

- 112 (11) Acting appointment - The filling of a position by
113 a person who has not been appointed to fill the
114 position on a permanent basis, or, in the case of
115 positions requiring the advice and consent of the
116 Legislature, the situation where a person is
117 filling the position in an acting capacity, has
118 been nominated to fill the position permanently,
119 but has not been confirmed to the position by the
120 Legislature. Acting appointments include so
121 called "holdover" positions on boards and
122 agencies, such as when the enabling legislation
123 provides that an appointee shall serve until his
124 or her successor is appointed. In construing the
125 time limits in this act, all time as an acting
126 appointee shall be included together, even if such
127 acting time was spent in an acting position
128 pursuant to different appointments or as a
129 holdover.
- 130 (12) Acting capacity - the serving of a person in a
131 position in an acting capacity or pursuant to an
132 acting appointment.
- 133 (13) Salaried position - any position receiving a
134 Salary, but not including boards and commissions
135 receiving a stipend for each meeting attended.

136 (14) Meaning and computation of days. In computing the
137 90 day time limit imposed in this act, the term 90
138 days shall mean 90 days from the date of the
139 initial acting appointment, without regards to
140 weekends, holidays, nor any lapses in the acting
141 appointment of less than 30 days"

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143 Section 3. A new Section 2103(b) is added to 4 GCA, to
144 read as follows:

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146 "Section 2103(b) **Submission for Legislative**
147 **Advice and Consent.** The appointing authority shall submit
148 to the Speaker of the Legislature, the name of the nominee
149 to a position in a Nomination Letter to be hand delivered to
150 the Speaker or to the Legislative office of the Speaker.
151 The Nomination Letter shall include the following: Name;
152 position to which the appointment is made; address;
153 citizenship; criminal record, if any; age; educational
154 background; prior government service whether within or
155 without the Government of Guam; information pertinent to the
156 position's qualification; police clearance report; a record
157 of any court marshals or of any non-judicial punishment
158 inflicted under the Uniform Code of Military Justice; facts
159 concerning military service, if any, including type of
160 discharge, branch, rank at discharge, current status and

161 special distinctions and honors; whether nominee has been
162 declared mentally incompetent by any court, whether within
163 or without the United States and if so, specify in detail
164 reasons and facts related to such declaration; whether
165 nominee has been found not guilty or not punishable in any
166 criminal proceedings by reason of insanity; whether nominee
167 has been confined to a mental institution for any reason and
168 if so, the reasons why appointing authority believes nominee
169 is not suffering from any mental illness or affliction."

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171 **Section 4.** 4 GCA Section 2103(c) is hereby enacted to
172 read:

173 **"Section 2103(c) Resignations from positions.**

174 (1) A resignation from any position shall be in
175 writing ("Resignation Letter") and directed to the
176 appointing authority, and shall, by its terms, be
177 effective immediately or by its terms on a date
178 certain. If no effective date is indicated, it
179 shall be effective upon delivery to the appointing
180 authority. Upon receipt by the appointing
181 authority of any such resignation, the appointing
182 authority may make the resignation effective
183 immediately or sooner than the effective date in
184 the resignation letter. Such resignation shall be
185 effective according to its terms unless the

186 appointing authority, at its discretion, makes the
187 resignation effective immediately or at sometime
188 sooner than the resignation letter. If the
189 position involved requires Advice and Consent of
190 the Legislature, the appointing authority shall
191 immediately after receipt of the resignation
192 forward a copy of such resignation letter to the
193 Speaker of the Legislature. Once such a
194 resignation is delivered to the appointing
195 authority, it may not be later withdrawn by the
196 resigning person without the consent of the
197 appointing authority. No acceptance of such
198 resignation by the appointing authority is
199 required for the resignation to become effective.

