AMEND §16 OF CHAPTER V OF P.L. NO. 25-72, RELATIVE TO CONTINUING DISCUSSIONS WITH THE EXECUTIVE BRANCH REGARDING THE FINANCIAL POSITION

OF THE GOVERNMENT OF GUAM; AND TO ALLOW GMHA TO HIRE THE PERSONNEL NEEDED TO OPERATE THE HOSPITAL, *SUBJECT TO BUDGET LIMITS AND THE RECOMMENDATIONS OF THE PUC MANAGEMENT AUDIT*; TO AUTHORIZE THE TEMPORARY ABOVE STEP RECRUITMENT FOR QUALIFIED MEDICAL STAFF; AND TO AUTHORIZE QUALIFIED RETIRED MEDICAL STAFF TO FILL VACANT POSITIONS.

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

2 **Section 1. Legislative Intent.** Restrictions on non-critical hiring
3 must remain in place.

4 The current debate between the Executive and Legislative Branches
5 regarding the hiring policies of the government of Guam during FY2000 has
6 produced valuable exchanges of information between the two (2) Branches.
7 The preliminary exchange of information reveals the following:

8 An estimated Forty-four Million Dollars (\$44,000,000) in annual
9 payroll reductions was the result of the two (2) early-out programs
10 allowed by law during FY2000. The amount of savings estimated for
11 FY2000 is approximately Thirty-four Million Dollars (\$34,000,000).
12 These savings allowed the Government to avoid a Twenty-seven Million
13 Dollar (\$27,000,000) budget shortfall.

14 Over one thousand two hundred (1,200) government employees
15 chose to leave the government *voluntarily* under the two (2) programs.
16 No employees were laid off. No pay cuts or reduction in work hours
17 was necessary.

1 The general fund budget for personnel is sufficient to cover the
2 regular payroll obligations for FY2000 *if* surpluses from certain agencies
3 are reallocated to other agencies with shortfalls.

4 While regular payroll obligations can be met, *however*,
5 expenditures for over-time pay have exceed the budget ceiling for
6 FY2000. The administration has effectively reduced over-time
7 expenditures from an annual average of Nine Million Dollars
8 (\$9,000,000) annually to Five Million Five Hundred Thousand Dollars
9 (\$5,500,000) this fiscal year. This amount is Three Million Dollars
10 (\$3,000,000) *higher* than the amount originally budgeted by *I Liheslaturan*
11 *Guåhan* for FY2000. The additional overtime expenditures creates a
12 possible Two Million Eight Hundred Thousand Dollar (\$2,800,000)
13 shortfall in Executive Branch payroll for FY2000.

14 Due to the continued downturn in the Island's economy, actual
15 expenditures for various public assistance programs and the Medically
16 Indigent Program ("MIP") for our families most in need continue to rise,
17 and also exceeds projections originally made by the Executive and
18 Legislative Branches. The Executive Branch budget request of Sixty-five
19 Million Dollars (\$65,000,000) for the Department of Public Health and
20 Social Services ("DPHSS") and the Sixty Million Dollar (\$60,000,000)
21 budget adopted by *I Liheslaturan Guåhan* for FY2000 will *not* fully fund
22 the increased demand for assistance to our needy families. The budget
23 shortfall is estimated at Twelve Million to Fifteen Million Dollars
24 (\$12,000,000 - \$15,000,000) for FY2000.

1 *However*, more accurate information is difficult to obtain due to
2 continued problems in implementing the Five Million Five Hundred
3 Thousand Dollar (\$5,500,000) AGUPA benefit management system of
4 DPHSS.

5 The Executive Branch continues to implement the new financial
6 management system ("FMS") to better calculate the current financial
7 status of the government of Guam. *However*, the FMS currently cannot
8 detail actual revenues collected, actual expenditures by budget
9 categories and other important budgetary information necessary for
10 both Branches of government to successfully manage government
11 resources.

12 Until more complete information is exchanged between the Executive
13 and Legislative branches, *I Liheslaturan Guåhan* finds that the current policy to
14 allow hiring for only certain critical positions, such as teachers, medical
15 professionals, public safety officers and social workers is still necessary and
16 prudent at this time. What little money may be available must be saved to
17 hire only the most critically needed personnel in order to protect the most
18 fundamental government services needed. Furthermore, the needs for public
19 assistance and MIP, as well as the over-time obligations of the General Fund
20 must still be addressed.

21 As a result of these significant fiscal challenges facing the government, it
22 is finally determined that it would be premature to lift the General Fund
23 hiring freeze at this time until the financial status of the government of Guam
24 is more accurately determined and it is certain that existing obligations will be
25 met.

1 *I Liheslaturan Guåhan* remains committed to working diligently with the
2 Executive Branch to resolve the financial problems facing the government of
3 Guam this fiscal year. *I Liheslaturan Guåhan* shall continue to exchange
4 information with the Executive Branch and seek meaningful compromises to
5 insure that essential government services are provided without increasing the
6 already heavy burden taxpayers must carry to support their government.

7 *I Liheslaturan Guåhan* further finds the following:

8 Since the issuance of the Attorney General's opinion in January,
9 hiring has nonetheless occurred in the Executive Branch. Nurses,
10 medical technicians and administrative employees were hired at the
11 Guam Memorial Hospital. Teachers and other employees were hired at
12 the Guam Community College. Directors were hired for various
13 agencies. All these hirings violate the interpretation of the hiring freeze
14 opinion of the Attorney General. To date, all these employees remain
15 employed with the government of Guam. No certifying officer has been
16 prosecuted by the Attorney General. These hirings prove that critical
17 positions could be filled by the Executive Branch without fear of
18 prosecution or violation of law. The Executive Branch has always had
19 and continues to have the power to hire.

20 The Courts will soon decide whether the opinion of the Attorney
21 General or *I Liheslaturan Guåhan* with regards to restrictions on hirings
22 shall prevail. *If* the Court sides with the Attorney General, *I Maga'lahren*
23 *Guåhan* can hire critically needed positions, as well as any other position
24 he deems necessary. *If* the Court sides with *I Liheslaturan Guåhan*, *I*
25 *Maga'lahren Guåhan* can hire critically needed positions. Either way the

1 Court decides, *I Maga'lahren Guåhan* can hire critically needed positions
2 immediately.

3 *I Liheslaturan Guåhan* urges *I Maga'lahren Guåhan* to begin hiring
4 critically needed positions while the Court decision remains pending.
5 The legal difference of opinion does *not* justify any action that would
6 threaten the health, education, safety and welfare of the people of
7 Guam.

8 **Section 2. (a) Legislative Intent. Exemption of the Guam**
9 **Memorial Hospital Authority ("GMHA") From Any Restrictions on**
10 **Hiring Needed Personnel to Insure the Safe Provision of Essential**
11 **Hospital Health Care.** The Guam Memorial Hospital Authority
12 ("GMHA") is the Island's only civilian hospital available to the majority
13 of Guam's people. GMHA currently faces a number of critical problems
14 that require legislative action to insure GMHA can provide improved
15 services to the people of Guam.

16 Despite two (2) rate increases in the past twelve (12) months,
17 totaling an estimated Thirteen Million Dollars (\$13,000,000) in additional
18 annual billing revenue, GMHA continues to struggle financially.
19 GMHA continues to collect significantly below actual billings, reducing
20 the amount of dollars actually collected from the two (2) rate increases.
21 Nonetheless, the rate increases add to the already significant burdens
22 for paying customers of GMHA.

23 The preliminary results of the Public Utility Commission ("PUC")
24 management audit required by *I Liheslaturan Guåhan* last year reveal that
25 GMHA can improve its non-clinical and support performance

1 significantly, saving between Two Million Four Hundred Thousand to
2 Three Million Six Hundred Thousand Dollars (\$2,400,000 - \$3,600,000)
3 annually. Despite these findings, most of the recent hires at GMHA
4 were for non-clinical positions.

5 Conversely, the audit revealed a need to increase direct funding
6 for patient care delivery by One Million Two Hundred Thousand
7 Dollars (\$1,200,000). The Three Million Dollars (\$3,000,000) in estimated
8 annual savings from non-clinical services would more than offset the
9 increased costs needed to fund patient care delivery.

10 The audit further revealed that GMHA can generate a one-time
11 savings in inventory and materials management of almost One Million
12 Dollars (\$1,000,000) and as much as Two Million Four Hundred
13 Thousand Dollars (\$2,400,000) by improving receivable management of
14 billings to Medicare and self-paying customers.

15 Clearly, the PUC audit shows key areas that GMHA can save
16 money for direct patient care by reducing administrative inefficiencies.
17 GMHA also continues to remain silent on its intentions to collect the
18 Four Million Five Hundred Thousand Dollars (\$4,500,000) owed to it by
19 the Guam Memorial Health Plan ("GMHP") and affiliated companies for
20 services rendered *prior to* 1997. This settlement amount was reduced
21 from Eleven Million Dollars (\$11,000,000) and agreed to by GMHA and
22 GMHP late last year. *However*, all efforts by GMHA to collect from
23 GMHP ceased at the beginning of the year. Additional amounts are
24 owed by GMHP to GMHA for 1998 and 1999. Meanwhile, hundreds of
25 GMHA patients now are receiving direct billings as a result of GMHA's

1 failure to collect from GMHP. Ironically, GMHA continues to bill the
2 innocent patients, while avoiding action against GMHP.

3 GMHA has also failed to collect an estimated Eight Million Dollars
4 (\$8,000,000) owed by the Medically Indigent Program and Medicaid,
5 despite significant local and Federal funding for these programs in
6 FY2000. According to the Executive Branch, this figure is now in
7 dispute between GMHA and DPHSS and awaits reconciliation.
8 *However*, the Executive Branch has indicated that a substantial amount
9 of MIP payments are nonetheless due for GMHA. Payment of some
10 portion of the disputed amounts at this time could help GMHA
11 significantly at this time.

12 *I Liheslaturan Guåhan* finds that GMHA can significantly improve
13 its financial position in the coming months as a result of the recent rate
14 increases, improved control of non-clinical operations and collecting
15 from MIP, GMHP and other large debtors. GMHA can then re-invest
16 these savings into direct patient care services, thereby improving health
17 care services to the people of Guam.

18 To assist this effort, *I Liheslaturan Guåhan* finds it must provide
19 maximum hiring flexibility to GMHA to hire *all* clinical support
20 positions needed, while reorganizing and streamlining its non-clinical
21 operations. GMHA faces critical shortages in key clinical positions that
22 must be addressed, beyond the positions allowed by Public Law
23 Numbers 25-98, 25-74 and 25-72.

24 (b) Notwithstanding any other provision of law, §50 of Public
25 Law Number 25-74 shall *not* apply to the Guam Memorial Hospital

1 Authority. The Guam Memorial Hospital Authority is hereby
2 authorized to hire employees necessary to insure the delivery of quality
3 health care services, *except* as constrained by its availability of funds and
4 while working towards compliance with the February 17, 2000
5 management audit executive briefing performed by the Public Utility
6 Commission and its management audit consultants.

