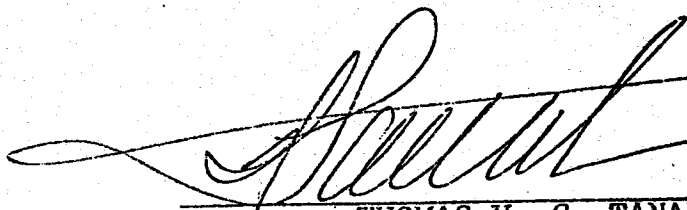


SIXTEENTH GUAM LEGISLATURE  
1981 (FIRST) Regular Session

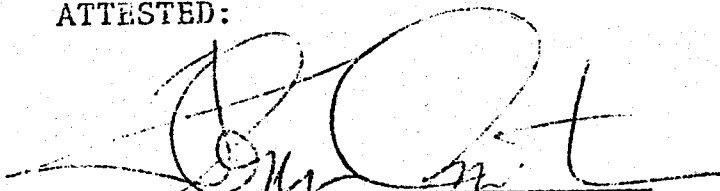
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 325, "An Act to amend the provisions of the Military Code in order to conform to provisions of United States law in the preparation for activation of National Guard Units in Guam," was on the 8th day of May 1981, - duly and regularly passed.



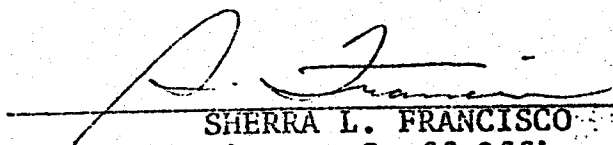
THOMAS V. C. TANAKA  
Speaker

ATTESTED:



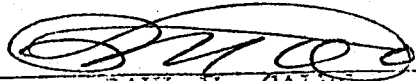
THOMAS C. CRISOSTOMO  
Legislative Secretary

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This Act was received by the Governor this 26th day of May, 1981, at 4:30 o'clock P.M.



SHERRA L. FRANCISCO  
Assistant Staff Officer  
Governor's Staff

APPROVED:



PAUL M. CALVO  
Governor of Guam

DATED: 6/5/81 2:18 p.m.

P.L. 16-18

SIXTEENTH GUAM LEGISLATURE  
1961 (FIRST) Regular Session

Bill No. 325  
(Substituted by  
the Committee on  
Youth & Senior  
Citizens, Federal-  
Territorial Relations  
and Military &  
Veterans Affairs)

Introduced by: E. R. Duenas

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AN ACT TO AMEND THE PROVISIONS OF THE MILITARY  
CODE IN ORDER TO CONFORM TO PROVISIONS OF UNITED  
STATES LAW IN THE PREPARATION FOR ACTIVATION OF  
NATIONAL GUARD UNITS IN GUAM.

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

2 Section 1. Chapter I of Title XXXVI of the Government Code  
3 is repealed and reenacted to read:

4 "CHAPTER I

5 General Provisions

6 Section 40000. Department of Military Affairs. There  
7 is within the government of Guam the Department of Military  
8 Affairs. The administrative and executive head of the  
9 department shall be the Adjutant General. The government  
10 of Guam shall provide adequate office space for the Depart-  
11 ment of Military Affairs.

12 Section 40001. Definitions. As used in this Title:

13 (a) 'Enlisted person' means all members of the  
14 Guam Army or Air National Guard who are not officers.

15 (b) 'Federal recognition' means enrollment in  
16 the Army National Guard of the United States and  
17 Reserve of the Army or Air National Guard of the  
18 United States and Reserve of the Air Force, in a  
19 particular grade, of members of the Guam National  
20 Guard, in accordance with federal law and regulations.

1 (c) 'Guam National Guard' means the Guam Army  
2 National Guard and the Guam Air National Guard.

3 (d) 'Officer' means any commissioned officer, or  
4 any warrant officer, of the Guam National Guard.

5 (e) 'Order' means a general or special order,  
6 oral or written, given pursuant to either territorial  
7 or federal authority.

8 (f) 'Resident' means any person who is legally  
9 in Guam with the intent of making this his permanent  
10 homo.

