



House Journal
FIRST REGULAR SESSION, 2008

Adopted:
June 17, 2008

Seventh Day

Wednesday, March 26, 2008

The House of Representatives of the Sixteenth Northern Marianas Commonwealth Legislature convened its Seventh Day, First Regular Session on Wednesday, March 26, 2008, at 10:15 a.m. in the House Chamber on Capitol Hill, Saipan, Commonwealth of the Northern Mariana Islands.

The Honorable Arnold I. Palacios, Speaker of the House, presided.

A moment of silence was observed.

The Clerk called the roll and nineteen members were present one member absent. Representative Diego T. Benavente came in late.

Speaker Palacios: Representative Benavente will be arriving in late this morning. I recognize the Floor Leader for a motion to convene into the Committee of the Whole.

Floor Leader Camacho: Mr. Speaker, a motion to resolve into the Committee of the Whole for the presentation of the resolution.

The motion was seconded and carried by voice vote.

The House dissolved into the Committee of the Whole at 10:17 a.m.

COMMITTEE OF THE WHOLE

The House received the Borja Family of As Teo and presented H. R. No. 16-8, HDI.

The House rose to Plenary Session at 11: 25 a.m.

ADOPTION OF JOURNALS

Speaker Palacios: Mr. Floor Leader, recognized.

Floor Leader Camacho: Mr. Speaker, a motion to adopt the First, Second and Third Days' Journals of the House for the First Regular Session.

1st Day, First Regular Session – January 14, 2008
2nd Day, First Regular Session – January 22, 2008
3rd Day, First Regular Session – February 11, 2008

The motion was seconded.

Speaker Palacios: Under discussion, I recognize Representative Babauta.

Representative Babauta: Traditionally, we allow members to make corrections with the clerk if it need be.

Speaker Palacios: Okay, we will allow the members to make corrections with the clerk but please do it on a timely manner because the journals are sent out to the archives (U.S. Library of Congress).

The motion to adopt House Journals of the 1st Day (1/14/08), 2nd Day (1/22/08), and 3rd Day (2/11/08) First Regular Session of 2008 was carried by voice vote.

INTRODUCTION OF BILLS AND INITIATIVES

H. B. No. 16-64: A Bill for an Act to establish an Administrative Office of the Courts, and for other purposes.

Offered by: Representative Rosemond B. Santos and one other

Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-65: A Bill for an Act to restrict the use of wireless telephones while driving vehicles; and for other purposes.

Offered by: Representative Edward T. Salas

Referred to: Committee on Public Utilities, Transportation and Communications

H. B. No. 16-66: A Bill for an Act to amend 3 CMC § 1316(b) to provide the Board of Regents of the Northern Marianas College with full autonomy in hiring and retaining the president of the college; and for other purposes.

Offered by: Representative Justo S. Quitugua and three others

Referred to: Committee on Health, Education, and Welfare

H. B. No. 16-67: A Bill for an Act to amend 8 CMC § 1202(a); and for other purposes.

Offered by: Representative Justo S. Quitugua and three others

Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-68: A Bill for an Act to repeal and reenact 1 CMC § 8364, as amended by Public Law 15-70, Section 4(j), to allow annuitants to enroll in the Commonwealth government health care program, and for other purposes.

Offered by: Representative Joseph N. Camacho

Referred to: Committee on Health, Education, and Welfare

H. B. No. 16-69: A Bill for an Act to repeal and reenact 1 CMC § 8313(g) to define “child” to include adopted children for retirement benefits and for other purposes.

Offered by: Representative Joseph N. Camacho

Referred to: Committee on Health, Education, and Welfare

H. B. No. 16-70: A Bill for an Act to provide a tax credit for individuals and businesses that purchase renewable energy devices by amending the Revenue and Taxation Act of 1982; and for other purposes.

Offered by: Representative David M. Apatang
 Referred to: Committee on Public Utilities, Transportation and Communications

H. B. No. 16-71: A Bill for an Act to protect persons soliciting donations along public highways and roads; and for other purposes.

Offered by: Representative Joseph N. Camacho
 Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-72: A Bill for an Act to create visitation right for grandparents; and for other purposes.

Offered by: Representative Joseph N. Camacho
 Referred to: Committee on Health, Education, and Welfare

H. B. No. 16-73: A Bill for an Act to establish and attorney reciprocity program with the Territory of Guam; and for other purposes.

Offered by: Representative Victor B. Hocog
 Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-74: A Bill for an Act to amend 4 CMC § 3216 to establish an “inactive status” period for the renewal of certificates or licenses; and for other purposes.

Offered by: Representative Ramon A. Tebuteb and one other
 Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-75: A Bill for an Act to authorize the Department of Public Safety to permit private companies to serve bench warrants issued by the CNMI courts.

Offered by: Representative Joseph N. Camacho
 Referred to: Committee on Judiciary and Governmental Operations

H. B. No. 16-76: A Bill for an Act to amend 2 CMC § 7181; and for other purposes.

Offered by: Representative Oscar M. Babauta
 Referred to: Committee on Judiciary and Governmental Operations

H. L. I. NO. 16-12: A House Legislative Initiative to amend Article X of the Constitution of the Northern Mariana Islands to permit the issuance of pension obligation bonds.

Offered by: Representative Heinz S. Hofschneider
 Referred to: Committee on Ways and Means

H. L. I. NO. 16-13: A House Legislative Initiative to amend Article III of the Constitution of the Northern Mariana Islands.

Offered by: Representative Heinz S. Hofschneider
 Referred to: Committee on Ways and Means

H. L. I. NO. 16-14: A House Legislative Initiative to add a new Section 10 to Article X of the Constitution of the Commonwealth of the Northern Mariana Islands to authorize the Commonwealth to issue pension obligation bonds and for other purposes.

Offered by: Representative Joseph P. Deleon Guerrero and five others
 Referred to: Committee on Ways and Means

H. L. I. NO. 16-15: A House Legislative Initiative to amend Section 12 of Article II of the Constitution of the Northern Mariana Islands to remove immunity presently enjoyed by legislators from being questioned in any other place regarding statements made in the legislature.

Offered by: Representative Victor B. Hocog

Referred to: Committee on Judiciary and Governmental Operations

Representative Hocog: If there is no objection, Mr. Speaker, I move to place H. L. I. NO. 16-15 on today's calendar.

Speaker Palacios: There is an objection on the Floor. I believe the legislative initiative needs to be assigned to committee for a potential public hearing, but it certainly is an interesting initiative that perhaps warrants scrutiny by every member of the House. I recognize the Floor Leader.

Floor Leader Camacho: I apologize I did not hear Representative Hocog's reading of the initiative, but does that include the Executive Branch.

Representative Hocog: The legislators, Mr. Speaker. I guess this warrants discussion and perhaps we can discuss this legislative initiative on today's calendar for the benefit of the members to debate and probably pass it on First Reading or whatever the final disposition of the members is upon discussing this legislative initiative on the floor today.

Representative Apatang: Mr. Speaker, I object to that. I would like to recommend that we treat this as any other initiative and refer it to the committee so the committee can look at it, and let us do a public hearing. I have no objection with the initiative, but just treat like any other initiative, thank you.

Speaker Palacios: Yes, if we start proposing changes to our Constitution it really does warrant in depth scrutiny by the members, but I will allow Representative Hocog the privilege to discuss this further when we get to the Miscellaneous Business portion of our session. Is that okay, Representative Hocog?

Representative Hocog: I do not like to discuss the issue under privilege, Mr. Speaker. I would like to debate the issue when it is on the Floor. So if we cannot all agree, we will refer it to the committee without further expounding on the House Legislative Initiative.

Speaker Palacios: Thank you for your consideration.