7 (c) Section 50 of Public Law Number 25-74 is hereby *repealed and*
8 *reenacted* to read as follows:

9 **"Section 50. Hiring Freeze Applies to Autonomous**
10 **Agencies, *Except* for the Guam Memorial Hospital Authority.**

11 Notwithstanding any other provision of law, §19 of Chapter IV of
12 Public Law Number 25-72 shall hereby apply to autonomous
13 agencies of the government of Guam, *except* for the Guam
14 Memorial Hospital Authority, and *except* as provided for in §14 of
15 this Act."

16 (d) Notwithstanding any other provision of law, §28 of Public
17 Law Number 25-98 shall *not* apply to the Guam Memorial Hospital
18 Authority.

19 **Section 3. Legislative Intent. Requesting Approval of Above Step**
20 **Recruitment Authorization as Submitted by the Guam Memorial Hospital**
21 **Authority ("GMHA") to the Civil Service Commission.** For many years it
22 has been the policy of the government of Guam to allow an agency to recruit
23 above step for certain critical position titles that regularly lack a pool of
24 qualified candidates. This policy is incorporated into the general powers of

1 the Civil Service Commission and above step recruitment is a limited time
2 incentive that lasts only as long as the specific position(s) shortage remains.

3 It also has been policy to allow certain critical positions within the
4 government of Guam, such as nurses or teachers, to be filled by retired
5 persons who possess the expertise and experience to qualify for vacant
6 positions in the absence of enough qualified employees already employed.

7 Both of these policies can be changed through the merit system when a
8 government entity no longer has difficulty attracting enough qualified labor.
9 GMHA has utilized both of these policies to attract sufficient qualified health
10 professionals.

11 Unfortunately, it has become evident that recruitment difficulties
12 continue to threaten GMHA's ability to improve and maintain the quality of
13 health care deserved by the people of Guam.

14 In January of this year, GMHA submitted a request for "difficulty of
15 recruitment above-step-pay" authorization to the Civil Service Commission.
16 To date the Commission has *not* acted on the request.

17 The shortage of nurses has reached a crisis state and requires immediate
18 action from *I Liheslaturan Guåhan* in order to protect the public's healthcare
19 interests. *I Liheslaturan Guåhan* finds that GMHA requires emergency
20 approval of their request still pending before the Civil Service Commission in
21 order to address their critical shortage of nurses.

22 *I Liheslaturan Guåhan* requests immediate action by the Civil Service
23 Commission on the submission by the Guam Memorial Hospital request for
24 above step recruitment pay for Staff Nurse I and Staff Nurse II positions.

1 **Section 4. Adoption of the “Health Care Professional Hourly Per**
2 **Diem Pay Policy” as Part of the Administrative Manual of the Guam**
3 **Memorial Hospital Authority. (a) Legislative Intent.** The Guam

4 Memorial Hospital Authority (“GMHA”) faces a chronic and critical
5 shortage of medical professionals. *I Liheslaturan Guåhan* intends to allow
6 GMHA the maximum flexibility in attracting and retaining qualified
7 employees to insure that the highest quality health care is available to
8 the people of Guam at all times.

9 As part of its Administrative Manual, GMHA has developed a
10 “Health Care Professional Hourly Per Diem Policy.” The intent of this
11 policy is to allow the recruitment of medical professionals to
12 supplement its existing manpower resources in the clinical care areas,
13 and to pay these professionals on an hourly *per diem* basis.

14 While this payment policy has been presented to the Civil Service
15 Commission for approval, *I Liheslaturan Guåhan* finds that immediate
16 approval of GMHA’s hourly *per diem* policy will serve the public interest
17 if it is enacted into law.

18 **(b) Adoption.** The proposed Guam Memorial Hospital
19 Authority’s “Health Care Professional Hourly Per Diem Pay Policy” as
20 contained as **Attachment 1** is hereby adopted by *I Liheslaturan*
21 *Guåhan* for immediate implementation by the Guam Memorial Hospital
22 Authority.

23 **Section 5.** Section 5151(a) of Part F, Article 2, Chapter 5, Division 1 of
24 Title 5 of the Guam Code Annotated is hereby *amended* to read as follows:

1 **"(a) General Authority.** For the purpose of procuring the
2 services of accountants, physicians, lawyers, dentists, licensed nurses,
3 other licensed health professionals and other professionals, any
4 governmental body of Guam may act as a purchasing agency and
5 contract on its own behalf for such services, *subject to* this Chapter and
6 regulations promulgated by the Policy Office, but this Subsection shall
7 *not* authorize the procuring of such services where any given
8 governmental body is otherwise prohibited from procuring such
9 services."

10 **Section 6.** Section 16 of Chapter V of Public Law Number 25-72, as
11 repealed and reenacted by §14 of Public Law Number 25-74 and further
12 repealed and reenacted by §21 of Public Law Number 25-98, is hereby *amended*
13 to read as follows:

14 **"Section 16. Filling of Teaching, School Health Counselors,
15 Nursing and License Health Care Professional Vacancies.**

16 Notwithstanding the provisions of §§19 and 24 of Chapter IV of this Act,
17 all funds appropriated for the teaching, school health counselor and
18 nursing positions listed in 'Attachment B' of this Act, and for positions
19 of certified registered or licensed health care professional ancillary
20 service personnel employed at the Guam Memorial Hospital Authority,
21 the Department of Mental Health and Substance Abuse and the
22 Department of Public Health and Social Services, that become vacant
23 after the enactment hereof shall *not* be automatically de-appropriated.
24 Such funds may be used by the appointing authority to fill these vacant

1 positions. *However*, during the period of time that a position remains
2 vacant, all unspent funds shall be deposited into the Rainy Day Fund as
3 provided in §§23-25 of Public Law Number 25-72. To the extent that
4 public law allows the re-employment of retired employees who retired
5 from the Government of Guam Retirement Fund to be hired for nursing,
6 and certified registered or licensed health care professional ancillary
7 service positions, all such retired persons hired hereafter shall be hired
8 at entry level Step 4 for the applicable vacancy."

ATTACHMENT 1
GUAM MEMORIAL HOSPITAL AUTHORITY
ADMINISTRATIVE MANUAL

APPROVED	RESPONSIBILITY	ORIGINATION DATE	NUMBER	PAGE
	Nursing Administration Personnel Dept.	1/25/2000	6301-17	1 of 3
TITLE: Health Care Professional Hourly Per Diem Pay Policy				

PURPOSE:

To establish pay policy and the administrative procedures for the compensation and employment of Hourly Per Diem Health Care Professionals. This will allow GMH to establish a pool of qualified professionals willing to work limited hours to supplement the Guam Memorial Hospital's full time and part-time workforce.

POLICY:

The Guam Memorial Hospital has established a health care professional pool to allow for the supplemental coverage of open shifts in the clinical care work environment which will augment the pool of professionals available for work at GMH as well as provide opportunity for health care professionals to remain active and current in their clinical skills.

Eligibility to Participate:

Health Care Professionals are defined as Registered Nurses, Technologists, Therapists, Pharmacists or other licensed professionals as defined by the Dictionary of Occupational Titles as "0" or "1" classifications.

Hours:

Per Diem Health Care Professionals participating in the pool may work a minimum of 4 hours daily, up to a maximum of 30 hours per pay period.

Compensation:

Compensation of the Health Care Professionals participating in the pool shall be in accordance with the established all-inclusive hourly rate compensation schedule attached hereto as Schedule A.

No benefits are provided.

Hourly compensation will be provided with compensation set a 1.5 times the hourly rate for work on Government of Guam established holidays.

No additional compensation such as certification pay, on-call pay, call-back pay, weekend or shift differentials will be paid.

Employment Requirements:

Current or temporary Guam License.

Physician certification of physical fitness.

Successful completion of GMH drug screen and TB testing.

Proof of current certification in ACLS/BCLS or PALS/NALS as required.

Attendance of GMH Orientation (Hours in orientation will be paid).

Participants may not be a current full time or part time employee of the Guam Memorial Hospital or

the Government of Guam.

PROCEDURE:

1. Applicant completes an employment application.
2. Personnel Department arranges for an interview as appropriate.
3. Applicant is scheduled for orientation.
4. Applicant executes a Letter of Agreement regarding terms and conditions of Per Diem Employment.
5. Applicant's name and work hours are submitted for immediate scheduling.
6. After initial scheduling, applicants may sign up for uncovered shifts as desired. Listing of available shifts will be posted and can be faxed to Per Diem Employees.
7. Per Diem Employees are to contact the Staffing Coordinator at least once a month to coordinate any desired changes in scheduling.
8. Per Diem Employees who are unable to work scheduled times must give four (4) hours notice to the scheduling supervisor.
9. Per Diem Employees with Military obligations who are working when recalled will immediately notify the Head/Charge Nurse who will arrange for immediate endorsement of clinical information and the immediate release of the employee. Military employees scheduled to work and recalled to duty will notify the scheduling supervisor or nursing supervisor on duty.
10. Per Diem Employees can obtain paychecks from the Nursing Administration Office between 3:30pm and 5:00pm on Payday.

Schedule A
Compensation Schedule

Job Title	Pay Grade Compensation Rate/Hour
Staff Nurse I	K 19.05
Staff Nurse II	M 22.15
Hospital Radiological Technologist I	K 19.05
Hospital Radiologic Technologist II	L 20.49
Nuclear Medicine Technologist	M 22.15
Ultrasound Technologist	M 22.15
Hospital Physical Therapist I	L 20.49
Hospital Physical Therapist II	M 22.15
Medical Laboratory Technologist I	L 20.49
Medical Laboratory Technologist II	M 22.15
Hospital Respiratory Therapist I	K 19.05
Hospital Respiratory Therapist II	M 22.15
Clinical Dietician I	L 20.49
Clinical Dietician II	M 22.15
Pharmacist	N 27.54

Compensation is set at step 12 for all job classifications except Pharmacists who will be paid at step 16 due to shortage determination compensation previously set by CSC.

