



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
LESIANAN MAGA LAHI
AGANA, GUAM 96910 USA

MAY 26 1992

The Honorable Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hesler Street
Agana, Guam 96910

REFER TO
LEGISLATIVE SECRETARY

JS
5/28/92

Dear Mr. Speaker:

Transmitted herewith is Bill No. 838, which I have signed into law
this date as Public Law 21-103.

Sincerely yours,

Joseph F. Ada
JOSEPH F. ADA
Governor

Attachment

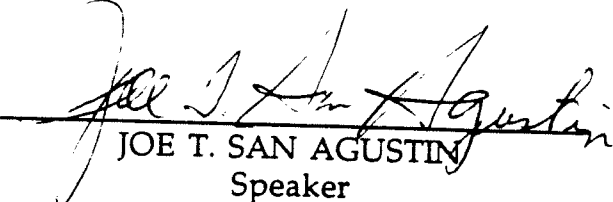
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TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

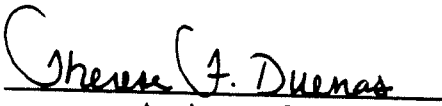
This is to certify that Substitute Bill No. 838 (COR), "AN ACT TO AMEND THE PREAMBLE AND PARAGRAPHS (a), (b), AND (c) OF §63201 OF TITLE 10, GUAM CODE ANNOTATED; TO AMEND PARAGRAPH (b) OF §63202 AND PARAGRAPH (b) OF §63303, TO REPEAL AND REENACT §63500 OF SAID TITLE AND TO ADD §63720 THERETO, PERTAINING TO THE APPOINTMENT OF THE ADJUTANT GENERAL AND THE RIGHTS OF MEMBERS OF THE GUAM NATIONAL GUARD WHEN ORDERED TO ACTIVE SERVICE," was on the 13th day of May, 1992, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker

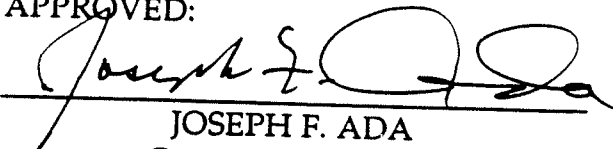
Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 14th day of MAY, 1992, at 11:05 o'clock A.M.


Theresa J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:


JOSEPH F. ADA
Governor of Guam

Date: May 26, 1992

Public Law No. 21-103

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 838 (COR)

Substituted by the Committee on
Housing, Community Development,
Federal and Foreign Affairs and as
further substituted by Committee
on Rules

Introduced by:

H. D. Dierking
E. R. Dueñas
J. G. Bamba
E. P. Arriola
A. C. Blaz
E. M. Espaldon
M. D. A. Manibusan
P. C. Lujan
D. F. Brooks
A. R. Unpingco
T. V. C. Tanaka
M. C. Ruth
M. J. Reidy
J. P. Aguon
M. Z. Bordallo
C. T. C. Gutierrez
G. Mailloux
D. Parkinson
J. T. San Agustin
D. L. G. Shimizu
F. R. Santos

AN ACT TO AMEND THE PREAMBLE AND PARAGRAPHS (a),
(b), AND (c) OF §63201 OF TITLE 10, GUAM CODE
ANNOTATED; TO AMEND PARAGRAPH (b) OF §63202 AND
PARAGRAPH (b) OF §63303, TO REPEAL AND REENACT §63500
OF SAID TITLE AND TO ADD §63720 THERETO, PERTAINING
TO THE APPOINTMENT OF THE ADJUTANT GENERAL AND
THE RIGHTS OF MEMBERS OF THE GUAM NATIONAL

GUARD WHEN ORDERED TO ACTIVE SERVICE.

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

2 **Section 1.** The preamble and paragraphs (a), (b) and (c) of §63201, Title
3 10, Guam Code Annotated, are hereby amended to read as follows:

4 "**§63201. The Adjutant General.** The Adjutant General
5 shall be appointed by the Governor, subject to the advice and
6 consent of the Legislature, and shall have such rank and
7 qualifications as the Governor may prescribe, and he shall:

8 (a) Be capable of being Federally recognized in accordance
9 with Federal law and Army and Air Force regulations, as
10 appropriate, in the grade of at least colonel;

11 (b) Be promoted to the Guam Army or Air National Guard,
12 as appropriate, at the discretion of the Commander-in-Chief, to a
13 grade not to exceed major general;