H. L. B. NO. 16-8: A Local Appropriation Bill for an Act for the Second Senatorial District to appropriate \$25,000.00 from local license fees for pachinko slot machines and poker machines in the Second Senatorial District for the transition of students from the NMC Tinian campus to the NMC Saipan campus; and for other purposes. [*First Appearance*]

Offered by: Representative Edwin P. Aldan

INTRODUCTION OF RESOLUTIONS

H. COMM. RES. NO. 16-2: A House Commemorative Resolution expressing the utmost appreciation of the House of Representatives of the 16th Northern Marianas Commonwealth Legislature to Mr. Seiji Sato (an Ambassador of Tourism) for his hard work and dedication in

promoting the CNMI and its people as an international tourist destination and a warm place of comfort to the people of Japan and the world.

Offered by: Representative Ramon A. Tebuteb

H. J. R. NO. 16-3: A House Joint Resolution to put the question of Calling a Constitutional Convention before the voters of the Commonwealth of the Northern Mariana Islands.

Offered by: Representative Rosemond B. Santos and one other

MESSAGES FROM THE GOVERNOR

GOV. COMM. 16-59: (3/14/08) Certification for vacant positions at the Department of Public Safety.

GOV. COMM. 16-60: (3/14/08) Certification for an annual salary in excess of \$50,000 for Dr. Grant Eiselen.

GOV. COMM. 16-61: (3/14/08) Certification for a vacant position at the Division on Environmental Quality-Tinian.

GOV. COMM. 16-62: (3/14/08) Certification for a vacant position at the Department of Public Health.

Speaker Arnold Palacios: Any discussion on the Governor's Communications? None.

Several members voiced "ready."

SENATE COMMUNICATIONS

SEN. COMM. 16-9: (3/11/08) Transmitting a certified copy of S. R. NO. 16-4, entitled, "A Senate Resolution honoring Mr. and Mrs. Vicente Villagomez Torres for their dedication and sacrifice in prioritizing the education of their children, and their contributions to the Commonwealth," which was adopted by the Senate on March 7, 2008.

SEN. COMM. 16-10: (3/13/08) From Senate President Reyes calling the Senate to meet on Tuesday, March 18, 2008, at 10:00 a.m.

SEN. COMM. 16-11: (3/19/08) Returning H. B. NO. 16-1, HD1 (re Rota Casino Initiative) which was passed by the Senate without amendment on March 19, 2008. [Will go to Governor]

SEN. COMM. 16-12: (3/19/08) Returning H. B. NO. 16-7 (re Tinian Junior/Senior High School Electrical System Upgrade) which was passed by the Senate without amendment on March 19, 2008. [Will go to Governor]

SEN. COMM. 16-13: (3/19/08) Informing the House that the Senate adopted Senate Standing Committee Report No. 16-8 with regards to H. B. NO. 16-51, HD5, the Appropriations and Budget Authority Act of 2007, on March 19, 2008.

SEN. COMM. 16-14: (3/19/08) Returning H. B. NO. 16-55 (re Operating a vehicle without a license) which was passed by the Senate without amendment on March 19, 2008. [Will go to Governor]

SEN. COMM. 16-15: (3/19/08) Transmitting S. J. R. NO. 16-3, entitled, "A Senate Joint Resolution to call for a Joint Session of the Legislature to receive the State of the Commonwealth Address by the Governor and the State of the Washington Office Report by the Resident Representative to the United States," which was adopted by the Senate on March 19, 2008. [For action]

SEN. COMM. 16-16: (3/19/08) Appointment of Senate conferees on H. B. NO. 16-51, HD5. (See also Sen. Comm. 16-13)

Speaker Arnold Palacios: Any discussion on the Senate Communications? None.

Several members voiced "ready."

HOUSE COMMUNICATIONS

HSE. COMM. 16-23: (3/14/08) From the Speaker to RLD Chair Victor Hocog regarding S. J. R. NO. 16-1, SD1, HD1.

Speaker Palacios: Representative Hofschneider, recognized.

Representative Hofschneider: I would like to ask the indulgence of the members that I read a House Communication regarding the initiatives that I have just introduced.

There was no objection from the Floor.

Speaker Palacios: There being no objection, you may continue, Representative Hofschneider.

Representative Hofschneider: Thank you, Mr. Speaker. Mr. Speaker and members, as we consider the overall state of the Commonwealth's finances and its impact on government employment, fuel payments, dwindling tax collection, and how best to deliver public services under these circumstances, we must begin by taking a stark look at the actions and lack of actions that have given rise to our lingering fiscal crisis. Repealing Public Law 15-94, which cuts power rates back to seventeen cents per kilowatt hour without providing the utility with the ability to pay for the actual cost of fuel and leaving us with mandatory scheduled power outages. Unfunded liabilities skew agency finances on the budget, affecting operations. The same situation applies to the Retirement Fund. According to the Retirement Fund, twenty-eight separate pieces of legislation introduced over a period of many years has added to the Fund's long term survivability and put the Fund at risk by compounding the problem with non-payment of employer contributions to the Fund. The laws are enumerated in this letter for emphasis. In a letter written by Buck Consultants to the Fund Administrator dated August 15, 2006 and logged as Miscellaneous Communication 16-20, Buck describes the net effect of three of the most recent public laws enacted affecting the Retirement Fund. One, Public Law 15-14 is neutral; Public Law 15-13 does not improve NMI Retirement Fund's future instead its effect will be neutral at best if no one elects a balance transfer and in fact will shorten the Fund's viable lifetime by six years if all eligible members transfer; additionally, Public Law 15-15 shortens the Fund's viable lifetime by three years. The enumerated Public Laws

Mr. Speaker, I do not want to labor they are all enumerated in this letter to you but there are 28 Public Laws. In continue in a more recent communications from the Retirement Fund dated March 11, 2008, the Fund liquidated \$69,652,000.00 of assets to pay for current obligations and at this rate, and with all other things remaining the same, the Fund will be bankrupted within 8 to 10 years. The Fund reports that of December 31, 2007, receivables from the three branches of government as well as other unpaid moneys owed to the Fund exceeds \$193,000,000.00. The history of nonpayment to the Fund is long and despite repeated pledges of repayment a huge amount in receivables remains in the books. According to the Fund nonpayment to the Fund which began on pay period on August 14, 1999, and continued through pay period on October 6, 2001, created a nonpayment balance of \$48,857,000.00. On November 30, 2001, a memorandum of agreement was signed resuming payments to the Fund, but the record shows a spotty repayment history. Beginning on October 15, 2001, bi-weekly payments of \$500,000.00 were received by the Fund but these payments stopped on December 15, 2003. The last payment made by the Executive Branch of \$500,000.00 was received on December 15, 2003, and applied to pay period on November 4, 2000. On November 14, 2003, the Fund received larger bi-weekly payments in the amounts of \$844,922.00 which \$832,956.00 was applied to pay period on October 1, 2003 of and part of pay period of October 1, 2001 in the sum of \$9,966.00. Further payments continue to be paid bi-weekly and then stops again on January 13, 2006, when \$830,487.00 was received and applied to pay period on April 20, 2002, \$330,487.00 was applied to that and pay period ending May 4, 2002, \$500,000.00. Payments were received again on January 6, 2006, in the amount of \$925,000.00 and applied to pay period ending January 1, 2006, and pay period ending December 24, 2005. Additional contributions to cover pay period ending May 2006 and pay period ending February 28, 2006, continued with a payment of \$874,000.00 on March 30, 2006, this was the last employer contribution paid to the Fund. On October 4, 2006, eleven separate payments in the aggregate amount of \$883,900.00 were paid by the Administration to the Fund. This sum represented federally funded employer contributions. Today, 2,800 retirees, including survivors, 4,595 active retirement fund members rely on the Fund for their financial security. Even if, as the Fund reports, 300 members terminate membership as they did in 2007 and roughly the same number are expected to do the same for 2008 the Fund is adding members each year and it is not known precisely how many members will eventually transfer from the existing program to the new Define Contribution Plan further impacting the Fund. In response to the nonpayment of employer contribution, the Fund has refused to retire employees whose employer contribution were not covered leaving an undisclosed number of employees who would otherwise retire on the active list. For example as of December 31, 2007, several autonomous agencies owe an outstanding balance of \$4,563,000.00: Marianas Visitor's Authority \$34,000.00; Department of Public Lands, \$123,000.00; Northern Marianas College, \$2,800,000.00; Commonwealth Ports Authority, over a million dollars; and the Tinian Municipal Treasurer in the amount of \$517,700. With nearly 7,395 relying on the NMI government pension plan for its financial security it is imperative that the Legislature do its part to stabilize the Retirement Fund settle on how to pay its share of employer contributions which now hovers between \$183 million and \$200 million. What will the government's employer contribution be? At what level should employee contributions be fixed? Certainly, these numbers should be fixed based on some formula that will assure the continued survival of the Fund beyond 2015. But what is that, what mechanism will assure that once the Fund is paid in full future payments will not also be deferred? What assurances can be given that the government will be prevented from increasing employee benefits or decreasing government obligations? There are many questions that remain to be answered before a solution can be identified, but this should not delay us for discussing these issues now. The Fund pays out five million dollars on a monthly, and this year it has liquidated principal to pay for current obligations. Its annual investment return is insufficient to pay its current obligations. This cannot continue beyond a fixed point which the Fund sets at different levels

