



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OCT 08 2001

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>[Signature]</i>
Time	10:26 a.m.
Date	9 Oct 2001

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 200 (COR) entitled: "AN ACT TO APPROPRIATE MONIES TO THE GUAM POLICE DEPARTMENT FOR PERSONNEL AND HOLIDAY PAY, THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR WELFARE PROGRAMS, AND FOR OTHER APPROPRIATIONS AND PURPOSES" which was signed into as Public Law No. 26-47.

The budget acts for Fiscal Year 2002 (Public Law Nos. 26-35 and 26-36) did not provide for mandated holiday pay for various agencies whose duty it is to protect public safety. They did not provide for basic procurement. The budget acts also did not allow for the payment of public assistance program benefits and Medicaid. They did not provide for the payment of lump sums for those separating from the government, or for numerous classified employees. All of this occurred despite the awareness of members of the Legislature that these items are vital and necessary. The corrections contained in this legislation were blamed on Executive Branch employees. Executive Branch employees did their part; the Legislature failed to address the necessities.

GUAM POLICE DEPARTMENT. Section 1 of this legislation states that the Guam Police Department (GPD) did not provide the necessary information requested and required, so that seven police officer positions and holiday pay were unfunded. This is simply not the case. The record will show that information was constantly being forwarded to the Legislature and the Committee on Ways and Means employees during the budget process. For example, GPD met with the Committee on Ways and Means, including Senator Joseph Ada, for a budget overview on 2:30 p.m. Monday, July 16. Further information was submitted later, on Thursday July 19th. The original submission for this Department, however, included 10 recruits, with position numbers, and a lump sum was requested for the fiscal year's holiday pay.

Despite submitting this information, no recruits appeared in the budget as passed, and no holiday pay appeared. Telephone calls to staff of the Committee on Ways and Means indicated that

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recruits would be coming on board, paid with local funds. Several more were finishing up screening. None of them, however, were in the budget, yet these recruits know that the Department had planned for them in the budget communications.

The initial budget of the GPD was prepared by an individual working as a Program Coordinator, due to the lack of an Administrative Services Officer. This person, Ovita Nauta, was personally congratulated by staff of the Committee on Ways and Means for doing an excellent job of budget preparation for the GPD. It is hard to see how an individual can be personally congratulated for an excellent job, only to find out later that the Legislature passed a law stating that errors and omissions are the fault of the Department.

Kathy Taijeron, the recently hired Administrative Services Officer (ASO) of the GPD, worked tirelessly to finish the information requested by the Legislature. Telephone calls were made concerning breakdowns of certain amounts. For example, the recruit pay was entered under the item "Miscellaneous" under "Police Commander". This item was questioned by Ways and Means staff, and cleared as correct. Yet, in the passed budget, no pay for the police recruits appeared.

Kathy Taijeron and Ovita Nauta of the Guam Police Department did an excellent job of preparing the GPD budget, and communicated all necessary information to the staff of the Committee on Ways and Means. These women performed their tasks well. The Legislature did not follow through.

This legislation includes a lump sum for holiday pay for 4 agencies: GPD, Department of Youth Affairs, Department of Corrections, and Guam Fire Department. Since these agencies are responsible around the clock for public safety functions, it is hard to see how their holiday pay could have been overlooked.

GUAM FIRE DEPARTMENT. Mike Uncangco of the Guam Fire Department also submitted all the budget information required and asked for to the Committee on Ways and Means. Holiday pay was calculated out and included in the staffing pattern for the Guam Fire Department. This information was personally delivered by Mike Uncangco to the staff of the Committee on Ways and Means.

Despite the transfer of all of this information, the Ways and Means staff sat by idly during the Committee of the Whole discussion at the Session on Friday, October 5, 2001, while senators repeated over and over that the Guam Fire Department did not submit this information to them. This is simply not true. It is not true for the Guam Fire Department, as it was not true for the Guam Police Department.

Mike Uncangco conscientiously and carefully prepared the budget submittal for the Guam Fire Department. He included all of the necessary information. The request for holiday pay was included. This pay was excluded by the Guam Legislature, for the purpose of cutting the budget. The Executive Branch staff was erroneously blamed for the exclusion by the Legislature.

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES. Funding was not provided in the Fiscal Year 2002 budget acts to pay out for public assistance and Medicaid for the first quarter. Appropriations for the first quarter were short about \$600,000. Without an appropriation for this first quarter to make up for this deficiency, checks could not be released to those in dire need of this assistance.

Some additional language also needed to be included in the legislation to authorize Medicaid payments as well as public assistance, however, without the increase in appropriation for the first quarter, no payments could be made. The new appropriation, as well as additional language, is included in this legislation. Once again, information was forwarded to the legislature concerning first quarter payments, yet was not included in budget acts.

SALARIES WERE LEFT OUT OR INACCURATE FOR VARIOUS POSITIONS IN DEPARTMENTS AND AGENCIES. Schedule C of Public Law No. 26-35 contained a detailed listing of each and every position within the line agencies of the government, together with the pay and benefits allowed for each position. Language in this public law mandated that funds could only be spent according to the dictates of Schedule C. If an item did not appear in Schedule C, it could not be paid. If it appeared in Schedule C, it could only be paid exactly as it appeared in Schedule C, with no deviation.

The Legislature recognizes in this corrective legislation that Schedule C simply cannot be followed, and that some classified positions are under-filled with other classified appointments. The Legislature also recognizes that Schedule C does not provide for lump sum payments for those separating from the government, nor does it provide for variations in salaries due to vacancies during the fiscal year. With no flexibility at all, some employees were subject to unfair discrimination.

This legislation allows some flexibility, specifically to fill classified positions with other classified appointments, and to shuffle some funds within departments, programs, divisions, or sections to account for vacancies that occur and annual leave lump sum payments that must be made to separating employees.

NEED FOR A CHIEF PROCUREMENT OFFICER AND CONTROLLER. The budget corrections in this legislation admit that the laws requiring financial accountability of the government require these positions to be in place. The elimination of these positions in the budget acts is an obvious deficiency that could not be left to stand. It is noteworthy that these positions were restored in this legislation, to allow the government to do any procurement.

DEFICIT BUDGET. Please note that the budget for Fiscal Year 2002 is a deficit budget. According to the provisions of Public Law No. 26-36, all amounts above the \$49 Million level expected for Section 30 funds to be returned to Guam are reserved for tax rebates. These tax rebates are sorely needed, and the additional expected funds of \$6.4 Million has already been put into the tax reserves for our people.

Legislative Secretary
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October, 2001
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It is no longer possible to pay for any other items than tax rebates from this additional \$6.4 Million of Section 30 funds. Please note that no appropriations can be made from this amount, now or in the future, as the amount is accounted for and will be released as tax rebates.

LEGISLATIVE MANAGEMENT OF EXECUTIVE BRANCH FUNCTIONS. The Legislature is simply unable to manage Executive Branch functions from the distance of the session hall armchairs. Delivery of government services is an ongoing daily operation. Employees change from day to day, there are changes in operations and procedures. The legislative function does not include delivery of services. Micromanagement of Executive Branch operations down to the buying of toothpicks will inevitably leave all of us with no toothpicks at all. Smooth procurement of vital and necessary items was precluded in the budget acts.

The legislative function is to make policy. Policy and day-to-day operations should be compatible, not in opposition, to each other. The type of armchair micro-management that occurred in Public Law Nos. 26-35 and 26-36, that resulted in the numerous omissions, mistakes, misunderstandings, and elimination of government functions, will only repeat and repeat and repeat and repeat in the future if the Legislature fails to take itself out of Executive Branch operations.

Very truly yours,



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

Attachment: copy attached for enacted bill
original attached for vetoed bill


cc: The Honorable Antonio R. Unpingco
Speaker

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

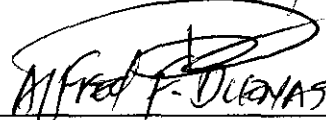
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 200 (COR) "AN ACT TO APPROPRIATE MONIES TO THE GUAM POLICE DEPARTMENT FOR PERSONNEL AND HOLIDAY PAY, THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR WELFARE PROGRAMS, AND FOR OTHER APPROPRIATIONS AND PURPOSES," was on the 6th day of October 2001, duly and regularly passed.