Attachment "B" - Personnel					
Department/Agency	General Fund	Special Fund	Note	Federal Fund Match	Total
Department of Education	\$37,608,188				\$37,608,188
Public Health and Social Services	\$3,707,097			\$1,920,013	\$5,627,110
Guam Fire Department	\$5,477,164				\$5,477,164
Guam Police Department	\$5,117,710	\$123,846	1		\$5,241,556
Department of Public Works	\$4,748,052	\$793,113	2		\$5,541,165
DPW - Solid Waste	\$0	\$1,175,167	3		\$1,175,167
Superior Court	\$4,111,491			\$35,306	\$4,146,797
Department of Corrections	\$3,061,170				\$3,061,170
Department of Revenue and Taxation	\$2,054,544				\$2,054,544
Department of Administration	\$1,968,062				\$1,968,062
Department of Law	\$1,563,370			\$230,262	\$1,793,632
Dept. of Mental Health & Subst. Abuse	\$1,382,451				\$1,382,451
Department of Youth Affairs	\$1,026,106				\$1,026,106
Department of Land Management	\$821,219				\$821,219
Department of Agriculture	\$672,471	\$321,448	4	\$128,646	\$1,122,565
Public Defender	\$592,254				\$592,254
Department of Labor	\$569,905			\$57,082	\$626,987
DISID	\$215,016				\$215,016
Supreme Court	\$492,915				\$492,915
Department of Commerce	\$405,030				\$405,030
Dept. of Parks and Recreation	\$917,259				\$917,259
Bureau of Budget & Mangmt Research	\$406,509				\$406,509
Guam Library	\$253,063				\$253,063
Civil Service Commission	\$311,459				\$311,459
Guam EPA	\$230,413			\$359,510	\$589,923
Bureau of Planning	\$239,179				\$239,179
Department of Chamorro Affairs	\$185,456				\$185,456
Department of Military Affairs	\$179,145			\$97,377	\$276,522
Public Auditor	\$100,497				\$100,497
Chamorro Land Trust Commission	\$128,745				\$128,745
Ancestral Lands Commission	\$124,022				\$124,022
CAHA	\$89,174				\$89,174
Guam Educational Telecomm. Corp	\$110,901				\$110,901
Guam Election Commission	\$42,209				\$42,209
Commission on Self-Determination	\$51,322				\$51,322
Chamorro Registry Advisory Board	\$0				\$0
Chief Medical Examiner	\$71,535				\$71,535
State Council on Vocational Ed.	\$47,669				\$47,669
Guam Planning Council	\$45,024				\$45,024
AHRD	\$36,027				\$36,027
Guam Finance Commission	\$27,328				\$27,328
Guam Mass Transit Authority		\$164,631	2		\$164,631
Customs & Quarantine		\$488,478	4		\$488,478
PEALS Board		\$0			\$0
Guam Contractors License Board		\$82,696	5		\$82,696
GRAND TOTAL	\$79,191,151	\$3,149,379		\$2,828,196	\$85,168,726
Notes					
1 - Police Services Fund					
2 - Territorial Highway Fund					
3 - Solid Waste Operations Fund					
4 - Customs, Agricultural and Quarantine Inspection Services Fund					
5 - Contractors License Board Fund					

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

2000 (THIRD) Special Session

Date: 4/14/00

Passed 4/14/00

VOTING SHEET

Bill No. 1(3-S)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
AGUON, Frank B., Jr.	✓				
BERMUDES, Eulogio C.		✓			
BLAZ, Anthony C.		✓			
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V					✓
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

12 2 _____ _____ 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

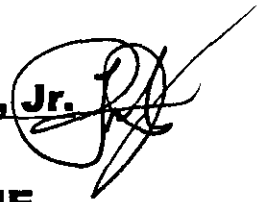
* 3 Passes = No vote
EA = Excused Absence

MAR 20 2000

**MINA BENTE SINGKO NA LIHESLATURAN GUAHAN
2000 (SECOND) REGULAR SESSION**

Bill No. 403 (COR)

Introduced By:

F. B. Aguon, Jr. 

**AN ACT RELATIVE TO RECOGNIZING THAT THE
LEGISLATURE'S CONTROL ON THE HIRING OF
PERSONNEL IN THE GOVERNMENT OF GUAM IS
THROUGH THE PROGRAM BUDGETING PROCESS,
AND REMOVING THE GENERAL RESTRICTION ON
THE GOVERNMENT PERSONNEL HIRING FREEZE.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings/Intent.**

2 I Liheslaturan Guahan finds that over the past few months serious concerns
3 have been raised by agency heads of the government of Guam, members of I
4 Liheslaturan Guahan, and most especially people in the community about the
5 diminishing level in the quality of services being provided by government entities
6 due to the lack of personnel and financial resources necessary to effectively carry
7 out the mandates of the departments. The limitations of such resources, has
8 resulted in the lack of much-needed healthcare professionals (nurses, medical
9 physicians at the Guam Memorial Hospital and DPHSS), classroom teachers
10 (Department of Education), law enforcement officers (Guam Police Department),
11 and fire safety personnel (Guam Fire Department).

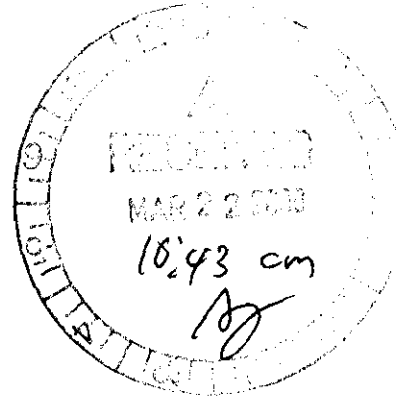
12 I Liheslaturan Guahan recognizes that the Attorney General of Guam has
13 stated that the ability of the Liheslaturan Guahan to control any hiring of personnel
14 throughout the government, inclusive of all three branches of the government of



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAR 22 2000

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910



Dear Legislative Secretary Brown:

Pursuant to the power of i Maga'lahi, the Governor, under §1423h of Title 48 United States Code (Organic Act of Guam), and because the public interest requires it, I hereby call i Liheslatura, the Legislature, into special session at the following time and place:

Wednesday
March 22, 2000
3:00 p.m.
Session Hall
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

The attached draft bill shall be considered at the special session, and in the alternative, the attached Bill No. 403 (COR), introduced by Senator Frank Aguon, Jr., shall be considered at the special session.

Also attached to this call to session is a copy of the Attorney General of Guam's January 2, 2000 opinion relative to the state of the law on the general hiring freeze now in effect on Guam.

The special session is called now because collective members of the legislative branch have shirked their duty as the holder of the purse strings for our government. Instead of passing an annual budget for the entire operations of the government, as required by the Organic Act, the

00821

legislative branch has passed numerous piecemeal budgets, failing to provide the government with the necessary resources to adequately perform executive functions.

The legislative branch of government is the policy maker, the holder of the purse strings. It **does not have the legal capability** of running the day to day operations of the Executive Branch. The Governor, i Maga'lahi, by contrast, is **charged with running the day to day operations of the Executive Branch**. Unfortunately, the general hiring freeze has disabled the Chief Executive from doing his job.

Also disabling the Executive Branch were the ill-thought out early retirement and voluntary separation-with-50%-of-salary provisions, causing loss of personnel in a willy-nilly fashion unrelated to proper government reorganization or money-saving principles. The loss of personnel according to individual employee choice, coupled with a general hiring freeze, seriously undermined the day to day government operations.

The legislative branch is attempting to control hiring, job by job. By putting into place a general hiring freeze and then attempting to make exceptions for certain named job positions, the legislative branch is performing acts outside of its legal authority. It is also hindering the Chief Executive, the Governor, from performing the legal mandate which he was elected to carry out. These actions on the part of the legislative branch steal from the people of Guam, because the people are deprived of the sound policy and sound budget financing which the senators are elected to provide. At the same time, it steals from the people of Guam by impeding the Executive Branch from carrying out its lawful duties.

By lifting the general hiring freeze and making adequate budgetary provisions for the line agencies, the people will be served well by our two branches of government. Obviously, when this freeze is lifted, no hiring can happen outside of the legislatively set budgetary limits, once proper budgetary limits are put into place. Who to hire, in what exact job, is only within the power of the Executive Branch. Irrational media charges that

“rampant hiring” will happen, above our means, is a myth. Since 1995, our Administration, Gutierrez-Bordallo, has been the only one which has spent less money than money coming in. Where is the “rampant hiring” in this track record?

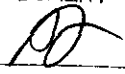
Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment

cc: The Honorable A. R. Unpingco
Speaker

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u></u>
Time	<u>10:43 am</u>
Date	<u>22 March 2000</u>

100-512

I MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
TWENTY-FIFTH GUAM LEGISLATURE
2000 (SECOND) Regular Session

(Third) Special

Bill No. 1(3-5)

Introduced by:

_____ by request of I Maga'Lahen Guåhan,
the Governor, in accordance with
the Organic Act of Guam.

AN ACT TO LIFT THE GENERAL HIRING FREEZE AND
ALLOW FOR PROPER MANAGEMENT OF THE EXECUTIVE
BRANCH OF THE GOVERNMENT OF GUAM.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Findings.** The general hiring freeze was put into
3 place as an attempt to save money in the government, and prevent the
4 Executive Branch from rampant hiring. This freeze has been in effect for
5 many months, and has had far more devastating effect on the government
6 and the public than merely saving money. It has crippled the Executive
7 Branch from carrying out its Organic Act mandate to operate the day to
8 day operations of the departments and agencies of the government by
9 dictating that no position can be filled. Later enacted legislation named
10 certain job positions that were dictated by the legislative branch, to be
11 hired. This is not a legally authorized action on the part of the legislative
12 branch.

13 The legislative branch now seeks to lift the general hiring freeze, and
14 financial responsibility will be exercised instead through the budget
15 process. This is the mandate of the legislative branch, as required in the
16 Organic Act.

1 **Section 2. Lifting of general hiring freeze.**

2 Notwithstanding any other provision of law, i Maga'lahi, the
3 Governor, may manage the Executive Branch as required under the
4 Organic Act of Guam by hiring, or not hiring, in positions as deemed
5 necessary for the responsible management of the departments and
6 agencies of the Executive Branch. I Maga'lahi, the Governor, shall not hire
7 outside of budgetary amounts authorized for the respective departments
8 and agencies of the government, as prescribed by i Liheslatura, the
9 Legislature.

MINA BENTE SINGKO NA LIHESLATURAN GUAHAN

2000 (SECOND) REGULAR SESSION Date: 03/20/00

Bill No. 403 (COR)

Introduced By:

F. B. Aguon, Jr. 

AN ACT RELATIVE TO RECOGNIZING THAT THE LEGISLATURE'S CONTROL ON THE HIRING OF PERSONNEL IN THE GOVERNMENT OF GUAM IS THROUGH THE PROGRAM BUDGETING PROCESS, AND REMOVING THE GENERAL RESTRICTION ON THE GOVERNMENT PERSONNEL HIRING FREEZE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings/Intent.**

2 I Liheslaturan Guahan finds that over the past few months serious concerns
3 have been raised by agency heads of the government of Guam, members of I
4 Liheslaturan Guahan, and most especially people in the community about the
5 diminishing level in the quality of services being provided by government entities
6 due to the lack of personnel and financial resources necessary to effectively carry
7 out the mandates of the departments. The limitations of such resources, has
8 resulted in the lack of much-needed healthcare professionals (nurses, medical
9 physicians at the Guam Memorial Hospital and DPHSS), classroom teachers
10 (Department of Education), law enforcement officers (Guam Police Department),
11 and fire safety personnel (Guam Fire Department).

12 I Liheslaturan Guahan recognizes that the Attorney General of Guam has
13 stated that the ability of the Liheslaturan Guahan to control any hiring of personnel
14 throughout the government, inclusive of all three branches of the government of

1 Guam, would be through the program budgetary process, and that the executive
2 branch is restricted from hiring personnel in excess of the funds appropriated by I
3 Liheslaturan Guahan. The Liheslaturan Guahan further recognizes that due to the
4 limited financial resources available to the government of Guam because of
5 recently declining revenues, it is imperative that any future hiring be conducted
6 judiciously and that such hiring pertain specifically to critical and essential
7 personnel positions. This view shall be maintained until such time that the
8 revenue base of the government of Guam stabilizes.

9 I Liheslaturan Guahan further finds that due to the limited amount of
10 financial resources available for the overall operation of the government of Guam,
11 it is imperative that a reorganization of the government agencies and departments
12 be undertaken that would allow for the sharing of limited government resources.
13 It is the understanding of I Liheslaturan Guahan that the executive branch has
14 recently commenced its efforts toward this end.

