

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

| BILL NO. | SPONSOR | TITLE | DATE INTRODUCED | DATE REFERRED | CMTE REFERRED | PUBLIC HEARING DATE | DATE COMMITTEE REPORT FILED | FISCAL NOTES | NOTES |
|-------------|--|---|----------------------|---------------|---------------|---------------------|-----------------------------|--------------|-------|
| 312-35 (LS) | Mary Camacho Torres Tina Rose Muña Barnes | AN ACT TO AMEND §4403(d) THROUGH (f), ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE CIVIL SERVICE COMMISSION TO NULL AND VOID PERSONNEL ACTIONS WHICH ARE IN VIOLATION OF EXISTING LAWS OR REGULATIONS, AND TO ESTABLISHING PENALTIES FOR PUBLIC OFFICIALS WHO UNJUSTIFIABLY REFUSE TO COOPERATE WITH SUCH INVESTIGATIONS; AND TO FURTHER AMEND §4406 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REMOVING THE APPLICATION OF THE NINETY DAY RULE FOR POST AUDIT INVESTIGATIONS; AND TO FURTHER AMEND §4408 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE ENFORCEMENT OF CIVIL SERVICE COMMISSION ORDERS. | 3/9/20 10:23 a.m. | | | | | | |

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 312-35 (LS)

Introduced by:

Mary Camacho Torres *mc1*
Tina Muña Barnes *B*

AN ACT TO AMEND §4403(d) THROUGH (f), ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE CIVIL SERVICE COMMISSION TO NULL AND VOID PERSONNEL ACTIONS WHICH ARE IN VIOLATION OF EXISTING LAWS OR REGULATIONS, AND TO ESTABLISHING PENALTIES FOR PUBLIC OFFICIALS WHO UNJUSTIFIABLY REFUSE TO COOPERATE WITH SUCH INVESTIGATIONS; AND TO FURTHER AMEND §4406 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REMOVING THE APPLICATION OF THE NINETY DAY RULE FOR POST AUDIT INVESTIGATIONS; AND TO FURTHER AMEND §4408 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE ENFORCEMENT OF CIVIL SERVICE COMMISSION ORDERS.

2020 MAR -9 AM 10:23

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan*

finds that §1422c of the Organic Act of Guam reads in part, “The Legislature shall establish a merit system and as far as practicable, appointments and promotions shall be made in accordance with such merit system.” *I Liheslaturan Guåhan* further finds that in order to serve the people of Guam, persons appointed to the classified service

1 of government of Guam positions in the executive branch must qualify for the job
2 and their “personnel action” must be in compliance with personnel rules and
3 regulations and laws in accordance with the merit system.

4 *I Liheslaturan Guåhan* finds that parts of Article 4 (Civil Service
5 Commission) of Chapter 4 (Personnel Policy and the Civil Service Commission),
6 Title 4 (Public Officers and Employees), Guam Code Annotated require
7 modification in order to advance the mission of the Civil Service Commission to
8 promote and protect the merit selection process in the hiring of employees for the
9 government of Guam. Currently, the Commission finds it difficult to enforce its
10 actions when null and voiding certain personnel actions which are in violation of
11 existing laws or regulations as agencies avoid enforcement by simply not giving a
12 timely Notice of a Proposed and Final Adverse Action. It is therefore the intent of *I*
13 *Liheslatura* to grant the Civil Service Commission null and void authority when such
14 conditions require.

15 *I Liheslaturan Guahan* further finds that current language in Chapter 4, Title
16 4, Guam Code Annotated requires that an adverse action following a decision to null
17 and void a personnel action(s) must take place within ninety (90) days of when the
18 agency knew or should have known the personnel action violated existing laws or
19 regulations. Often this ninety (90) day window will have expired before the
20 Commission is asked to investigate or will expire before the Commission can finish
21 its investigation and make a decision. It is therefore the intent of *I Liheslatura* to
22 remove the ninety (90) day rule from reviews of personnel actions (post audit
23 investigations).

24 *I Liheslaturan Guahan* finds that current law does not penalize management
25 who may refuse to cooperate with the Commission in post audit investigations. It is
26 therefore the intent of *I Liheslatura* to impose a fine on an appointing authority for
27 non-cooperation or delay of the investigation.

1 *I Liheslaturan Guahan* further finds that current law can have a catastrophic
2 effect on the employee(s) whose position is voided through no fault of his or her
3 own, as the Commission can currently null and void a personnel action even if the
4 employee has been receiving favorable evaluations for many years and therefore had
5 reason to believe his or her job was safe. It is therefore the intent of *I Liheslatura* to
6 limit the Commission to take action only where the complaint is filed within six (6)
7 months of the effective date of the personnel action in question.

8 **Section 2.** §§ 4403(d)-(f) of Chapter 4, Title 4, Guam Code Annotated, is
9 hereby *amended* to read:

10 “§ 4403. **Duties of the Commission.** The Commission has the following
11 duties, powers and responsibilities:

12 (d) The Commission may investigate and set aside and declare null and void
13 any personnel action of an employee in the classified service if the Commission finds
14 after conducting the necessary investigation that the personnel action was taken in
15 violation of personnel laws or rules; provided, however, that this Section shall not
16 be deemed to permit appeals by employees from adverse actions not covered in
17 subsection (b) above.

