


I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

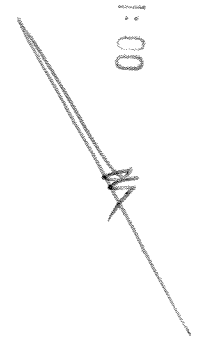
Bill No. 327-33 (COR)

Introduced by:


Committee on Rules, Federal,
Foreign and Micronesian Affairs,
Human and Natural Resources,
Election Reform and Capitol District
By request of *I Maga'lahen*
Guåhan, the Governor of
Guam, in accordance with the
Organic Act of Guam.

**AN ACT TO AMEND SUBSECTIONS 3103(a) AND 3104(a)
AND TO REPEAL SUBSECTION 3103(n) OF CHAPTER 3,
DIVISION 1 OF TITLE 7 OF THE GUAM CODE
ANNOTATED RELATIVE TO THE COMPOSITION OF THE
SUPREME COURT OF GUAM; AND TO AMEND
SUBSECTION 4101(a) OF CHAPTER 4, DIVISION 1 OF TITLE
7 OF THE GUAM CODE ANNOTATED RELATIVE TO THE
COMPOSITION OF THE SUPERIOR COURT OF GUAM;
AND TO AMEND SUBSECTIONS 5101(a), (b) AND (c) OF
CHAPTER 5, DIVISION 1 OF TITLE 7 OF THE GUAM CODE
ANNOTATED RELATIVE TO THE COMPOSITION OF THE
JUDICIAL COUNCIL OF GUAM.**

2016 MAY 26 AM 11:00



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

2 **Section 1. Legislative Findings and Intent.** It is the intent of *I*
3 *Liheslaturan Guåhan* to support the work of the Judiciary of Guam in ensuring that
4 all who seek justice in the courts of Guam receive full, fair, and efficient
5 administration of justice. There are new, as well as ongoing, challenges faced by
6 the judicial branch that raise the concern of the Judicial Council of Guam.
7 Recently, the Judicial Council appointed a committee to examine the need for an

1 additional judge for the Superior Court of Guam. Chaired by Associate Justice
2 Katherine A. Maraman, this committee conducted a survey of the judicial officers
3 and membership of the Guam Bar Association, and the responses supported the
4 need for an eighth judge. The oral report of the committee certified the need for an
5 additional judgeship, and the Judicial Council officially determined a need for an
6 additional judge during its April 7, 2016 regular meeting. The committee later
7 issued a written report formalizing its recommendation.

8 The Judicial Council’s determination was based on several factors, from the
9 changing demographic of our island population, to the increased number of
10 criminal felony cases filed. More specifically, there is a growing diversity of
11 litigants, defendants, and witnesses who appear in court and who require
12 interpretation services, which correspondingly results in more lengthy hearings and
13 trial. Further, the Attorney General anticipates an increase in the number of
14 serious felonies being charged, as well as the number of felony jury trials. By law,
15 priority must be given to criminal trials, resulting in a much longer waiting time for
16 motions to be heard or cases to be tried in civil and family cases. Guam adopted
17 the therapeutic and specialty court models which requires judges to spend longer
18 hours in the courtroom. If the upward trend of criminal cases continues, the delay
19 in these non-criminal cases will only worsen if the additional judgeship is not
20 authorized and funded. The last time a judge was added to the Superior Court was
21 in 1994 – more than 20 years ago. Since that time, there has been a significant
22 increase in the complexity of cases heard in the courts of Guam.

23 In accordance with the statutory authority of 7 GCA § 4101(b) and the
24 determination of the Judicial Council that an additional judge is required for the
25 proper dispatch of business, the Chief Justice notified *I Maga’lahen Guåhan* of the
26 need for an additional judge to the Superior Court of Guam.

1 In light of the concurrence of *I Maga'lahen Guåhan* as to the necessity of
2 the additional judge, *I Liheslaturan Guåhan* finds that the creating and funding an
3 additional judgeship will be crucial to avoid greater delays and increase efficiency
4 permitting more prompt disposition of cases.