15 Therefore, this provision would lift the general government of Guam hiring
16 restriction, with the understanding that any and all future hiring should pertain to
17 critical government positions, i.e. law enforcement officers, healthcare
18 professionals, education, and other positions deemed essential by I Maga'lahaen
19 Guahan (Governor of Guam).

20 **Section 2. Provision for the Revocation of the Government of Guam Hiring**
21 **Restriction.**

22 Notwithstanding any other provision of law, specific hiring restriction
23 provisions as they pertain solely to the hiring of government personnel are hereby
24 repealed.

25 **Section 3. Government of Guam Personnel Hiring Policy.**

1 The hiring of personnel within the government of Guam line departments
2 and autonomous agencies shall be exclusively for critical and essential positions in
3 the respective government entities as identified below:

- 4 i.) Healthcare professionals, to include but not limited to nurses, medical
5 physicians, etc;
- 6 ii.) Law Enforcement Officers, to include but not limited to the Guam
7 Police Department and the Guam Customs and Quarantine Agency;
- 8 iii.) Classroom Education Teachers; and,
- 9 iv.) Other Critical Positions, as identified by the Governor of Guam as
10 critical and essential for the general safety, healthcare and welfare of
11 the island community and the people of Guam.

12 A list of all personnel positions filled prospectively within line departments
13 or autonomous agencies, upon the enactment of this provision, shall be forward by
14 the Department of Administration to I Liheslaturan Guahan, through the
15 Governor's Office, no later than the final day of each quarter henceforth.

16 **Section 4. Budgetary Restriction Provisions.**

17 The implementation of the provisions contained herein pertaining to the
18 hiring of critical personnel within the government of Guam shall be conducted
19 within the program budgetary restrictions provided by I Liheslaturan Guahan in
20 the government's fiscal year budget allocation. This provision shall not allow for
21 the inter-department or inter-governmental transfer of funds between
22 agencies/departments, unless specifically authorized by I Liheslaturan Guahan
23 prior to the filling of any critical government position.

Carl T.C. Gutierrez
Maga'lahi
Governor

Madeleine Z. Bordallo
Tifente Gubetnadora
Lt. Governor



Ufisinan Hinirát Abugao
Hagátña, Guáhan
Office of the Attorney General
Hagátña, Guam

John F. Tarantino
Hinirát Abugao
Attorney General

Robert H. Kono
Atkédi Sigundo
Chief Deputy

COPY

January 2, 2000

Memorandum - (Opinion)

Ref: GOV 00-0001

To: Governor of Guam
From: Attorney General
Subject: Application of Bill 372

Buenas!

Pursuant to your request of December 31, 1999 I have reviewed Bill 372 regarding the following:

REQUEST: Does the Legislature have the power to exempt certain positions within the government of Guam from a general hiring freeze?

ANSWER: No. The Legislature's attempt to "micro manage" the staffing and resource allocations in administering the appropriated funds is a serious intrusion on the Governor's authority and ability to perform his duty under the Organic Act of Guam.

STATEMENT OF FACTS

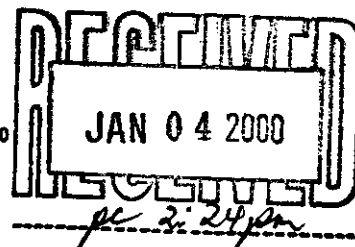
A brief history regarding the actions of the *I Liheslaturan Guahån* in it's attempts to gain control over the employment of government of Guam employees is necessary in order to fully appreciate the gravity of what is now being attempted in Bill No. 372 (LS) which was recently passed and transmitted to the Governor.

In late 1998 *I Liheslaturan Guahån* passed a bill which became Public Law 24-327. Section 11 of P.L. 24-327 attempted to exercise control over specific government of Guam positions, identified by "FTE" numbers listed in staffing patterns which had been submitted by the executive during budget hearings. In particular, Section 11 provided that



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[t]he appropriated funding and Full Time Equivalencies ('FTE' or any position in the government of Guam...which becomes vacant after the effective date of this Act for whatever reason, shall be considered automatically repealed.

Section 11 went on to provide for a "fast track" procedure whereby the Governor could request the re-establishment of a repealed FTE by action of *I Liheslaturan Guahån* pursuant to the language of Section 11. Only after re-establishment of the repealed FTE position could the Governor then be allowed to hire a replacement person for the particular FTE.

In March, 1999, Public Law 25-03 amended Section 11 of P.L. 24-327 and added a new dimension to *I Liheslaturan Guahån*'s attempts to exercise control over specific government of Guam positions by attaching a list which limited the total number of FTE positions that could be held by each department and agency of the Executive branch.

At the request of the Director of the Department of Mental Health and Substance Abuse (DMHSA), on May 27, 1999, This office issued a Memorandum Opinion entitled "Review of Public Law No.'s 24-327 and 25-03 Pertaining to Restriction of the Governor's Employment Authority for Executive Agencies." In that opinion, it was the Attorney General's conclusion that Section 11 of Public Law 24-327 as amended by P.L. 25-03 was void because it was an exercise of legislative power in violation of the Organic Act because by attempting to exercise control over specific government of Guam positions the legislature was encroaching upon the Governor's authority and powers which are mandated by the Organic Act. A copy of our May 27, 1999 is attached for your review. (Ref: DMHSA 99-0613)

The legislature then took another tack in it's continuing efforts to gain control over specific government of Guam employee positions.

On October 1, 1999, a government of Guam wide hiring freeze was implemented through the passage of Public Law 25-72.

The particular section of Public Law 25-72, that implemented the hiring freeze was Section 12, which provides:

Notwithstanding any other provisions of law to the contrary, no funds shall be expended for any position filled subsequent to this Act, *except* for such exceptions noted in §11 of this Chapter, as well as a director or deputy director of an agency or department of the government of Guam.

The positions that were excepted by Section 11 of Public Law 25-72 were:

Teacher positions, and guidance and health counselors, within the Department of Education and personnel employed by the University of Guam under the Chamorro Teaching Degree Institute, and employment survey workers of the Department of Commerce....

Section 11, of Public Law 25-72 was another clear encroachment upon the Executive function under the Organic Act and a violation of separation of powers. This is because Section 11 identifies specific positions within the executive branch which are exempted from the general hiring freeze.

However, that was not the only action taken by the legislature. Section 20, of Public Law 25-72 announced an intent on the part of the legislature to reorganize the government of Guam. The stated goals where to reduce the government of Guam by no less than fifty percent (50%) through a

government wide reorganization. However, there was no specific language as to the respective powers and duties of the Legislature and the Executive in carrying out this reorganization, and to date, no effective discussions or action to carry out a reorganization has occurred.

In response to the language contained in Section 20, of Public Law 25-72 regarding the legislature's intent to reorganize the government of Guam, the Governor of Guam requested an opinion from the Attorney General. The issue stated was:

What are the powers and limitations of the Legislature and the Governor in the reorganization of the Government of Guam pursuant to §20 of Public Law No. 25-72?

On October 19, 1999, this office issued a Memorandum Opinion which responded to the issue stated:

The Governor has the authority pursuant to the Organic Act to reorganize departments, agencies and other executive instrumentalities of the Government of Guam without legislative consent. However, the Legislature has the power to pass legislation not inconsistent with the Organic Act and other laws of the United States applicable to Guam including the power of monetary appropriation. Therefore, the Legislature creates public entities within limits and defines by legislation whether an agency or department is an executive instrumentality of the Government of Guam, and controls the size of the government by the power to restrict monetary appropriation.

After articulating the legal basis for the response to the issue stated, this office concluded with the following observations:

Since the Legislature has the power to withdraw mandates, change government purposes, and abolish agencies, the executive would be prudent in coordinating any defined "reorganization" with the Legislature. Such coordination would insure, at least in the short term, that the Legislature would not respond with a law abolishing an agency reorganized by the executive altogether or changing its mandate, purposes and functions. Even with the Governor's reorganization power, laws may need change regarding the specifics of a given function and duties. However, under the Organic Act (constitutional) doctrine of separation of powers specifically delineating three branches of the government of Guam, the legislature has a duty to designate any agency or department with governmental functions, that are executive in nature, as an instrument of the executive branch. Without coordination, the checks and balances of the Executive and Legislative Branches could result in a stalemate under the mandate of Public Law No. 25-72, §20 which reduces the government of Guam by no less than fifty percent, and could end up costing more in time than savings in money. **Genuine cooperation between the legislative and executive branches, keeping the guidelines of the separation of powers doctrine in mind, could produce significant changes and improvements in the streamlining of the government, and a cost savings necessary for the survival of a viable government of Guam in our harsh economic times.**

A copy of the October 19, 1999 opinion is attached for your review. (Ref: Gov 99-1308)

The legislation contained in Bill No. 372 (LS) which was recently passed and transmitted to the Governor, is yet another attempt by the legislature to encroach upon the Governor's authority and powers which are mandated by the Organic Act.

In this bill the legislature blatantly picks and chooses which particular government of Guam employee positions will be filled during this fiscal year. Below are selected portions of the bill which evidence this unabashed attempt by the legislature to takeover the staffing decisions which are the exclusive purview of the Governor of Guam:

Section 10. Restoration of Positions to GPD. The Guam Police Department is authorized to hire no more than one (1) Psychologist and one (1) Attorney IV. The Department also is authorized to hire *no more than* forty (40) "Police Officers I" to positions vacated between October 1, 1999 and December 31, 1999.

Section 19. Department of Mental Health Hiring Authority. The Department of Mental Health is authorized to hire *no more than* seven (7) psychiatric technicians and two (2) social workers to positions vacated between October 1, 1999 and December 31, 1999, or in the case of the Early Retirement Program between October 1, 1999 and January 7, 2000. The Department of Mental Health is also authorized to hire no more than four (4) nurses and one (1) program director for the Healing Hearts Program as new positions *not* previously included in the staffing pattern listed in "Exhibit A" of Public Law Number 25-74. In the event any of these positions are filled, the positions shall be paid *only* from funds appropriated from the General Fund to the Department of Mental Health for personnel services during Fiscal Year 2000.

Section 20. DISID Hiring Authority. The Department of Integrated Services for People with Disabilities ("DISID") is authorized to rehire *no more than* three (3) social workers to positions vacated between October 1, 1999 and December 31, 1999, or in the case of the Early Retirement Program between October 1, 1999 and January 7, 2000. In the event any of these positions are filled, the positions shall be paid only from funds appropriated from the General Fund to DISID for personnel services during Fiscal Year 2000.

Several other sections of Bill No. 372 (LS) have titles that purport to be appropriations, however, the text of the sections are in fact authority to rehire specific positions within the Executive branch.

Section 21. Appropriations for Select Positions.

Section 23. Appropriations for Department of Law Positions.

Section 24. Appropriations for DOE Comptroller Position.

Section 25. Appropriation for DLM Chief of Cadastre Position.

Section 29. Authorization to GEPA for Additional Personnel.

Section 28 of Bill No. 372 (LS) continues the hiring freeze in place but introduces a new and chilling dimension which is clearly spelled out in its title:

**Section 28. Positions to be Filled Until Authorized by I
Liheslaturan Guahan.**

Section 28 would require that the entire Executive branch submit detailed staffing patterns of all people working in each department and that no hiring of new positions would take place until the legislature approved each such position requested.

