



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

AUG 15 2002

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

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 326 (LS) "AN ACT TO *REPEAL AND REENACT* § 56 OF P.L. NO. 26-76 AND TO *ADD* § 22(e) TO CHAPTER V OF P.L. NO. 26-35; TO *REPEAL AND REENACT* § 6112 OF TITLE 3 AND TO *AMEND* §§ 2103.5 AND 2103.9 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION, AND FOR OTHER PURPOSES," which was vetoed and overridden. This legislation is now designated as **Public Law No. 26-119**.

Very truly yours,

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

Attachments: original bill for vetoed legislation or
copy of bill for signed or overridden legislation
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco
Speaker

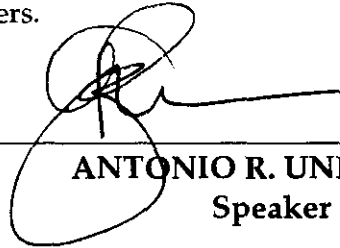
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OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGEMENT RECEIPT	
Received By	
Time	9:33
Date	8/16/02

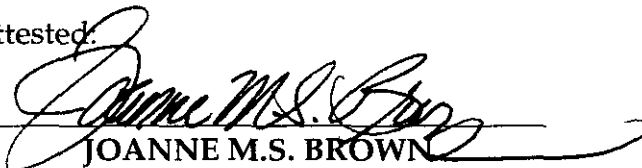
MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

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


This is to certify that Substitute Bill No. 326 (LS), "AN ACT TO REPEAL AND REENACT § 56 OF P.L. NO. 26-76 AND TO ADD § 22(e) TO CHAPTER V OF P.L. NO. 26-35; TO REPEAL AND REENACT § 6112 OF TITLE 3 AND TO AMEND §§ 2103.5 AND 2103.9 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION, AND FOR OTHER PURPOSES," returned without approval of *I Maga'lahen Guåhan*, was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 14th day of August, 2002, to pass said bill notwithstanding the veto of *I Maga'lahen Guåhan* by a vote of thirteen (13) members.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15th day of August,
2002, at 1:15 o'clock P.M.


Assistant Staff Officer
Maga'lahi's Office

Public Law No. 26-119

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

Bill No. 326 (LS)

As substituted by the Committee
on Rules, General Governmental
Operations, Reorganization and Reform,
and Federal, Foreign and General Affairs, and
amended on the Floor.

Introduced by:

Mark Forbes
V. C. Pangelinan
J. F. Ada
T. C. Ada
F. B. Aguon, Jr.
J. M.S. Brown
E. B. Calvo
F. P. Camacho
M. C. Charfauros
L. F. Kasperbauer
L. A. Leon Guerrero
K. S. Moylan
A. L.G. Santos
A. R. Unpingco
J. T. Won Pat

**AN ACT TO REPEAL AND REENACT § 56 OF P.L. NO.
26-76 AND TO ADD § 22(e) TO CHAPTER V OF P.L.
NO. 26-35; TO REPEAL AND REENACT § 6112 OF
TITLE 3 AND TO AMEND §§ 2103.5 AND 2103.9 OF
TITLE 4, ALL OF THE GUAM CODE ANNOTATED,
RELATIVE TO CLARIFYING THE CONTINUED
EXISTENCE OF THE GUAM ELECTION
COMMISSION, AND FOR OTHER PURPOSES.**

1

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
2 hereby finds that a recently overridden vetoed legislation, namely Public Law
3 Number 26-76:56, has been misinterpreted by *I Maga'lahren Guåhan* to the
4 extent that he believes that the law abolished the existence of the Guam
5 Election Commission's Board of Directors.