11 (g) 'Territorial duty' means all duty performed  
12 by members of the Guam National Guard pursuant to  
13 orders of the Commander-in-Chief calling such members  
14 into the active service of the territory of Guam.

15 Section 40002. Management of the Guam National Guard.  
16 The Department of Military Affairs shall be responsible for  
17 the management of all elements of the Guam National Guard  
18 not in active service of the United States.

19 Section 40003. Restriction to Guam. Except when on  
20 active duty in the service of the United States, the Guam  
21 National Guard, or any part thereof, shall not leave Guam  
22 with arms or equipment without consent of the Governor.

23 Section 40004. Commercial Ventures and Political  
24 Activities. No member of the Guam National Guard shall  
25 use his position in, or affiliation with the Guam National  
26 Guard to promote or endorse any commercial venture, pro-  
27 duct or service not connected with the Guam National Guard,  
28 or to sponsor or support a political candidate, political  
29 party, or public issue not connected with the Guam National  
30 Guard. The wearing of the Guam National Guard, in conjunc-  
31 tion with such activities, shall be deemed a promotion or  
32 endorsement thereof.

1           Section 40005. Discrimination against members:  
2 penalty. Any person who deprives a member of the National  
3 Guard of Guam of his employment, or attempts to prevent  
4 his being employed by himself or another, because said  
5 member of the Guam National Guard is such a member, or  
6 dissuades any person from enlisting in, or joining the  
7 Guam National Guard by threat of any sort, shall be deemed  
8 guilty of a violation and upon conviction thereof, shall  
9 be fined a sum not to exceed One Thousand Dollars (\$1,000).

10           Section 40006. Leaves of absence. All officers and  
11 employees of the government of Guam who are members of  
12 the Guam National Guard shall be entitled to leaves of  
13 absence from their respective duties without loss of time  
14 or efficiency rating on all days during which they shall  
15 be engaged on duty ordered or authorized under the laws  
16 of the United States or under this Title. The officers and  
17 employees shall be entitled to leave with pay for such  
18 active duty not to exceed fifteen (15) days per year then  
19 the officers and employees shall receive leave without pay."

20           Section 2. Chapter II of Title XXXVI of the Government  
21 Code is repealed and reenacted to read:

22                           "CHAPTER II

23                           Organization, Powers and Responsibilities

24           Section 40100. Commander-in-Chief. The Governor  
25 is ex-officio Commander-in-Chief and shall have command  
26 of the Guam National Guard when not in active federal  
27 service. During the absence of the Governor, or a vacancy  
28 in the Governor's Office, the person legally acting as  
29 Governor shall also be Acting Commander-in-Chief of the  
30 Guam National Guard with all the powers and authority of  
31 the Commander-in-Chief.

1           Section 40101. The Adjutant General. The Adjutant  
2 General shall be appointed by the President and shall have  
3 such rank and qualifications as the President may prescribe,  
4 and he shall:

5           (a) if nominated to the President by the  
6 Governor, be capable of being federally recognized  
7 in accordance with federal law and Army or Air Force  
8 regulations, as appropriate, in the grade of at least  
9 colonel;

10           (b) be promoted in the Guam Army or Air National  
11 Guard, as appropriate, at the discretion of the  
12 Commander-in-Chief, to a grade not to exceed major  
13 general, if eligible for federal recognition in such  
14 grade, and shall then be recommended to the President  
15 of the United States for promotion;

16           (c) serve until such time as his replacement is  
17 appointed by the President or until he resigns. The  
18 Governor may recommend to the President the relief  
19 of the Adjutant General for malfeasance, misfeasance,  
20 or his inability to continue federally recognized  
21 status;

22           (d) issue and promulgate regulations in further-  
23 ance of the provisions of this Title. The regulations  
24 shall take effect by Executive Order of the Governor.  
25 The provisions of the Administrative Adjudication Act  
26 shall not apply to the issuance and promulgation of  
27 regulations of the Department of Military Affairs;

1           (e) be the senior commander, under the Commander-  
2 in-Chief of the Guam National Guard and be respon-  
3 sible for the training of all members and units of  
4 the Guam National Guard for both federal and territo-  
5 rial missions;

6           (f) be the paymaster general and be charged  
7 with all disbursements of pay and allowances for the  
8 service of the troops when in the service of Guam;

9           (g) give his entire time to his military duties;

10           (h) have such military and civilian assistants  
11 and clerks as may be required to properly conduct the  
12 operation of his department. All positions in the  
13 Department of Military Affairs and the Guam National  
14 Guard shall be in the unclassified service of the  
15 government of Guam.