DISCUSSION:

The issues that are posed in this opinion are essentially the same as those posed in two prior opinions which is attached to this opinion for your review. The only change is the different tack that the Legislature has taken in its relentless drive to usurp the powers of the Governor. Without an understanding of the chronology, the perception of the Legislature's singular fixation on stripping the Governor of any authority with regard to how the Executive branch is to be staffed would not be so apparent.

Certain members of the Legislature have been attributed with making recent public statements that they intend to "micro manage" the Executive branch. This intent is also evidenced in the chronology laid out above. If indeed the intent of the legislators is to "micro manage" the Executive, then their perception of their authority as legislators under the Organic Act is flawed.

As established by the Organic Act of Guam, "the government of Guam shall consist of three branches, executive, legislative and the judicial." 42 USC §1421a. The Organic Act functions as Guam's constitution, and the powers of each branch flow from and are limited by the Organic Act. *See, e.g., Haeuser v. Department of Law, et al.*, 97 F.3d 1152, 1156 (9th Cir. 1996); *Bordallo v. Baldwin*, 624 F.2d 932, 934 (9th Cir. 1980). As set forth in the Organic Act, the powers of the Executive Branch are vested in the Governor of Guam and include:

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may veto any legislation as provided in this chapter. He shall appoint, and may remove all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam.42 USC §1422.

In contrast, the powers of the Legislature "shall extend to all subjects of legislation of local application not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam." 42 USC §1423a..

The doctrine of separation of powers has long been established as a constitutional principle preventing one branch of government from encroaching upon another. *See, e.g., Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 111 S.Ct. 2298 (1991); *Bowsher v. Synar*, 106 S.Ct. 3181 (1986); *I.N.S. v. Chada*, 103 S.Ct. 2764 (1983); *Springer, et al. v. Government of the Philippine Islands*, 48 S.Ct. 480 (1928). The U.S. Supreme Court explained the historical underpinnings of the doctrine of separation of powers, stating:

“The Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial.” The declared purpose of separating and dividing the powers of government, of course, was to “diffuse power the better to secure liberty.” ... [these] words echo the famous warning of Montesquieu, quoted by James Madison in *The Federalist* No. 47, that “there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates’....” *Bowsher v. Synar*, 106 S.Ct. at 3185 (citations omitted).

The courts of Guam have recognized the doctrine of separation of powers, holding that “[t]he legislature may not enact a law encroaching upon the Governor’s authority and powers which are mandated by the Organic Act.” *Territorial Prosecutor v. Superior Court of Guam*, 1983 WL 30224, p.7 (D.Guam 1983); see also *Bordallo, supra*; *People v. Camacho*, 1 Guam R. 501 (Sup.Ct. 1975) (The Organic Act provides for a stricter separation of powers than that provided by the U.S. Constitution because the Act specifies that there shall be “three branches” of government).

With regard to the specific issue raised by Bill No. 372 (LS), that is, whether the legislature has the power to control what specific positions can be filled, *Communications Workers v. Florio*, 617 A.2d 223 (N.J. 1992), is instructive. In *Florio*, the Supreme Court of New Jersey addressed the issue of whether amendments to an appropriations act that mandated how employee layoffs were to be accomplished by the Governor violated separation of powers “by allowing the Legislature to interfere excessively with the Governor’s constitutional authority to manage government.” 617 A.2d at 225. The challenged provision of the appropriations act provided that certain employees such as State Troopers, corrections officers, communications operators, security guards, alcoholic beverage control inspectors, marine police officers or other personnel providing services shall not be laid off and further required that:

Savings required to be realized through the reduction of managerial and other exempt personnel outside the collective negotiations units in the unclassified service, and then, if necessary, by the reduction of managerial and other exempt personnel outside the collective negotiations units in the career service.

This provision essentially required the Governor to layoff higher paid, non-union state employees. Based on an opinion from the Attorney General, the Governor’s Chief Counsel instructed all members of the Governor’s cabinet to not enforce the provisions identified as unconstitutional. *Id.* After layoff plans were approved and slated to be implemented, a union challenged the Governor’s refusal to implement layoffs as dictated by the Legislature. *Id.* at 227.

The Executive Branch asserted to the court:

[T]he Appropriations Amendments impermissibly intrude on the Governor’s constitutional authority to administer funds, which includes the making of specific staffing and resource-allocation decisions. The Governor claims that if government is to operate efficiently and effectively, the selection and assignment of necessary personnel and the decisions concerning how to best effectuate a reduction in force must reside in the executive branch. The Legislature’s attempt to control the order

of layoffs both usurps and thwarts the Governor's duty to make staffing and resource allocations, which are an essential part of the Executive's day-to-day management of the branch of government. *Id.* at 229.

After an exhaustive review of precedent established in their jurisdiction, the court held that the appropriations act amendments were unconstitutional because such legislative action violated the separation of powers. *Id.* at 229-34. The court stated:

The Legislature properly has the power to reduce appropriations for the operation of State government. Both the executive and legislative branches agree that because the Appropriations Act did not provide sufficient funds to maintain staffing at then-current levels, personnel cuts were required. According to plaintiffs, the Legislature's purpose in enacting the provisions restricting layoffs was to ensure that those personnel cuts were made in the most efficient manner possible, with the least possible disruption in the provision of State services.

Legislative oversight of or cooperation with the Executive was not necessary to fulfill that purpose. The Governor had the ability -- and indeed the duty -- to make the necessary personnel cuts so as to enable the agencies to continue to function as efficiently and effectively as possible. Not only was the legislative mandate of how to make the cuts unnecessary for the effectuation of the statutory scheme, but the Legislature's attempt to "micro manage" the staffing and resource allocations in administering the appropriated funds was a serious intrusion on the Governor's authority and ability to perform his constitutionally-delegated functions.

Staffing decisions are at the core of the Governor's day-to-day administration of government. Decisions about what type of employees are needed in a department and how many positions can be retained or eliminated directly affect how the executive branch operates. By hampering executive discretion on staffing decisions, the provisions prevent the Governor and department heads from using their expertise and familiarity with the agencies they manage to make the cuts in the least disruptive manner. Thus the provisions impede them in the performance of their constitutional duties faithfully to execute the laws.

* * * *

Indisputably, the Legislature retains broad powers in the appropriations process to control the size and priorities of the State government. The Legislature properly exercised the power in this case by choosing to reduce the amount of money it appropriated to the salaries-and-wages accounts of most executive departments, thus necessitating a reduction of the State workforce through layoffs. The Legislature's power to shape State government and achieve savings in this manner is unquestioned. However, in this case the Legislature went one step further in its attempt to shape State government. Having reduced the salaries-and-wages accounts, it attempted, through the provisions challenged here, to control how those reduced appropriations would be administered specifying which employees should and should not be laid off. Although the Legislature may "appropriate and dictate, if it desires, the services and positions designated for such

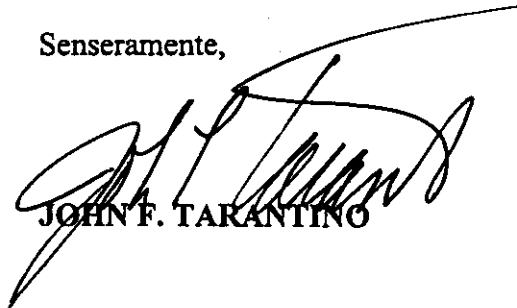
appropriation,” “There is one thing ... [the Legislature] cannot do It cannot exercise functions of the executive. It cannot administer the money after it has been once appropriated.”Id. at 234-35.

Although the Guam courts have not addressed the meaning of administration of appropriations, several states have. In *Anderson v. Lamm*, 579 P.2d 620 (Colo. 1978), the court concluded that “the state legislature was not permitted to interfere with the executive’s power to administer appropriated funds, which included the making of specific staffing and resource allocation decisions.” In that case, the legislature allocated funds based upon the number of full-time employees which the legislature believed each county should have and specified the number of full-time employees assigned to specific job categories. The governor therein vetoed the limitations set by the legislature stating that the executive needed the flexibility to determine the proper allocation of manpower. The court agreed with the governor and concluded that the legislation clearly violated the separation of powers doctrine.

CONCLUSION:

The attempts by the Legislature to authorize exceptions to the general hiring freeze is inorganic and is void and unenforceable as a matter of law. Until such time as the legislature removes the general hiring freeze, there can be no exceptions except in those cases where the general hiring freeze itself would itself be void.

Senseramente,



JOHN F. TARANTINO

Attachment Enclosed

00-0001\mlt

Carl T.C. Gutierrez
Maga'lahi
Governor

Madeleine Z. Bordallo
Tinente Gubernadora
Lt. Governor



Ufisinan Hinirát Abugao
Guåhan
Office of the Attorney General
Guam

Michael C. Stern
Arkad. Sigunor
Chief Deputy

Robert H. Kono
Sigunor, Division Inabason Gubernamento
Deputy, Solicitors Division

May 27, 1999

Memorandum (Opinion)

REF: DMHSA 99-0613

To: Director, Department of Mental Health and Substance Abuse (DMHSA)

From: Attorney General, Acting

Subject: Review of Public Law Nos. 24-327 and 25-03 Pertaining to Restriction of the Governor's Employment Authority for Executive Agencies

Hafa Adai!

We are in receipt of your May 24, 1999 memorandum requesting an opinion on the following:

REQUEST: Is the action taken by the Guam Legislature in enacting Public Law No. 24-327, as amended by Public Law No. 25-03, restrictive of the Governor's executive powers as provided by the Organic Act?

ANSWER: Yes. Because such restriction violates the separation of powers doctrine, the relevant portions of these laws are inorganic, and therefore, inorganic and void. See Discussion.

STATEMENT OF FACTS:

The Legislature recently enacted Public Law Nos. 24-327 and 25-03. Section 11 of Public Law No. 24-327, as amended by Public Law No. 25-03, automatically repeals the appropriated funding for an FTE position and eliminates this position upon vacancy "for whatever reasons" after the effective date of the law. Section 1 of Chapter II of Public Law No. 25-03 appropriates a lump sum for the operations of the Executive Branch for Fiscal Year 1999 and section 11 of Chapter V establishes a limit on the number of FTE positions for the Executive Branch for Fiscal Year 1999. Furthermore,



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an eliminated FTE position can only be re-established by action of the Legislature. See P.L. 24-327, §11, as amended by P.L. 25-03, §21(b). Accordingly, the Legislature has delegated to itself the power to control expenditure of appropriated funds, as well as the power to eliminate and then re-establish FTE positions.

As an agency of the Executive Branch, DMHSA is subject to the hiring restrictions of Section 11 of Public Law No. 24-327, as amended. As outlined by the Director of DMHSA in the May 24, 1999 memorandum, these hiring restrictions are having "a devastating effect on the department's ability to carry out its mission." DMHSA recently lost the manager of its Healing Hearts Program and is slated to lose its only psychiatrist in two (2) weeks. Additionally, there are several essential counselor and division head positions in the Nursing Services Division, and the Children and Adolescent Services Division, that are currently vacant and require filling. In conjunction with seeking approval from the Governor to fill these essential positions, the Director of DMHSA has requested a review and opinion of the hiring restrictions as promulgated in Section 11 of Public Law 24-327, as amended by Public Law 25-03.