14 (c) Serve until such time as his replacement is appointed by
15 the Governor or until he resigns. The Governor may relieve the
16 Adjutant General for malfeasance, misfeasance or his inability to
17 continue Federally recognized status;"

18 **Section 2.** Paragraph (b) of §63202, Title 10, Guam Code Annotated, is
19 hereby amended to read as follows:

20 "(b) Be qualified for immediate Federal recognition as a
21 colonel or lieutenant colonel; and"

22 **Section 3.** Paragraph (b) of §63303, Title 10, Guam Code Annotated, is
23 hereby amended to read as follows:

24 "(b) Be qualified for immediate Federal recognition as a

1 colonel or lieutenant colonel; and"

2 **Section 4.** §63500 of Title 10, Guam Code Annotated, is hereby
3 repealed and reenacted to read as follows:

4 **"§63500. Active Service: Authority of Governor to Order:**

5 (A) The Commander-in-Chief may in time of war,
6 insurrection, rebellion, riot or imminent danger thereof, or in time
7 of any state emergency, order the Guam National Guard, or any
8 part thereof, into active military service of the Territory of Guam,
9 except when such members of the Guam National Guard are
10 already in the service of the United States.

11 (B) The Governor may also order the Guam National
12 Guard, or any part thereof, to Territorial Active Duty to assist the
13 government of Guam in affairs of state, state ceremonies, or
14 other territorial activities or duties as determined by the
15 Governor.

16 (C) Any person who is a member of the Guam National
17 Guard, called to duty under the provisions of this Chapter, who,
18 in order to perform duties or receive training with the armed
19 forces of the United States or of the Territory of Guam, leaves a
20 position in the employ of an employer, and who shall give
21 evidence of the satisfactory completion of such duty or training,
22 and who is still qualified to perform the duties of such position,
23 shall be entitled to be restored to his previous or a similar
24 position, in the same status, pay, and seniority, and such period of
25 absence for military duty or training shall be construed as an

1 absence with leave, but may be without pay. Such leave shall not
2 be annual or regular leave, but in addition to that allowed the
3 employee as part of the employment benefits. No employer shall
4 require any employee to take annual or regular leave to
5 participate in any training or duty under this Chapter.

6 (D) All members of the Guam National Guard shall receive
7 pay as set out in §63502 of this Chapter, but in no case shall pay
8 received be less than that earned at his civilian employment for
9 Territorial Active Duty under the provisions of this Chapter.
10 They shall be given leave as set out in §63106 of this Chapter.
11 When ordered to duty or training, the officers and employees of
12 the government of Guam shall be entitled to such leave of absence
13 from their respective duties, without loss of pay, time, annual
14 leave or efficiency rating, until relieved from duty or training, and
15 shall, when relieved from duty or training, be restored to the
16 position held by them when ordered to duty or training, or a
17 position of like seniority, status and pay; **provided**, however, that
18 the person:

19 (1) Shall be qualified to perform the duties of such position;
20 and

21 (2) Shall make application for re-employment within ninety
22 (90) days after such person is relieved from such training and
23 service or relieved from hospitalization for a period not to exceed
24 one (1) year for causes attributed to service.

25 Any person restored to a position under the above provisions shall

1 not be discharged from such position without cause within one (1)
2 year after reinstatement. The fact that there has been a change of
3 administration affecting any position with the Territory or
4 subdivision thereof, shall in no manner affect or deny such person
5 his position, regardless of any limitation on the number of
6 employees, and such person shall be re-employed. The provisions
7 of this Section do not apply to any officer elected by the voters of
8 the Territory or political subdivision when the statutory or
9 Organic Act of Guam term of office has expired upon the release
10 of such person from military service of the Territory under this
11 Chapter, but these provisions do grant re-employment rights to
12 all other officers and employees of the Territory, or political
13 subdivision when ordered to military duty under this Chapter.
14 These provisions shall not limit leave and pay rights of members
15 of the Guam National Guard, but extend such rights, except the
16 government of Guam shall not be required to pay more than
17 fifteen (15) days of military leave per annum.

18 (E) In the event the person referred to in the foregoing
19 paragraphs are not reinstated as therein required, upon
20 application by such a person to the Attorney General of Guam, the
21 Attorney General shall act as the attorney for such person and
22 shall institute such action as may be necessary to enforce
23 compliance with the provisions contained in this Chapter, and no
24 fees or court costs shall be taxed against the person applying for
25 benefits hereunder. Failure to reinstate employees as required

1 shall be deemed an act of discrimination and in violation of §63501
2 of this Chapter.

