

AN ACT

To amend 4 CMC § 8131 regarding the composition of the Board of Directors of the Commonwealth Utilities Corporation; to provide for staggered terms on the Board; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Title. This Act may be cited as the “Commonwealth Utilities Corporation Operations and Maintenance Improvement Amendment of 1996.”

Section 2. Findings. This bill is similar to H.B. No. 9-241, which the Governor vetoed on October 31, 1994. Changes and clarifications have been made to accommodate the Governor’s concerns. The Legislature nonetheless finds it unnecessary to change the quorum requirement in view of the fact that the size of the Board is reduced from nine to eight. Thus, four of eight regular voting members will constitute a quorum. Increasing the quorum to five likely would result in unnecessary difficulties in obtaining a quorum for some meetings, a problem which existed in the past until the quorum requirement was reduced to four. Business or professional experience for at least five board members is one of the recommendations of the OMIP report, and the Legislature finds this requirement would be too vague and uncertain unless quantified as a certain number of years. The requirement has been reduced to three years experience to accommodate the Governor’s concern that five years is too stringent. Although the OMIP reports of prior years recommended that the Secretary of Finance be an ex officio member of the Board to ensure close communication between Finance and CUC, that recommendation has been dropped in the Fifth Year Review (December 1994). In addition, the CUC Partnership Agreement recently formalized between the Governor and the U.S. Department of Interior endorses the Governor’s proposal to remove the Secretary of Finance from the Board. Finally, although the Legislature recognizes that the requirements for representation of Rota and Tinian and of women on the Board are superfluous in view of 1 CMC § 2901 (g), these have been retained because the provisions are specific recommendations of the OMIP report and inclusion assures continued representation for women and the neighbor islands by insulating this mandate from any (admittedly unlikely) future changes in the general requirement stated by 1 CMC § 2901 (g).

The Legislature further finds that staggered terms on the Board are essential to preserve institutional memory, lend continuity to Board actions and policies, and guard against politicization

of the Board. Further, appointees should not be permitted to act as Board members until confirmed by the Senate. Allowing members to serve in an acting capacity undermines the advice and consent process, injects an element discontinuity for third parties as to the future direction of a Board with acting members, and allows a string of temporary, acting appointments, which would impair the integrity of the Board.

Additionally, the Legislature finds that all of the current members of the CUC Board assumed seats vacated prior the expiration of the terms of their predecessors on account of so-called “courtesy resignations.” Such “courtesy resignations” are inconsistent with Article III, Section 21 of the Commonwealth Constitution, which guarantees the independence of boards and commissions. Accordingly, it is appropriate for the Legislature, in order to achieve the staggering of terms on the Board mandated by this Act, to limit the terms of some of the current members to approximately the unexpired term of their predecessors despite the provision of current law that states that all appointments shall be full four-year terms. Indeed, but for the dubious “courtesy resignations,” membership on the Board would not now be skewed so far away from staggered terms.

Section 3. Purpose. The purpose of this Act is to address the recommendations incorporated by the Operations and Maintenance Improvement Program Team in their December 1992 report (Third Year Review), and conform with the recent Partnership Agreement for CUC between the Commonwealth and the U.S. Department of the Interior. The Department of Interior commissioned the OMIP Team to evaluate, inter alia, the operations of CUC, and submit their recommendations to the Department of Interior and the Government of the Northern Mariana Islands. The recommendations pertaining to this Act appear on page 26 of the report. The report stated, “Although the issue was not raised in the Second Year Review Report, it is recommended that consideration be given to changing the number and qualifications of the Board of Directors...” and went on to list seven specific recommendations. These are:

- (1) None of the board members should be employees or officials of the CNMI or local governments during their tenure, although current board members could be permitted to complete their term;
- (2) Provide for eight members with staggered four year terms (plus the Director of Finance);
- (3) Provide that at least one member be from Tinian and one member be from Rota;
- (4) Provide that at least one member be from off-island with utility management experience. (This provision would be similar to a provision in the American Samoa statute which has provided ASPA with valuable utility management experience on the board;
- (5) Provide that at least five of the board members possess private sector business or professional background; and
- (6) Provide that at least two board members be women.