5 In addition, after a review of all opinions issued by the Guam Supreme
6 Court between 2000 and 2015, *I Maga'lahi* has revealed that a designated justice
7 or a justice *pro tempore* sat on the appellate panel for a staggering 48.5% of all
8 opinions. Sixteen percent of the opinions issued during that same time period were
9 decided by a panel of justices made up by a majority, and in some cases even a
10 complete, panel of temporary justices.

11 These numbers reveal a more fundamental deficiency in the Judiciary than
12 does an inadequate number of trial court judges. *I Liheslatura* understands the need
13 to rely on temporary justices in those situations where, because of conflicts or
14 illness, the Supreme Court is unable to assemble a panel of three full-time justices;
15 but those occasions should be rare. When nearly 50% of our cases require the use
16 of temporary justices, and when 16% of our opinions are being issued by a
17 majority of temporary justices who have not been appointed by *I Maga'lahi* nor
18 confirmed by *I Liheslatura*, no matter how qualified and well-intentioned these
19 individuals may be, we signal a lack of independence by our government
20 institutions. Especially in this period of heightened focus on Guam's right to self-
21 determination, we need to take action to preserve the legitimacy of the "Guam"
22 Supreme Court by preserving the respective roles of the Executive and Legislative
23 branches in selecting our judges and justices.

24 *I Liheslaturan Guåhan* finds that the creating and funding of two additional
25 Associate Justice positions will be crucial to preserving the integrity of the
26 Judiciary.

1 **Section 2. Amending the Composition of the Supreme Court of Guam.**

2 Subsection 3103(a) of Chapter 3, Division 1 of Title 7 of the Guam Code
3 Annotated is hereby *amended* to read as follows:

4 “(a) The Supreme Court of Guam is established pursuant to 22A of the
5 Organic Act of Guam and has such original and appellate jurisdiction as is
6 prescribed by the Organic Act of Guam and by this Title. The Supreme Court shall
7 consist of ~~three~~ ~~(3)~~ five (5) full-time Justices who shall be appointed by *I*
8 *Maga'lahen Guåhan*, the Governor of Guam, subject to the advice and consent of *I*
9 *Liheslatura*. ~~Two~~ ~~(2)~~ Four (4) of the full-time Justices shall be Associate Justices
10 and one (1) shall be Chief Justice, who shall be selected as provided herein.

11 *I Maga'lahen Guåhan* [the Governor] may appoint any Federal Judge or any
12 Judge, retired Judge or retired Justice of a court of record in the Commonwealth of
13 the Northern Mariana Islands, the Republic of Palau or the Federated States of
14 Micronesia to sit as an acting Associate Justice. Such appointees shall be referred
15 to as Designated Justices of the Supreme Court of Guam.

16 To be appointed, the individual shall have practiced law, or sat as a Judge,
17 for a total of at least ten (10) years, be a graduate of a law school accredited by the
18 American Bar Association, and, except for residency requirements and practice
19 requirements on Guam, meet all other qualifications for a Justice. An appointment
20 as a Designated Justice shall be for four (4) years and shall expire at the end of
21 such period, unless the Designated Justice is reappointed by *I Maga'lahen*
22 *Guåhan* [the Governor]. All such appointments are subject to the advice and
23 consent of *I Liheslaturan Guåhan* [Guam Legislature], and a Designated Justice
24 may not sit until so confirmed.

25 The Designated Justices shall sit as assigned by the Chief Justice, and while
26 sitting shall have all the powers of an Associate Justice, and shall be paid the same
27 as a part-time Justice, unless some other arrangement has been made by the Chief

1 Justice with the court from which the Designated Justice comes. Designated
2 Justices are entitled to a per diem allowance when traveling away from home on
3 official business for Guam at the rates set for other Associate Justices of Guam.”

4 **Section 3 Repeal of Subsection 3103(n) of Chapter 3 of Title 7 of the**
5 **Guam Code Annotated.** Subsection 3103(n) of Chapter 3 of Title 7 of the Guam
6 Code Annotated is hereby *repealed*.