ANTONIO R. UNPINGCO
Speaker

Attested:

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 6 day of October, 2001,
at 10:00 o'clock A. .M.


Alfred F. Duenas
Assistant Staff Officer
Maga'laha's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 10-6-01

Public Law No. 26-47

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

Bill No. 200 (COR)

As substituted and amended
on the Floor.

Introduced by:

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

**AN ACT TO APPROPRIATE MONIES TO THE
GUAM POLICE DEPARTMENT FOR PERSONNEL
AND HOLIDAY PAY, THE DEPARTMENT OF
PUBLIC HEALTH AND SOCIAL SERVICES FOR
WELFARE PROGRAMS, AND FOR OTHER
APPROPRIATIONS AND PURPOSES.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Guam Police Department ("GPD") did *not* provide the
4 necessary information requested and required by *I Liheslaturan Guåhan*, which

1 left seven (7) police officer positions un-funded and the "Holiday Pay" for
2 officers un-funded in Public Law Number 26-35.

3 Now that GPD has provided the information *after* the passage of the
4 "General Appropriations Act of 2002," I Liheslaturan Guåhan wishes to act to
5 resolve this oversight by GPD.

6 I Liheslaturan Guåhan further finds that the government of Guam has
7 received approximately Fifty-five Million Dollars (\$55,000,000) in Section 30
8 revenues, and makes the necessary appropriation from the amount over the
9 Forty-five Million Dollars (\$45,000,000) appropriated in Public Law Number
10 26-35.

11 **Section 2. Supplemental Appropriations to Various Agencies.**

12 (a) The sum of Two Hundred Seventy-three Thousand Two
13 Hundred Twenty-eight Dollars (\$273,228.00) is hereby appropriated
14 from the General Fund, *specifically* from amounts received in *excess* of
15 the adopted Section 30 revenues of Forty-five Million Dollars
16 (\$45,000,000) contained within Public Law Number 26-35 to the Guam
17 Police Department ("GPD") to fund salaries and benefits for an
18 *additional* seven (7) "Police Officers I" positions for fiscal year ending
19 September 30, 2002.

20 (b) The sum of One Hundred Thousand Dollars (\$100,000.00) is
21 hereby appropriated from the Customs, Agricultural and Quarantine
22 Inspections Services Fund to the Plant Protection and Quarantine
23 Division of the Department of Agriculture ("DOA") to fund "Holiday
24 Pay" for the first quarter of the fiscal year ending September 30, 2002.

1 (c) The sum of Five Hundred Thousand Dollars (\$500,000.00) is
2 hereby appropriated from the General Fund, *specifically* from amounts
3 received in *excess* of the adopted Section 30 revenues of Forty-five
4 Million Dollars (\$45,000,000) contained within Public Law Number 26-
5 35 to GPD, the Department of Youth Affairs (“DYA”), the Department
6 of Corrections (“DOC”), and the Guam Fire Department (“GFD”) to
7 fund “*Holiday Pay*” for the first quarter of the fiscal year ending
8 September 30, 2002.

9 (d) The appropriations contained within Subsections (b) and (c)
10 herein shall be expended for “*Holiday Pay*” for work performed on
11 holidays in accordance with Guam law. The Department shall submit
12 to *I Liheslaturan Guåhan* a labor cost distribution report due within five
13 (5) days of each disbursement detailing the payment of “*Holiday Pay*”
14 for each person receiving the additional compensation.

15 (e) The sum of Sixty Thousand Dollars (\$60,000.00) is hereby
16 appropriated from the General Fund, *specifically* from amounts received
17 in *excess* of the adopted Section 30 revenues of Forty-five Million Dollars
18 (\$45,000,000) contained within Public Law Number 26-35 to GPD to
19 fund police reserve stipends for fiscal year ending September 30, 2002.

20 **Section 3. Authorized But Un-funded Positions.** Section 1(a) of
21 Chapter V, *Administrative Provisions*, of Public Law Number 26-35 is hereby
22 *amended* to read as follows:

23 “(a) Personnel Services (Regular Salaries/Other Pay and Benefits)
24 appropriations shall be expended *only* for positions contained within

1 APPENDIX C, corresponding with each Division/Section/Program
2 breakdown contained within APPENDIX B.

3 (1) Authorized classified positions contained within
4 Appendix C may be under-filled by classified appointments
5 in the same or like classification series/group.