3 (F) In proceedings to establish re-employment rights under
4 this Chapter, the court may award reasonable litigation expenses,
5 including, but not limited to, attorney's fees, upon good cause
6 being shown, which may include the failure, refusal, or inability,
7 of the Attorney General to act as the service member's attorney
8 pursuant to this Chapter."

9 **Section 5.** §63720 is hereby added to Title 10, Guam Code Annotated,
10 to read:

11 "§63720. **Severability.** If any of the provisions of this
12 Chapter, or the application thereof to any person or
13 circumstances, are held invalid, such invalidity shall not affect any
14 other provision or application of this Chapter which can be given
15 full force and effect without the invalid provision or application,
16 and to this end the provisions of this Chapter are severable."



COMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT,
FEDERAL AND FOREIGN AFFAIRS
TWENTY-FIRST GUAM LEGISLATURE



163 Chalan Santo Papa
Agaña, Guam 96910

Senator Francisco R. Santos
Chairman

Tel: (671) 472-3414/3415
Fax: (671) 477-3048

May 8, 1992

The Honorable Joe T. San Agustin
Speaker, 21st Guam Legislature
155 Hesler St.
Agana, Guam

Dear Mr. Speaker,

The Committee on Housing, Community Development, Federal and Foreign Affairs, to which was referred **Bill No. 838: An Act to amend the Guam Code pertaining to the appointment of the Adjutant General** and **Bill No. 120: An Act to clarify the rights of members of the National Guard when called to active territorial duty** has had both under consideration and herewith reports its recommendation **TO DO PASS** as amended and substituted by the Committee, both measures as consolidated into Bill No. 838. The Committee votes were as follows:

TO DO PASS	- 9 -
TO DO NOT PASS	- 0 -
TO REPORT OUT ONLY	- 0 -
OFF ISLAND/NOT VOTING	1

Sincerely yours,
F.R. Santos
F.R. Santos

**COMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
FEDERAL AND FOREIGN AFFAIRS
TWENTY-FIRST GUAM LEGISLATURE**

163 Chalan Santo Papa
Agaña, Guam 96910

Senator Francisco R. Santos
Chairman

Tel: (671) 472-3414/3415
Fax: (671) 477-3048

COMMITTEE REPORT

o n

BILL NO. 838

An Act to to amend the Guam Code Annotated pertaining to the appointment of the Adjutant General and to clarify the rights of National Guam members when called to active service.

May 5, 1992

**COMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT,
FEDERAL AND FOREIGN AFFAIRS
TWENTY-FIRST GUAM LEGISLATURE**

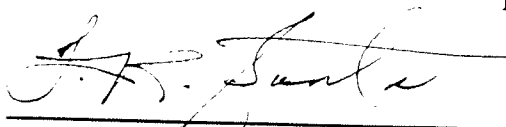
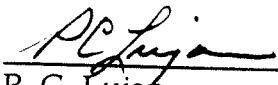

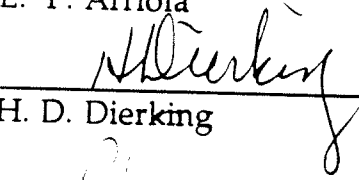
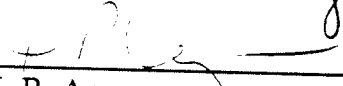
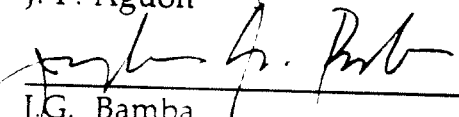
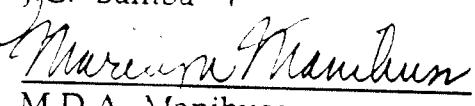
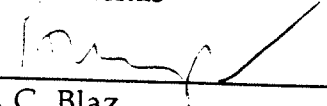
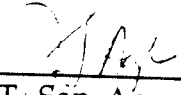
163 Chalan Santo Papa
Agaña, Guam 96910

Senator Francisco R. Santos
Chairman

Tel: (671) 472-3414/3415
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VOTE SHEET

BILL NO. 838: An Act to amend the Guam Code Annotated pertaining to the appointment of the Adjutant General and to Clarify the rights of the Members of the Guam National Guard when ordered to active service.