The December 1993 report (Fourth Year Review) added a recommendation (on page 25) that Board members be college graduates.

This bill has the further purpose of correcting the problems identified by the Legislature with respect to lack of staggered terms and the possibility of appointees serving on the Board in an acting capacity without prior Senate confirmation.

Section 4. Amendment. 4 CMC § 8131 (a) is amended to read:

“Section 8131. Board of Directors; Established.

(a) The Corporation shall be governed by a Board of Directors. The Board shall be composed of eight members. The Governor shall appoint the members with the advice and consent of the Senate; Provided, however, that no employee or official of the CNMI Government (including any agency, instrumentality, or political subdivision thereof) shall be appointed except as explicitly authorized by this Section; Provided, further, that no person shall be appointed who does not have at least an Associate of Arts degree from an accredited post-secondary educational institution. Except as explicitly provided by this section, 1 CMC, Div. 2, Part 2, is applicable to the Board. The Board shall be composed as follows:

- (1) At least one member shall be from Tinian and at least one member shall be from Rota;
- (2) At least two members shall be women;
- (3) At least one member shall be from off-island with utility management experience; and
- (4) At least five members shall possess a minimum of three years private sector business or professional background.”

Section 5. Staggered Board; Acting Directors Prohibited.

(a) 4 CMC § 8131 (b) is hereby amended to read:

“(b) The appointed members shall serve a term of four years. Vacancies shall be filled in the same manner as the original appointment. Any person appointed to fill a vacancy created prior to the expiration the term of a member shall serve the remainder of the unexpired term. Any member may be reappointed to serve successive terms. No person may act as a member of the Board until confirmed by the Senate, except that reappointment to another term shall not affect the ability of an incumbent member to serve until the expiration of his or her term.”

(b) 4 CMC § 8131 (f) is hereby amended to read:

“(f) The Governor may remove an appointed member for gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. The Board may remove any member for missing three consecutive meetings or other frequent absences without the prior written approval of the chairman. Upon resignation, removal or expiration of the term of appointment, the member shall cease to sit on the board and shall not be included in a quorum count.”

(c) Transition.

- (1) Notwithstanding any other provision of law, the terms of members of the

Board of Directors of the Commonwealth Utilities Corporation shall serve the terms provided by this section.

(2) To achieve staggered terms on the Board, the terms of current members are hereby adjusted as provided in this subsection. In addition, the Governor will appoint one new member with the advice and consent of the Senate. That member and the members appointed to fill the vacancy on the Board existing as of January 16, 1996 shall serve terms expiring April 10, 2000. Thus, the terms of two members will expire in 1997, two members in 1998, two members in 1999, and two members in 2000.

(3) The term of that member who is presently serving as an employee or official of the Commonwealth shall expire April 10, 1997, almost two years later than the term of his predecessor would have expired. The term of that person appointed to the seat previously held by Joseph T. Torres shall expire on May 24, 1997, the date of expiration of the unexpired term. The terms of the member representing Tinian and the member appointed to the seat previously held by J.S. Muna shall expire April 10, 1998--more than three years and more than a year, respectively, after the unexpired terms of their predecessors would have ended. The terms of the member representing Rota and the member representing Saipan and Carolinians are hereby extended one year to April 10, 1999.

Section 6. Executive Order 96-1. Section 9 of Executive Order No. 96-1 is vacated to the extent that it would create a revised Section 304(b) (1) of Executive Order 94-3. The balance of Section 9 of Executive Order No. 96-1 is unaffected hereby, with the original text of Section 304 (b) of Executive Order 94-3 serving as paragraph (1) of the revised Section 304 (b), unless otherwise modified or rejected by action of the legislature.

Section 7. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 8. Savings Clause. Except as regards ex officio membership on the Board, Section 4 of this Act shall apply prospectively only, to govern new appointments or reappointments to the Board. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have any effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 9. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

/s/ Jesus R. Sablan
JESUS R. SABLAN
PRESIDENT OF THE SENATE

/s/ Henry DLG. San Nicolas
HENRY DLG. SAN NICOLAS
SENATE LEGISLATIVE SECRETARY

Approved this 16th day of May, 1996.

/s/ Froilan C. Tenorio
FROILAN C. TENORIO
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS