



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

May 24, 2013

MEMORANDUM

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

To: **Rennae Meno**
Clerk of the Legislature

Senator
Vicente (Ben) C. Pangelinan
Member

From: **Senator Rory J. Respicio**

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Subject: **Supplement to Committee Report on
Bill No. 19-32(COR) as Substituted**

Senator
Dennis G. Rodriguez, Jr.
Member

Hafa Adai!

Vice-Speaker
Benjamin J.F. Cruz
Member

Transmitted herewith is a memo from Senator Vicente A. Pangelinan, Chairperson, Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land, forwarding Attachments for Bill No. 19-32 (COR) as Substituted. *Oh*

Legislative Secretary
Tina Rose Muña Barnes
Member

Please include this memo and the attachment as a "Supplemental" to the Committee Report on Bill No. 19-32 (COR) as Substituted.

Senator
Frank Blas Aguon, Jr.
Member

Please make the appropriate indication in your records; and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Si Yu'os Ma'ase'!

Senator
Aline Yamashita
Member

2013 MAY 24 PM 12:32



I Mina'trentai Dos na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

May 24, 2013

Chairman
Committee on Appropriations,
Public Debt, Legal Affairs,
Retirement, Public Parks,
Recreation, Historic Preservation
and Land

Member
Committee on Education,
Public Libraries
and Women's Affairs

Member
Committee on General
Government Operations and
Cultural Affairs

Member
Committee on Municipal
Affairs, Tourism, Housing and
Hagåtña Restoration and
Development Authority

Member
Committee on Health &
Human Services, Health
Insurance Reform, Economic
Development and Senior
Citizens

Member
Committee on Aviation, Ground
Transportation, Regulatory
Concerns and Future
Generations

Senator Rory Respicio
Chairman
Committee on Rules
I Mina'trentai Dos Na Liheslaturan
155 Hesler St.
Hagatna, Guam

Re: Bill 19

Hafa Adai,

The Office of the Attorney General submitted testimony on Bill No 19-32 (COR), which I have attached and hereby request that it be included in the committee report filed with the Committee on Rules.

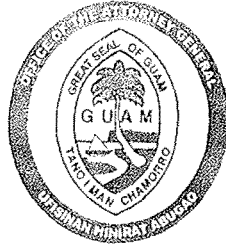
Thank you.

Si Yu'os Ma'ase,

Vicente (ben) Cabrera Pangelinan
Senator

S-23-15 hm

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

May 22, 2013

HAND DELIVER

Honorable Christopher M. Duenas
Assistant Minority Leader
I Mina'trentai Dos Na Liheslaturan Guåhan
Ste. 701A, DNA Bldg.
238 Archbishop Flores St.
Hagatna, Guam 96910
Letter to Senator Duenas

Ref: LEG 13-0163

Re: Bill No. 19-32(COR)

Dear Senator Duenas:

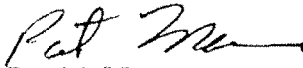
You have asked for our comments on corrected Bill 19-32 which you forwarded to this office with your May 17, 2013 email. On February 25, 2013, we sent you the attached letter expressing our concerns about the original draft of Bill 19-32. These concerns have been addressed in the corrected Bill we received from you on May 17. Hence, the concerns in our February 25 letter, no longer apply to the correct Bill you forwarded to us.

We do have a few comments about corrected Bill 19-32. These comments are in new §§ 5201, 5202, 5203 5205. The comments only involve our proposed clarification of certain language in the Bill. Attached is a copy of the Bill showing our proposed clarifications.

Also, new § 5204 mentions using some of the funds collected "for the purpose of the administration of this Act" but adds that the funds shall *not* be used for "personnel costs". Since a reference to administrative costs usually means personnel costs plus other miscellaneous costs, it might be helpful to specify which administrative costs are meant to be covered by the funds made available for administrative costs.

We hope this is helpful.

Sincerely,


J. Patrick Mason
Deputy Attorney General



cc: Honorable Vicente Pangelinan, Senator
Attachments

COPY

Adds new §§ 5201-5205 to 11 GCA, relative to gaming.

“§5201. Limited Gaming Tax.

(a) There is hereby imposed, a limited gaming tax on the gross receipts from limited gaming activities allowed by this Act in Guam. The tax rate on limited gaming activities shall be *no less than* four percent (4%).