Senator	To Do Pass	To Do Not Pass	Report Out Only	Not Voting
 F. R. Santos	✓			
 P. C. Lujan	✓			
 E. P. Arriola	✓			
 H. D. Dierking	✓			
 J. P. Aguon	✓			
 J.G. Bamba	✓			
 M.D.A. Manibusan	✓			
_____ E.R. Duenas				
 A.C. Blaz	✓			
 J.T. San Agustin	✓			

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 838 (COR)

Substituted by the Committee on Housing,
Community Development, Federal and Foreign Affairs

Introduced by:

H. D. Dierking
F. R. Santos
J. George Bamba

E.P. Arriola
A. C. Blaz
E. M. Espaldon
M. D.A. Manibusan
P. C. Lujan
D. F. Brooks
A. R. Unpingco
T. V.C. Tanaka
M. C. Ruth
M. J. Reidy

AN ACT TO AMEND §63201 AND PARAGRAPHS (a), (b), AND (c); TO AMEND PARAGRAPH (b) OF §63202; TO AMEND PARAGRAPH (b) §63303, AND TO REPEAL AND REENACT §63500 ALL OF TITLE 10, GUAM CODE ANNOTATED, PERTAINING TO THE APPOINTMENT OF THE ADJUTANT GENERAL; AND TO CLARIFY THE RIGHTS OF MEMBERS OF THE GUAM NATIONAL GUARD WHEN ORDERED TO ACTIVE SERVICE.

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

3 Section 1. §63201 and Paragraphs (a), (b) and (c) all of Title 10, Guam
4 Code Annotated are hereby amended to read as follows:

1 "§63201. The Adjutant General. The Adjutant General shall be
2 appointed by the [President] Governor, subject to the advice and
3 consent of the Legislature, and shall have such rank and
4 qualifications as the [President] Governor may prescribe, and he
5 shall:

6 (a) [If nominated to the President by the Governor, b]
7 Be capable of being Federally recognized in accordance with
8 Federal law and Army and Air Force regulations, as
9 appropriate, in the grade of at least colonel;

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

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

21 Section 2. Paragraph (b) of §63202 of Title 10, Guam Code
22 Annotated is hereby amended to read as follows:

23 "(b) Be qualified for immediate Federal recognition as a
24 colonel or lieutenant colonel [and shall serve only so long as
25 Federally recognized in such grades]; and"

26 Section 3. Paragraph (b) of §63303 of Title 10, Guam Code
27 Annotated is hereby amended to read as follows:

28 "(b) Be qualified for immediate Federal recognition as a
29 colonel or lieutenant colonel [and shall serve only so long as
30 Federally recognized in such grades]; and"

31 Section 4. §63500 of Title 10, Guam Code Annotated is hereby
32 repealed and reenacted to read as follows:

33 "§63500. Active Service: Authority of Governor to Order.

34 (A) The Commander-in-Chief may in time of war, insurrection,
35 rebellion, riot or imminent danger thereof, or in time of any state

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

5 (B) The Governor may also order the Guam National
6 Guard, or any part thereof, to Territorial Active Duty to assist the
7 government of Guam in affairs of state, state ceremonies, or other
8 territorial activities or duties as determined by the Governor.

9 (C) Any person who is a member of the Guam National
10 Guard, called to duty under the provisions of this Chapter, who, in
11 order to perform duties or receive training with the armed forces of
12 the United States or of the Territory of Guam, leaves a position in
13 the employ of any employer, and who shall give evidence of the
14 satisfactory completion of such duty or training, and who is still
15 qualified to perform the duties of such position, shall be entitled to be
16 restored to his previous or a similar position, in the same status,
17 pay, and seniority, and such period of absence for military duty or
18 training shall be construed as an absence with leave, but may be
19 without pay. Such leave shall not be annual or regular leave, but in
20 addition to that allowed the employee as part of the employment
21 benefits. No employer shall require any employee to take annual or
22 regular leave to participate in any training or duty under this
23 Chapter.

24 (D) All members of the Guam National Guard shall receive
25 pay as set out in §63502 of this Chapter, but in no case shall pay
26 received be less than that earned at his civilian employment for
27 Territorial Active Duty under the provisions of this Chapter. They
28 shall also be given leave as set out in §63106 of this Chapter. When
29 ordered to duty or training, the officers and employees of the
30 government of Guam shall be entitled to such leave of absence from
31 their respective duties, without loss of pay, time, annual leave or
32 efficiency rating, until relieved from duty or training, and shall,
33 when relieved from duty or training, be restored to the position held
34 by them when ordered to duty or training, or a position of like
35 seniority, status and pay, provided; however, that the person:

1 (1) shall be qualified to perform the duties of such
2 position; and

3 (2) shall make application for re-employment within
4 ninety (90) days after such person is relieved from such training
5 and service or relieved from hospitalization for a period not to
6 exceed one (1) year for causes attributable to service.

