

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
26-35 (COR)	James C. Moylan	AN ACT TO ADD §75100(f)(1), (2), (3) AND (4), AMEND §75107, AND ADD §75108 AND §75108A, ALL FROM CHAPTER 75, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO DRUG TESTING FOR ELECTED AND APPOINTED OFFICIALS AND THE SAFE HARBOR EXEMPTIONS.	1/22/19 10:57 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. *26*-35 (*002*)

Introduced by:

James C. Moylan *JM*

AN ACT TO ADD §75100(f)(1), (2), (3) AND (4), AMEND §75107, AND ADD §75108 AND §75108A, ALL FROM CHAPTER 75, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO DRUG TESTING FOR ELECTED AND APPOINTED OFFICIALS AND THE SAFE HARBOR EXEMPTIONS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds
3 that for the Government of Guam to truly establish a War on Drugs, mandatory
4 drug testing would have to be extended beyond just classified employees. Elected
5 and appointed officials, including those who will establish policies via board and
6 commissions of public sector entities, and serve *I Maga'Haga Guahan* in an
7 advisory capacity should be drug free, and should promote a similar philosophy in
8 their governance of the respective instrumentality they shall lead.

9 The government has, for decades, established drug testing policies, and have
10 created more stringent policies for law enforcement officials, as well as those
11 considered “Test Designated Positions” (TDP), however there has been very little
12 accomplished for other appointed positions or elected officials. Furthermore, the
13 “Safe Harbor” provision, established by Executive Order 95-29, has allowed some
14 leniency in drug policies, and should be revisited. However, and just as law

1 enforcement and TDP officials have been exempted from this provision, it is vital
2 that something similar be established for elected and appointed officials.

3 **Section 2.** §75100(f)(1), (2), (3) and (4) of Chapter 75, Title 10, Guam
4 Code Annotated are hereby *added* to read as follows:

5 “(f) *Elected and Appointment Officials* means the following:

6 (1) Any elected individual, including the Governor, Lieutenant
7 Governor, Senator, Mayor, Vice Mayor, Commissioner of the
8 Consolidated Commission on Utilities, and Member of the Elected
9 School Board.

10 (2) Any appointed individual, including directors and their appointed
11 deputies, of line agencies, General Managers, Presidents and
12 Executive Managers and all of their appointed deputies, of any
13 autonomous agency or instrumentality of the Government of
14 Guam.

15 (3) Any individual appointed by the Governor of Guam or Speaker of
16 the Guam Legislature, to serve on a Board or Commission of the
17 Government of Guam, including those requiring a confirmation
18 from the Guam Legislature.

19 (4) Any unclassified employee of the Government of Guam, including
20 those employed at the Office of the Governor and Lieutenant
21 Governor.”

22 **Section 3.** §75107(a) of Chapter 75, Title 10, is hereby *amended* to read as
23 follows:

24 (a) Notwithstanding any other law, rule, executive order, regulation or
25 policy, the provision of “Safe Harbor,” as the term is described in the Department
26 of Administration Drug-Free Workplace Program as promulgated by Executive
27 Order 95-29, *shall not* be applicable to law enforcement personnel, employees, and

1 positions, and elected and appointed officials as the terms is are defined in
2 §75100(a) and §75100(f), Chapter 75, Title 10 Guam Code Annotated, and *shall*
3 *not* be applicable to all Test Designated Positions (TDP) of the government of
4 Guam.

5 **Section 4.** §75108 and §75108A of Chapter 75, Title 10 are hereby *added* to
6 read as follows:

7 **“§ 75108. Drug Testing; Applicants for Elected and Appointed Positions.**

8 Elected Officials and Applicants for appointed positions, boards,
9 commissions, and unclassified employees with the Office of the Governor shall be
10 tested for illegal controlled substance as a condition of employment or
11 appointment. The testing procedure shall contain safeguards outlining physician
12 and others involved in the testing procedure.

13 The following rules shall apply to said applicants:

14 (a) Refusal to take the test, or test results reporting a presence of controlled
15 substance, or the use of non-prescription drugs, shall be the basis of
16 discontinuing an applicant in the appointment process and preclude any
17 further consideration for employment.

18 (b) Applicants found to be involved in the illegal sale, manufacture or
19 distribution of any controlled substance will be permanently rejected.

20 (c) Applicants demonstrating addiction to any controlled substance will be
21 permanently rejected.

22 (d) Any improper use of any controlled substance by an applicant after
23 application will be grounds for permanent rejection.

24 (e) The results of drug tests on applicants for elected and appointed positions
25 shall be kept confidential and shall not be used as evidence in any
26 subsequent criminal prosecution of the applicant.

27 **§ 75108A. Drug Testing; Current Elected and Appointed Positions.**

1 All current Elected and Appointed personnel with the Government of Guam,
2 including those serving on boards, commissions and unclassified personnel
3 employed at the Office of the Governor shall be required to submit to a drug test as
4 outlined below:

5 (a) The Governor or a supervisor may order a drug test when there is a
6 reasonable objective basis or documentation or allegation that an employee
7 is impaired or incapable of performing his or her assigned duties such as
8 reduced productivity, excessive vehicle accidents, high absenteeism, or other
9 behavior inconsistent with previous performance. The contents of the
10 documentation shall be made available to the employee.

11 (b) Current Elected or Appointed personnel may be ordered by the Governor
12 or a supervisor to take a drug test:

13 (1) Where the allegation involved the use, or sale of a controlled
14 substance; or

15 (2) Where the allegation, involves the actual use of force; or

16 (3) Where there is serious on-duty injury to the employee or another
17 person.

18 (c) A supervisor who orders a drug test when there is a reasonable objective
19 basis for suspecting usage shall forward a report containing the facts and
20 circumstances directly to the Governor.

21 (d) Test results reporting the presence of a controlled substance, or the use of
22 prescription drugs without a prescription, or the abuse of any over the
23 counter drugs, will be submitted as a part of a complaint by the supervisor to
24 the head of the department or agency.

25 (e) Notwithstanding any other provisions of the law, any elected official who
26 was inaugurated into office on January 7, 2019, or any elected officials who
27 continue to remain in office even prior to January 7, 2019, shall be subject to

1 a mandatory drug test within 48 hours of the enactment of this Act. Any
2 elected official who completed a government of Guam required drug test
3 between January 7, 2019 and the date of the enactment of this Act shall be
4 exempted from the required first (1st) test of the year.

5 (f) Notwithstanding any other provisions of the law, all Elected and
6 Appointed Officials, as identified in the terms defined in §75100(f) of this
7 Chapter, shall be subject to at least three (3) randomly administered tests a
8 year without advance notice and the Department of Administration shall be
9 tasked with the coordination of the tests.

10 (g) Notwithstanding any other provisions of the law, the obtaining of Drug
11 Testing/Urinalysis required for Elected and Appointed Officials shall be
12 identical with the policy stated in §75105 of this chapter. “

13 **Section 5. Severability.** If any provision of this Act or its application to
14 any person or circumstance is found to be invalid or contrary to law, such
15 invalidity *shall not* affect other provisions or applications of this Act that can be
16 given effect without the invalid provision or application, and to this end the
17 provisions of this Act are severable.

18 **Section 6. Effective Date.** The act shall become effective immediately
19 upon enactment.