depending on the variables known and unknown. Today's global investment market is uncertain resulting in an 18% loss of more than \$23.8 million as of February 29, 2008, for fiscal year 2000 alone. Investment uncertainties combine with sour local economic conditions continue to affect the long term health of the Fund and the well-being of thousands of families who rely completely on a monthly retirement payments for their survival. Aside of cleaning up the books for audit purpose and making the CNMI more attractive investment target by demonstrating a capacity for paying its obligations, it is important to the Fund to know what level of payment it can expect from the government and its obligations. Without this kind of information it will continue to be difficult, if not impossible, for the Fund to plan effectively for the future. As it stands today, this Administration asked for and received legal authority to suspend its share of contributions to the Fund adding to the overall amount of the money still owing to the Fund. But, the Administration cannot make the current payments either since most of its budget it already reserved for salaries. So it too has come up with an initiative to pay for the government's pension obligation. For these reasons and many more not raised in this letter, I am urging the members to begin exploring ways to rescue the Fund form its immediate financial problems, and in its members from an uncertain future. The initiative that I prefiled on March 19, 2008, for introduction in the House is intended to trigger discussion on these issues and finally to propose what I believe is a workable and acceptable long term solution to huge financial question. The general public, businesses included, have expressed a general dissatisfaction with the governments handling of its affairs and financial and otherwise, but they are also aware of the government's excesses. From conversations of many of our island residents they want the government to begin behaving in a responsible way. They support express extreme reservations on the subject of borrowing for government operations and have made very clear that borrowing must come with mechanisms to prevent a repetition of future borrowing to pay for past sins. House Legislative Initiatives 16-12 and 16-13 not only authorizes the borrowing of money to pay for government's nonpayment of its share and retirement contributions but provides a stop gap measure to prevent the government from increasing its financial burden by specifically requiring a modest 2% reduction in force until the government budget reflects an allocation of 60% for personnel leaving a more rational portion of the budget for services. The lopsided budget which now allocates more than 85% to salaries has made it near impossible for employees to do and provide public services. So we have hospital staff who cannot deliver proper health services because there are no re-agents diabetes strips or to measure Dilantin in the blood and no electro-cardiogram machines, limiting diagnostic capacity and treatment, not enough qualified emergency service staff. Teachers and principals scramble to raise money for school supplies and toilet paper. The cuts have been misplaced doing little more then deprive the community of essential public services and shrinking the economy even more. House Legislative Initiatives 16-12 and 16-13 are written to relieve the government of a burden that affects a large segment of this population. It is designed to clean up the books, it is designed to provide some measure of relief to the Administration which is unable on willing to make meaningful cut, and it is designed to curtail government's ability to continue along the same path that brought it to this place. House Legislative Initiatives 16-14 introduced by Representatives Joseph P. Deleon Guerrero, Arnold I. Palacios, Edward Salas, Diego T. Benavente, Ramon Tebuteb, and Ray Yumul authorizes public borrowing but proposes no action to trim the size of government or to restrict the government's budget from ballooning once this relief is granted. The time of half way measure is past. No borrowing without repayment; no more hiring or spending without purpose. We cannot continue to approve government expenditures and debt in the way that we have in the past. The budget cannot continue to be slanted toward employment and not service. House Legislative Initiatives 16-12 and 16-13 collectively is an effort to right the wrongs of the past, and set us on the right path for the future. Thank you, Mr. Speaker, and members.

The statement read by Representative Hofschneider was submitted and number as HSE. COMM. 16-24.

Speaker Palacios: Thank you. We move on to Communications from the Judicial Branch.

COMMUNICATIONS FROM THE JUDICIAL BRANCH

JUD. BR. COMM. 16-3: (3/18/08) Certification for a vacant position at the Supreme Court.

Speaker Palacios: Representative Deleon Guerrero.

Representative Deleon Guerrero: If there is no objection from the members, I believe that there is one Senate Communication that needs action. We kind of went through it and did not act on it and that is Senate Communication 16-15. I just wanted to point that out.

Speaker Palacios: Thank you. The Chair will take that up perhaps tomorrow. Representative Stanley Torres.

Representative Stanley Torres: Mr. Speaker, I have a letter addressed to you and I think I need to read the letter under House Communication, if I may be permitted.

Representative Babauta voiced no objection.

Speaker Palacios: There being no objection, we are back to House Communication.

HOUSE COMMUNICATIONS

Speaker Arnold Palacios: I recognize Representative Stanley Torres.

Representative Stanley Torres: Thank you. Mr. Speaker, this community has been struggling with inadequate power services for many, many years. And now, because of mismanagement covering a ten year period or more and high fuel prices, the general public is suffering from power outages and high power rates. Our response to this crisis is and continues to be the creation of more commissions. The utility has direct oversight from the Office of the Governor, Office of the Lt. Governor, has its policies reviewed by a power advisor commission and now we created a regulatory agency, the Public Utility Commission (PUC). The PUC's regulatory function is important but creditable appointments have not been forth coming. Appointees to this commission have not been probably vetted. Though they have advanced college degrees, all the members have admitted to their credit that they do not have the qualification to sit on this Commission. There has been considerable pressure on my committee to rubber stamp this nominee. Most members insisting that an interview of one nominee, Kimberlyn King-Hinds, was unnecessary. I disagree with that assessment. I am convinced that the information provided in her financial disclosure statement is not entirely accurate despite Ms. King-Hinds representation to the contrary. Ms. King-Hinds indicated that she has no property interest anywhere including Tinian. I am not sure this is an accurate statement. Further, Ms. King-Hinds indicated that she has no business affiliation with the Commonwealth Utilities Corporation, ignoring her management position in a water company on Tinian. While legal counsels and others have stated that there is no conflict of interest, I do not agree. More importantly, it is my observation that the majority of members of the House have made a hard push to get these PUC members on board. Why? The stated need for this appointment has been on the books for a long time. There is barely anything left to regulate. Somehow, Mr. Speaker,

I know that it is important to you and other members that a special sub-committee on power be created, despite my opinion that I need to reassess, unless the purpose of a newly created sub-committee is to steer the privatization issued in a particular direction. It is clear that we have different intention with regards to how the power issues should be handled in the Commonwealth. It is also clear that you and other members of the House will continue to exert undue pressure and influence on this process until your objectives are met. Since this situation is not going to improve, I resign as Chairman of House Committee of Public Utilities giving way for you and the other members to do as you like. Thank you.

The statement read by Representative Stanley Torres was submitted and number as HSE. COMM. 16-25.

Speaker Palacios: Thank you. Representative Babauta, recognized.

Representative Babauta: Mr. Speaker, I sympathize the statement made by our distinguished colleague Representative Torres, but I guess the issue here is whether or not the committee would like to dwell more on the nominee. Whatever the case may be, I guess it will be left up to the entire House to decide on those issues. But, I see no logical reason for Chairman Torres to relinquish this vital committee he now spearheads. I for one will not support such an action and would like to request Representative Torres to reconsider that suggestion of him resigning from that Standing Committee. We can probably move on whether or not he wants to share part of those pressing issues and that will be left to the Chair and of course to the members of his committee. But, I respectfully request Chairman Torres to reconsider even the insinuation of him resigning, Mr. Speaker.

Speaker Palacios: Thank you. Before I recognize Representative Hofschneider, are there any objections that I say a few words? First let me say that, it is unfortunate that our Chairman has felt that there is an undue pressure from the members of the House and myself on the committee particularly on the issue of the appointment of Ms. Kimberlyn King-Hinds. There is pressure and the pressure is not just on this Committee on Public Utilities, Transportation and Communications, the pressure falls on all of our shoulders collectively and individually. The electrical power issues are something that we are all mindful and aware of. Unfortunately, we do not have the luxury of time. Representative Hofschneider's beginning statement deals with an issue of power rates. We have to leave and end our session by noon today because of an impending power outage, so there is certainly a sense of urgency for us to act on all legislation and every matter that comes before this body to be addressed. It is unfortunate that my colleague Chairman Torres feels that he is personally being pressured. The appointment of Ms. King-Hinds has been made and has been on the books since we came in the Sixteenth Legislature, and we have continued to go back and forth. One committee has come up with a committee report, and we allowed for an additional two and a half to three weeks for the Committee on PUTC to come up with its recommendation. We have yet to receive a committee report. Be that as it may I believe that most members of this House unfortunately some may mistake it as pressuring but during our last session we agreed that this issue will be taken up that, if necessary, Ms. Kimberlyn King-Hinds will be brought in for questioning by the committee. I do not believe the Committee on PUTC has done that. Be that as it may, this is just one issue on CUC that has required and continues to require our immediate attention. Like Representative Babauta I will also ask my colleague Chairman Torres to reconsider his decision but, certainly, it is his prerogative. I now recognize Representative Hofschneider.

Representative Hofschneider: With the indulgence of the members, could we go back to Introduction of Bills. I have bill to introduce.

There was no objection.

INTRODUCTION OF BILLS AND INITIATIVES

Speaker Palacios: Representative Benavente.

Representative Benavente: Mr. Speaker, I just would like to ask that the record reflect that I am present for today's session.

Speaker Palacios: Let the record reflect that Representative Benavente is present. Continue Representative Hofschneider.

Representative Hofschneider: Thank you Mr. Speaker. Now, Mr. Speaker, we can move on with real solutions to our CUC problems.

H. B. No. 16-77: A Bill for an Act to allow and encourage the CUC to engage the private sector to partner with the Commonwealth to secure reliable utility services at affordable rates; and for other purposes.

Offered by: Representative Heinz S. Hofschneider

Referred to: Committee on Public Utilities, Transportation and Communications

Speaker Palacios: Thank you. We move back to House Communications.

HOUSE COMMUNICATIONS

Speaker Arnold Palacios: Are there any more comments under House Communications? Representative Sablan.

Representative Sablan: This is germane to the issues that were raised by Representative Stanley Torres. I also have a statement that I would like to read. On March 19, 2008, as the Chair of the Public Utilities, Transportation, and Communications Committee for the Saipan and Northern Islands Legislative Delegation I convened a meeting with Ms. Kimberlyn King-Hinds to review her nomination to the Public Utilities Commission. Also in attendance were the two currently confirmed members of the PUC: Ms. Viola Alepuyo and Mr. Kyle Calabrese, and the Lieutenant Governor's Legal Counsel, Ms. Teresa Kim and at times Representatives Stanley Torres, Rosemond Santos, Frank Dela Cruz, Edwin Aldan, and yourself, Mr. Speaker. I prepared for this meeting a list of questions covering several subjects that I felt would be pertinent to the position for which Ms. King-Hinds has been nominated. This list included questions about financial interest which will pose a direct or indirect conflict to her and to her capacity as a PUC member. Questions about any experience that she might have in power engineering, water treatment, waste water management, telecommunications, cable television, or accounting, and questions about her experience dealing with evaluating certain critical documents including proposals, contracts, maintenance records, audit reports, legal opinions, rate studies, etcetera. In addition to the questions that I had composed for Ms. Hinds, Representative Stanley Torres had also ask questions dealing with Ms. Hinds' statement of financial interest and specifically to verify whether or not she has any interest in any business that is regulated by the PUC and whether or not she owns any property. I am finalizing a report of the findings of that meeting and will submit it for the record next week. Mr. Speaker,

today, we can discuss on the floor the issue of the screening and confirmation process for PUC nominees, which I have found to be sorely lacking in any standard of due diligence whatsoever. We can also talk about the qualifications that are required of PUC members and how they have been significantly watered down since the Public Law was first enacted and what significant problems we create when we relax qualifications for highly technical and complex positions. And we can explore the questions of why it has been so difficult to find acceptable nominees for the PUC -- whether it is because there are so few qualified candidates in the CNMI, as some would say, or whether it is really because so many qualified candidates would not touch this job with a ten foot pole and why that would be the case. I do think that it is imperative that we discuss and resolve these issues for future nominations and I will explore these issues further in the forthcoming report. But with respect to the nomination that is on the floor today, I am assuming, there is an immediate question that needs to be resolved and that is, are private water bottling companies considered public utilities and therefore entities subject to regulation by the Public Utilities Commission? If the answer is yes, and I believe that it is, then an immediate conflict of interest problem arises and there should be no further consideration of Ms. Hinds' nomination. As we know Ms. Hinds is currently Vice President of Tinian Ice and Water. At our last session, I asked if Tinian Ice and Water would be considered public utilities subject to regulation by the commission and the answer I received is: no, private water companies are not considered public utilities. At last week's meeting with Ms. Hinds Representative Stanley Torres but raised the question again and the answer again was, no. Ms. Hinds acknowledged that her company does business with CUC, as any company utilizing public services does, that the company itself would not be subject to regulation by the PUC. Her company is regulated instead, she said, by the Division of Environmental Quality and the Bureau of Environmental Health. I had accepted these answers until I took a closer look at the definition of a public utility and a public water system. Public Law 15-35 defines public utilities as the Commonwealth Utilities Corporation and "any duly licensed private contractor operating a facility or sub-system of the community-wide water production and distribution system or electrical production and or distribution system or a community-wide waste water disposal system. There is a standard definition of public water system that is used by the Division of Environmental Quality and the U.S. EPA and that is any water system that collects, treats, or distributes water for human consumption, has at least fifteen service connections, or serves at least twenty-five people daily for at least sixty days a year. Private bottling companies, by this definition, are clearly public water systems. Tinian Ice and Water is, therefore, a public water system. It is also clearly a facility or a sub-system of the community-wide water production and distribution system and therefore, a public utility subject to regulation by the commission. As the Vice President of operations of Tinian Ice and Water, Ms. Hinds has a financial interest in an entity regulated by the commission. Because of this conflict of interest, she is not qualified to serve on the PUC. In other places Mr. Speaker, the relationship between municipally managed water systems and private water companies is often a tense one. We should take seriously into account this tension as we review the nomination of the vice president of a local bottling company to the PUC. Consider the fact that local governments faced with crumbling water infrastructure are often forced to privatize. The presence of bottling companies in a community tends to accelerate the privatization process because they divert funding from municipal coffers, as public confidence in the water utilities erodes. When private companies takeover public water infrastructure in any way rates are often raised. Who takes the responsibility for protecting the interest of consumers when this happens?--The Public Utilities Commission. Mr. Speaker, I recognize the urgency that many of us feel, which you have pointed out today, to establish a quorum for the PUC, but we should make sure that we do so the right way. You have before you at least two members who object to the confirmation of Ms. Hinds, but consider that those members include the Chair or perhaps the former Chair of the House Standing Committee on PUTC as well as the Chair of the Saipan and Northern Islands Legislative Delegation PUTC. Our

voices should count for something. If we are wrong, then I ask the members to show us how we are wrong. But if we are right, then we should uphold our own laws and decline Ms. Hinds' nomination. Thank you, Mr. Speaker.

Representative Sablan's written statement was later submitted and entered into record as HSE. COMM. 16-29.

Speaker Palacios: Thank you. Actually I would have preferred that you give that statement at the time when we are going to raise the issue of Ms. Kimberly Hinds' nomination, but it is okay. I appreciate your comments. Are there any more under House Communication? Representative Apatang.

Representative Apatang: Thank you Mr. Speaker. First of all, I would like to ask my PUTC Chairman to reconsider his position as far as resignation is concerned. Yesterday, we asked that we call in the Public Auditor in regards to the two questions that were brought up. I am wondering if there is an answer from the Auditor this morning. I think the Chairman himself should be getting a call from the Public Auditor whether the issue is conflicting or not, or the report that is on the financial status is in conflict and that is what we are waiting for this morning. So I think the letter as far as resignation is concern is premature and I would like to ask my Chairman to reconsider his position until we clarify the issues. Since the beginning, I said that we want to make sure that we follow the law on the confirmation process, but until we clarify the issues whether the conflict is there or not, then I think we should ask the Chairman to stay, put this matter on hold until we clarify everything before we act on it. Thank you.

Speaker Palacios: Thank you, Representative Apatang. Floor Leader.

Floor Leader Camacho: I would like to echo the sentiments of former Speaker Babauta, yourself, and also Representative Apatang to ask our very experienced PUTC Chairman to reconsider his decision to resign his Chairmanship. I believe he is experienced and we value that. I know that in the chamber things can be a little bit hectic, very heated, and sometimes very controversial and we can disagree strongly and maybe rightly so, but that does not mean that we disagree with his management of the committee. It needs to be said, Mr. Speaker, that when the PUC Act was passed into law they defined what it meant to be a public utility, And whether we agree or disagree what that definition is, that is the definition that is binding. All other definitions outside of that, it is a persuasive definition. Earlier this morning we had our legal counsel look at that and we can discuss that further again once we get there. Let me finish, Mr. Speaker, by saying that often times and I will use this simple cup as an example for one can subjectively look at it and say whether it is half full or half empty. But, objectively, that is the real question -- is it full or empty? Thank you very much, Mr. Speaker.

Speaker Palacios: Thank you Floor Leader. Representative Yumul.

Representative Yumul: I have here a brief summary of the shortfall and I will be passing it out to the members. Basically as a background, the CNMI is facing a shortfall to the tune of \$14,544,000.00, and this is spread throughout basically two of the three branches of our government. I will attempt to show in summary the shortcomings of each department of the administration and the agencies receiving general fund revenues in the attachment. In our attempt to budget the CNMI government every year, the administration and the legislature goes through a series of events that will cumulate in one of the following: the budgeting for the fiscal year, or a

budget impasse which will then result in a automatic continuing budget commonly known as continuing resolution with appropriation levels at that of the last enacted budget. In budgeting, major tensions between the legislature and the administration usually will reveal themselves. Yet, to resolve this tension both sides must adopt a compromised strategy that we can all agree on in order to move forward with FY 2008 funding requirements. As a brief on timelines, especially to the new members, Public Law 15-15 which was enacted to assist the Commonwealth government in addressing the fiscal emergency it faced for the remainder of then FY 2006 and the entire FY 2007, we basically gave the Governor or his designee the authority at their discretion to suspend the employer contribution due under 1 CMC § 8362 for the remainder of FY 2006 retroactive to March 1, 2006, and the entire FY 2007 from the general fund to the Northern Mariana Islands Retirement Fund. Public Law 15-28 which was enacted on September 15, 2006, sets the budget ceiling at \$193,483,041.00; employment at that time was pegged at 4,927 employees at a budget of \$134,000,000.00; and operations and utilities at \$58.5 million. And then on February 28, 2007, Governor Benigno Fitial, upon recommendation from the Secretary of Finance, reduced the budget of all budgeted activities of the government proportionately by approximately 15.6%. The Fifteenth Legislature then enacted Public Law 15-71 on June 26, 2006, and effectively reduced the revenue available for FY 2007 to \$163,260,013.00 and also allowed the Governor reprogramming authority. On January 28 of this year, Governor Benigno Fitial submitted to the Legislature budget resources estimate for FY 2008 and sets the budget available for appropriation to \$160,100,000. The bottom line is that the CNMI Government has been operating with a reduced budget of approximately \$160,100,000 for FY 2008, a 2.38% reduction across the board from the last FY 2007 budget ceiling at \$163 Million. In all, the reductions in budget outlays that have been taken by this government did not include remittances of Retirement contributions pegged at 18% that was enacted under Public Law 15-126. So based on overall fund status provided by the Administration as of February 6, 2008, the government's expenditure trend projected through September 30, 2008, is hovering around \$14,544,565 shortfall. The major areas of concern is funding essential departments and agencies, i.e. Department of Public Health, Department of Public Safety, Department of Corrections, the Public School System. In order to mitigate this shortfall the following actions must be taken to avert any unintentional consequences such as a government-wide shutdown or massive termination of employees and a disruption of services to the community. Expenditures to date from October 7 to January 8: personnel costs, \$39.1 Million and the all others category at \$22 Million with a total of \$61 Million. If we were to analyze that personnel would be pegged at \$132.3 Million and all others at about \$48.6 Million with a total of \$180 Million. It is clearly obvious that the expenditure trend will exceed budget authority. The budget authority again is \$163,100,000. Even if we were to add Compact Impact in at \$5.1 Million, Saipan Local Law 15-31, at \$1.2 Million, a total of \$166.4 Million will be the net budget authority. However, the shortfall, again, if we were to deduct that from the expenditure trend it would come up to \$14.5 Million that in essence is where we are at. And the plan of action, based on this understanding, I reviewed and analyzed the Governor's recommendations and I have come up with the following estimated cost savings that the government is to realize should they be implemented: Reducing employer contribution to the Retirement Fund from 18% to 11% as requested by the Governor is estimated to save \$6 Million on personnel cost; passage of cost cutting measures through the restoration of nine austerity Fridays, a two million dollar savings; and, suspension of the remaining four non-paid legal holidays will be \$1.6 million in savings for the remainder of this fiscal year. The total estimated savings from personnel cost will amount to at least \$3.6 Million capping all government expenditures. In other words, the remaining budget authority of about \$105 Million for the remaining of this fiscal year by prohibiting departments from spending all their allocations. At a minimum, this will save the government at least three million dollars.

Speaker Palacios: Representative Yumul, can we try to wind it down, perhaps you can provide copies of that report to all members.

Representative Yumul: Providing the Governor with budgeting tools such as reprogramming authority and to allow the continued reprogramming authority provisions pursuant to Public Law 15-71 for an additional \$4.4 Million. All in all, if we were to add this, it actually exceeds \$14.5 Million. And the reason for that is because of the 397 employees that were not accounted for, and I am asking that we at minimum ask the Governor to continue employing these employees until the end of this fiscal year to give them a head start. All in all the above actions, if taken together, will reverse the spending trend and certainly will allow the government to get back on track to avoid drastic actions by the Administration. These adjustments must be taken seriously and expeditiously as time is of the essence. And I will include a summary breakdown of the estimated shortfalls by departments and by agencies of the government to include the independent programs. Be mindful that the shortfalls are primarily from personnel funding and not so much the all others because again when we have suspended employer contributions in FY 2006 and FY 2007, the expenditure trend at that time is still high at \$163 million and now that we are operating at \$160 Million with the required 18% we do have that shortfall. Thank you.