7 Any person restored to a position under the above provisions shall
8 not be discharged from such position without cause within one (1)
9 year after reinstatement. The fact that there has been a change of
10 administration affecting any position with the Territory or
11 subdivision thereof, shall in no manner affect or deny such person his
12 position, regardless of any limitation on the number of employees,
13 such person shall be re-employed. The provisions of this Section do
14 not apply to any officer elected by the voters of the Territory or
15 political subdivisions when the statutory or Organic Act of Guam, as
16 amended, term of office has expired upon the release of such person
17 from military service of the territory under this Chapter, but these
18 provisions do not grant re-employment rights to all other officers
19 and employees of the territory, or political subdivision when ordered
20 to military duty under this Chapter. These provisions shall not limit
21 leave and pay rights of members of the Guam National Guard, but
22 extend such rights, save and except, the government of Guam shall
23 not be required to pay more than fifteen (15) days of military leave
24 per annum.

25 (E) In the event the persons referred to in the foregoing
26 paragraphs are not reinstated, as therein required upon application
27 by such person to the Attorney General of Guam, the Attorney
28 General shall act as the attorney for such person and shall institute
29 such action as may be necessary to enforce compliance with the
30 provisions of contained herein, and no fees or court costs shall be
31 taxes against the person applying for benefits thereunder. Failure to
32 reinstate employees as required shall be deemed an act of
33 discrimination and in violation of §63105 of this Chapter.

34 (F) In proceedings to establish re-employment rights under
35 this Chapter, the court may award reasonable litigation expenses,

1 including, but not limited to, attorney's fees upon good cause being
2 shown, which cause may include the failure, refusal, or inability, of
3 the Attorney General to act as the service member's attorney
4 pursuant to this Chapter.

5
6 Section 5. Severability. If any of the provisions of this Chapter, or
7 the application thereof to any person or circumstances, is held invalid, such
8 invalidity shall not affect any other provision or application of this
9 Chapter which can be given the force and effect without the invalid
10 provision or application, and to this end the provisions of this Chapter are
11 severable.

Committee on Housing, Community Development, Federal and Foreign Affairs

Report on Substitute Bill No. 838

"An act to amend to amend Paragraphs (a), (b), and (c) of §63201; to amend Paragraph (b) of §63202; to amend Paragraph (b) of §63303 and to repeal and reenact §63500, all of Title 10, Guam Code Annotated, pertaining to the appointment of the Adjutant General of the Guam National Guard, and to clarify the authority of the Governor and the rights of members of the Guam National when ordered to active service."

Introduced by Senators

H. D. Dierking, F. R. Santos, J. G. Bamba

A. C. Blaz, E. M. Espaldon, M.D.A. Manibusan, P. C. Lujan, D. F. Brooks, A. R. Unpingco, T. V.C. Tanaka, M. C. Ruth, and M. J. Reidy

PREFACE:

The Committee on Housing, Community Development, Federal and Foreign Affairs, to which was referred Bill No. 120, "An act to clarify the authority of the Governor and the rights of members of the Guam National Guard," and Bill No. 838, "An act to amend §63201 and Paragraphs (a), (b), and (c), all of Title 10, Guam Code Annotated, pertaining the appointment of the Adjutant General of the Guam National Guard," conducted a public hearing on Tuesday, April 21, 1992, at 9:00 a.m. in the Legislative Public hearing Room.

Committee members present were senator Frank R. Santos, Chairperson, and Senators J. George Bamba, Eddie R. Duenas, and Anthony C. Blaz.

NOTIFICATION:

Letters were sent to the Governor; the Deputy Adjutant General, Guam National Guard; the Attorney General; the Committee members; the news-media, and the general public.

TESTIMONY:

At this time, the Chairman called on representatives from the Guam national Guard (COL David Smith, LTCOL Nathan Hathowe, and Guardsman Robert G.P. Cruz and Andrew Artero-Boname) to present testimony.