200 (2) When, as to positions requiring the advice and
201 consent of the legislature, the appointing
202 authority and the Appointee following delivery of
203 a resignation letter to the appointing authority,
204 jointly decide to withdraw the resignation, the
205 appointing authority shall submit the name of the
206 appointee to the Legislature for a new
207 confirmation process as a new appointee.

208 (3) A letter of resignation by any officer or employee
209 of the Government of Guam, its agencies and
210 instrumentalities which is directed to the

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211 Governor or directed to any of the person's
212 supervisors shall be treated as a non-revokable
213 resignation as if it had been directed to an
214 appointing authority.

215 (4) In the case of appointments awaiting action by the
216 Legislature for confirmation, either the
217 appointing authority or the appointee may
218 unilaterally request the Speaker of the
219 Legislature to withdraw the nomination of the
220 appointee, which withdrawal shall be effective
221 immediately. Such a withdrawal of nomination
222 shall have the effect of terminating any acting
223 appointments for the position in question which
224 the appointee may hold.

225 Section 5. 4 GCA Section 2103(d) is hereby enacted to
226 read:

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228 "Section 2103(d) Undated 'courtesy' resignations not
229 allowed. The practice of requiring or submitting undated
230 resignations to be accepted at a later date by the
231 appointing authority or any other person is hereby declared
232 to be contrary to public policy for any position within the
233 Government of Guam. Neither the Governor of Guam nor any
234 other person may request an undated resignation letter or
235 courtesy resignation from any officer or employee of the

236 Government of Guam, whether the position held by such person
237 is subject to the advice and consent of the Legislature or
238 not; and no officer or employee of the Government of Guam
239 shall submit such an undated resignation letter, and any
240 such undated "Courtesy" resignation letter submitted shall
241 be void."

242 Section 6. 4 GCA Section 2103(e) is hereby enacted to
243 read:

244 "Section 2103(e) No Government of Guam official
245 or employee who occupies an unclassified position within the
246 Government of Guam (including positions on boards and
247 commissions which are paid a stipend for each meeting
248 attended), which position is unclassified may fill a
249 permanent classified position with the Government of Guam
250 for a period of one hundred eighty (180) days following
251 termination of his or her employment from the unclassified
252 position. Such a former unclassified official or employee
253 may be hired to fill a classified position during such 180
254 day period, however the appointment may not be made
255 permanent during such 180 day period, and the person shall
256 be subject to dismissal without cause during the 180 day
257 period, in the same manner as an unclassified employee,
258 notwithstanding any other law, or rule, or regulation of the
259 Government of Guam."

260 Section 7. 4 GCA Section 2103(f) is hereby enacted to
261 read:

262 "Section 2103(f) Time limits on Acting Capacity.

- 263 (1) The Governor or appointing authority may, by
264 separate appointment, appoint a person in an
265 acting capacity to fill a salaried position which
266 requires the advice and consent of the
267 Legislature. In any twelve month period, no
268 person may serve in such an acting capacity for a
269 total of more than Ninety Days (90 days) plus 3
270 legislative days.
- 271 (2) In the event of his or her rejection, a
272 candidate's nomination may be resubmitted by the
273 appointing authority to fill the same position,
274 but the candidate may not function in an acting
275 capacity for that position following such
276 resignation, and may assume the position only when
277 confirmed by the Legislature.
- 278 (3) No funds appropriated by law may be expended to
279 pay a salary or any personnel benefits of any kind
280 or to pay someone on payroll or contract who
281 serves in an acting capacity in a position to
282 which he or she was appointed by the Governor and
283 subsequently denied confirmation by the
284 Legislature, for a period of three years following

285 rejection of his or her appointment by the
 286 Legislature.

287 (4) No person shall serve more than a total of Ninety
 288 (90) days plus three Legislative days during any
 289 twelve month period in an acting capacity on any
 290 board or commission (which shall include a period
 291 in time during which the position was held over,
 292 following election of a new Administration). No
 293 person may be appointed to serve in an acting
 294 capacity on any board or commission unless that
 295 person has been nominated by the appointing
 296 authority to serve in that position in a permanent
 297 capacity.