16           (i) issue and transmit and keep a record of  
17 all orders and regulations of the Commander-in-Chief  
18 and the Department of Military Affairs pertaining to  
19 the Guam National Guard;

20           (j) keep a record of all appointments, commis-  
21 sions and warrants of officers and appointments of  
22 non-commissioned officers and shall have general  
23 charge of recruiting and records of enlistments and  
24 discharges;

25           (k) keep the military history of the Guam  
26 National Guard and personnel records of each individual  
27 member thereof;

1 (1) have charge of all correspondence and records  
2 pertaining to the Guam National Guard, and file for  
3 record all reports and records of all active service  
4 performed by members of the Guam National Guard in  
5 the service of the territory of Guam or of the United  
6 States;

7 (m) on or before the opening day of each Guam  
8 Legislature, make out a full and detailed report of  
9 the activities of the Department of Military Affairs  
10 for the preceding two (2) years; and

11 (n) direct and have charge of all purchase of  
12 military supplies and stores, subject to the pur-  
13 chasing procedure of the government of Guam.

14 Section 40102. Assistant Adjutant General for Army.  
15 The Assistant Adjutant General for Army shall be appointed  
16 by the Adjutant General and he shall:

17 (a) be a citizen of the United States and a  
18 resident of Guam;

19 (b) be qualified for immediate federal recogni-  
20 tion as a colonel or lieutenant colonel and shall  
21 serve only so long as federally recognized in such  
22 grades; and

23 (c) perform all such military duties as may be  
24 required of him by the Adjutant General under his  
25 supervision and control.

26 Section 40103. Assistant Adjutant General for Air.  
27 The Assistant Adjutant General for Air shall be appointed  
28 by the Adjutant General and he shall:

29 (a) be a citizen of the United States and a  
30 resident of Guam;

1 (b) be qualified for immediate federal recogni-  
2 tion as a colonel or lieutenant colonel and shall serve  
3 only so long as federally recognized in such grades;  
4 and

5 (c) perform all such military duties as may be  
6 required of him by the Adjutant General under his  
7 supervision and control.

8 Section 40104. Headquarters Staff. The headquarters  
9 staff of the Department of Military Affairs shall consist  
10 of the Adjutant General, the Assistant Adjutants General  
11 for Army and Air, and such other offices as the Adjutant  
12 General, with the approval of the Governor, shall establish.

13 Section 40105. National Guard Personnel. The Guam  
14 National Guard shall consist of the federally recognized  
15 commissioned officers, warrant officers and enlisted  
16 members, organized, armed, and equipped as prescribed by  
17 the laws of the United States, and the regulations and  
18 tables of organization in conformity therewith, published  
19 from time to time by the President of the United States,  
20 the Secretary of Defense or the appropriate service  
21 secretary.

22 Section 40106. Uniforms and insignia. No member of  
23 the Guam National Guard shall wear any Army or Air Force  
24 uniform unless federally recognized and no member shall  
25 wear the insignia other than that of his federally recog-  
26 nized grade, nor other badges, emblems, decorations, awards,  
27 or evidences of qualification unless authorized by appro-  
n8 priate federal law or regulation. Members may wear awards,  
29 decorations or service ribbons conferred by the territory



1 of Guam or other states, commonwealths or territories, pro-  
2 vided written orders have been issued by the Adjutant  
3 General, territory of Guam, authorizing the wearing of such  
4 awards, decorations and service ribbons and provided the  
5 member is not in the active service of the United States."  
6 Section 3. Chapter III of Title XXXVI of the Government  
7 Code is repealed and reenacted to read:

8 "CHAPTER III

9 Commissioned and Warrant Officers

10 Section 40200. Appointment. No person shall be  
11 appointed and commissioned or warranted as an officer of  
12 the Guam National Guard unless he shall be qualified for  
13 immediate federal recognition in the grade to which he is  
14 to be appointed and approved by the Adjutant General. If  
15 a person so appointed shall fail to receive federal recogni-  
16 tion when first recommended, his appointment and commission  
17 or warrant shall be terminated promptly. Subject to federal  
18 regulations, and at the discretion of the Adjutant General,  
19 such person may be reappointed and commissioned or warranted  
20 and submitted for federal recognition one additional time  
21 after the passage of one year from the date federal recogni-  
22 tion was denied.