6 (2) The combined funding levels of all positions,
7 within each department, program, division or section as
8 grouped in Appendix C, may be used to fund *any* position
9 authorized therein, to the extent that funds may be lapsing
10 due to vacancies in the course of the fiscal year. An un-
11 funded, but authorized position, within each department,
12 program, division or section, as grouped in Appendix C,
13 does *not* preclude an appointment to that position, as long as
14 funding is available resulting from lapses from other
15 authorized positions, within the same department, program,
16 division or section grouped in Appendix C.

17 (3) The payment of accumulated annual leave for
18 separating employees, funded by this Act, shall be made
19 from funds available and in the following order of
20 application:

21 (i) from balances of appropriations for the
22 approved or occupied position of the separating
23 employee; *or*

1 (ii) from appropriation lapses of *all* other
2 vacancies of other approved positions within the same
3 department, program, division or section.

4 (4) Payments made pursuant to this Section shall be
5 reported to *I Liheslaturan Guåhan* by the agency head from
6 which the employee separated *no later than thirty (30) days*
7 after the effective date of the employee separation. The
8 report shall detail a 'position specific' impact as may be
9 applicable.

10 (5) The Guam Public Library System may utilize *all*
11 carry-over authorizations from previous appropriation acts
12 to fund authorized positions for the Guam Public Library
13 System contained within **Appendix C** of Public Law
14 Number 26-35."

15 **Section 4.** Section 31 of Chapter IV, *Miscellaneous Provisions*, of Public
16 Law Number 26-35 is hereby *repealed and reenacted* to read as follows:

17 **"Section 31. Appropriation for Ratable Reduction for Public**
18 **Assistance Program.**

19 (a) The following is hereby appropriated to the Bureau of
20 Economic Security under the Department of Public Health and
21 Social Services ('DPH&SS') for welfare payments of Fiscal Year
22 2002 Public Assistance Program benefits, including Temporary
23 Assistance for Needy Families ('TANF'), Old Age Assistance
24 ('OAA'), Aid to the Blind ('AB') *and* Aid to Permanently and

1 Totally Disabled ('APTD'). The sum is composed of Twelve
2 Million Four Hundred Fifteen Thousand Three Hundred Twenty-
3 three Dollars (\$12,415,323) from the General Fund and Three
4 Million Six Hundred Eighty-seven Thousand Seven Hundred
5 Fifty-four Dollars (\$3,687,754) from Federal Grants-in-Aid to be
6 allocated as follows:

7 (1) For public assistance program benefits, One
8 Million Six Hundred Eighteen Thousand Eight Hundred
9 Fifty-two Dollars (\$1,618,852) is hereby appropriated from
10 October 1, 2001 to October 31, 2001.

11 (2) For public assistance program benefits, One
12 Million Five Hundred Thirty-three Thousand Six Hundred
13 Fifty Dollars (\$1,533,650) is hereby appropriated from
14 November 1, 2001 to November 30, 2001.

15 (3) For public assistance program benefits, One
16 Million Five Hundred Thirty-three Thousand Six Hundred
17 Fifty Dollars (\$1,533,650) is hereby appropriated from
18 December 1, 2001 to December 31, 2001.

19 (4) For public assistance program benefits, Eleven
20 Million Four Hundred Sixteen Thousand Nine Hundred
21 Twenty-five Dollars (\$11,416,925) is hereby appropriated to
22 be used from January 1, 2002 to September 30, 2002.

23 (b) The Director of DPH&SS is hereby authorized,
24 notwithstanding any other provisions of law or this Act, to
25 transfer *up to* Four Hundred Sixty-one Thousand Dollars

1 (\$461,000.00) from the appropriation made in § 31(4) of Chapter IV
2 of Public Law Number 26-35 to cover for any shortfall in the
3 appropriation made in § 31(1) of Chapter IV of Public Law
4 Number 26-35 for the Public Assistance Programs; *provided*, that
5 notice of each transfer is delivered by the end of the month in
6 which the transfer takes place to the Speaker of *I Liheslaturan*
7 *Guåhan*.