6 This clearly was neither the intent nor the effect of Public Law Number
7 26-76:56. Noteworthy is the fact that subsequent to Federal Judge John S.
8 Unpingco's September 13, 2000 decision finding *I Maga'lahren Guåhan's*
9 unilaterally selected Guam Election Commission Board void, *I Maga'lahren*
10 *Guåhan* refused to empanel the Guam Election Commission Board specified
11 by Public Law Number 25-146. Because of the delay which was caused by *I*
12 *Maga'lahren Guåhan*, and his prolonged appeal, and the fact that he never
13 permitted a partisan board to convene, made up of representatives from the
14 Democrat and Republican parties, *I Maga'lahren Guåhan* in effect prevented the
15 meeting of the Board for over a twelve (12) month period. Further, *I*
16 *Liheslaturan Guåhan* would *not* have intended that the Guam Election
17 Commission Board be abolished, since it was expressly opposing *I Maga'lahren*
18 *Guåhan* to preserve the partisan election board both in the U.S. District Court
19 of Guam and the U.S. Ninth Circuit Court of Appeals.

20 This legislation is intended to clarify that *I Liheslaturan Guåhan* never
21 intended to abolish the Guam Election Commission Board and avoid any
22 ambiguity or misinterpretation of Public Law Number 26-76:56.

1 **Section 2. Preservation of the Guam Election Commission Board.**

2 Section 56 of Public Law Number 26-76 is hereby *repealed and reenacted* to read
3 as follows:

4 **“Section 56.** Any board, commission, council or oversight
5 body that has *not* met in the last twelve (12) months, with the *exception*
6 of bodies relating to the Department of Education (‘DOE’), the Guam
7 Community College (‘GCC’), the University of Guam (‘UOG’), the
8 Guam Memorial Hospital Authority (‘GMHA’) and the Guam Election
9 Commission (‘GEC’), shall hereby be abolished.

10 Any powers vested in said boards, commissions or councils shall
11 revert to the previous authority empowered with handling the
12 respective mandate. In the event a body was created within a
13 governmental entity to generally manage the affairs of matters relating
14 to said entity, that governmental entity shall assume the powers given
15 to any body abolished by this Section.

16 Should *I Maga’lahen Guåhan* identify the continued need for such a
17 board, commission, council or oversight body, *I Maga’lahen Guåhan* shall
18 provide *I Liheslaturan Guåhan*, within thirty (30) days of the enactment of
19 this Act, justification for the reformulation of such body and a list of
20 appropriate mandates.”

21 **Section 3.** Section 6112 of Chapter 6 of Title 3 of the Guam Code
22 Annotated is hereby *repealed and reenacted* to read as follows:

23 **“Section 6112. Filing and Distribution of Petitions.**

1 Notwithstanding any other provision of law, partisan candidates for *I*
2 *Liheslaturan Guåhan*, offices of *I Maga'lahren Guåhan* and *I Segundu Na*
3 *Maga'lahren Guåhan*, Washington Delegate, Mayor and Vice-Mayor shall
4 file their declarations of candidacy with the Commission *no earlier than*
5 one hundred and thirty (130) days before the primary election, and *no*
6 *later than sixty (60) days* before the primary election.

7 Notwithstanding any other provision of law, candidates for offices
8 with a non-partisan requirement, including the Guam Education Policy
9 Board, the Public Auditor, the Attorney General of Guam and the
10 Consolidated Commission on Utilities shall file their declarations of
11 candidacy with the Commission *no earlier than* one hundred and thirty
12 (130) days and *no later than sixty (60) days* before the general election.

13 The Commission shall publish in a newspaper of general
14 circulation the names of all candidates and the offices for which they
15 have declared their candidacy after each filing deadline.”

16 **Section 4.** Section 2103.5 of Chapter 2 of Title 4 of the Guam Code
17 Annotated is hereby *amended* to read as follows:

18 **“Section 2103.5. Submission for Legislative Advice and**
19 **Consent.** The appointing authority shall submit to the Speaker of *I*
20 *Liheslaturan Guåhan* the name of the nominee to a position in a
21 nomination letter to be hand-delivered to the office of the Speaker. The
22 nomination letter shall include the following: name; position to which
23 the appointment is made; address; citizenship; age; educational
24 background; prior government service whether within or without the

1 government of Guam; information pertinent to the position's
2 qualifications; police clearance report; a copy of DD Form 214 for those
3 with prior military service; special distinctions and honors; whether the
4 nominee has been declared mentally incompetent by any court, whether
5 within or without the United States, and *if so*, specify in detail reasons
6 and facts related to such declaration; whether the nominee has been
7 found *not* guilty or *not* punishable in any criminal proceedings by
8 reason of insanity; whether the nominee has been confined to a mental
9 institution for any reason, and if so, the reasons why the appointing
10 authority believes the nominee is *not* suffering from any mental illness
11 or affliction.