23 Section 40201. Oath of office. Every officer in the  
24 Guam National Guard shall at the time of accepting his  
25 commission, and before entering upon the duties of his  
26 office, take and subscribe to the following oath of office:

27 'I \_\_\_\_\_, do solemnly swear (or  
28 affirm) that I will support and defend the Constitu-  
29 tion of the United States and the Organic Act of the  
30 territory of Guam against all enemies, foreign and

1 domestic; that I will bear true faith and allegiance  
2 to the same; that I will obey the orders of the Presi-  
3 dent of the United States and of the Governor of Guam,  
4 that I make this obligation freely, without any mental  
5 reservation or purpose of evasion, and that I will well  
6 and faithfully discharge the duties of the office of  
7 \_\_\_\_\_ in the National Guard of the territory  
8 of Guam upon which I am about to enter, so help me God.

9 The oath of office may be taken before any officer of  
10 the Guam National Guard, an officer of the active military  
11 services or any other person authorized to administer the  
12 oath.

13 Section 40202. Promotion. Officers of the Guam  
14 National Guard shall be promoted only when eligible for  
15 federal recognition in the grade to which promoted, upon  
16 recommendation of their commander and approval of the  
17 Adjutant General.

18 Section 40203. Commissions and warrants: how vacated.  
19 Commissions of officers of the Guam National Guard may be  
20 vacated:

21 (a) by resignation if accepted by the Commander-  
22 in-Chief;

23 (b) by withdrawal of federal recognition in  
24 accordance with federal law or regulations;

25 (c) pursuant to the sentence of a General Court-  
26 Martial;

27 (d) upon recommendation of a board of examiners  
28 pursuant to regulations of the Departments of the Army  
29 or Air Force; and

(c) By transfer to another component of the military services of the United States, with the approval of the Adjutant General."

Section 4. Chapter IV of Title XXXVI of the Government Code is repealed and reenacted to read:

"CHAPTER IV

Enlisted Personnel

Section 40500. Enlistment eligibility. Any able-bodied person of good character who is capable of immediate federal recognition shall be eligible for enlistment in the Guam National Guard, provided a position is available for which he is qualified.

Section 40301. Oath of enlistment. Each person enlisting in the Guam National Guard shall take and subscribe to the following oath:

'I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Organic Act of the territory of Guam against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of Guam and the orders of the officers appointed over me, according to law and regulations, so help me God.'

The oath of enlistment may be taken before any officer of the Guam National Guard, an officer of the active military services or any other person authorized to administer the oath.

1           Section 40302. Promotion. Enlisted persons of the  
2 Guam National Guard shall be promoted only when eligible  
3 for federal recognition in the grade to which promoted, upon  
4 recommendation of their commander and approval of the  
5 Adjutant General.

6           Section 40303. Enlistments: how terminated. Terms of  
7 enlistment of enlisted persons of the Guam National Guard  
8 may be terminated by:

9           (a) expiration of enlistment;

10           (b) withdrawal of Federal recognition in  
11 accordance with federal law or regulations;

12           (c) pursuant to the sentence of a General or  
13 Special Court-Martial;

14           (d) upon recommendation of a board of examiners  
15 pursuant to regulations of the Departments of the Army  
16 or Air Force;

17           (e) transfer to another component of the military  
18 services of the United States, with the approval of  
19 the Adjutant General; and

20           (f) upon permanent relocation of residence out-  
21 side the territory of Guam."