Representative Yumul's written statement was submitted and entered into record as HSE. COMM. 16-26.

Speaker Palacios: Thank you, Representative Yumul. Representative Benavente.

Representative Benavente: Thank you, Mr. Speaker. I would like to point out something and I am trying to figure out where to start, but I know for a fact that it is illegal to campaign in public buildings and that would include -- and even though the legal counsel has advised me separately -- political paraphernalia should be included as campaign in public buildings and counsel has advised me that even that might have immunity pursuant to the Constitution. Using political paraphernalia's in our Chamber, I believe, really at the very least makes a mockery of this Body. And this is not the first time the Representative Stanley Torres acts this way -- makes a mockery out of this body, and I wish that the rest of the members object to this behavior. Thank you.

Speaker Palacios: Clarification, Representative Benavente, what -- (recording was paused). Thank you. Representative Stanley Torres, for everybody's sake, please.... Thank you very much. We will move on.

COMMUNICATIONS FROM THE RESIDENT REPRESENTATIVE

NONE

COMMUNICATIONS FROM DEPARTMENTS & AGENCIES

DEPT./AGCY. COMM. 16-16: (3/21/08) A memorandum from the NMIRF Administrator to all department and activity heads regarding strict accounting of employer's contributions.

There was no discussion under this Item.

OTHER COMMUNICATIONS

MISC. COMM. 16-21: (Undated) From Chairman Joseph M. Mendiola, T&ALD, calling the Delegation to meet on Wednesday, March 19, 2008, at 9:00 a.m.

MISC. COMM. 16-22: (3/13/08) From Director Jack Omar, LB, forwarding a copy of the Assessment of the legislative building's accessibility for individuals with disabilities as requested by the Speaker.

There was no discussion.

Speaker Palacios: Representative Ralph Torres.

Representative Ralph Torres: Have we passed the Senate Communications?

Speaker Palacios: Yes, we have.

Representative Ralph Torres: Can we go back to Senate Communications? I would like to say a few words.

There was no objection from the floor and the House went back to Senate communications.

SENATE COMMUNICATIONS

Speaker Palacios: I will allow you a few minutes, Representative Ralph Torres.

Representative Ralph Torres: Thank you, Mr. Speaker, On Senate Communication 16-9 on the resolution that was adopted for my parents, it is a great honor for me to say a few words on it. I would like to thank the Senate for adopting that resolution. My brothers and sister and I were there to receive the resolution and just to have that recognition, I would like to thank the Senate for adopting the resolution. Thank you.

Speaker Palacios: Thank you. Representative Salas.

Representative Salas: I just want to make a comment that perhaps the House should do the same, I believe the family is entitled.

Speaker Palacios: You are certainly welcome to take the initiative.

Representative Salas: I will take that lead. Thank you.

Speaker Palacios: Thank you. Let us take a short recess before we move on to the Reports of Standing Committees.

The House recessed at 11:27 a.m.

RECESS

The House reconvened at 11:39 a.m.

Speaker Arnold Palacios: We are back in session and we are under Item 12.

REPORTS OF STANDING COMMITTEES

S. C. R. No. 16-7: Reporting on H. B. NO. 16-11, entitled: “A Bill for an Act to amend the Safe Diving Act of 1990, to allow the Department of Public Safety enforcement authority and strengthen enforcement of Safe Diving Act.” *Your Committee on Judiciary and Governmental Operations recommends passage of the bill.*

S. C. R. No. 16-8: Reporting on H. B. NO. 16-17, entitled, “A Bill for an Act to repeal 8 CMC §§ 1723 and 1741 thru 1744 and to require the transfer of pertinent documents from the Clerk of Court's Office to the Health and Vital Statistics Office; and for other purposes.” *Your Committee on Judiciary and Governmental Operations recommends passage of the bill.*

Speaker Palacios: Representative Hocog.

Representative Hocog: Prior, you permitted Representative Torres to go back to Senate Communications, and I would also like to make a short statement on Senate Communication 16-13. I believe this posted a unique and innovative strategy as it pertains to H. B. NO. 16-51, HD5. I would like to ask the House Chairman on Ways and Means to provide an alternative measure of the budget process as it pertains to Senate Communication 16-13. While I respect the Senate’s action in the adoption of the Standing Committee Report, I find it very unusual as to what then happened and the fate of H. B. NO. 15-51, HD5. Does that mean, Mr. Speaker, that H. B. NO. 16-51, HD5 is still in existence, or it faded away in route to the Senate. And are we to take action on Senate Communication 16-13, Mr. Speaker? I cannot understand the reason for adopting a Standing Committee Report and the meat of the Standing Committee Report was left unresolved. I do not know whether a conference committee can be formed unofficially to reach an understanding between the House and the Senate. I will leave that up to my good Speaker. Thank you.

Speaker Palacios: Thank you, Representative Hocog. I will be sending a letter to the Senate President regarding Senate Communication 16-13. Basically, I would also reiterate the unusual approach to the appropriation bill which originated from the House. But at the same time, I will be appointing the Chairman of Ways and Means to go ahead and initiate communications with the Chairman of the Fiscal Affairs Committee of the Senate on this issue.

Representative Hocog: Thank you.

Speaker Palacios: Floor Leader, recognized.

Floor Leader Camacho: Mr. Speaker, in reference to a previously adopted Standing Committee Report 16-6, recommending confirmation of Ms. Kimberly Hinds, I move to confirm PUC nominee Kimberlyn King-Hinds.

The motion was seconded.

Speaker Palacios: The motion is to act on the recommendation of Standing Committee Report No. 16-6 relative to the nomination of Kimberlyn King-Hinds, which is to confirm the nominee. The motion has been seconded. Discussion on the motion? We adopted the committee report from the Committee on Judiciary and Governmental Operations. And if I may, there are very relevant concerns that were raised by Representative Sablan and that is legal issue of whether or not Ms.

Hinds is conflicted in that she is the vice president of a bottling water distribution company on Tinian, and whether that is a regulated entity under the PUC statute. So, that warrants examination or scrutiny and discussions by the members of the House, and if necessary we will ask the legal counsel for his legal guidance, on this particular issue. I will open up the floor for discussion. I recognize Representative Benavente.

Representative Benavente: I am looking at the section that Representative Sablan referred to and it is on subsection (e) Public Utilities means Commonwealth Utilities Corporation and any duly licensed private contracting operating. And then it defines that as “1) a facility or subsystem of a community-wide water production and distribution system or electrical production and or distribution system.” It goes on, as she referred to in her statement as “including waste water disposal.” I was Chairman of the Water Task Force and I remembered when several companies were interested in offering to produce water for the facility, for CUC’s distribution system for the community and the way I see this provision, I am looking at this as referring to those private companies who are interested in producing water such as desalinization, digging more wells, and improving the quality of those waters and then selling to CUC system and that, certainly, we had a lot of companies that were interested. I realize that we would have to go to the legal counsel for the legal counsel’s final opinion on this before we should act. But, I still do not see the relationship between a private bottling company that we are referring to in Tinian because those companies actually have the same relationship as any business where they purchase water from CUC and then clean the water, produce the water for safe drinking and sell bottled water. I do not see that as different from any other business. And so, I offer that as a comment and I hope that the legal counsel can make the final opinion on it. Thank you.

Speaker Palacios: Representative Hofschneider.