8 (c) The Director of DPH&SS is hereby authorized,
9 notwithstanding any other provisions of law or this Act, to
10 transfer *up to* Five Hundred Twenty Thousand Dollars
11 (\$520,000.00) from the appropriation made in § 31(4) of Chapter IV
12 of Public Law Number 26-35 to cover for *any* shortfall in the
13 appropriation made in § 31(2) of Chapter IV of Public Law
14 Number 26-35 for the Public Assistance Programs; *provided*, that
15 notice of each transfer is delivered by the end of the month in
16 which the transfer takes place to the Speaker of *I Liheslaturan*
17 *Guåhan*.

18 (d) The Director of DPH&SS is hereby authorized,
19 notwithstanding any other provisions of law or this Act, to
20 transfer *up to* Five Hundred Twenty Thousand Dollars
21 (\$520,000.00) from the appropriation made in § 31(4) of Chapter IV
22 of Public Law Number 26-35 to cover for any shortfall in the
23 appropriation made in § 31(3) of Chapter IV of Public Law
24 Number 26-35 for the Public Assistance Programs; *provided*, that

1 notice of each transfer is delivered by the end of the month in
2 which the transfer takes place to the Speaker of *I Liheslaturan*
3 *Guåhan*.

4 (e) The Director of DPH&SS shall submit to *I Liheslaturan*
5 *Guåhan* by December 31, 2001 an amended plan, in accordance
6 with applicable conditions associated with Federal grants, to
7 implement a ratable reduction formula for the expenditure of the
8 balance of the appropriation for the period of January 1, 2002 to
9 September 30, 2002."

10 **Section 5.** Section 33(a) of Chapter IV of Public Law Number 26-35 is
11 hereby amended to read as follows:

12 **"(a) MIP and Medicaid Appropriation.** The sum of Ten
13 Million Six Hundred Thousand Dollars (\$10,600,000) is hereby
14 appropriated from the General Fund to the Medically Indigent Program
15 Payment Revolving Fund ('MIPPR Fund') for Medically Indigent
16 Program *and* Medicaid Programs."

17 **Section 6.** Section 21 of Chapter V, *Administrative Provisions*, of Public
18 Law Number 25-164 is hereby *amended* to read as follows:

19 **"Section 21. MIP Payment Revolving Fund.** From the funds
20 appropriated by this Act from the General Fund for the Department of
21 Public Health and Social Services ('DPH&SS') Miscellaneous Object
22 Category, the amount of Twenty-four Million Dollars (\$24,000,000) shall
23 be deposited into the Medically Indigent Program Payment Revolving
24 Fund ('MIPPR Fund'). The MIPPR Fund shall be maintained separate

1 and apart from all other funds allocated to DPH&SS. Payments from
2 the MIPPR Fund shall be authorized by the Director and credited
3 against the MIPPR Fund. Appropriations to the MIPPR Fund are
4 hereby authorized to be carried over into subsequent fiscal years, and
5 may be expended for any authorized Medically Indigent Program
6 obligation and any authorized Medicaid Program obligation.”

7 **Section 7. Supplemental Appropriation to DOA.**

8 (a) The sum of One Hundred Thirteen Thousand Eight
9 Hundred Seven Dollars (\$113,807.00) is hereby appropriated from the
10 General Fund, *specifically* from amounts received in *excess* of the
11 adopted Section 30 revenues of Forty-five Million Dollars (\$45,000,000)
12 contained within Public Law Number 26-35 to the Department of
13 Administration (“DOA”) for salaries and benefits of the Chief
14 Procurement Officer and Controller.

15 (b) **DOA Controller and Chief Procurement Officers.** *If* the
16 positions of Chief Procurement Officer and Controller within the
17 Department of Administration (“DOA”) are *not* filled by January 1,
18 2002, the sums appropriated in Subsection (a) for those positions shall
19 revert to the General Fund.

20 **Section 9. Additional Estimated Revenues for FY2002.** *I Liheslaturan*
21 *Guåhan* adopts an *additional* Ten Million Dollars (\$10,000,000) of Section 30
22 revenues *above* the adopted Section 30 revenues of Forty-five Million Dollars
23 (\$45,000,000) contained within Public Law Number 26-35.

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

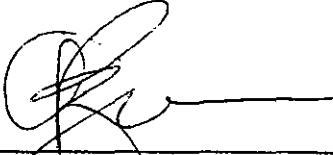


MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

2001 (FIRST) Regular Session

I, Antonio R. Unpingco, 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 safety and welfare of the People and therefore waive the statutory requirements for a public hearing on Bill Number 200 (COR), "AN ACT TO APPROPRIATE NINE HUNDRED TWELVE THOUSAND SEVEN HUNDRED NINETY-THREE DOLLARS (\$912,793.00) FOR THE GUAM POLICE DEPARTMENT IN ORDER TO CONTINUE ITS SERVICES TO THE ISLAND COMMUNITY," which was introduced on October 1, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 200 (COR).

Dated: October 5, 2001



ANTONIO R. UNPINGCO
Speaker and Presiding Officer

JS

1:25am

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 10/6/01
continuation of 10/5/01 session

VOTING SHEET

5 Bill No. 200 (COR)
 Resolution No. _____
 Question: _____

26-47

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 15 0 0 0 0

CERTIFIED TRUE AND CORRECT:

 Clerk of the Legislature

* 3 Passes = No vote
 EA = Excused Absence

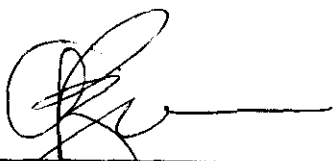


MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

2001 (FIRST) Regular Session

I, Antonio R. Unpingco, 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 safety and welfare of the People and therefore waive the statutory requirements for a public hearing on Bill Number 200 (COR), "AN ACT TO APPROPRIATE NINE HUNDRED TWELVE THOUSAND SEVEN HUNDRED NINETY-THREE DOLLARS (\$912,793.00) FOR THE GUAM POLICE DEPARTMENT IN ORDER TO CONTINUE ITS SERVICES TO THE ISLAND COMMUNITY," which was introduced on October 1, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 200 (COR).

Dated: October 5, 2001



ANTONIO R. UNPINGCO
Speaker and Presiding Officer

Office of



the People

M i n a ' B e n t e S a i s N a L i h e s l a t u r a n G u å h a n

Senator vicente (ben) c. pangelinan
Minority Leader (D)

6

October 1, 2001

The Honorable Antonio R. Unpingco
Speaker, *I Liheslaturan Guåhan*
155 Hesler Street
Hagåtña, Guam 96932

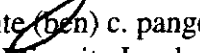
Re: Request for Emergency Declaration of Bill No. 200 (COR)

Dear Mr. Speaker:

I hereby request that you, pursuant to the authority of the Speaker, certify as an emergency measure Bill No 200 (COR), "An act to appropriate Nine Hundred Twelve Thousand Seven Hundred Ninety Three Dollars for the Guam Police Department in order to continue its services to the island community." This bill funds seven police officers that were terminated yesterday and the holiday pay for the Department's officers. This action is made necessary due to the oversight and untimely provision of information by the Guam Police Department to the Legislature. Now that the information has been provided, we need to act immediately to put these police officers back on the street.

I thank you in advance for your favorable consideration of this matter.

Sincerely,


vicente (ben) c. pangelinan
Minority Leader

enclosures: Bill No. 200 (COR)

cc: All Senators

Office of the Speaker
ANTONIO R. UNPINGCO

Date: 1001 2001
Time: 2:45
Rec'd by: [Signature]
Print Name: Joh

Jul 10/5/01 Jul

2001 (FIRST) Regular Session

ACKNOWLEDGMENT RECEIVED
Received by: [Signature]
Date: 10-1-01

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

Bill No. 200 (CP)

Introduced by:

v.c. pangelinan
L. Leon Guerrero [Signature]

**AN ACT TO APPROPRIATE NINE HUNDRED
TWELVE THOUSAND SEVEN HUNDRED
NINETY-THREE DOLLARS (\$912,793.00) FOR THE
GUAM POLICE DEPARTMENT IN ORDER TO
CONTINUE ITS SERVICES TO THE ISLAND
COMMUNITY.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Guam Police Department has not provided the necessary
4 information requested and required by *I Liheslaturan Guahan*, which left seven
5 police officer positions and the Holiday Pay for officers un-funded in P.L. 26-
6 35.