DISCUSSION:

As established by the Organic Act of Guam, "the government of Guam shall consist of three branches, executive, legislative and the judicial." 42 USC §1421a. The Organic Act functions as Guam's constitution, and the powers of each branch flow from and are limited by the Organic Act. See, e.g., *Haeuser v. Department of Law, et al.*, 97 F.3d 1152, 1156 (9th Cir. 1996); *Bordallo v. Baldwin*, 624 F.2d 932, 934 (9th Cir. 1980). As set forth in the Organic Act, the powers of the Executive Branch are vested in the Governor of Guam and include:

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may veto any legislation as provided in this chapter. He shall appoint, and may remove all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam.

42 USC §1422. In contrast, the powers of the Legislature "shall extend to all subjects of legislation of local application not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam." 42 USC §1423a.

Additionally, the Organic Act provides in relevant part:

The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system. The Government of Guam may by law establish a Civil Service Commission to administer the merit system.

48 USC §1422c(a). The Legislature has established a merit system and the Civil Service Commission. See 4 GCA, Chap. 4. Through this merit system, the Legislature provided for the creation and termination of classified positions as follows:

§4403. Duties of the Commission. The Commission has the following duties, powers and responsibilities:

(a) It shall provide by rule standards relating to position classification, creation of new positions or classes of positions, as provided by §6210 [§6303] of this Title, and as required for positions in the other branches of the Government as such positions are placed within the jurisdiction of the Commission.

* * * *

(g) The provisions of this Section shall not apply to the Judiciary or Legislature in compliance with the doctrine of separation of powers unless such separate branch opts to make them applicable by submitting to the jurisdiction of the Civil Service Commission. All reference to classified employees will be deemed to mean classified employees of the Executive Branch including agencies and authorities.

§6303. Creation of positions. (a) New positions may be created by the Governor ... when necessary for the efficient performance of the duties and functions of the government. The Governor shall submit to the Civil Service Commission ... the position descriptions for the positions within thirty (30) calendar days after creation. Except for positions in the Office of the Governor, the positions shall be terminated unless approved by the Commission ... within ninety (90) days after submission. No newly created position shall be filled in the absence of appropriations to pay the salary of the proposed position.

Emphasis added. Accordingly, through laws established by the Legislature, the creation and termination of classified positions in the Executive Branch are functions of the Governor and the Civil Service Commission, not the Legislature.¹ The only control the Legislature reserved for itself was the power to not fund a newly created position (“[n]o newly created position shall be filled in the absence of appropriations to pay the salary of the proposed position.”).

I. Separation of Powers Doctrine

The doctrine of separation of powers has long been established as a constitutional principle preventing one branch of government from encroaching upon another. See, e.g., *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 111 S.Ct. 2298 (1991); *Bowsher v. Synar*, 106 S.Ct. 3181 (1986); *I.N.S. v. Chada*, 103 S.Ct. 2764 (1983); *Springer, et al. v. Government of the Philippine Islands*, 48 S.Ct. 480 (1928). The U.S. Supreme Court explained the historical underpinnings of the doctrine of separation of powers, stating:

“The Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial.” The declared purpose of separating and dividing the powers of government, of course, was to “diffuse power the better to secure liberty.” ... [these] words echo the famous warning of Montesquieu, quoted by James Madison in *The Federalist* No. 47, that “there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates’....”

¹ There is a general rule that “the power to create a position in the civil service includes the power to abolish the position.” See e.g., *State v. Raschig*, 49 N.E.2d 56, 60 (OH 1943); *Ellis v. Allen*, 154 S.W.2d 815 (AK 1941). See generally 15 Am Jur 2d Civil Service § 72 (1976).

Bowsher v. Synar, 106 S.Ct. at 3185 (citations omitted).

The courts of Guam have recognized the doctrine of separation of powers, holding that "[t]he legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act." *Territorial Prosecutor v. Superior Court of Guam*, 1983 WL 30224, p.7 (D.Guam 1983); see also *Bordallo, supra*; *People v. Camacho*, 1 Guam R. 501 (Sup.Ct. 1975) (The Organic Act provides for a stricter separation of powers than that provided by the U.S. Constitution because the Act specifies that there shall be "three branches" of government).

In *Territorial Prosecutor*, the issue before the district court was whether the Territorial Prosecutor's Act violated the Organic Act. WL 33024 at p.5. The challenged portion of the Act provided:

The Territorial Prosecutor shall be appointed by the Governor with the advice and consent of the Legislature. The Governor may remove the Territorial Prosecutor, but only for conviction of felony involving moral turpitude or for willful misconduct in office, willful and persistent failure to perform prosecutorial duties, or any conduct which is prejudicial to the administration of justice or which brings the Territorial Prosecutor's office into disrepute. The Territorial Prosecutor may appeal such removal to the Superior Court.

Id. at p.6. This portion of the Act was alleged to violate the Organic Act because the Organic Act provided "that the Governor have supervision and control of all executive departments, have authority to appoint and remove all officers of the executive branch and be responsible for the faithful execution of the laws of Guam." *Id.* at p.5. The opposition argued that the Act did not violate the Organic Act because "the Governor's authority to appoint and remove officers is completely subject to the power of the Legislature to modify it or to determine an alternative method of selection of officers." *Id.* at p.6. The district court held the Act inorganic following the Ninth Circuit ruling in *Bordallo, supra*. *Id.* at p.7.

In *Bordallo*, the Legislature had passed a law which provided that all powers vested in the Guam Memorial Hospital shall be exercised by a Board of Trustees, which would consist of thirteen members who were to be appointed by the Governor after thirteen private organizations chose who he was to appoint. *Id.* at p.6; 624 F.2d at 933. The Governor challenged the law as violating the Organic Act and beyond the authority of the Legislature. *Id.* at 934. The district court ruled that "the Governor's general appointive power [48 USC §1422c(a)] was intended to be subject to legislative action, otherwise Congress would not have included the phrase 'except as otherwise provided in this chapter or the laws of Guam,' and that his specific responsibility with respect to hospitals was restricted by the inclusion in Section 1421g(a) of the phrase "subject to the laws of Guam." WL 30224 at p.6. Section 1421g(a) provides:

Subject to the laws of Guam, the Governor shall establish, maintain, and operate public health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

However, the Ninth Circuit disagreed and reversed the district court holding "that legislative power is limited by Section 1423a [of the Organic Act] to subjects not inconsistent with the provisions of this chapter." 624 F.2d at 934. Thus, despite the Governor's powers to "establish, maintain and operate ... hospitals being limited by the phrase "subject to the laws of Guam" in section 1421g(a), the Ninth Circuit ruled that the Legislature "may not negate the command of the Organic Act that the ultimate responsibility for the governance of the Hospital be in the Governor." *Id.* Because the legislation in question had effectively "taken over the entire power to establish, maintain and operate the Hospital by dictating who the governing trustees shall be," the Legislature had exceeded its power under the Organic Act. *Id.* at 934-35. In *Territorial Prosecutor*, the district court noted the effect of the *Bordallo* ruling:

[T]he Legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act. If we were to permit the legislature to do so, not only would it render the concept of the separation of powers meaningless and be inconsistent with [the] mandate of the Organic Act, but it could possibly result in the Governor being divested of his executive authority and power at the whim of the legislature.

WL 30224 at p.7.

This is exactly the effect of section 11 of Public Law No. 24-327, as amended, and Section 11 of Chapter V of Public Law No. 25-03, because the law severely restricts the Governor's executive authority to administer appropriated funds for the management and operation of the Executive Branch, which includes the making of specific staffing and resource-allocation decisions. Although Guam's courts have never had occasion to address this specific issue, several other jurisdictions have. *See, e.g., In Re Opinion of the Justices to the Governor*, 341 N.E.2d 254 (Mass. 1976); *Anderson v. Lamm*, 579 P.2d 620 (Colo. 1978); *Communications Workers v. Florio*, 617 A.2d 223 (N.J. 1992).

In *Opinion of the Justices*, the Governor of Massachusetts requested the Supreme Judicial Court of Massachusetts to address the question of whether legislation, which was similar to Public Law 24-327, was unconstitutional as a limit and infringement upon the powers of the executive branch. 341 N.E.2d at 255. The challenged statute provided:

All positions vacant or that become vacant other than positions essential for the care of patients, on or after June thirtieth, nineteen hundred and seventy-five, shall remain vacant during the fiscal year nineteen hundred and seventy-six; provided, that vacancies for which there exists a critical need may be filled upon certification of the critical need by the commissioner of administration and verification of said critical need by the house and senate committees on ways and means. No funds shall be allotted for overtime compensation unless it is essential to the safety and care of persons under the care and jurisdiction of the commonwealth.

Id. at 256, fn.2. The court held that the statute violated the separation of powers, and was therefore unconstitutional, because it entrusted the executive power of expenditure to legislators. The court stated:

Page 4
The power so delegated is the legislative power of appropriation but the executive power of expenditure of appropriated funds.

Under § 25C [the statute] "critical need" is to be certified by the Commissioner of Administration, an executive officer, and is to be verified by the House and Senate Committees on Ways and Means, composed of legislative officers. What is required is not merely verification that the Commissioner has made the required certification, but "verification of said critical need" by the legislative committees. We read the statute ... as requiring the exercise of judgment and discretion by legislative officers.

Thus to entrust the executive power of expenditure to legislative officers is to violate art. 30 [constitutional provision for separation of powers] by authorizing the legislative department to exercise executive powers.

Id. at 257 (citations omitted).

In *Anderson v. Lamm*, the Supreme Court of Colorado was presented with the issue of whether the lower court had correctly determined the unconstitutionality of portions of a general appropriation bill, which portions had been vetoed by the Governor. 579 P.2d at 623. The vetoed portions germane to our case involved an appropriation to a government agency for its counties, whereby (1) the Legislature allocated funds based upon the number of full-time employees (FTEs) which the Legislature believed each county should have and (2) made certain specifications as to the number of FTEs that can be assigned to specific job categories.² *Id.* at 626. The Governor vetoed these portions, stating "I am vetoing the ... county FTE limitations because the executive needs the flexibility to determine the proper allocation of manpower." *Id.* The court agreed with the Governor, stating:

We agree that these conditions on the number of full-time employees in each county interfere with the executive authority to allocate staff and resources in administering funds. In sum, these provisions are clearly in violation of the separation of powers doctrine.

*Id.*³

More recently, in *Communications Workers v. Florio*, the Supreme Court of New Jersey addressed the issue of whether amendments to an appropriations act that mandated how employee layoffs were to be accomplished by the Governor violated separation of powers "by allowing the Legislature to interfere excessively with the Governor's constitutional authority to manage government." 617 A.2d at 225. The challenged provision of the appropriations act provided that certain employees such as State Troopers, corrections officers, communications operators, security guards, alcoholic beverage control inspectors, marine police officers or other personnel providing services shall not be laid off and further required that:

² An example of these limitations on FTEs was "953 of the total FTEs are to be social workers, 454.6 FTEs are to be clerical staff, and 18.5 new FTEs are to be social workers in the area of child abuse. *Id.*

³ The Governor also vetoed another portion of the general appropriation bill that provided that ten additional FTEs were to be funded in another government division if that division reached its projected case load by specified dates. *Id.* at 628. The court held this portion to be unconstitutional as violation of separation of powers *inter alia*, stating that "the contingent funding of ten full-time employees is a clear interference with the executive authority to allocate staff and resources in administering appropriation." *Id.*

Savings required to be realized through the reduction of managerial and other exempt personnel outside the collective negotiations units in the unclassified service, and then, if necessary, by the reduction of managerial and other exempt personnel outside the collective negotiations units in the career service.

Id. at 226. This provision essentially required the Governor to layoff higher paid, non-union state employees. Based on an opinion from the Attorney General, the Governor's Chief Counsel instructed all members of the Governor's cabinet to not enforce the provisions identified as unconstitutional. *Id.* After layoff plans were approved and slated to be implemented, a union challenged the Governor's refusal to implement layoffs as dictated by the Legislature. *Id.* at 227. The Executive Branch asserted to the court:

[T]he Appropriations Amendments impermissibly intrude on the Governor's constitutional authority to administer funds, which includes the making of specific staffing and resource-allocation decisions. The Governor claims that if government is to operate efficiently and effectively, the selection and assignment of necessary personnel and the decisions concerning how to best effectuate a reduction in force must reside in the executive branch. The Legislature's attempt to control the order of layoffs both usurps and thwarts the Governor's duty to make staffing and resource allocations, which are an essential part of the Executive's day-to-day management of the branch of government.

Id. at 229. After an exhaustive review of precedent established in their jurisdiction, the court held that the appropriations act amendments were unconstitutional because such legislative action violated the separation of powers. *Id.* at 229-34. The court stated:

The Legislature properly has the power to reduce appropriations for the operation of State government. Both the executive and legislative branches agree that because the Appropriations Act did not provide sufficient funds to maintain staffing at then-current levels, personnel cuts were required. According to plaintiffs, the Legislature's purpose in enacting the provisions restricting layoffs was to ensure that those personnel cuts were made in the most efficient manner possible, with the least possible disruption in the provision of State services.

Legislative oversight of or cooperation with the Executive was not necessary to fulfill that purpose. The Governor had the ability -- and indeed the duty -- to make the necessary personnel cuts so as to enable the agencies to continue to function as efficiently and effectively as possible. Not only was the legislative mandate of how to make the cuts unnecessary for the effectuation of the statutory scheme, but the Legislature's attempt to "micromanage" the staffing and resource allocations in administering the appropriated funds was a serious intrusion on the Governor's authority and ability to perform his constitutionally-delegated functions.

Staffing decisions are at the core of the Governor's day-to-day administration of government. Decisions about what type of employees are needed in a department and how many positions can be retained or eliminated directly affect how the executive branch operates. By hampering executive discretion on staffing decisions, the

provisions prevent the Governor and department heads from using their expertise and familiarity with the agencies they manage to make the cuts in the least disruptive manner. Thus the provisions impede them in the performance of their constitutional duties faithfully to execute the laws.

* * * *

Indisputably, the Legislature retains broad powers in the appropriations process to control the size and priorities of the State government. The Legislature properly exercised the power in this case by choosing to reduce the amount of money it appropriated to the salaries-and-wages accounts of most executive departments, thus necessitating a reduction of the State workforce through layoffs. The Legislature's power to shape State government and achieve savings in this manner is unquestioned. However, in this case the Legislature went one step further in its attempt to shape State government. Having reduced the salaries-and-wages accounts, it attempted, through the provisions challenged here, to control how those reduced appropriations would be administered specifying which employees should and should not be laid off. Although the Legislature may "appropriate and dictate, if it desires, the services and positions designated for such appropriation," "there is one thing ... [the Legislature] cannot do ... It cannot exercise functions of the executive. It cannot administer the money after it has been once appropriated."

Id. at 234-35.

Similarly, the Guam district court has recognized that once the Legislature has appropriated funds to the Executive Branch, "the Governor is authorized to exercise his executive prerogative in administering the expenditure of appropriate funds." *Santos v. Calvo*, Civil 80-0223A, p.10 (D.C. Guam 1982). In so ruling, the district court noted that the Territorial Auditor of Guam had "recognized that 'when an appropriation is made in lump sum, the expenditures from that appropriation are executive prerogatives and the legislature has no further control over such expenditures.'" *Id.* (citing Legal Opinion of the Territorial Auditor of Guam TA 80-1, Jan. 2, 1980). *See also* 63C Am. Jur. 2d Public Funds § 45 (1997)⁴.

Section 11 of Public Law No. 24-327, as amended, mandates that once an FTE (classified) position becomes vacant "for whatever reason," an Executive

⁴ This section states in relevant part:

Once the appropriation is made, the legislative work is complete and it is up to the executive to administer the appropriation. Yet it has been stated that an appropriation of public monies is not a mandate to spend, rather it is an authorization given by the legislature to a designated agency not to exceed a stated sum. Spending money appropriated by the legislature is essentially an executive task, and regardless of how minutely appropriations are itemized, some scope is left to the executive for the exercise of judgment and discretion in making expenditures within the limits of the appropriation. Allocation of resources and establishment of priorities are the essence of management.

branch agency can no longer hire a replacement, even though funds have already been appropriated for the position by the Legislature.⁵ The only way a replacement can be hired is for the Governor to return to the Legislature and submit a bill for re-appropriation and re-establishment of the eliminated FTE position. The bill must then be reviewed by the Legislative Committee with oversight of the respective agency and passed by a majority of the Legislature. Only then can the eliminated FTE position be re-established. Such legislation not only seriously intrudes on the Governor's authority and ability to perform his constitutionally-delegated functions of "general supervision and control" of the Executive Branch, but has impermissibly delegated an executive power of expenditure of appropriated funds to itself. See *Opinion of Justices, supra; Anderson, supra; Communications Workers, supra.*

Section 11 of Chapter V of Public Law No. 25-03 mandates that "[n]otwithstanding any other provision of law, the Executive Branch for Fiscal Year 1999 is authorized FTE(s) equal to the FTE level pursuant to "Exhibit A" of this Act. Exhibit A lists each Executive Branch agency and designates the total number of FTE positions each agency will have. As previously discussed, a similar provision of an appropriation bill that limited the number of FTEs which a government agency could have was ruled unconstitutional as a violation of the separation of powers doctrine because it interfered with the executive authority to allocate staff and resources in administering funds. See *Anderson, supra.* Accordingly, the suspect provisions in Public Law No. 24-327, as amended, and Public Law No. 25-03 violate the separation of powers doctrine, and therefore, are inorganic and void.

CONCLUSION: Section 11 of Public Law 24-327, as amended, and Section 11 of Chapter V of Public Law No. 25-03, violate the separation of powers doctrine, and therefore, are inorganic and void.

⁵ Section 11 of Public Law No. 24-327, as amended, states in relevant part:

The appropriated funding and Full-Time Equivalencies ('FTE') for any position in the government of Guam, including the Judicial Branch, funded by the General Fund or any fund appropriated, including the Tourist Attraction Fund, by *I Liheslaturan Guahan*, which becomes vacant after the effective date of this Act for whatever reason, shall be considered automatically repealed.

The following fast-track procedure must be followed in order for a replacement to be hired. *I Maga'lahaen Guahan* shall transmit to the Speaker of *I Liheslaturan Guahan* in bill form a detailed description of the position, or positions, the funding and FTE of which have been automatically repealed pursuant to this Section which *I Maga'lahaen Guahan* wishes to reinstate. The Speaker of *I Liheslaturan Guahan* shall submit *I Maga'lahaen Guahan's* bill to the Committee on Rules for referral to the appropriate oversight committee. The requirement for a public hearing of the bill shall be waived, however, public notice prior to the consideration of the bill in Session shall be required. An affirmative vote of the majority of the Senators shall be required in order to pass any bill to re-appropriate towards and re-establish an FTE repealed pursuant to this Section. Only upon the re-apportionment of funds for, and the re-establishment of, a repealed FTE by action of *I Liheslaturan Guahan* pursuant to this Section may any hiring action on the vacant position be initiated.

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October 19, 1999

Memorandum (Opinion)

REF: GOV-991308

To: The Honorable Carl T.C. Gutierrez
Governor of Guam

From: Attorney General

Subject: Reorganization of the Government of Guam Pursuant to Public Law No. 25-72, §20

Buenas! You have asked for information concerning the Governor's reorganization authority as follows:

REQUEST: What are the powers and limitations of the Legislature and the Governor in the reorganization of the Government of Guam pursuant to §20 of Public Law No. 25-72?

ANSWER: The Governor has the authority pursuant to the Organic Act to reorganize departments, agencies and other executive instrumentalities of the Government of Guam without legislative consent. However, the Legislature has the power to pass legislation not inconsistent with the Organic Act and other laws of the United States applicable to Guam including the power of monetary appropriation. Therefore, the Legislature creates public entities within limits and defines by legislation whether an agency or department is an executive instrumentality of the Government of Guam, and controls the size of the government by the power to restrict monetary appropriation.



Commonwealth Now!

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STATEMENT OF FACTS:

Among other things, Public Law No. 25-72 is an appropriations act purporting to provide by subsequent legislation, in cooperation with the administration and the executive branch, a bill to reduce the government of Guam by no less than fifty percent (50%) through a government wide reorganization. Roundtable discussions are mandated to produce legislation accomplishing the reorganizational purposes detailed in §20 within sixty days of the Act's effective date. The specific powers and duties of the Legislature and the executive are not effectively defined.

DISCUSSION:

The Organic Act functions as Guam's constitution and the Legislature may not pass laws inconsistent with the powers of each of the three branches of government. As limited by §1421a of the Organic Act, "the government of Guam shall consist of three branches, executive, legislative, and judicial." The separation of powers of these three branches is considered more strict under the Organic Act than under the U.S. Constitution. See, *People v. Camacho*, 1 Guam R. 501 (Sup. Ct. 1975).

Section 1423a of the Organic Act concerns the scope of the Legislature's authority and provides, in pertinent part, that "The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam."

The Governor, on the other hand, as head of the executive branch, is vested with "[t]he executive power of Guam" and "shall have general supervision and control of all the departments, bureaus, agencies and other instrumentalities of the executive branch of the government of Guam." 42 U.S.C. §1422.

The executive power is the power to execute laws, that is, carry laws into effect, as distinguished from the power to make those laws, or to judge them. See, generally, 16 Am.Jur.2d *Constitutional Law* §303. In fact, however, the power to legislate or to make laws is generally considered "the most important of all the powers of government" and "has been characterized as the vital function which animates, directs, and controls the whole operation of civil authority." See, generally, 16 Am.Jur.2d *Constitutional Law* §318. Legislatures are limited only by the provisions of the constitution, and if no limitations exist, then "the legislative will is supreme and must be obeyed by all other departments of the government." See, generally, 16 Am.Jur.2d *Constitutional Law* §319.

With respect to the organization of the executive branch of the government of Guam, our Organic Act has specifically delegated to the Governor, as head of the executive branch, the following authority pursuant to §1422c(c), which is entitled "Reorganization":

The Governor shall, from time to time, examine the organization of the executive branch of the government of Guam, and shall determine and carry out such changes therein as are necessary to promote effective management and to execute faithfully the purposes of this chapter and the laws of Guam.