298 (5) An appointed board or commission member may
 299 continue to serve in his position as a "holdover"
 300 after his or her term has expired, in an acting
 301 holdover capacity, until he or another person is
 302 appointed and confirmed by the Legislature,
 303 provided, that the time limits imposed by law on
 304 acting appointments shall apply.

305 (6) the ninety (90) calendar days plus the 3 (three)
 306 Legislative days limitation period for serving in
 307 an acting capacity shall not be tolled due to the
 308 fact that another person is serving in a temporary
 309 acting capacity during the nominee's absence nor

310 shall it be tolled by the appointment of some
311 other person to temporarily fill the position in
312 an acting capacity."

313 **Section 8.** 4 GCA Section 2103(g) is hereby enacted to
314 read:

315 "Section 2103(g). **Withdrawal of Nomination.** The
316 appointing authority or the appointee may withdraw a
317 Nomination Letter at any time prior to confirmation by
318 delivering a letter of withdrawal to the Speaker. The
319 withdrawal shall become effective upon receipt by the
320 Speaker, effected in the same manner as submission. A
321 person whose nomination has been withdrawn may neither serve
322 nor be reappointed to serve in an acting capacity for that
323 position until the Legislature confirms a nominee to fill
324 that position permanently."

325 **Section 9.** 4 GCA Section 2103(h) is hereby enacted to
326 read:

327 "Section 2103(h) **Deputy may become acting.** If, upon
328 the expiration of the maximum term for serving in an acting
329 capacity, a nominee to an approved position has not been
330 confirmed, any person appointed to a deputy position, if
331 such exists, may assume the position in an acting capacity
332 for the maximum term provided by this Act, pending
333 completion of the confirmation process.

335 Section 10. Section 4 GCA 4118 is hereby recodified as
 336 4 GCA 2103(i), and is hereby amended to read:

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338 "Section 2103(i) No ~~[employee of a department,~~
 339 ~~agency or instrumentality of the Government of Guam]~~ person
 340 who shall be appointed to a position which requires advice
 341 and consent of the legislature ~~[by a cognizant authority to~~
 342 ~~serve temporarily]~~ may serve in an acting capacity as head
 343 of a department, agency or instrumentality for a period in
 344 excess of ~~[one year]~~ ninety (90) days plus three legislative
 345 days during any twelve month period pursuant to any
 346 authority whatsoever. Any employee so appointed ~~[has]~~ shall
 347 have the right to return to the position the employee held
 348 immediately before the appointment to serve in an acting
 349 capacity after the ninety (90) day plus three legislative
 350 day period is exhausted. The time limitation of this
 351 section may not be circumvented by an interruption in the
 352 appointment to an acting capacity or by transfer back to the
 353 position the employee held immediately before the
 354 appointment for a period of less than thirty (30) days or by
 355 a temporary transfer to any other position.

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357 Section 11. 4 GCA Section 2103(j) is hereby enacted to
 358 read:

359 "Section 2103(j) Convictions. If any person
360 whose name is submitted to the Legislature for confirmation
361 is convicted of any felony, misdemeanor involving moral
362 turpitude, or of any offense or violation involving
363 narcotics while the nomination is pending, the nomination
364 shall be considered automatically withdrawn upon such
365 conviction. The appointing authority may, however, resubmit
366 such nomination to the Legislature thereafter."

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368 Section 12. Section 2103(k) is added to Title 4 GCA
369 and read as:

370 "Section 2103(k) No unclassified employee or
371 officer of the Government of Guam may receive a retroactive
372 pay increase unless specifically authorized by statute."