COL Smith noted that the Guardsmen should at least have the assurance when called on for emergency or territorial duty to know that once they have completed their task they would still have their jobs. Guardsmen, said COL Smith should at least have this peace of mind when called on to serve the territory.

LTCOL Hathowe added that incentives should be afforded to Guardsmen. Guam, said LTCOL Hathowe, is prone to unpredictable storms and Guardsmen stand ready to assist in these emergencies. However, when called to duty for an extended period, they would appreciate knowing that they would still retain their employment in the civilian community.

Enactment of this legislation would elevate and bring the status of the National Guard and bring it up to par with that of a state.

Testifying in support of Bill Nos.120 and 838, LTCOL Robert G.P. Cruz informed the Committee that the provisions contained in both measures are necessary and important.

Individuals in the Guard, said LTCOL Cruz, are reluctant to perform Territorial Active Duty when they are not protected from loss of income and more importantly, being terminated from their jobs.

The amendment contained in Bill No. 838 he said would clarify the Governor's authority to appoint the Adjutant General. According to LTCOL Cruz, the Adjutant General bridges the gap between the military organizations, and the civilian employees of the Department.

Failure to enact both measures, he said, may result in unnecessary friction and low morale in the organization.

DISCUSSION:

At this time, Senator J. George Bamba queried the Guard members whether enactment of the legislation would be just to conform to Federal statute.

COL Smith responded saying that federal law provides for re-employment rights. Presently, Guardsmen do not have this protection should the Governor call them to duty.

He went on to say that employers could, if they wanted to, terminate Guardsmen from their civilian employment.

However, the legislation before us parallels Federal statute. Guardsmen when called to duty, said COL Smith, place their family's in jeopardy by not being able to financial support their family.

Guardsman Andrew Artero-Boname informed the Committee that there is a matter that has become a concern to the Prosecutors Office and Guard. The Guardsmen, said, Mr. Artero-Boname, have been assisting Customs Officers with certain duties at the Airport.

Accordingly, he went to say that Judge Janet Weeks has ruled that, without a specific provision in the code that allows the Governor to use the Guard for such duties, it is not permitted.

Responding to the Chairman's question on when the decision was issued, Mr. Artero-Boname stated that it was about one (1-) ago. This decision concerns the drug enforcement program. According to Mr. Artero-Boname, this ruling if not authorized by law, would place the program, in jeopardy.

This concern, said the Chairman, should be addressed in separate legislation, and therefore requested that a copy of the decision be provided to the Committee.

Mr. Artero-Boname stated that Judge Week's concern and interpretation of the law the Governor may only call out the Guard in an emergency situation.

The Judge suggested that there should be specific authorization to permit the Guardsmen to be called to act on quasi-law enforcement duties. The legislation covers the concerns of Judge Weeks.

ADJOURNMENT:

There being no further discussion, the Chairman adjourned the Committee's hearing on Bill Nos. 120 and 838.

SECTION ANALYSIS & FINDINGS:

Please refer to page entitled "Profile on Substitute Bill No. 838."

RECOMMENDATION:

The Committee on Housing, Community Development, Federal and Foreign Affairs, to which was referred Bill No. 838, "An act to amend §63201 and Paragraphs (a), (b), and (c); to amend Paragraph (b) of §63202; to amend Paragraph (b) of §63303; and to repeal and reenact §63500 all of Title 10, Guam Code Annotated, pertaining to the appointment of the Adjutant General; and to clarify the rights of members of the Guam National Guard when ordered to active service," has had the same under consideration, and now wishes to report back the same with the recommendation to do pass as substituted.

PROFILE ON SUBSTITUTE BILL NO. 838

- Brief Title: "Appointment of Adjutant General by the Governor, and clarification on the rights of members of the Guam National Guard."
- Main Sponsors: Senators Herminia D. Dierking, Frank R. Santos, and J. George Bamba.
- Date Introduced: Tuesday, April 14, 1992.
- Referral: Committee on Housing, Community Development, Federal and Foreign Affairs, Tuesday, April 14, 1992.
- Public Hearing: Tuesday, April 21, 1992, 9:00 a.m., Legislative Public Hearing Room.
- Official Title: "An act to amend §63201 and Paragraphs (a), (b), and (c); to amend Paragraph (b) of §63202; to amend Paragraph (b) of §63303; to repeal and reenact §63500 all of Title 10, Guam Code Annotated, pertaining to the appointment of the Adjutant General; and to clarify the rights of members of the Guam National Guard when ordered to active service."
- Co-Sponsors: Senators Anthony C. Blaz, Ernesto M. Espaldon, Marilyn D.A. Manibusan, Pilar C. Lujan, Doris F. Brooks, Antonio R. Unpingco, Tommy V.C. Tanaka, Martha C. Ruth, and Michael J. Reidy.
- Recommendation: To do pass as substituted by the Committee.