12 The applicant shall execute an affidavit under penalty of perjury
13 that the applicant has read and reviewed the information contained in
14 the nomination letter from *I Maga'lahaen Guahan* that the matters
15 contained in such nomination letter and all attachments thereto are true
16 and correct. *If* the applicant cannot, or will not, certify or verify the
17 accuracy of any part of the nomination letter, it shall be so noted in the
18 applicant's affidavit."

19 **Section 4.** Section 2103.9 of Chapter 2 of Title 4 of the Guam Code
20 Annotated is hereby *amended* to read as follows:

21 **"Section 2103.9. Time Limits on Acting Capacity for**
22 **Positions requiring Legislative Approval.**

23 (a) *I Maga'lahaen Guahan* or appointing authority may, by
24 separate appointment, appoint a person in an acting capacity to

1 fill a salaried position which requires the advice and consent of *I*
2 *Liheslaturan Guåhan*. In any twelve (12) month period, no person
3 may serve in such an acting capacity for a total of more than
4 ninety (90) days plus three (3) legislative days; *provided*, that no
5 acting director who is *not* otherwise a classified employee of the
6 government of Guam may serve in the capacity of acting director
7 without the transmittal of such person's name to *I Liheslaturan*
8 *Guåhan* for the purpose of confirmation within fifteen (15) days of
9 their appointment as acting director.

10 This Section does *not* apply to appointments to classified
11 positions, but does apply to classified employees appointed in an
12 acting capacity to positions requiring the advice and consent of *I*
13 *Liheslaturan Guåhan*.

14 (b) In the event of that person's rejection, a candidate's
15 nomination may be resubmitted by the appointing authority to fill
16 the same position, but the candidate may *not* function in an acting
17 capacity for that position following such rejection, and may
18 assume the position *only* when confirmed by *I Liheslaturan Guåhan*.

19 (c) No funds appropriated by law may be expended to
20 pay a salary or any personnel benefits of any kind, or to pay
21 someone on payroll or contract who serves in an acting capacity in
22 a position to which that person was appointed by *I Maga'lahaen*
23 *Guåhan* and subsequently denied confirmation by *I Liheslaturan*

1 *Guáhan*, for a period of three (3) years following rejection of that
2 person's appointment by *I Liheslaturan Guáhan*.

3 (d) No person shall serve more than a total of ninety (90)
4 days plus three (3) legislative days during any twelve (12) month
5 period in an acting capacity on any board or commission, which
6 shall include a period in time during which the position was held
7 over, following election of a new administration. No person may
8 be appointed to serve in an acting capacity on any board or
9 commission, *unless* that person has been nominated by the
10 appointing authority to serve in that position in a permanent
11 capacity.

12 (e) An appointed board or commission member may
13 continue to serve in that person's position after that person's term
14 has expired in an acting holdover capacity until that person, or
15 another person, is appointed by *I Maga'lahaen Guáhan* and
16 confirmed by *I Liheslaturan Guáhan*; provided, that the time limits
17 imposed by law on acting appointments shall apply.

18 (f) The ninety (90) calendar day plus the three (3)
19 legislative day limitation period for serving in an acting capacity
20 shall *not* be tolled because another person is serving in a
21 temporary acting capacity during the nominee's absence, nor shall
22 it be tolled by the appointment of some other person to
23 temporarily fill the position in an acting capacity."

1 **Section 5.** Section 22(e) is hereby *added* to Chapter V of Public Law
2 Number 26-35 to read as follows:

3 “(e) In the year that a regular primary and general election is
4 conducted, the appropriations to the Guam Election Commission shall
5 *not* be subject to the Bureau of Budget and Management Research’s
6 (‘BBMR’s’) allotment process, for the budget for that calendar year.”