22           Section 5. Chapter V of Title XXXVI of the Government Code  
23 is repealed and reenacted to read:

24                           "CHAPTER V :

25                           Territorial Duty

26           Section 40400. Active service: authority of Governor  
27 to order. The Commander-in-Chief may in time of war, in-  
28 surrection, rebellion, riot, or imminent danger thereof,  
29 or in time of any state of emergency, order the Guam

1 National Guard, or any part thereof, into the active service  
2 of the territory of Guam, except when such members of the  
3 Guam National Guard are already in the active service of  
4 the United States.

5 Section 40401. Labor organizations and strikes: use  
6 of National Guard limited. In no case shall the Guam  
7 National Guard, or any part thereof, be used against any  
8 labor organization, or for the purpose of strike breaking  
9 within Guam except such as shall be necessary in an  
10 emergency proclaimed by the Governor to maintain law and  
11 order.

12 Section 40402. Pay and allowances. When in the actual  
13 service of Guam under orders of the Commander-in-Chief,  
14 officers of the Guam National Guard, except officers on  
15 permanent duty receiving regular pay, and enlisted personnel  
16 shall receive for each day's service, or fraction thereof,  
17 the same basic pay and allowances as provided by law for  
18 members of the United States Army or Air Force of like  
19 grades, including longevity pay.

20 Section 40403. Transportation, lodging and subsist-  
21 ence. Transportation for all members of the Guam National  
22 Guard on duty and receiving pay under Sections 40402 of  
23 this Title shall be furnished by the territory of Guam  
24 either in-kind or by reimbursement. Lodging and subsistence  
25 will be furnished in-kind or by reimbursement when it is  
26 determined by the Adjutant General that lodging and subsist-  
27 ence at the member's usual place of residence is impractical  
28 during any part of the period of territorial duty.

1           Section 40404. Worker's Compensation Law applicable to  
2 service. The service of all officers and enlisted persons  
3 of the Guam National Guard, while on territorial duty and  
4 lawfully performing the same, shall be deemed to be 'public  
5 employment' within the terms of Section 37002(p) of Title  
6 XXXIII of the Government Code, the Worker's Compensation  
7 Law.

8           Section 40405. Same: computation of claims. Whenever  
9 a claim is to be computed under the Worker's Compensation  
10 Law, as provided in Section 40404 of this Title, because  
11 of injury or death of any officer or enlisted person of  
12 the Guam National Guard as such, it shall be computed on  
13 the basis of the active duty pay of such person as if such  
14 person were on permanent active duty with the Guam National  
15 Guard.

16           Section 40406. Physicians: compensation. Physicians  
17 attending cases of injury or illness incurred by a member  
18 of the Guam National Guard in the line of duty under Section  
19 40400 of this Chapter shall receive reasonable compensation  
20 for each case as the circumstances may warrant and as  
21 approved by the Adjutant General."

22           Section 6. Chapter VI of Title XXXVI of the Government  
23 Code is repealed and reenacted to read:

24                           "CHAPTER VI

25                                 National Guard Facilities

26           Section 40500. Facilities to be maintained. The  
27 government of Guam shall maintain adequate armories, shops,  
28 ranges and sites suitable for training, assembly, mainte-  
29 nance, storage and other purposes as may be required for

1 each unit of the Guam National Guard; such buildings and  
2 sites may be leased, constructed or financed out of territo-  
3 rial appropriation by cooperative arrangements between the  
4 government of Guam and the federal government.

5 Section 40501. Control of facilities. Each facility  
6 shall be subject to the order of the Adjutant General, and  
7 under direct charge of the commanding officer of the unit  
8 occupying the same; such facility may house all property,  
9 arms or equipment issued to the unit occupying the same.

10 Section 40502. Use of facilities for civilian  
11 activities. Subject to such regulations as are promulgated  
12 by the Adjutant General, the individual facilities may be  
13 used for reasonable and legitimate civilian activities so  
14 long as such activities do not interfere with their military  
15 purposes. Proceeds, if any, received from the civilian use  
16 of such facilities shall be deposited in the General Fund."

17 Section 7. Chapter VII of Title XXXVI of the Government  
18 Code is repealed.

19 Section 8. A new Subsection (c) is added to Section 6500.01  
20 of the Government Code to read:

21 "(c) For the purposes of the Government Claims Act,  
22 any officer or enlisted person of the Guam National Guard  
23 on territorial duty shall be deemed an employee of the  
24 government."