

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

March 8, 2013

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina'trentai Unu Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 3/19/13
Time 3:18 PM
Received by Faith
32-13-19S

2013 MAR 19 PM 3:29
Faith

Dear Madame Speaker:

Attached is Bill No. 22-32 (COR) entitled "**An act to amend §2103.12 of Chapter 2, Title 4, Guam Code Annotated, relative to acting appointments in excess of ninety (90) days**" which was enacted into law without the signature of *i Maga'lahen Guåhan* as **Public Law 32-007**.

Under the Rule 6.009 of the DOA Personnel Rules & Regulations, an employee who is appointed to serve in an acting capacity as the head or deputy head of a department or agency is entitled to have a pay differential added to his base pay so that he essentially receives the same salary as the head of the agency.

New P.L. 32-007 effectively repeals this practice because in addition to permitting an employee to serve as acting head of an agency for up to 14 months, it also changes the method of compensation for the employee by including the following language at new Subsection 2103.12(b)(5): "*The compensation of the employee shall not be made to suffer as a result of the appointment but instead shall be maintained at the average of the preceding twelve (12) months earnings.*"

Subsection 2103.12(b)(5) is a concern because it acts as a double-edged sword. In most GovGuam agencies, the head of the department/agency earns more than the subordinate employees. Under DOA Rule 6.009, when an employee is temporarily appointed to an acting head of agency position, he receives a higher pay differential appropriate to the acting position.

There exist some agencies/departments, however, where employees who work overtime may earn more than the head of the agency/department. Under new Subsection 2103.12(b)(5) this would not be case because instead of the high pay differential, the employee's salary would only be "*maintained at the average of the preceding twelve (12) months earnings.*" The preceding 12-month earnings is basically the same salary the employee earned before taking on the

additional duties that come from being the head of an agency. This anomaly in the law would violate the principle of equal pay for equal work. It also acts as a disincentive for employees to assist their departments by stepping up to an acting appointment.

My administration fully supports the hard working employees of the Government in all respects. I therefore appeal to *i Liheslatura* to amend new Subsection 2103.12(b)(5) so to make it consistent with Rule DOA Rule 6.009 in permitting all employees who take on the extra responsibilities of an acting appointment to be fairly and justly compensated.

Senseramente,



EDDIE BAZA CALVO

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

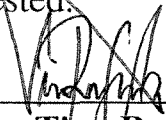
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 22-32 (COR)**, "AN ACT TO AMEND §2103.12 OF CHAPTER 2, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ACTING APPOINTMENTS IN EXCESS OF NINETY (90) DAYS", was on the 22nd day of February, 2013, duly and regularly passed.



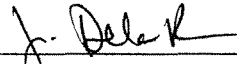
Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 26th day of Feb., 2013,
at 3:20 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: March 8, 2013

Public Law No. 32-007

I MINA 'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 22-32 (COR)

As amended on the Floor.

Introduced by:

T. C. Ada
B. J.F. Cruz
R. J. Respicio
V. Anthony Ada
Frank B. Aguon, Jr.
Chris M. Dueñas
M. T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. M. Barnes
Vicente (ben) C. Pangelinan
Dennis G. Rodriguez, Jr.
M. F.Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND §2103.12 OF CHAPTER 2, TITLE 4,
GUAM CODE ANNOTATED, RELATIVE TO ACTING
APPOINTMENTS IN EXCESS OF NINETY (90) DAYS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that continuity of leadership is imperative in maintaining the effectiveness of an
4 organization.

5 *I Liheslaturan Guåhan* further finds that since the War on Terror has been
6 declared by the United States, Department of Defense (DOD) and the Department

1 of Transportation (DOT) Reserve Component Units have been activated for
2 extended periods of time to engage in this War.

3 It is the intent of *I Liheslaturan Guåhan* to allow for acting appointments in
4 excess of ninety (90) days, in the event of the activation of a DOD or DOT Reserve
5 Component Unit wherein the head or director of a department, agency or
6 instrumentality is a member.

7 **Section 2.** §2103.12 of Chapter 2, Title 4 GCA is hereby *amended* to read:

8 **“§ 2103.12. Acting Capacity.**

9 (a) No person who shall be appointed to a position which requires
10 advice and consent of *I Liheslatura* may serve in an acting capacity as head
11 or director of a department, agency or instrumentality for a period in excess
12 of ninety (90) days. Any employee so appointed *shall* have the right to
13 return to the position the employee held immediately before the appointment
14 to serve in an acting capacity after the ninety (90) day period is exhausted.
15 The time limitation of this Section *may not* be circumvented by an
16 interruption in the appointment to an acting capacity *or* by transfer back to
17 the position the employee held immediately before the appointment for a
18 period of *less than* three hundred sixty (360) days *or* by a temporary transfer
19 to *any* other position for a period of *less than* three hundred sixty (360) days.

20 (b) Extended Absence Due to Military Deployment.

21 (1) In the event the legislatively confirmed head or director
22 of a department, agency or instrumentality is a member of the
23 Department of Defense or the Department of Transportation Reserve
24 Component, including, but *not* limited to, the United States Navy,
25 Army, Marine Corps, Air Force, the Coast Guard, or the Guam
26 National Guard, and the individual’s Unit of Assignment receives a
27 Unit call to active military duty for a period in excess of ninety (90)

1 days, the appointing authority may appoint in an acting capacity a
2 person who meets the qualification requirements for the position and
3 is a classified employee of the same department, agency or
4 instrumentality, for a period of *up to* fourteen (14) months, *or* the
5 duration of the confirmed director's active military duty, whichever is
6 shorter.

7 (2) Information specified in §2103.5, Chapter 2, Title 4 GCA
8 *shall* be transmitted to the Speaker of *I Liheslaturan Guåhan* (the
9 Guam Legislature) within ten (10) days of making the appointment to
10 serve in an acting capacity. Said appointment to acting capacity *shall*
11 become effective five (5) working days from the date of receipt of the
12 background information by the Speaker.

13 (3) Any employee so appointed *shall* have the right to return
14 to the position the employee held immediately before the appointment
15 to serve in an acting capacity after the time limit is exhausted, *or* at
16 the request of the employee.

17 (4) The time limitation of this Section *may not* be
18 circumvented by an interruption in the appointment to an acting
19 capacity or by transfer back to the position the employee held
20 immediately before the appointment for a period of *less than* three
21 hundred sixty (360) days *or* by a temporary transfer to any other
22 position for a period of *less than* three hundred sixty (360) days.

23 (5) The compensation of the employee *shall not* be made to
24 suffer as a result of the appointment to acting capacity, but instead
25 *shall* be maintained at the average of the preceding twelve (12)
26 months earnings.”

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