7 **Section 6. Severability.** *If* any provision of this Law or its
8 application to any person or circumstance is found to be invalid or contrary to
9 law, such invalidity shall *not* affect other provisions or applications of this
10 Law which can be given effect without the invalid provisions or application,
11 and to this end the provisions of this Law are severable.

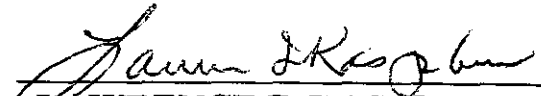


MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

2002 (SECOND) Regular Session

I, Lawrence F. Kasperbauer, Acting Speaker of *I Mina' Bente Sais Na Liheslaturan Guåhan*, hereby certify, in conformance with Title 2 Guam Code Annotated § 2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public welfare of the People and therefore waive the statutory requirements for a public hearing on Bill Number 326 (LS), "AN ACT TO CLARIFY THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION," which was introduced on this date, May 20, 2002, and therefore waive the statutory requirements for a public hearing on Bill Number 326 (LS).

Dated: May 21, 2002


LAWRENCE F. KASPERBAUER
Acting Speaker and Presiding Officer

Overridden

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2002 (SECOND) Regular Session

Date: 8/14/02

VOTING SHEET

Vetoed
Bill No. 326 (LS)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	.	✓			
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	1	✓			
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL 13 2 _____

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUN 11 2002

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>2:40</u>
Date	<u>6/11/02</u>

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 326 (LS) "AN ACT TO REPEAL AND REENACT § 56 OF P.L. NO. 26-76 AND TO ADD § 22(e) TO CHAPTER V OF P.L. NO. 26-35; TO REPEAL AND REENACT § 6112 OF TITLE 3 AND TO AMEND §§ 2103.5 AND 2103.9 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION, AND FOR OTHER PURPOSES," which I have vetoed.

This legislation never had a public hearing. While it has been stated that it is an emergency measure, a number of the subjects treated in this legislation are already making their way through the litigation process within the court system. Matters that are before the courts should be held in abeyance until the courts have made their rulings.

The legislative intent section of this legislation recites incorrectly that the Governor prevented the meeting of a Guam Election Commission made up of individuals selected from the political parties for over a twelve-month period. This issue was in litigation, and the Governor's appointees to the Guam Election Commission were never prohibited from meeting.

Whatever the Legislature's intent, it is clear that the language of Public Law No. 26-76 did not exempt the Guam Election Commission from being abolished. If laws as written cannot be relied upon for their plain meaning, then the laws as written do not have much meaning for purposes of guiding the public.

0820

Legislative Secretary
SB326;veto
June, 2002
Page 2

On another matter within this legislation, the amendments made to two sections concerning acting appointments continues to muddy the waters with respect to interpreting how to appoint persons in acting capacities. For example, in this legislation, Section 2103.5, the amendment removes the time limit of 180 days for the Legislature to act on a nomination. Theoretically, this means the Legislature can avoid its responsibility of conducting a hearing on a nomination and placing the nomination on the session agenda for a vote. The law contains no time limits, and nothing is assumed from the Legislature's failure to act.

On a final note, the amendments to Section 2103.9 are inconsistent with the language of Section 2103 of Title 4 of the Guam Code Annotated. In Section 2103.9, a time frame of 15 days is prescribed for transmitting an acting appointment to the Legislature. In Section 2103, a time frame of 10 days is prescribed for transmitting an acting appointment to the Legislature.

It seems that the amendments made to Sections 2103.5 and 2103.9 of Title 4 of the Guam Code Annotated were made without any reference to inconsistent language in other sections of the same code. Sections 2103 and 2103.1 through 2103.16 should all be considered together since they are all supposed to work together to form a system for filling appointed positions within the government.

Very truly yours,



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


Attachments: original bill for vetoed legislation or
copy of bill for signed or overridden legislation
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco
Speaker

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

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

This is to certify that Substitute Bill No. 326 (LS), "AN ACT TO REPEAL AND REENACT § 56 OF P.L. NO. 26-76 AND TO ADD § 22(e) TO CHAPTER V OF P.L. NO. 26-35; TO REPEAL AND REENACT § 6112 OF TITLE 3 AND TO AMEND §§ 2103.5 AND 2103.9 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION, AND FOR OTHER PURPOSES.," was on the 21st day of May, 2002, duly and regularly passed.



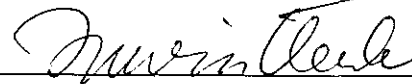
ANTONIO R. UNPINGCO
Speaker

Attested:



Lawrence F. Kasperbauer
Vice-Speaker/Acting Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 20th day of May, 2002,
at 4:40 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN
2002 (SECOND) Regular Session

Date: 5/21/02

VOTING SHEET

S Bill No. 326(LS)

Resolution No. _____

Question: _____

VETOED

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.					✓
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.					✓
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.					✓
WON PAT, Judith T.					✓

TOTAL 11 0 0 0 4

CERTIFIED TRUE AND CORRECT:

Patricia C. ...
 Clerk of the Legislature

* 3 Passes = No vote
 EA = Excused Absence

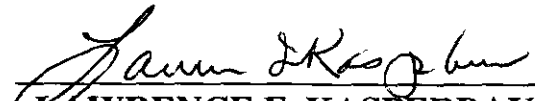


MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

2002 (SECOND) Regular Session

I, Lawrence F. Kasperbauer, Acting Speaker of *I Mina' Bente Sais Na Liheslaturan Guåhan*, hereby certify, in conformance with Title 2 Guam Code Annotated § 2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public welfare of the People and therefore waive the statutory requirements for a public hearing on Bill Number 326 (LS), "AN ACT TO CLARIFY THE CONTINUED EXISTENCE OF THE GUAM ELECTION COMMISSION," which was introduced on this date, May 20, 2002, and therefore waive the statutory requirements for a public hearing on Bill Number 326 (LS).

Dated: May 21, 2002


LAWRENCE F. KASPERBAUER
Acting Speaker and Presiding Officer

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 326 (LS)

As substituted on the Floor.

Introduced by:

Mark Forbes
v. c. pangelinan

**AN ACT TO CLARIFY THE CONTINUED EXISTENCE
OF THE GUAM ELECTION COMMISSION.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 hereby finds that a recently overridden vetoed legislation, namely Public Law
4 Number 26-76:56, has been misinterpreted by *I Maga'lahren Guåhan* to the
5 extent that he believes that the law abolished the existence of the Guam
6 Election Commission's board of directors.

7 This clearly was neither the intent nor the effect of Public Law Number
8 26-76:56. Noteworthy is the fact that subsequent to Federal Judge John S.
9 Unpingco's Year 2000 decision finding *I Maga'lahren Guåhan's* unilaterally

1 selected election commission board illegal, *I Maga'lahaen Guahan* refused to
2 empanel the election commission board specified by Public Law Number 25-
3 146. Because of the delay which was caused by *I Maga'lahaen Guahan*, and his
4 prolonged appeal, and the fact that he never permitted a partisan board to
5 convene, made up of representatives from the Democrat and Republican
6 parties, *I Maga'lahaen Guahan* in effect prevented the meeting of the Board for
7 over a twelve (12) month period. Further, *I Liheslaturan Guahan* would not
8 have intended that the election commission board be abolished, since it was
9 expressly opposing *I Maga'lahaen Guahan* to preserve the partisan election
10 board both in the U.S. District Court of Guam and the Ninth Circuit Court of
11 Appeals.

12 This legislation is intended to clarify that *I Liheslaturan Guahan* never
13 intended to abolish the Guam Election Commission Board and avoid any
14 ambiguity or misinterpretation of Public Law Number 26-76:56.

15 **Section 2. Preservation of Election Commission Board.** Section
16 56 of Public Law Number 26-76 is hereby *repealed and reenacted* to read as
17 follows:

18 **"Section 56.** Any board, commission, council or oversight
19 body that has *not* met in the last (12) twelve months, with the exception
20 of bodies relating to the Department of Education ('DOE'), the Guam
21 Community College ('GCC'), the University of Guam ('UOG'), the
22 Guam Memorial Hospital Authority ('GMHA') and the Guam Election
23 Commission ('GEC'), shall hereby be abolished.

1 Any powers vested in said boards, commissions or councils shall
2 revert to the previous authority empowered with handling the
3 respective mandate. In the event a body was created within a
4 governmental entity to generally manage the affairs of matters relating
5 to said entity, that governmental entity shall assume the powers given
6 to any body abolished by this Section.

7 Should *I Maga'lahaen Guåhan* identify the continued need for such a
8 board, commission, council or oversight body, *I Maga'lahaen Guåhan* shall
9 provide *I Liheslaturan Guåhan*, within thirty (30) days of the enactment of
10 this Act, justification for the reformulation of such body and a list of
11 appropriate mandates.”

12 **Section 3.** Section 6112. of 3GCA is repealed and reenacted to read:

13 **“Section 6112. Filing and distribution of petitions.**
14 Notwithstanding any other provision of law, partisan candidates for the
15 Legislature, offices of Governor and Lieutenant Governor, Washington
16 Delegate, Mayor and Vice-Mayor shall file their declarations of
17 candidacy with the Commission no earlier than one hundred and thirty
18 (130) days before the primary election, and no later than thirty (30) days
19 before the primary election. Candidates for offices with a non-partisan
20 requirement, including the Guam Education Policy Board, the Public
21 Auditor, the Attorney General and the Consolidated Commission on
22 Utilities shall file their declarations of candidacy with the Commission
23 no earlier than one hundred and thirty (130) days and no later than
24 thirty (30) days before the general election. The Commission shall

1 publish in a newspaper of general circulation the names of all
2 candidates and the offices for which they have declared their candidacy
3 after each filing deadline.”

4 **Section 4.** Section 2103.5. of Title 4, Guam Code Annotated is amended
5 to read:

6 “§2103.5. **Submission for legislative advice and consent.** The
7 appointing authority shall submit to the Speaker of the Legislature the
8 name of the nominee to a position in a Nomination Letter to be hand
9 delivered to the office of the Speaker. The Nomination Letter shall
10 include the following: Name; position to which the appointment is
11 made; address; citizenship; age; educational background; prior
12 government service whether within or without the government of
13 Guam; information pertinent to the position’s qualification; police
14 clearance report; facts concerning military service, if any, including type
15 of discharge, branch, rank at discharge, current status, a record of any
16 court martials or of any non-judicial punishment imposed under the
17 Uniform Code of Military Justice; special distinctions and honors;
18 whether the nominee has been declared mentally incompetent by any
19 court, whether within or without the United States and if so, specify in
20 detail reasons and facts related to such declaration; whether the
21 nominee has been found not guilty or not punishable in any criminal
22 proceedings by reason of insanity; whether the nominee has been
23 confined to a mental institution for any reason and if so, the reasons
24 why the appointing authority believes the nominee is not suffering from
25 any mental illness or affliction. The applicant shall execute an affidavit

1 under penalty of perjury that he or she has read and reviewed the
2 information contained in the Nomination Letter from the Governor that
3 the matters contained in such Nomination Letter and all attachments
4 thereto and are true and correct. If the applicant cannot or will not
5 certify or verify the accuracy of any part of the Nomination Letter, it
6 shall be so noted in his or her affidavit. ~~If Legislature fails to act on such~~
7 ~~Nomination Letter within one hundred eighty (180) days of its receipt~~
8 ~~by the Speaker, the nomination shall be deemed disapproved."~~

9 **Section 4.** Section 2103.9. of Title 4 Guam Code Annotated is amended
10 to read:

11 **"§2103.9. Time Limits on Acting Capacity for Positions**
12 **requiring Legislative Approval.** (a) The Governor or appointing
13 authority may, by separate appointment, appoint a person in an acting
14 capacity to fill a salaried position which requires the advice and consent
15 of the Legislature. In any twelve (12) month period, no person may
16 serve in such an acting capacity for a total of more than ninety (90) days
17 plus three (3) legislative days, provided that no acting director who is
18 not otherwise a classified employee of the government of Guam may
19 serve in the capacity of acting director without the transmittal of such
20 person's name to I Liheslaturan Guahan for the purpose of confirmation
21 within thirty (30) of their appointment as acting director, unless such
22 person is the deputy director of said department or agency who is
23 acting as director due to a vacancy in the director's position. This
24 section does not apply to appointments to classified positions, but does

1 apply to classified employees appointed in an acting capacity to
2 positions requiring the advice and consent of the Legislature.

3 (b) In the event of his or her rejection, a candidate's nomination
4 may be resubmitted by the appointing authority to fill the same
5 position, but the candidate may not function in an acting capacity for
6 that position following such rejection, and may assume the position
7 only when confirmed by the Legislature.

8 (c) No funds appropriated by law may be expended to pay a
9 salary or any personnel benefits of any kind or to pay someone on
10 payroll or contract who serves in an acting capacity in a position to
11 which he or she was appointed by the Governor and subsequently
12 denied confirmation by the Legislature, for a period of three (3) years
13 following rejection of his or her appointment by the Legislature.

14 (d) No person shall serve more than a total of ninety (90) days
15 plus three (3) legislative days during any twelve (12) month period in an
16 acting capacity on any board or commission (which shall include a
17 period in time during which the position was held over, following
18 election of a new administration). No person may be appointed to serve
19 in an acting capacity on any board or commission unless that person has
20 been nominated by the appointing authority to serve in that position in
21 a permanent capacity.

22 (e) An appointed board or commission member may continue
23 to serve in his or her position after his or her term has expired in an
24 acting holdover capacity until he or she or another person is appointed

1 and confirmed by the Legislature; provided, that the time limits
2 imposed by law on acting appointments shall apply.

3 (f) The ninety (90) calendar day plus the three (3) legislative
4 day limitation period for serving in an acting capacity shall not be tolled
5 because another person is serving in a temporary acting capacity during
6 the nominee's absence nor shall it be tolled by the appointment of some
7 other person to temporarily fill the position in an acting capacity."

8 **Section 5.** Section 22(e) is hereby added to Chapter V of Public Law
9 Number 26-35 to read as follows:


10 "(e) In the year that an regular primary and general election is
11 conducted, the appropriations to the election commission shall not be
12 subject to the Bureau of Budget and Management Research's
13 ("BBMR's") allotment process, for the budget for that calendar year."

14 **Section 6. Severability.** *If* any provision of this Law or its
15 application to any person or circumstance is found to be invalid or contrary to
16 law, such invalidity shall *not* affect other provisions or applications of this
17 Law which can be given effect without the invalid provisions or application,
18 and to this end the provisions of this Law are severable.

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 326 (LS)

Introduced by:

Mark Forbes 

**AN ACT TO CLARIFY THE CONTINUED EXISTENCE
OF THE GUAM ELECTION COMMISSION.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 hereby finds that a recently overridden vetoed legislation, namely Public Law
4 Number 26-76:56, has been misinterpreted by *I Maga'lahaen Guåhan* to the
5 extent that he believes that the law abolished the existence of the Guam
6 Election Commission's board of directors.

7 This clearly was neither the intent nor the effect of Public Law Number
8 26-76:56. Noteworthy is the fact that subsequent to Federal Judge John S.
9 Unpingco's Year 2000 decision finding *I Maga'lahaen Guåhan's* unilaterally
10 selected election commission board illegal, *I Maga'lahaen Guåhan* refused to
11 empanel the election commission board specified by Public Law Number 25-
12 146. Because of the delay which was caused by *I Maga'lahaen Guåhan*, and his
13 prolonged appeal, and the fact that he never permitted a partisan board to
14 convene, made up of representatives from the Democrat and Republican
15 parties, *I Maga'lahaen Guåhan* in effect prevented the meeting of the Board for
16 over a twelve (12) month period. Further, *I Liheslaturan Guåhan* would not

1 have intended that the election commission board be abolished, since it was
2 expressly opposing *I Maga'lahren Guåhan* to preserve the partisan election
3 board both in the U.S. District Court of Guam and the Ninth Circuit Court of
4 Appeals.

