



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

22 AUG 2008

2008 SEP -3 PM 3:54

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina' Bente Nuebe Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

29-08-0642
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 8/22/08
Time 3:54
Received by [Signature]

Dear Speaker Won Pat:

Returned herewith is Bill No. 295 (EC), "AN ACT TO AMEND §§2103.12 AND 2103.9 (d) AND (e) OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO APPOINTMENTS, IN AN ACTING CAPACIY, TO POSITIONS REQUIRING THE ADVICE AND CONSENT OF I LIHESLATURA, AS HEAD OR DIRECTOR OF A DEPARTMENT, AGENCY, OR INSTRUMENTALITY, OR AS A MEMBER OF A BOARD OR COMMISSION," which I have vetoed.

In 2005, 4 G.C.A § 2103.12 along with other statutory provisions relative to appointments in an acting capacity were amended to be consistent with 4 G.C.A. § 4118, which was enacted by Public Law 17-81:11. Unfortunately, other sections were overlooked. The proposed FY09 budget provides for these amendments so the Guam Code Annotated relative to acting capacity appointments is consistent. The amendment proposed in Bill No. 295 would create conflicts of law.

Further, the current law with a one year term for acting appointments allows the executive branch to operate without constant disruption by providing stability in the management of an agency while a permanent appointee is identified. Unfortunately, finding permanent appointees for agencies and boards has been difficult. The fear of litigation, especially ongoing litigation, has made people reluctant to serve. Litigation coupled with inadequate compensation rates have discouraged highly qualified and competent individuals from accepting appointments.

The other more alarming effect of Bill No. 295 is the amendment to Subsections (d) and (e) of §2103.9 of Chapter 2, Title 4, Guam Code Annotated. Prohibiting board appointees to serve in an acting capacity pending confirmation would effectively paralyze agencies and delay critical government services.

After a person has been appointed by the Governor to serve on a board or commission, the individual has 10 days to submit the required documents for confirmation to be transmitted to the Legislature. These documents include a lengthy application, clearances and an affidavit. Once this packet is transmitted to the Legislature, the appointee can serve in an acting capacity pending confirmation. The appointment packet is referred to the appropriate committee to schedule a public hearing to be held not less than 5 working days from issuance of a public notice. After the public hearing, the committee allows 10 days from the hearing date to submit written testimony. Thereafter, a committee report is compiled and voted on by the members of the committee. If the committee votes to report the appointment to the legislative body, the legislative body would act on the appointment during legislative session. This process can take 3 months to 2 years.

The acting capacity authorization allows appointees to provide government services pending the results of the confirmation process. Without this authorization, government agencies would be powerless to effectuate their mandates, including the ability to apply for federal grants and execute contracts in connection therewith. This especially applies at the outset of a new Administration when new board members are appointed to boards and commissions, including the boards for Guam Memorial Hospital Authority, Guam International Airport Authority, Guam Housing and Urban Renewal Authority, Guam Community College, and Port Authority of Guam. Should the law prohibit boards from functioning pending confirmation, as this bill proposes to do, then the government's actions would be held in abeyance and create potential problems of unforeseen proportions until addressed by a confirmed board.

The acting capacity is a necessary and integral management tool necessary to effectively run any government agency and to remove it would jeopardize critical government services.

Sinsëru yan Magåhet,



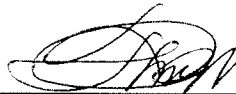
FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

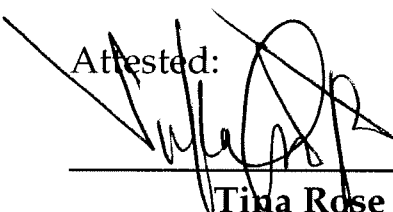
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 295 (EC), "AN ACT TO AMEND §§2103.12 AND 2103.9 (d) AND (e) OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO APPOINTMENTS, IN AN ACTING CAPACITY, TO POSITIONS REQUIRING THE ADVICE AND CONSENT OF I LIHESLATURA, AS HEAD OR DIRECTOR OF A DEPARTMENT, AGENCY, OR INSTRUMENTALITY, OR AS MEMBER OF A BOARD OR COMMISSION,"** was on the 9th day of August, 2008, duly and regularly passed.

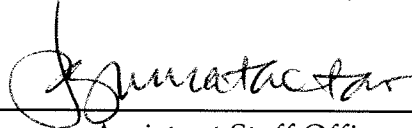


Judith T. Won Pat
Speaker

Attested:


Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahaen Guåhan* this 11 day of Aug, 2008, at 9:40 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 295 (EC)

As amended on the Floor.

Introduced by:

B. J.F. Cruz
Judith P. Guthertz, DPA
Frank F. Blas, Jr.
Edward J.B. Calvo
James V. Espaldon
Mark Forbes
Frank T. Ishizaki
J. A. Lujan
Tina Rose Muña Barnes
A. B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Dr. David L.G. Shimizu
Ray Tenorio
J. T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§2103.12 AND 2103.9 (d) AND (e) OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO APPOINTMENTS, IN AN ACTING CAPACITY, TO POSITIONS REQUIRING THE ADVICE AND CONSENT OF *I LIHESLATURA*, AS HEAD *OR* DIRECTOR OF A DEPARTMENT, AGENCY, *OR* INSTRUMENTALITY, *OR* AS MEMBER OF A BOARD *OR* COMMISSION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. §2103.12, Chapter 2 of Title 4 of the Guam Code Annotated, is *amended* to read:

“§2103.12. **Acting Capacity.** No person who *shall* be appointed to a position which requires advice and consent of *I Liheslatura* may serve in an acting capacity as head *or* director of a department, agency *or*

1 instrumentality for a period in excess of ninety (90) days. Any employee so
2 appointed *shall* have the right to return to the position the employee held
3 immediately before the appointment to serve in an acting capacity after the
4 ninety (90) day period is exhausted. The time limitation of this Section may
5 not be circumvented by an interruption in the appointment to an acting
6 capacity *or* by transfer back to the position the employee held immediately
7 before the appointment for a period of *less than* three hundred sixty (360)
8 days *or* by a temporary transfer to any other position for a period of *less than*
9 three hundred sixty (360) days.”

10 **Section 2.** Subsections (d) and (e) of §2103.9 of Chapter 2, Title 4, Guam
11 Code Annotated are hereby *amended* to read:

12 “(d) No person may be appointed to serve in an acting capacity on
13 any Board *or* Commission requiring legislative advice and consent. Failure
14 to comply with this Subsection *shall* render the actions of a defective
15 appointee null and void.

16 (e) An appointed Board *or* Commission member may continue to
17 serve for ninety (90) calendar plus three (3) legislative days in that person’s
18 position after that person’s term has expired in an acting holder capacity
19 until that person, *or* another person, is appointed by *I Maga’lahen Guåhan*
20 [Governor] and confirmed by *I Liheslaturan Guåhan* [the Legislature].”

21 **Section 3.** Section 2 of this Bill *shall* be effective sixty (60) days from
22 enactment of this Act.

23 **Section 4. Severability.** *If* any of the provisions of this Act or the
24 application thereof to any person or circumstance is held invalid, such invalidity
25 shall *not* affect any other provision or application of this Act which can be given
26 effect without the invalid provision or application, and to this end the provisions of
27 this Act are severable.