Representative Hofschneider: Thank you, Mr. Speaker. This is very constructive that now we are beginning to question the intent of the language that is now in place as law and that it is a reminder for us to make sure that when we intend to do something that it is very clear as to the implication of the language itself. Assumption is really the greatest failure. In this respect, we all have different opinions. That in, itself, should raise a red flag that even amongst us, we take a opinion about the language being in place in PUC whether or not that type of service constitute a public entity. But be it as it may, I think the potential conflict arises. We were all here when EPA came and we were talking about a consent decree, severing away CUC water and sewer from power. And as a result the motive behind it all is the last time that the water rates has ever been revisited was twenty years ago. So, a potential conflict arises when an entity purchases water from CUC, is a customer themselves, and turns around and becomes a supplier, a retailer. The potential conflict sitting on making decision for yourself and the company is very clear that is a rate increase should be subjected to all entities that do business with CUC how would you make your decision. That is where the conflict lies. And that poses a potential disservice to the general public and CUC to become solvent in adjusting the rates appropriately. Businesses will always be looking at trying to contain the cost of those commodities that they have direct interest. So it is very simple, I think we can give an opportunity to Ms. Kimberlyn Hinds to amend and declare and then we move on and confirm her. She has to in fact declare that she has a direct conflict being a customer of CUC and a retailer that constitutes upon the definition provided under PUC as direct public entity conflict. On the other hand, to remove the potential conflict, advise the Governor to submit a new name. Those are the two options before us. To look away without appropriate review of that language I think that all nominees are first screened by the Executive Branch before they are submitted, and I think that

we can resolve this expediently by asking the Attorney General to send over a declaratory opinion that she has no potential conflict. Thank you, Mr. Speaker.

Speaker Palacios: Thank you. Representative Reyes.

Representative Reyes: Thank you Mr. Speaker. I think it appears the only problem that we are faced with right now with the candidate is a question about conflict of interest in her part versus what she does. The thing is, Mr. Speaker, she can always abstain if she realizes that there is a conflict of interest in her part. She can always vote no or abstain from voting if that is to be a problem. But I think we all agree here that we do have an urgency to get CUC back on and look into this matter so that they can get going. We have a legal counsel here and perhaps he can give us a legal opinion right here on the floor so that we can act on this issue, but we have to get on with the agenda of CUC. Just like you said, we will be out of power here in about another 15-20 minutes and we need to have these people in place in order to decide how to take this approach and find some resolve to the problems that we are all faced with this power. And as far as a conflict about being a vice president, maybe Ms. Kim might resign next week from the corporation that she is in, I do not know. But as I said she could always abstain. Thank you.

Speaker Palacios: I will recognize the Vice Speaker and then I will ask the question to the legal counsel.

Vice Speaker Deleon Guerrero: I just want to make a statement the two options that were mentioned by Representative Hofschneider. The two options are one, that she declare that she is in conflict of interest and two, that the Attorney General the advise or for the Governor to submit a new nominee. Both those options pretty much subscribe to the opinion that the definition here is in conflict of interest that Tinian Water and Ice is a regulated entity. I would like to state for the record that is one opinion, and so with that we can go ahead ask the legal counsel to clarify the intent of this. I have an opposing opinion but for the sake of time, I will not debate but just go into find out what the legal issue is. Thank you.

Speaker Palacios: Representative Sablan.

Representative Sablan: What I wanted to ask is if we will to consider getting a legal opinion in writing, because as I recall we asked this exact question on the floor with our legal counsel during our last session and we did not give him time to do his due diligence in research and we got an off the cuff answer that became (inaudible).

Speaker Palacios: I will go ahead and ask the legal counsel provide us with guidance and see whether we are satisfied with that guidance. And if not then I will ask that we do an analysis, if necessary.

Legal Counsel Tony Cabrera: What I am hearing is an allegation that Ms. Hinds has an interest in some water bottling company on Tinian and that she may even perhaps be the Vice President. So assuming that is true then as I read Public Law 15-35 on page 3 under subsection (e), basically saying -- no commissioner shall be an employee of the Government of the Commonwealth or any of its agencies nor may a commissioner serve as a consultant to any entity regulated by the commission. So maybe that is where the concern lies is that she may be acting as a consultant and construing that broadly and being the fact that she is Vice President of that is true then we need to look at what does an entity regulated by the commission means. So that definition is provided for on the proceeding page under subsection (f) which reads: an entity regulated means all persons regulated by the commission including public utilities, telecommunication companies, and cable television

companies. When you look at the definition for public utilities, as Representative Benavente had already read, my reading of public utility which includes a facility or a sub-system of the community-wide water production and distribution system or electrical production and or distribution system. It would be a stretch for me to read in there to include water bottling companies as I know that water bottling companies are retail businesses. We are talking about utilities, and if you go to a Webster's dictionary which I do not have right now and were to look up "utility" it will basically say the production and the distribution to a certain geographic area so that everyone can tap into that or have that available for their personal consumption. I have a hard time reconciling that with a retail business which is what they are doing -- it is just they are making potable water available in bottles and selling them at stores or whatever retail establishment they choose. So in my opinion unless the PUC is duly constituted they can enact or promulgate regulations to further define what a facility or sub-system of water distribution production, etcetera, etcetera, which may or may not include water bottling companies. But given the plain words of the public law right now, I would be hesitant to read into it to include water bottling companies.

Speaker Palacios: Floor Leader Camacho.

Floor Leader Camacho: Point of clarification with the legal counsel -- if the Water Division at CUC was privatized, for example, would that fall under the definition that you presently mentioned?

Legal Counsel: Yes, I agree.

Representative Babauta: Mr. Speaker, may I ask the counsel to review Public Law 15-35 as amended by Public Law 15-40, because that subsequent law it went on to define criteria for the nominee, and I want to find out what is under § 8403 on the original version of the law.

Speaker Palacios: Short recess.

The House recessed at 11:59 a.m.

RECESS

The House reconvened at 12:03 p.m.

Speaker Palacios: Representative Babauta, you still have the floor.

Representative Babauta: I will yield for now and in the interest of time, let us move on, and vote.

Speaker Palacios: Are there any further discussion?

Representative Stanley Torres: Mr. Speaker, just to add more information about Ms. Kimberlyn Hinds. Looking at her professional experience, on her resume', and it says, Tinian Ice and Water Company. I do not know where the bottling word came in, but I guess they are doing water bottling too. Being a vice president of the company, she became an interested party of that company that is a customer at CUC at the present time, and if she becomes a commission member she will be in direct conflict. Why put her in there and then every time the water rate issues come up that she will recuse herself because of her direct conflict.

Speaker Palacios: Representative Sablan.

Representative Sablan: Thank you, Mr. Speaker. I take issue with our acting legal counsel's opinion that it will be a stretch to consider a bottling company an entity subject to regulation under the

commission. Public utilities commissions in other places routinely regulate water bottling companies. There is nothing unusual about that. And looking the definition in our own law a community-wide water distribution and production facility is a public water system and that definition applies to all bottling companies, including Tinian Water Company. They provide the public (*End of tape 2 side A*).... I am feeling that the pressure from this Body to move on this and act and vote and confirm her and I would rather see a written legal opinion that would tell us whether or not there is in fact a conflict. The conflict to me seems obvious. And I would also echo Representative Stanley Torres' contention that perhaps we should reconsider confirming somebody who may or may not have a conflict -- our position is that she does. And if we are considering a highly technical, highly complicated, and difficult position such as the Public Utilities Commissioner for a utilities agency that has been racked with enormous problems of impropriety, mismanagement, would we not want to get the regulatory body off on the right foot and not even the appearance of impropriety tainting it from the start. Before we act on this, at a minimum, we should do our due diligence and get a written legal opinion to determine what the meaning of community-wide water distribution and production is. We should not rush on this vote. Thank you.

Speaker Palacios: Representative Santos.