18 (1) The agency head shall cooperate and assist with the Commission’s
19 investigation. The agency head or the deputy shall be required to pay a
20 penalty, if the Court finds that a public official’s decision to refuse to
21 cooperate with the Commission is not justified under this Chapter. The Court
22 shall order the public official to cooperate and to pay a fine of One Thousand
23 Dollars (\$1,000.00). The fine shall be a personal expense for the responsible
24 official and in no way shall the fine be paid by the agency or the government
25 of Guam. The fine shall be paid to the General Fund. Petitioning the Court to
26 force cooperation of the Agency shall toll the One Hundred Eighty (180) day
27 time limitation pursuant to § 4403(d)(2)(B).

1 (2) Prior to declaring any personnel action null and void, the
2 Commission shall provide written notice of the alleged violation to the agency
3 head and the employee(s) whose personnel action may be affected. The notice
4 to the employee(s) shall be in the form of a Notice of Proposed Adverse
5 Action.

6 (A) The agency head and employee(s) shall respond within ten
7 (10) calendar days after receipt of the notice to the Commission's proposed
8 action. Where the Commission declares any personnel action null and void,
9 the Civil Service Commission shall have the authority to terminate the
10 employee and shall serve the employee with notice of Final Adverse Action
11 and the agency head with notice of the decision to null and void the personnel
12 action. The Agency or the Employee may appeal this decision to the Superior
13 Court.

14 (B) All actions taken by the Commission pursuant to this Section
15 shall be taken within one hundred eighty (180) calendar days after the
16 personnel action or complaint is filed with the Commission.

17 (C) The Civil Service Commission shall submit a copy of its final
18 decision to *I Liheslatura* by the next working day.

19 (3) The Commission shall adopt rules and regulations to effectuate this
20 Section, including the requirement of a written complaint to initiate any
21 investigation. The absence of rules and regulations shall not, however, prevent
22 the Commission from performing its duties as described in this Section.

23 (4) The Commission's decision shall be final but subject to judicial
24 review;

25 (5) Where the Commission declares any personnel action null and void
26 the Commission, shall have the authority to demote or dismiss the

1 employee(s) and shall serve the employee(s) with notice of Proposed Adverse
2 Action and where appropriate Notice of Final Adverse Action.

3 (6) All written request for a post audit investigation must be submitted
4 to the Commission within six (6) months of the personnel action's effective
5 date. Should a request for a post audit investigation be requested prior to the
6 six (6) month statute of limitations, the Commission has jurisdiction to
7 investigate the complaint. Having begun the investigation in compliance with
8 this section, the Commission may take an action on the complaint and
9 personnel action so long as it is compliant with the One Hundred Eighty (180)
10 day rule of § 4403(d)(2)(B).

11 (7) For purposes of this Section, "Personnel Action" shall mean any
12 action taken by management that directly changes the status quo of an
13 employee pursuant to rule or law.

14 (e) It shall conduct reviews of notices of personnel actions of employees from
15 the classified service and may request additional documents to verify the nature of
16 the action through the Executive Director or his or her designee.

17 (1) All notices of personnel actions regarding the classified service shall
18 be filed with the Commission within twenty (20) calendar days after their
19 effective date.

20 (2) Failure to submit the required notices of personnel actions within
21 ten (10) calendar days after written request by the Commission ~~will~~
22 ~~immediately result in a ten percent (10%) salary reduction of the agency head~~
23 ~~and his deputy until compliance is made will require the agency head or the~~
24 deputy to pay a penalty. If the Court finds that a public official's decision to
25 refuse to cooperate with the Commission is not justified under this Chapter,
26 the Court shall order the public official to cooperate and to pay a fine of One
27 Thousand Dollars (\$1,000.00) The fine shall be a personal expense for the

1 responsible official and in no way shall the fine be paid by the agency or the
2 government of Guam. The fine shall be paid to the General Fund.

3 (3) The Civil Service Commission shall submit a copy of its written
4 request to the agency head and his deputy for compliance with this Section to
5 *I Liheslatura* by the next working day;

6 (f) The jurisdiction of the Commission shall ~~also~~ apply to the adverse action
7 appeals of all certified, technical, and professional personnel unless otherwise
8 exempted in this Section of the Guam Power Authority and the Guam Waterworks
9 Authority; the jurisdiction of the Commission shall apply to all classified personnel
10 of the government of Guam unless otherwise exempted in this Section.~~Guam~~
11 ~~Memorial Hospital Authority and the Guam Solid Waste Authority;~~

12 **Section 3.** A new §4406 (b)(5) is hereby *added* to Chapter 4, Title 4, Guam
13 Code Annotated, to read:

14 “(5) The Ninety (90) Day Rule of this Subsection shall not apply to actions
15 taken pursuant to 4 GCA §4403(d).”

16 **Section 4.** §4408 of Chapter 4, Title 4, Guam Code Annotated, is hereby
17 *amended* to read:

18 “**§4408. Enforcement of Orders.** The Civil Service Commission may seek
19 enforcement of its decisions and orders in all decisions and orders in all matters
20 permitted by this Title by application to the Superior Court for the appropriate
21 remedy. In seeking enforcement of its decisions and orders, the application for
22 enforcement shall be entitled, “The Civil Service Commission v. (department,
23 agency, instrumentality or officer).” ~~No enforcement shall be commenced against~~
24 ~~any department head or other employee or officer of the Government in his personal~~
25 ~~capacity.~~ If the Court finds that a public official’s decision to refuse to cooperate
26 with the Commission is not justified under this Chapter, the Court shall order the
27 public official to cooperate and to pay a fine of One Thousand Dollars (\$1,000.00)

1 The fine shall be a personal expense for the responsible official and in no way shall
2 the fine be paid by the agency or the government of Guam.

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