373 Section 13. Section 2106 of Title 4 GCA is recodified
374 as 2103(l) of 4 GCA, and is amended to read:

375 "2103(l). Duration of unclassified Appointments and
376 controls. All contracts for personal services for the
377 Government of Guam and all [~~statutory~~] employment within the
378 unclassified service of the Government of Guam, including
379 autonomous and semi-autonomous agencies, where no specific
380 term of appointment or employment is specified in law, as to
381 that particular and specific position, shall be at the
382 pleasure of the appointing authority. No employment
383 agreement, however described, shall provide for any other

384 term, nor shall such agreement prohibit the appointing
385 authority from exercising its [~~pleasure~~] discretion in
386 terminating said employment agreement. Any terms in
387 conflict with this Section in any employment agreement
388 executed after the effective date of this Section shall be
389 null and void from the beginning."

390 **Section 14.** Section 2107 of Title 4 GCA is recodified
391 as 4 GCA 2103(m) and is amended to read:

392 "2103(m) **Employment and Employment Contracts -**
393 **When Forbidden.** "No contract of employment shall be entered
394 into between the Government of Guam and any employee or
395 officer in the unclassified service within the government of
396 Guam unless such employment contract is specifically
397 permitted by law. Such employment shall be effected through
398 the standard form of personnel action. This Section shall
399 not affect the ability of the government to contract for
400 temporary services or for specific contracts not involving
401 an employment relationship with the Government, but shall
402 apply to a contract which is essentially a contract for
403 personal services."

404 **Section 15.** Because it was declared contrary to the
405 Organic Act in the case of Gutierrez & Miles vs. Torres, Civ
406 85-0052 (D.C. Guam 1985), Section 2103.2 of 4 GCA is hereby
407 repealed.

408 Section 16. When the compiler of laws compiles this
409 act, he shall include a footnote within Chapter Two
410 of Title 4 of the Guam Code Annotated which lists all
411 positions within the Government of Guam which require the
412 advice and consent of the Legislature along with the term of
413 office (which may be indefinite) and the citation to the
414 section of law requiring confirmation. Such footnote shall
415 be for information purposes only, and shall not have any
416 force as law.

417 Section 17. Effective date and transition provisions:

418 a. Any permanent appointment or nomination for
419 appointment which requires the advice and consent of the
420 Legislature which has been delivered to the Speaker of the
421 Legislature prior to the effective date of this act but
422 which has not been confirmed nor confirmation denied as of
423 the effective date of this act may be considered by the
424 Legislature notwithstanding the requirements of 4 GCA
425 2103(b). In such case, all time limits imposed by this act
426 shall start running as of the effective date of this act.

427 (b) As to any person holding an acting position
428 on the effective date of this act, the time limits imposed
429 by this act shall start running as of the effective date of
430 this act.

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3 TWENTY-SECOND GUAM LEGISLATURE
4 1993 (FIRST) REGULAR SESSION
5

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7 BILL NO. 414 (LS)
8 INTRODUCED BY:

D. PARKINSON 



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15 AN ACT TO REFORM THE PROCESS OF APPOINTMENTS AND
16 CONFIRMATION PROCESS AND TO RESTRICT ACTING
17 APPOINTMENTS AND FOR OTHER PURPOSES.
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22 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM

23 Section 1. Section 2103 of 4GCA is amended to read as
24 follows:

25 "2103. Same: **Where Consent of the Legislature**
26 **Required.** Whenever an appointment by the Governor
27 requires the consent of the Legislature, the Governor
28 shall submit such appointment to the Legislature within
29 ten (10) days of making the appointment. [~~If the~~
30 ~~Legislature shall recess prior to such submission, then~~
31 ~~he shall submit such appointment to the next meeting of~~
32 ~~such Legislature within ten (10) days after the~~
33 ~~commencement thereof; or~~] If such Legislature has
34 adjourned sine die, then the appointment shall be
35 submitted to the first meeting of the next Legislature
36 within ten (10) days after the commencement thereof.
37 Whenever the Legislature has adjourned sine die without
38 having confirmed or rejected an appointment, such