A CLOSER LOOK

Enactment of Substitute Bill No. 838, into law will be a big morale booster to the members of the Guam National Guard.

More importantly, the legislation as substituted by the Committee is designed to clarify the authority of the Governor in calling the National Guard, either in whole or part, for territorial duty, and protecting the rights of the members of the Guam National Guard.

Substitute Bill No. 838 also attempts to clarify the rank in which a member appointed as assistant Adjutant General for the Army or the Air Guard is not frozen at the present eligibility level even though such positions may be assigned to higher level or rank.

Currently, the present law restricts the Governor's call to only a riot, rebellion, or in time of state emergency.

The legislation as amended authorizes the Governor to call on the Guard to assist in territorial functions and activities, such as state funeral or other public functions when the Governor deems necessary or appropriate.

Moreso, the legislation provides employment security for Guard members called to territorial duty by the Governor, especially for a protracted period depending on the situation.

What this means is Guard members would be able to take temporary leave of absences from their civilian jobs for territorial duty call and to return upon completion of their duty.

Presently, the Committee finds that this same protection is being provided by Federal law if Guardsmen are called to federal active duty. The Committee finds that similar protection should be accorded to Guam's Guardsmen when called to territorial duty.

Also, the Committee finds that it would be very discriminatory, and unfair, to call Guardsmen to territorial duty and exposing them to possible job termination, demotion or loss of seniority and benefits.

Furthermore, the legislation provides that a Guard member would not suffer any financial loss in pay because of being called to territorial duty.

The Committee finds that since the government of Guam pays for the salaries of members on territorial duty, the legislation would require the government to pay at the same rate that the members receive from their civilian jobs.

The Committee also finds that there have been instances in the past, because of rank, Guardsmen have received less pay than what they were earning in the civilian jobs.

The Committee also finds that if the government were to ensure that the call to territorial duty receives one hundred percent (100%) response, then it behooves the government that the Guardsmen responding won't be subjected to possible job termination or loss in salaries.

Accordingly, the Committee finds that this provision is sound management practice, and to do otherwise, to call Guardsmen to territorial duty without having such protection would be counter productive to the Guard's mission readiness.

Therefore, the Committee recommends that the Legislature pass Substitute Bill No. 838.

Senator FRANK R. SANTOS
CHAIRMAN, COMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT, FEDERAL
AND FOREIGN AFFAIRS
21 ST GUAM LEGISLATURE

Dear Senator Santos and Committee members:

I do wholeheartedly support BILL NO. 838 - An Act to amend § 63201 and paragraphs (a), (b), and (c) all of TITLE 10 GUAM CODE ANNOTATED, pertaining to the appointment of the Adjutant General of National Guard because the Governor of Guam must appoint the Adjutant General for the Guam National Guard for more local autonomy and similar powers of state governors. The President doesn't appoint the Adjutant Generals of Hawaii, California, Oregon and other states but by their respective governors.

I do agree with paragraphs (a), (b) and (c) so that the nominee be at least a colonel; the nominee may be promoted to a grade not exceeding major general; and the Governor may recommend to the President the relieve of the Adjutant General for malfeasance, misfeasance or his inability to continue Federally recognized status. Additionally, discriminations against female officers and enlisted soldiers be included so that the Guam National Guard or the Adjutant General not allow or practice these types of discriminations which my wife, Captain Evelyn S. Leon Guerrero exper-

ROBERT G. P. CRUZ, ETO.

P. O. BOX 23396

BARRIGADA, GUAM 96921

April 21, 1992

Honorable Francisco R. Santos
Chairman, Committee on Housing,
Community Development, Federal
and Foreign Affairs
Twenty-First Guam Legislature
Agana, Guam 96910

Ref: Bill No. 838

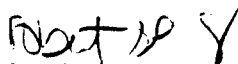
Dear Mr. Chairman:

I submit this letter in support of Bill No. 838, which would permit the Governor to appoint The Adjutant General of the Guam National Guard. Presently, 10 GCA Section 63201 provides for the President of the United States to appoint the individual. However, federal statute requiring the President to do so was recently amended, opening the way for Guam to do so. Amending our local statute would clarify the Governor's authority to appoint The Adjutant General.