7 Now that the Guam Police Department has provided the information
8 after the passage of the "General Appropriations Act of 2002," *I Liheslaturan*
9 *Guåhan* wishes to act to resolve this oversight by the Guam Police
10 Department.

11 *I Liheslaturan Guåhan* further finds that the Government of Guam has
12 received approximately Fifty Five Million Dollars (\$55,000,000.00) in Section

IN THE SUPREME COURT OF GUAM

HAGATNA, GUAM

IN RE:

REQUEST OF GOVERNOR CARL T.C. GUTIERREZ RELATIVE TO THE ORGANICITY AND CONSTITUTIONALITY OF PUBLIC LAW 26-35.

CIVIL CASE NO. CRQ01-001

REQUEST FOR DECLARATORY JUDGMENT

Governor Carl T.C. Gutierrez (the Governor) requests a declaratory judgment and alleges the following:

1. This Court has jurisdiction pursuant to the Organic Act of Guam § 1424, 7 G.C.A. § 4104 and Rules 26 and 27 of the Guam Rules of Appellate Procedure.
2. Carl T.C. Gutierrez is the Governor of Guam. He has standing to bring this action pursuant to 7 G.C.A. § 4104.
3. Public Law 26-35 (the fiscal year 2002 government budget law, hereafter referred to as "the budget law") was passed by the Legislature and vetoed by the Governor. On or about September 28, 2001, the Legislature overrode the Governor's veto. (Attached Exhibit "A")
4. Chapter V, section 1(a) of the budget law provides: "Personnel Services (Regular Salaries/Other Pay and Benefits) appropriations shall be expended *only* for positions contained in **APPENDIX C**, corresponding with each Division/Section/Program breakdown contained in **APPENDIX B.**" (bold and italics in the original). APPENDIX C contains columns which list: department; position title; appointment as classified or unclassified; pay grade and step; base salary; extra pay such as overtime and holiday; benefits such as the government's portion of health

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insurance and life insurance; total compensation after extra pay and benefits.

5. The Organic Act provides that the Legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system. Organic Act § 1422c. Pursuant to the mandate of the Organic Act, the Legislature has enacted a merit system which provides an equitable system for hiring and discharging public employees, for promoting and demoting employees and for increasing and decreasing the salaries of employees. 4 G.C.A. chs. 2, 4 & 6. (This paragraph is hereafter called the "merit system provisions" of the Organic Act.)

6. The Organic Act provides that the Governor shall have general supervision and control of all departments, bureaus, agencies and other instrumentalities of the executive branch of the government of Guam. And he shall appoint and may remove all officers and employees of the executive branch of the government of Guam, except as otherwise provided in the Organic Act, an Act of Congress or the laws of Guam. Organic Act § 1422. (This paragraph is hereafter called the "supervision and control provisions" of the Organic.)

7. The Organic Act and the U.S. Constitution provide that no person shall be deprived of property without due process of law. (Hereafter called the "due process clause.") Organic Act § 1421b. The U. S. Constitution provides that no person shall be deprived of the equal protection of the law. (Hereafter called the "equal protection clause.")

8. APPENDIX C eliminates at least one classified position in which the duties of the position are defined by law. And no provision is made in the law for the performance of those duties. The duties of Chief Procurement Officer are defined by statute. Those statutory duties

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include procuring or supervising the procurement of all supplies and services needed by government. 5 G.C.A. § 5113(c). The supplies which must be procured include medicines and supplies for the hospital, food for the inmates at the Department of Corrections and all other government services and functions. APPENDIX C appropriates zero salary for the classified position of Chief Procurement Officer. APPENDIX C does not provide for a deputy Chief Procurement Officer to assume the duties of the Chief Procurement Officer in his or her absence. The budget law provides that all detail appointments not funded by this Act shall cease. P.L. 26-35:IV:4(d). The Act does not provide funding for a detail appointment to the position of Chief Procurement Officer.

9. The foregoing paragraph violates the supervision and control provisions of the Organic Act.

10. APPENDIX C appropriates zero compensation for many classified employees; it omits altogether many the classified positions of many employees; it reduces the salary of many classified employees, but does not reduce the salary of other classified employees who hold the same or similar positions; it demotes classified employees without any rational basis; it retains many unclassified employees while terminating many classified employees.