Representative Santos: Mr. Speaker, if in fact Kimberlyn Hinds is Vice President of the Tinian Water and Bottling Company, whatever it is called, I would think her experience in that area in and of itself is technical which then is beneficial to her membership in the commission. Putting aside the conflict of interest, which even if it exist, we all have conflict if you ask me being clients and recipients of services of CUC. But nevertheless, as Representative Reyes has pointed out if there is a direct conflict of interest the law does provide practice, does provide that she recuse herself from acting on any issue that she may be benefit or be a detriment of that comes to the attention of the commission. I do not see a bottling company as a utility entity. It is a private company regulated by the government just as anybody else. It provides consumable products just like Pepsi, but nevertheless they are a private industry. They do not provide utilities like CUC. Unless it is endorsed by CUC, then that becomes an obvious problem. But until that happens, there is no conflict.

Speaker Palacios: Representative Apatang.

Representative Apatang: Thank you, Mr. Speaker. I would just like to say that let us all be mindful that there were several nominees that were rejected in the past to this particular commission. And like I said, I have no problem with Kimberlyn because I know her, but there were several nominees that were rejected because of issues like this. They can be in fact confirmed and when they are in there recuse on issues, but they were rejected because they have a potential conflict of interest. So what I am saying is let us get a clear legal opinion on this before we vote on it. We have a session tomorrow. If the legal counsel can issue or render an opinion in writing then we will go for it. But in the mean time I ask the members that we refrain from voting until tomorrow because I believe we have a session, and if the legal opinion comes out in favor then we will go for it.

Speaker Palacios: Representative Hofschneider.

Representative Hofschneider: Thank you. I really want to vote for this nominee, so the quickest way, Mr. Speaker, is for you to call up the Attorney General because this is their nominee to quiet the issue of whether there is a potential conflict from their prospective nominating Ms. Kimberlyn Hinds, and then I will rest, Mr. Speaker. Let us move on.

Speaker Palacios: Representative Hocog.

Representative Hocog: Mr. Speaker, I have decided not to participate on the discussion but I would like to now. And if I may ask, what is the validity of this candidate's financial disclosure with the public auditor? Does that mean anything to us? If it does not, then why do we have to require a candidate or a nominee to get clearance from the Office of the Public Auditor to declare any personal interest thereof? And if that does not suit the declaratory, then why do we require them to get one. Now, let us give the benefit of the doubt that Kimberlyn Hinds will not be in conflict with what she is today. And even if she is a vice president of a corporation, does she have shares or not. I can be a vice president of any corporation without a share but an honorary board of director, Mr. Speaker. So what is the fuss about this, what is the beef about it? I move to the previous question.

Representative Stanley Torres: Clarification, Mr. Speaker.

Speaker Palacios: State your point.

Representative Stanley Torres: Kimberlyn Hinds is the vice president and general manager of the company. She is running the operation, responsible for managing all aspects of business operations to include the development of personnel policies, internal controls, inventory management, cash-flow management, sales forecasting, and system automation.

Speaker Palacios: Floor Leader.

Floor Leader Camacho: Mr. Speaker, I know the certain very honorable and distinguish members on this floor are asking that we go to the Attorney General for a legal opinion. In defense of the Legislature, because we have our own legal counsel, I move that we vote on the previous question.

Several members seconded.

Speaker Palacios: Motion is undebatable. Vice Speaker Deleon Guerrero, I am going to give a minute.

Vice Speaker Deleon Guerrero: I was going to rebut the statements that were made today, but because you only give me one minute I do not think it is unreasonable to submit to the request of Representative Sablan to get a written opinion by tomorrow's session and we act on it. We have already asked, we are going to pose the question, we have a committee report, we are going to act on it, we extended it so we could get another committee report which did not happen, and we have dragged this on. It is not to oppress any member here it is just that this is a critical issue. We want to be mindful of the concerns of members and if a written legal opinion by our legal counsel which is really has been already rendered is going to satisfy the concerns of Representative Sablan then I do not have any objections to waiting one more day per Representative Apatang's recommendation to get a legal opinion by tomorrow and then act on it.

Speaker Palacios: There is a motion though to vote on this already. Clerk, call the roll.

The Clerk called the roll for the confirmation of Ms. Kimberlyn King-Hinds to serve as a member of the the Public Utilities Commission:

Representative Edwin P. Aldan	yes
Representative David M. Apatang	no
Representative Oscar M. Babauta	yes
Representative Diego T. Benavente	yes
Representative Joseph Camacho	yes

Representative Dela Cruz: Mr. Speaker, before I vote can I have a --

Speaker Palacios: Proceed.

Representative Dela Cruz: We all wanted to move the process of getting PUC organized. I know we all have different opinions, but I just want to share quickly how I feel. And the question is not really about having a bottling water company, the question to me personally is the source that this business is getting their water from. I remember Representative Hofschneider saying that EPA has come out with a consent decree that will force CUC to raise the water rates, and that is the only way they will survive. If we were to put a nominee in there that has an interest-- and I believe she has an interest for her company -- she has a lot at stake being the vice president and general manager of this company. Will she be willing to protect what is at stake? I think so. And I wish we could of waited, I agree with the Vice Speaker that if we could of waited for tomorrow's session, we would have gotten something from the Attorney General's Office an opinion at least to guide us a little further. We can discuss this and in fact we have discussed it to its length and still we are unclear. But be that as it may, Mr. Speaker, my vote is no.

Representative Francisco S. Dela Cruz	no
Representative Joseph P. Deleon Guerrero	yes

Representative Hocog: Because Kimberlyn Hinds has met the requirement to submit her financial disclosure I say yes.

Representative Victor B. Hocog	yes
Representative Heinz S. Hofschneider	no
Representative Raymond Palacios	yes
Representative Justo S. Quitugua	abstained
Representative Joseph Reyes	yes
Representative Christina Sablan	no
Representative Edward Salas	yes
Representative Rosemond Santos	yes
Representative Ramon Tebuteb	yes

Representative Ralph Torres: Mr. Speaker, may I have thirty seconds.

Speaker Palacios: Representative Ralph Torres, continue.

Representative Ralph Torres: We have a legal counsel here for one reason -- to guide us. If we are going to continue going in, oral and written is the same thing. If you want an Attorney General we should call the Attorney General for all of our sessions; otherwise, it is a disrespect for our attorneys here who are giving us all these legal advises and then all of the sudden we are going to say well let us hold on and check with the Attorney General. So for that, on his own advice, definitely yes.

Representative Ralph Torres	yes
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Representative Stanley Torres: Because Kimberlyn Hinds did not submit a truthful disclosure I vote no.

Representative Stanley Torres	no
Representative Ray Yumul	yes
Representative Arnold Palacios	yes

Speaker Palacios: By a vote of fourteen “yes,” five “no,” one abstention, the nominee, Ms. Kimberlyn Hinds for PUC is hereby confirmed by the House. I will recognize the Floor Leader for a motion to adjourn until tomorrow at ten o’clock in the morning.

ADJOURNMENT

Floor Leader Camacho: Mr. Speaker, a motion to adjourn until ten o’clock tomorrow morning.

The motion has been seconded and carried by voice vote.

Speaker Arnold Palacios: The House adjourns until tomorrow at ten.

The House adjourned at 12:21 p.m., and will reconvene at ten o’clock in the morning on Thursday, March 27, 2008.

Respectfully submitted,

Evelyn C. Fleming, House Clerk
House of Representatives

APPEARANCE OF LOCAL BILLS

FIRST APPEARANCE: 1st Appearance of a local bill is on the date of introduction.

SECOND APPEARANCE: NONE

THIRD APPEARANCE:

H. L. B. NO. 16-5: A Local Bill for an Act for the Third Senatorial District to repeal and reenact Article 2 of Chapter 2 of Title 10 of the Commonwealth Code, as established by Saipan Local Law No. 13-21, to reorganize the Saipan Higher Education Financial Assistance Program; and for other purposes. (Representative David M. Apatang +9)

H. L. B. NO. 16-6: A Local Appropriation Bill for an Act for the First Senatorial District to appropriate \$50,000 from the local license fees for pachinko slot machines and poker machines in the First Senatorial District; and for other purposes. (Representative Victor B. Hocog)