Thus, excluded from one of those "rightful subjects of legislation" is the Legislature's authority to pass legislation which would usurp the Governor's authority as provided for in §1422c(c). Hence, while the Guam Legislature may rightfully pass legislation to create instrumentalities of the government of Guam, and to create mandates for these government instrumentalities outlining their purposes or functions in a general sense, the Guam Legislature's authority does not extend to deciding how an executive branch agency may be better organized and to carrying out any changes to better organize the agency. The Legislature only determines whether an agency or department is an instrumentality of the executive branch of the government of Guam. See, e.g., *Roberto v. Bordallo*, 839 F.2d 573, 574 (1987); *Laguana v. Guam Visitors Bureau*, 725 F.2d 519, 521(1984).

The Legislature also does not have the power to require the Governor or any executive instrumentality of the government of Guam to obtain the Legislature's consent to reorganize said instrumentality or instrumentalities. In §12 of Public Law No. 20-65, the Legislature added §5302(a) to the Government Code of Guam (later recodified as 5 GCA §11103). Section 11103 requires legislative approval for any reorganization of a department, agency, or instrumentality of the government of Guam. In an Attorney General Opinion to the Director of the Department of Public Health and Social Services dated March 6, 1990 (Ref: PHSS 90-0191), we opined that §11103 violated the separation of powers doctrine because the Organic Act specifically delegates to the Governor, and not the Legislature, the authority to organize the executive branch. Thus, the Legislature may not encroach on the Governor's authority by requiring the Governor's reorganization plans to be submitted for legislative approval. Likewise, government agencies are not required to submit their reorganization plans for legislative approval. As we said in our prior opinion:

The executive power is always subject to check by the terms of the legislation that authorized it, and if that authority is exceeded, it is open to judicial review as well as the power of the (U.S.) legislature to modify or revoke the authority entirely. See e.g. *INS v. Chadha*, 103 S.Ct. 2764 (1983).

Attorney General of Guam Opinion PHSS 90-0191 dated March 6, 1990 at page 5.

The authority to reorganize the executive branch is not the same as the authority to create a separate agency of the government of Guam. The creation of agencies and instrumentalities of the government of Guam is strictly a legislative function. The Organic Act does not bestow upon the Governor the authority to create separate agencies or instrumentalities. *Laguana v. Guam Visitors Bureau*, 725 F.2d 519, 521(1984). The power to modify a public entity previously created by the Legislature is not the same as the power to create a new entity. The Governor has no authority to create a separate agency of the government of Guam by executive order. *Roberto v. Calvo*, Dist. Ct. (Judge Cristobal Duenas, 1986), *aff'd. Roberto v. Bordallo*, 839 F.2d 573, 574 (1987).

Once the legislature has created the executive agency or department, the Governor has exclusive authority to reorganize the departments or agencies in any manner that complies with the legislative purposes delineated in the legislation establishing the legislative mandate to the executive. However, the one clear qualification upon the reorganizational authority of the Governor is the merit

system mandated by the Organic Act.¹ The civil service law in 6 GCA §4201 requires that classified employees may only be removed for cause, which limits both the executive and the Legislature if a reorganization affects an employee's pay or substantive duties.

Additionally, the Legislature may have concurrent authority over the functions of certain agencies such as the Department of Education and Guam's public school system pursuant to §1421g(b) of the Organic Act. This section states that the government of Guam shall provide an adequate public educational system, and to that end shall establish, maintain, and operate public schools according to the laws of Guam. Prior to 1986, the same section of the Organic Act read, "The Governor shall provide an adequate public educational system of Guam, and to that end shall establish, maintain and operate public schools at such places in Guam as may be necessary." [Emphasis added.] Superior Court of Guam Judge Tydingco-Gatewood, at one point, issued a decision under the current Organic Act section which states that the government of Guam, generically, shall provide an adequate educational system. The legislature had passed an elected school board statute, in Public Law No. 22-42, which was challenged by the executive and others. Judge Tydingco-Gatewood decided that the Department of Education was not a part of the Executive Branch of the government of Guam. See, *Tainatongo v. Territorial Board of Education*, Special Proceedings Case No. SP114-95, consolidated with *Gutierrez, et al. v. Territorial Board of Education, et al.*, CV1383-95, Decision at page 15 (September 11, 1996). More recently, the Guam Legislature has placed the Department of Education directly under the Governor and, thereby, back into the Executive Branch, extinguishing the Board of Education. See, Public Law No. 25-03, §18 (1999). However, the Legislature could recreate a Board or Boards of Education at any time. Congressional legislative history does not indicate Congress intended for the Governor to have exclusive power over Guam's school system even prior to amendment of the Organic Act in 1986. See, e.g., *Brown v. Civil Service Commission*, 818 F.2d 706,709 (9th Cir.1987). However, the educational instrumentality must be in the government of Guam.

In *Bordallo v. Baldwin*, 634 F.2d 932 (9th Cir 1980), the Guam Legislature attempted to create a hospital board of trustees consisting of members chosen by private organizations whom the Governor was required to appoint. However, because the Organic Act gives the Governor the power to establish hospitals and a public health system, the court decided that if the Governor has no power to choose the members of the hospital board, then an executive function is being encroached upon by the Legislature, and any such law is inorganic as being violative of §1421g(a). Additionally, the Legislature may not limit the Governor's organic power to remove executive department heads as delineated in 42 USC §1422. *Territorial Prosecutor v. Superior Court of Guam*, 1983 WL 30224, at 6 (D. Guam A.D.1983).

Based upon §1423j of the Organic Act, the Guam Legislature has plenary or absolute power over appropriations, and it may attach conditions upon the expenditure of appropriated funds. Section 1423j(a) provides:

¹ 48 U.S.C. §1422c(a) provides, in pertinent part, "The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system ..."

Appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the legislature.²

See, also, *Santos v. Calvo*, 1982 W.L 10790 at 3 (D. Guam A.D. 1982).

The Legislature may determine and control the level of funding by appropriation, and it may refuse thereby to fund specific agency functions. Once an appropriation has been made for a specific purpose or function, however, the Legislature no longer has control over how the Governor determines to deliver the service or accomplish the function within the structure of the instrumentalities of the executive branch established by the Legislature.

Nevertheless, the Legislature may change the establishment of functions or purposes by legislation not inconsistent with the Organic Act. As the court indicated in *Bordallo v. Balwin, supra* at 934, the Legislature may determine whether a hospital shall exist at all, and how large it will be, and the size and qualifications for the governing body, but the Legislature may not remove the ultimate responsibility for governance of the hospital given to the Governor in the Organic Act.

Thus, the Governor has the prerogative to determine the organizational structure of the agencies and departments the Legislature has created. Additionally, the Governor has the organic power to restructure and reorganize the executive branch instrumentalities of the government of Guam to effectively and efficiently carry out the mandate of the legislature in creating them.

A reorganization has been defined by the Guam Legislature in 5 GCA §11103(b) as:

1. The transfer of a whole or any part of an agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency;
2. The abolition of all or any part of the functions of any agency;
3. The consolidation or coordination of the whole or any part of the functions of any agency, or the whole or any part of any other agency or the functions thereof;
4. The consolidation or coordination of any part of any agency or the functions thereof with any other agency or the functions thereof;
5. The authorization of any non-elective officer to appoint any individual to perform any functions;
6. The abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of a reorganization plan will not have, any function;

²48 U.S.C. §1423j(b) states in pertinent part... "If at the termination of the fiscal year the legislature shall have failed to pass appropriation bills providing for payments of the necessary current expenses of the government and meeting its legal obligations for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as same may be applicable shall be deemed reappropriated, item by item." Comment: There is some question as to whether the three month budget in the current appropriations act is organic in light of this section.

7. The establishment of a new agency to perform the whole or any of the functions of an existing agency or agencies; or
8. The use of a person under contract to perform functions which regularly are performed or budgeted to be performed by employees appointed under the merit system.

Under this definition of reorganization, the Guam Legislature would have the power to determine whether an instrumentality of the government of Guam shall exist at all and as explained in *Laguana, supra*. However, the Governor may then reorganize such agencies and their functions pursuant to his Organic Act powers to reorganize the government from time to time. A realignment by the Governor, where he streamlines a department by reassigning personnel and functions without substantive changes, would not require coordination with the Legislature. See, Attorney General of Guam Opinion Ref: LEG 85-0106 dated February 4, 1985.

However, the Governor would not have realignment authority as to agencies outside the executive branch and the government of Guam for that matter.

For example, in addressing the Guam Visitors Bureau, the 9th Circuit held that the removal of the Guam Visitors Bureau from the Governor's control and supervision did not infringe upon the Governor's powers over executive instrumentalities of the government of Guam pursuant to the Organic Act. *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985). This is because the Legislature had created the Guam Visitors Bureau as a "public corporation" which was not a government entity.

On the other hand, when the Legislature created the Guam Telephone Authority, the Guam Power Authority, and the Guam Airport Authority, it specifically designated these agencies by law as instrumentalities of the government of Guam.

Certainly, the Legislature is not legally required to place an agency under executive supervision at all unless the agency's purposes or functions are specifically outlined or mandated as an executive function pursuant to the Organic Act. When an agency does have executive duties and functions, the legislature then must place it in the executive branch under the doctrine of separation of powers. The legislature cannot delegate such powers and then veto executive decisions or delegate executive power to a legislative agent as though the government entity thus created was an instrumentality of the legislative branch because the foundation of the Constitutional doctrine of separation of powers prohibits such control. See, *Metropolitan Washington Airports Authority, et al. v. Citizens for the Abatement of Aircraft Noise*, 111 S. Ct. 2298, 2311-2312 citing *Springer v. Philippine Islands*, 48 S.Ct. 480 (1928) and *Bowsher v. Synar*, 106 S.Ct. 3181,3187(1986).

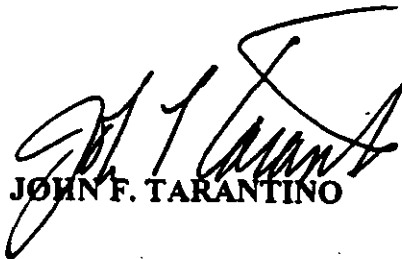
CONCLUSION:

Since the Legislature has the power to withdraw mandates, change government purposes, and abolish agencies, the executive would be prudent in coordinating any defined "reorganization" with the Legislature. Such coordination would insure, at least in the short term, that the Legislature would

not respond with a law abolishing an agency reorganized by the executive altogether or changing its mandate, purposes and functions. Even with the Governor's reorganization power, laws may need change regarding the specifics of a given function and duties. However, under the Organic Act (constitutional) doctrine of separation of powers specifically delineating three branches of the government of Guam, the legislature has a duty to designate any agency or department with governmental functions, that are executive in nature, as an instrument of the executive branch. Without coordination, the checks and balances of the Executive and Legislative Branches could result in a stalemate under the mandate of Public Law No. 25-72, §20 which reduces the government of Guam by no less than fifty percent, and could end up costing more in time than savings in money. Genuine cooperation between the legislative and executive branches, keeping the guidelines of the separation of powers doctrine in mind, could produce significant changes and improvements in the streamlining of the government, and a cost savings necessary for the survival of a viable government of Guam in our harsh economic times.

This opinion should be read together with my May 27, 1999 Memorandum Opinion entitled "Review of Public Law Nos. 24-327 and 25-03 Pertaining to Restriction of the Governor's Employment Authority for Executive Agencies", a copy of which I have attached for your review.

Dangkolo Na Agradesimiento!



JOHN F. TARANTINO