(b) (1) The Department of Revenue and Taxation shall collect the amount of limited gaming tax on the gross receipts from limited gaming activities determined pursuant to subsection (a) of this section from any limited gaming licensee owing the tax and shall have all of the powers, rights, and duties provided for by law to carry out such collection.

(2) All moneys collected pursuant to this section shall be deposited in the Fund created by §5204 of this act Title 11 of G.C.A.

§ 5202. Violations of Taxation Provisions – Penalties.

(a) Any person who willfully:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by ~~this Act~~ §5201 shall be punished as a third degree felony; ~~a third degree felony and shall be punished as provided by laws;~~
- (2) Fails to pay tax due under ~~this Act~~ §5201 within thirty (30) days after the date the tax becomes due, ~~commits~~ shall be punished as a misdemeanor;
- (3) Fails to file a return required by this Act within thirty (30) days after the date the return is due commits a misdemeanor and shall be punished as provided for by law;
- (4) Violates either paragraph (2) or (3) of this section, two (2) or more times in any twelve-month period, commits a third degree felony and shall be punished as provided for by law; and
- (5) Aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under any title administered by the Department, or a return, affidavit, claim, or other document which is fraudulent or is false as to any material fact, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, commits a third degree felony and shall be punished as provided for by law.

(b) For purposes of this section, “person” includes corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to this Act.

§ 5203. Returns and Reports – Failure to File – Penalties.

(a) (1) Any person who fails to file a return or report required by this Act for limited gaming activities, which return or report includes taxable limited gaming transactions,

on or before the date the return is due, as prescribed in § 5202(a)(3) of this Act, is subject to the payment of an additional amount assessed as a penalty equal to fifteen percent (15%) of the tax, or one thousand dollars (\$1,000.00), whichever is greater; except that, for good cause shown, the Director may reduce or eliminate such penalty.

(2) Any person, subject to taxation under this chapter for limited gaming activities, who fails to pay the tax within the time prescribed, is subject to an interest charge of two percent (2%) per month or portion thereof or the period of time during which the payment is late, or one thousand dollars (\$1,000.00), whichever is greater.

(3) (A) Penalty and interest are considered the same as a tax for the purposes of collection and enforcement, including liens, distraint warrants, and criminal violations; and,

(B) Any payment received for taxes, penalties, or interest is applied, first to the tax, beginning with the oldest delinquency then to interest and then to penalty.

(4) The Director may, upon application of the taxpayer, establish a maximum interest rate of twenty-four percent (24%) upon delinquent taxes if the Director determines that the delinquent payment was caused by a mistake of law and not by a willful intent to evade the tax.

(b) The procedures for collection of any taxes due under this Act and the authority of the Department to collect such taxes, shall be the same as those provided for the collection of gross receipts taxes.

§ 5204. Limited Gaming Fund.

(a) There is hereby created, separate and apart from other funds of the government of Guam, a fund to be known as the Limited Gaming Fund. All license fees, taxes and penalties collected under this Act shall be deposited in the Fund. The Fund shall not be commingled with the General Fund, except as indicated herein, shall be kept in a separate bank account, and, shall not be used as a pledge of security or as collateral for government loans. The Director of Administration shall make an itemized quarterly report to the Governor of Guam, and *I Liheslaturan Guåhan*, of the condition of, and a detailed description of all financial activity within, the Fund. The Director of Administration shall further make an itemized annual report, which shall be made available to the general public.

(b) The Fund shall be used first for the purpose of the administration of this Act, and as otherwise stated herein. *No more than* five percent (5%) of the Fund balance may be expended for this purpose, and funds *shall not* be expended for personnel costs. Said Fund shall be examined and reported upon by the Director of Administration as required by law.

(c) No claim for the payment of any expense incurred by the Department or any other agency in the administration of this Act, shall be made unless it is against the Fund. No other moneys of the government of Guam shall be used or obligated to pay the expenses of the Department.

(d) Moneys remaining in the Fund, after maintaining the stated reserves for administrative expenses of this Act, shall be appropriated in the following manner in each fiscal year:

(1) *up to* one third (1/3) of the available balance to the Mayors Council of Guam for the repair and construction of village recreational facilities, including community centers;

(2) *up to* one third (1/3) of the available balance to the Department of Parks and Recreation for the repair and construction of its facilities; and

(3) *up to* one third (1/3) of the available balance to the Department of Education for the repair and construction of its sports facilities.