With the retirement of Brigadier General Edward Perez, it becomes imperative to insure that his replacement is named and functioning as soon as possible. I serve as an officer in the Guam National Guard, and believe that it is necessary that the top position in the organization be filled to avoid conflicts between the civilian and military individuals associated with the Department of Military Affairs. The Adjutant General bridges the gap between the civilian employees of the Department, and the military organization. Failure to pass this bill may result in unnecessary friction and low morale in the organization.

I would also renew my support of the need to enact the punitive articles of our Code of Military Justice, pending as Bill 122. In my view, that measure, as well as Bills 838 and 120 are necessary for the efficient operation of our Guam National Guard.

Sincerely,


Robert G.P. Cruz
Lieutenant Colonel
Guam Army National Guard

POSITION PAPER ON BILL 120
by
Senator Eddie Duenas
April 21, 1992

Sen. Frank R. Santos
Chairman
Committee on Housing, Federal and Foreign Affairs
21st Guam Legislature
Agana, Guam 96910

Mr. Chairman and members of the committee:

Si Yuus Maase and many thanks on behalf of myself and the members of the Guam National Guard for publicly hearing Bill 120 this morning. We appreciate your efforts to solicit public input on a subject matter that directly affects the peace, safety and tranquility of the people of Guam, should a disaster or an urgent situation on the island develops requiring support from the organization. As you may know, the Guam National Guard has a dual mission -- its federal mission is national defense and its state mission, or in the case of Guam its territorial mission, is to provide protection of life and property, and assist the community in time of disasters or emergencies when called upon by the Governor.

I am happy to say that the Guam National Guard -- both Army and Air elements --

rebellion, or in time of state emergency. Item B of the measure would add more verbiage to authorize the Governor also to call on the Guard to assist in territorial functions and activities, such as state funeral or other public functions when he deems necessary.

Item C of the bill would provide job protection for Guard members called to territorial duty by the Governor, especially for a protracted period depending on the situation. This means that Guard members would be able to take temporary leave of absences from their civilian jobs for territorial duty call and to return upon completion of their duty. This protection is being provided by federal law if the Guardsman is called to federal active duty. I feel that similar protection should be accorded to our Guard members when called to territorial duty. Otherwise, it would be very difficult (and I would say unfair) to call Guardsmen to territorial duty and exposing them to possible job termination, demotion or loss of seniority and benefits.

Item D basically provides that a Guard member would not suffer any financial loss in pay because of being called to territorial duty. Since the Government of Guam pays for the salaries of members on territorial duty, it would require the government to pay at the same rate that the members receive from their civilian jobs. There were instances in the past because of rank Guard members received less pay than what they were earning in their civilian jobs.

If we are to ensure that the call to territorial duty receives 100-percent response, then it behooves us to provide that the Guard members responding won't be subjected

**COMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT,
FEDERAL AND FOREIGN AFFAIRS
TWENTY-FIRST GUAM LEGISLATURE**

163 Chalan Santo Papa
Agaña, Guam 96910

Senator Francisco R. Santos
Chairman

Tel: (671) 472-3414/3415
Fax: (671) 477-3048

Witness Sign Up Sheet

On Bill No. 120 + 838

Name (Please Print)	Village/ Representing	Phone No.	Favor/ Against
1 <u>LT COL BOB DEWE</u>	<u>SELF</u>	<u>475 3324</u>	<u>FAVOR</u>
2 <u>LT. COL. NATHAN HATHORNE</u>	<u>WIA</u>	<u>366-6147</u>	<u>EQUA</u>
3 <u>COL David E. Smith</u>	<u>Army Guard Unit</u>	<u>647-2736</u>	<u>Favor</u>
4 <u>PT J. A. BOYD</u>		<u>458 3406</u>	<u>FAVOR</u>
5 _____	_____	_____	_____
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8 _____	_____	_____	_____
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11 _____	_____	_____	_____

**COMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT,
FEDERAL AND FOREIGN AFFAIRS
TWENTY-FIRST GUAM LEGISLATURE**

163 Chalan Santo Papa
Agaña, Guam 96910

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Witness Sign Up Sheet

On Bill No. 838

Name (Please Print)	Village/ Representing	Phone No.	Favor/ Against
1 LT COL BOB BURT	SELF	475 3324	Favor
2 Art Lagan	Agaña	472 8254	-----
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