11. The foregoing paragraph violates the merit system provisions, the supervision and control provisions, the due process clause and the equal protection clause in that there is no rational basis for the different treatment of the same classes of employees.

12. Chapter IV, section 7 of the budget (hereafter section 7) bill provides that employees of the government who work with the financial aspects of the government of Guam fall within various

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definitions of "Accountable Officers" which may include but are not limited to Certifying Officers, Disbursing Officers and Collecting Officers. The Accountable officers are held criminally and civilly liable for losses of the government of Guam even though they may be without fault. There are two definitions for each type of officer can be found in the law: the first set of definitions is set forth in section 14104. The second set of definitions is contained in section 14106 as "Types of Accountable Officers".

13. A statute is void for vagueness where it does not give a reasonable person of ordinary intelligence an opportunity to know what acts are prohibited and consequent penalties of such acts. Section 7 is so vague that employees of the agencies of the government of Guam do not have notice of what acts will cause them to be held liable civilly or criminally liable.

14. Section 7 provides that employees of the government who work with the financial aspects of the government of Guam fall within various definitions of "Accountable Officers" which may include but are not limited to Certifying Officers, Disbursing Officers and Collecting Officers. The Accountable officers are held criminally and civilly liable for losses of the government of Guam even though they may be without fault. There are two different definitions in the law for each type of officer: the first set of definitions is set forth in section 14104. The second set of definitions is contained in section 14106 as "Types of Accountable Officers".

15. The definition of "accountable officer" in 4 GCA §14104 is vague and overbroad. A persons who has custody of funds or physically handles government funds even once, can be held liable if the payment turns out to be "improper, incorrect or illegal." The implication is that even if an employee who is a messenger assigned to deliver a check that was "improper, incorrect or illegal

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" and had nothing to do with the cutting of the check, could be held personally liable under the statute.

16. Chapter IV section 2 (e) of the budget bill provides a criminal penalty for violations of contractual restrictions.

17. The law provides several standards by which account officers are judged for improper illegal or incorrect payments. 4 GCA §14109 (a) requires strict liability when loss occurs. Subsection (b) section makes the account officer "automatically liable when loss occurs" and in the same section the law provides that the accountable officer is not liable unless the improper payment was the result of a "certified voucher." Section 14109(c) provides for a standard of negligence for liability to occur. Strict liability and negligence are different standards applied to find liability for the same conduct.

18. The statute provides for a form of "relief" which "must apply for all accountable officers" The form and basis for the "relief" is so vague that as a practical matter it cannot be implemented.

19. Personal liability can be incurred by an accountable officer for not paying on time when discounts are available and yet it is unclear from the statute what the standard is for holding an accountable officer liable.

20. Funds were not allocated for holiday pay. An agency head, such as the Chief of Police or the Director of the Department of Corrections, who permits his employees to work at night or on holidays may be subject to criminal penalties pursuant to chapter IV, section 2 (e) of the budget bill.

21. Section 7 holds accountable officers personally liable for acts of theft or fraud which they

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

Bill No. 200 (001)

Introduced by:

v.c. pangelinan
L. Leon Guerrero 

AN ACT TO APPROPRIATE NINE HUNDRED
TWELVE THOUSAND SEVEN HUNDRED
NINETY-THREE DOLLARS (\$912,793.00) FOR THE
GUAM POLICE DEPARTMENT IN ORDER TO
CONTINUE ITS SERVICES TO THE ISLAND
COMMUNITY.

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

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

3 finds that the Guam Police Department has not provided the necessary
4 information requested and required by *I Liheslaturan Guahan*, which left seven
5 police officer positions and the Holiday Pay for officers un-funded in P.L. 26-
6 35.

7 Now that the Guam Police Department has provided the information
8 after the passage of the "General Appropriations Act of 2002," *I Liheslaturan*
9 *Guåhan* wishes to act to resolve this oversight by the Guam Police
10 Department.

11 *I Liheslaturan Guåhan* further finds that the Government of Guam has
12 received approximately Fifty Five Million Dollars (\$55,000000.00) in Section