(e) The Mayors Council of Guam, the Department of Parks and Recreation, and the Department of Education shall present memoranda of request to the Department of Administration detailing the use of funds to be allocated to each entity. Funds *shall not* be expended for personnel costs. The Department of Administration shall release funds to each entity on the first Monday of each fiscal quarter.

§ 5205. Limited Gaming Activities – Authorized and Unauthorized.

(a) The following are the only limited gaming activities authorized in Guam under this Act.

(1) Bingo or lottery that is conducted by a tax exempt non-profit organization as authorized in 9 GCA §64.70(b);

(2) Cockfighting that is conducted at a licensed cockpit and that all wagers are present at the cockpit, as authorized in 9 GCA §64.40; and

(3) Carnival or Liberation Day gaming, as authorized in 9 G.C.A. §64.62;

(4) All other limited gaming activities are unauthorized.

(b) Each non-profit organization choosing to operate a gaming activity shall be open to an auditing of funds by the Office of the Public Auditor to ensure that the limited gaming tax is accounted for and that funding is being spent in the spirit accordance with the non-profit's organization's charter, and purposes, including the public benefit.

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

Section 4. Repealer. All laws and parts of laws inconsistent with any of the provisions of this Act, as stated in this Act, are hereby repealed.

09-25-12 K

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

February 25, 2013

HAND DELIVER

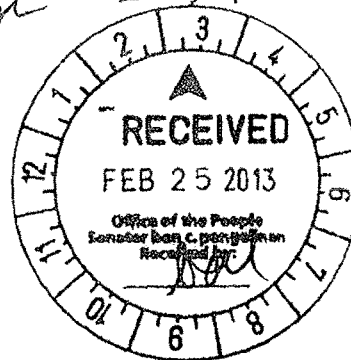
Ref: LEG 13-0163

Honorable Vicente C. Pangelinan
Senator
Committee on Appropriations, Public Debt, Legal
Affairs, Retirement, Public Parks, Recreation,
Historic Preservation and Land
I Mina'trentai Dos Na Lihestaturan Guåhan
Ste. 101 Quan Bldg.
324 W. Soledad Ave.
Hagatna, Guam

LM

357PM

MSK
2-25-12



Re: Bill No. 19-32 (COR)

Decid
2-25-13

Dear Senator Pangelinan:

The following is our analysis of Bill No. 19-32 (COR). For convenience, the Bill is attached hereto.

Although the language of Bill 19-32 is somewhat confusing, if it becomes law, it could be claimed that the Bill is intended to legalize certain electronic gambling devices – including the Liberty gaming machines which were so abundant in gaming parlors and bars in 2008 before the Superior Court ordered the Department of Revenue and Taxation (DRT) to revoke the licenses/registrations for the Liberty machines and other similar gambling devices. Two cases involving the legality of electronic gaming devices are currently pending in the Superior Court of Guam.¹ Furthermore, this type of gambling has been rejected by the voters of Guam.

Bill 19-32 plainly states in the caption to the Bill and in the Sections in the Bill that it amends administrative rules and regulations found in Chapter 7, Title 3 of the Administrative

¹ The case ordering the revocation of the Liberty gaming devices is *Rapadas v. Benito v. Guam Music, Inc.*, Superior Ct. No. SP0141-08. This case has been appealed to the Guam Supreme Court twice and remanded back to the Superior Court both times. A companion case is *Guam Music, Inc v. Camacho*, Superior Ct. No. SP0219-08. *Guam Music, Inc.* has been appealed to the Guam Supreme Court once and then remanded back to the Superior Court. Both cases are now pending in the Superior Court. Both cases involve the issue whether *Guam Music, Inc.* is entitled to have its electronic Liberty machines licensed as amusement devices or whether the devices cannot be licensed because they are gambling devices.

RECEIVED
FEB 25 2013
3:47PM

Office of Sen. Pangelinan

287 West O'Brien Drive • Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493(Fax)

COPY

Rules and Regulations; more specifically the Bill would amend certain rules and regulations found in 3 GARR §§ 7101-7167 (the "Regulations"). Since the Bill 19-32 merely amends rules and regulations and does not create new law, it is questionable whether the Bill has any real meaning.

Language in Section 1 of Bill 19-32 states: "[S]ince the rule-making authority [of DRT] did *not* allow for the repeal and re-enactment of existing statute, the regulations were placed in Chapter 7 of Title 3, Guam Administrative Rules and Regulations." Bill, p. 1. (Emphasis in original). Of course, Rules and Regulations *cannot* repeal and re-enact existing laws; nor can amendments to Rules and Regulations change existing laws. "An administrative agency may not employ its rule making power to modify, alter, or enlarge provisions of a statute which it is charged with administering." *Brunk v. Nebraska State Racing Commission*, 700 N.W.2d 594, 601 (2005). "Administrative rules or regulations cannot amend or change legislative enactments." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1,*19 (2002).