7 **Section 4. Authorizing *En Banc* Hearings in the Guam Supreme**
8 **Court.** Subsection 3104(a) of Chapter 3, Division 1 of Title 7 of the Guam Code
9 Annotated is hereby *amended* to read as follows:

10 “(a) In hearings and determining the merits of cases before it, the Supreme
11 Court shall normally sit in a three-Justice panel, but, as authorized by the Court’s
12 Rules, it may sit **en banc**, and all members of the panel or the **en banc** court, as the
13 case may be, shall participate in the decision of each case heard by it.”

14 **Section 5. Amending the Composition of the Superior Court of Guam.**
15 Subsection 4101(a) of Chapter 4, Division 1, of Title 7 of the Guam Code
16 Annotated is hereby *amended* to read as follows:

17 “(a) The Superior Court of Guam is a court of general jurisdiction in Guam,
18 having original jurisdiction as prescribed by this Title and in other laws of Guam
19 which are not within the exclusive jurisdiction of the Supreme Court of Guam or
20 the District Court of Guam. The Superior Court shall consist of a presiding judge
21 and ~~six (6)~~ seven (7) additional judges. The Judges of the Superior Court shall be
22 appointed as provided in this Title. The Presiding Judge holding office on the
23 effective date of this Act shall remain Presiding Judge for so long as he shall
24 remain a Judge of the Superior Court. Thereafter, however, the Judges of the
25 Superior Court shall elect one (1) of their number Presiding Judge. The first
26 elected Presiding Judge shall serve until the third Tuesday of the first January
27 occurring three (3) years after his or her election. Thereafter a Presiding Judge

1 shall serve a term of three (3) years, unless he or she is elected to fill a vacancy, in
2 which case he or she shall serve only the remainder of the unexpired term of his or
3 her predecessor. No person may be elected to consecutive terms as a Presiding
4 Judge.”

5 **Section 6. Amending the Composition of the Judicial Council.**

6 Subsections 5101(a), (b) and (c) of Chapter 5, Division 1 of Title 7 of the Guam
7 Code Annotated is hereby *amended* to read as follows:

8 “(a) There shall be a Judicial Council (the *Council*). ~~All full-time Justices of~~
9 ~~the Supreme Court shall sit on the Judicial Council.~~ Three (3) full-time Justices of
10 the Guam Supreme Court shall sit on the Judicial Council, which shall include the
11 Chief Justice who shall appoint the other two full-time Associate Justices. Two (2)
12 Superior Court Judges shall also sit on the Judicial Council, which shall include the
13 Presiding Judge who shall appoint the remaining Judge. ~~Should a Supreme Court~~
14 ~~member leave the bench, then the Presiding Judge shall remove one (1) Superior~~
15 ~~Court member until such time as a new Supreme Court Justice is nominated,~~
16 ~~confirmed and seated on the Supreme Court.~~ The Chairperson of the Council shall
17 be the Chief Justice. In the event of absence of the Chief Justice, the senior full-
18 time Associate Justice shall act as Chairperson. At no time shall a designated
19 Justice or Judge or a Justice or Judge *pro tempore* sit as a member of the Judicial
20 Council.

21 (b) The Chief Justice, in his or her absence, or the absence of an Associate
22 Justice member, may appoint from among the remaining Associate Justices an
23 alternate to sit on the Judicial Council to ensure an adequate number of members
24 from the Supreme Court of Guam. The Presiding Judge, in his or her absence, or
25 the absence of the other Superior Court Judge, may appoint from among the Judges
26 an alternate to sit on the Judicial Council to ensure an adequate number of
27 members from the Superior Court of Guam.

1 (c) The term of the members of the Council appointed by the Chief Justice
2 shall be for three (3) years. The term of the member of the Council appointed by
3 the Presiding Judge shall be for three (3) years. If a member is replaced, the
4 replacement member shall only serve out the remaining term of the member
5 replaced.

6 **Section 7. Appropriation for New Judicial Officers.** The judiciary shall
7 submit to *I Liheslaturan Guahan* a supplemental budget for the funding of the new
8 judicial officers, including support staff, courtroom equipment and supplies, within
9 thirty (30) days from the enactment of this bill into law.