5 This legislation is intended to clarify that *I Liheslaturan Guåhan* never
6 intended to abolish the Guam Election Commission Board and avoid any
7 ambiguity or misinterpretation of Public Law Number 26-76:56.

8 **Section 2. Preservation of Election Commission Board.** Section
9 56 of Public Law Number 26-76 is hereby *repealed and reenacted* to read as
10 follows:

11 **"Section 56.** Any board, commission, council or oversight
12 body that has *not* met in the last (12) twelve months, with the exception
13 of bodies relating to the Department of Education ('DOE'), the Guam
14 Community College ('GCC'), the University of Guam ('UOG'), the
15 Guam Memorial Hospital Authority ('GMHA') and the Guam Election
16 Commission ('GEC'), shall hereby be abolished.

17 Any powers vested in said boards, commissions or councils shall
18 revert to the previous authority empowered with handling the
19 respective mandate. In the event a body was created within a
20 governmental entity to generally manage the affairs of matters relating
21 to said entity, that governmental entity shall assume the powers given
22 to any body abolished by this Section.

23 Should *I Maga'lahren Guåhan* identify the continued need for such a
24 board, commission, council or oversight body, *I Maga'lahren Guåhan* shall

1 provide *I Liheslaturan Guåhan*, within thirty (30) days of the enactment of
2 this Act, justification for the reformulation of such body and a list of
3 appropriate mandates.”

4 **Section 3.** Section 6112. of 3GCA is repealed and reenacted to read:

5 **“Section 6112. Filing and distribution of petitions.**

6 Notwithstanding any other provision of law, partisan candidates for the
7 Legislature, offices of Governor and Lieutenant Governor, Washington
8 Delegate, Mayor and Vice-Mayor shall file their declarations of
9 candidacy with the Commission no earlier than one hundred and thirty
10 (130) days before the primary election, and no later than thirty (30) days
11 before the primary election. Candidates for offices with a non-partisan
12 requirement, and independent, non-partisan candidates for any office,
13 shall file their declarations of candidacy with the Commission no earlier
14 than one hundred and thirty (130) days and no later than thirty (30)
15 days before the general election. The Commission shall publish in a
16 newspaper of general circulation the names of all candidates and the
17 offices for which they have declared their candidacy after each filing
18 deadline.”

19 **Section 4.** Section 2103.5. of Title 4, Guam Code Annotated is amended
20 to read:

21 **“§2103.5. Submission for legislative advice and consent.** The
22 appointing authority shall submit to the Speaker of the Legislature the
23 name of the nominee to a position in a Nomination Letter to be hand
24 delivered to the office of the Speaker. The Nomination Letter shall

1 include the following: Name; position to which the appointment is
2 made; address; citizenship; age; educational background; prior
3 government service whether within or without the government of
4 Guam; information pertinent to the position's qualification; police
5 clearance report; facts concerning military service, if any, including type
6 of discharge, branch, rank at discharge, current status, a record of any
7 court martials or of any non-judicial punishment imposed under the
8 Uniform Code of Military Justice; special distinctions and honors;
9 whether the nominee has been declared mentally incompetent by any
10 court, whether within or without the United States and if so, specify in
11 detail reasons and facts related to such declaration; whether the
12 nominee has been found not guilty or not punishable in any criminal
13 proceedings by reason of insanity; whether the nominee has been
14 confined to a mental institution for any reason and if so, the reasons
15 why the appointing authority believes the nominee is not suffering from
16 any mental illness or affliction. The applicant shall execute an affidavit
17 under penalty of perjury that he or she has read and reviewed the
18 information contained in the Nomination Letter from the Governor that
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