1. Electronic Gaming Devices

At the present time, the licensing of gaming devices is specifically prohibited on Guam by duly enacted laws. See 11GCA § 22202 (as amended May 18, 2007) ("No slot machine or amusement devices set to make progressive or automatic payouts *shall* be licensed under this Section [which establishes licensing fees for amusement devices]. No gambling device as defined in 9 GCA §64.20(b)² shall be licensed under this Section." (footnote. added)). The rules and regulations, which Bill 19-32 would amend, permit the type of gambling that is now prohibited by 11 GCA § 22202 and 9 GCA § 64.20(b). Hence, the Regulations conflict with existing law.

Both Bill 19-32 and the Regulations refer to limited gaming. Under the Regulations, limited gaming, which includes gambling with electronic gaming devices, is authorized on Guam.

Limited gaming as defined in Section 7102(y) is hereby authorized and may be operated and maintained and conducted subject to the provisions of the Gaming Control Act. All limited gaming, as said term is defined in Section 7102(y), shall be regulated by the Commission.

3 GARR § 7103. Section 7102(y) defines "limited gaming" as follows:

² Under 9 GCA § 64.20(b) a gambling device is defined as follows:

As used in this Section, gambling device means any coin operated device which, when operated, may return winnings (other than free games not redeemable for cash) of value to the user based partially or completely upon chance, by the operation of which a person may become entitled to receive winnings of value. It does not include pinball and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not. It does include any slot machines, video poker machines and other machines or devices which afford the opportunity of winnings, payouts, malfunction refunds to the player, or giving the player or user anything of value under any guise or form based partially or completely upon chance.

“Limited Gaming” means land based bingo, cockfighting, dog racing, land based lottery, carnival or liberation day gaming, and operation and **use of land based electronic gaming devices** as authorized herein. All equipment or paraphernalia used, or intended to be used, in limited gaming or any limited gaming activities shall be “limited gaming equipment” or “limited gaming devices.”

33 GARR § 7102(y). (Emphasis added). The types of limited gaming authorized are the following:

(a) The following are the only limited gaming activities authorized in Guam under this Act:

- (1) Bingo . . .
- (2) Cockfighting . . .
- (3) Dog racing . . .
- (4) Public lottery and carnival or Liberation Day gaming and
- (5) **Electronic gaming devices that have been registered or were at any time previously registered by the Department of Revenue and Taxation pursuant to 11 Guam Code Annotated Chapter 22 Article 2 prior to August 1st 2001.**³ Any electronic gaming devices previously registered with the Department may be replaced by new electronic gaming devices which are approximately similar to the old gaming devices being replaced provided all old electronic gaming devices being replaced are disposed of or stored pursuant to rules and regulations issued by the commission.

3 GARR § 7114(a). (Emphasis added). Section 7114(a) above is an *exclusive* list of all legal gaming activities.

All limited gaming activities aside from those listed in subsection (a), and the importation, manufacture, and distribution of gaming devices in an attempt to conduct such limited gaming activities, except as indicated in the Gaming Control Act, are considered illegal and in violation of this Act. * * *

3 GARR § 7114(b). (Emphasis added). Under the Regulations, DRT may issue gaming licenses for limited gaming activities.

“Gaming license” means a license that authorizes any person, corporation or entity to engage in gaming and to repair, transport, manufacture, sell, purchase, operate and use all gaming equipment or gaming devices and to engage in all remote, satellite, and on- line gaming activities and other off-site betting activities and to engage in a lottery or lottery games.

3 GARR § 7102 (p).

³ This language would give a monopoly to electronic gaming device owners whose devices were licensed by DRT prior to August 1, 2001. The gaming devices that were licensed prior to August 2001 are predominately the Liberty machines.

The above cited statutes – 11 GCA § 22202 and 9 GCA § 64.20(b) – and regulations – 3 GARR §§ 7103, 7102(y), 7114(a) & (b), and 7102 (p) – leave no doubt that the Regulations allowing the licensing of electronic gaming devices are in direct conflict with the statutes prohibiting the licensing of electronic gaming devices. Since rules and regulations cannot alter or amend legislative enactments, the statutes prohibiting electronic gaming devices would remain in effect. And the conflicting rules and regulations that allow electronic gaming devices would have no force and effect.

There are additional problems with the Regulations. The Regulations were submitted to the Legislative Secretary on January 3, 2003 with a cover letter dated December 31, 2002. However, there is no record that a public hearing was ever held regarding the Regulations or that an economic impact statement was submitted to the Legislature. Both the record of the public hearing and the economic impact statement are required to be submitted to the Legislature pursuant to the Administrative Adjudication Law. There is also a question whether Public Law 26-52, which in its substantive provisions deals exclusively with cockfighting, legally authorized the drafting of the Regulations.

It is a tenant of legislative interpretation that one must determine legislative intent and give meaning to a statute without altering or amending the statute's scope. *Craftworld Interiors, Inc. v. King Enterprises, Inc.*, 2000 Guam 1, ¶ 17. However, notwithstanding the deference due the plain-meaning of statutory language, such language need not be followed where the result would lead to impractical consequences, untenable distinctions, or unreasonable results." *Sumitomo v. Government of Guam*, 2001 Guam 23, ¶ 17.

Bill 19-32 unequivocally states that it amends the Regulations. It does not enact the Regulations into law. The Regulations authorize the licensing of electronic gaming devices. The licensing of electronic gaming devices is prohibited by Guam law. The Superior Court has ordered DRT to revoke licenses previously issued to owners of electronic gaming devices. This order has not been overturned. Hence, Bill 19-32 amends rules and regulations that are unenforceable because they conflict with existing law. Also, the Regulations themselves are not legal because they were not adopted according the requirements of the Administrative Adjudication Law. Therefore, the plain meaning of Bill 19-32 leads to an inconsequential result because the amended Regulations are not enforceable.

2. Other Types of Gaming

As discussed above, Guam law does *not* authorize DRT to license electronic gaming devices such as Liberty gaming machines. See 11 GCA § 22202 & 9 GCA § 64.20(b). And the regulations in 3 GARR, Chapter 7 are not enforceable. This has raised the question that if these Regulations are unenforceable, what authority is there for the licensing of other types of gaming. The response is that there are other laws authorizing the licensing and permitting of certain types of gaming subject to specified restrictions.

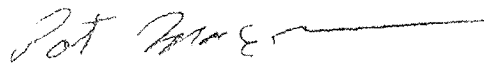
a. Cockfight Gambling. The Cockpit Licensing Board is authorized to license cockpits where wagers may be made on the result of a cockfight. See 22 GCA § 39105 & 9 GCA § 64.40.

b. **Carnival or Fair Gambling.** The Governor is authorized to license or permit gambling concessions and the playing of gaming devices during a fair or carnival and during the Guam Island Fair and Liberation Day Carnival. 9 GCA § 64.62. ("Section 64.10 of this Title [defining gambling] does not apply to any gambling conducted by a person who has been issued a permit by the Governor for concessions operated during a fair or carnival, and Section 64.20 of this title [making importation of gambling devices illegal and defining gambling device] does not apply to possession of any temporarily licensed gambling device during any Guam Island Fair, Liberation Day Carnival or any other fair or carnival for which the Governor has issued a proclamation.")

c. **Non-Profit Bingo and Lotteries.** DRT may issue permits to conduct gambling activities to certain non-profit organizations. The non-profit organizations that may be issued permits are churches or religious organizations; fraternal or fraternal benefit societies; education or charitable organizations; and clubs or organizations organized and operated exclusively for pleasure, recreation and other nonprofit purposes when no part of the net earnings inure to the benefit of any member or shareholder. The gambling activities that DRT is authorized to issue permits for are bingo games and lotteries (raffle tickets). Permits may not be issued for any form of casino gambling. See 9 GCA § 64.70.

Thus, the permitting and licensing of the above listed gambling activities are authorized by various Guam laws. On the other hand, Guam law prohibits the licensing of electronic gaming devices. Since the Regulations in 3 GARR §§ 7101-7167 conflict with Guam law, they are not enforceable. Any properly adopted and legally sufficient regulations that apply to the forms of gambling that are authorized by law are enforceable.

Sincerely,



J. Patrick Mason
Deputy Attorney General

cc: Honorable BJ Cruz, Vice Speaker
Honorable Christopher Duenas, Asst. Minority Leader
Honorable Thomas Morrison, Minority Whip
Attorney General
Chief Deputy Attorney General