



Territory of Guam
Territorion Guam

OFFICE OF THE GOVERNOR
UFISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

RECEIVED
OFFICE OF THE SPEAKER
DATE: 9/27/93
TIME: 4:55 pm
RECD BY: [Signature]

SEP 27 1993

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

Dear Mr. Speaker:

Transmitted herewith is Bill No. 21 which I have signed into law this date as
Public Law 22-34.

Sincerely yours,

A handwritten signature in cursive script that reads "Joseph F. Ada".

JOSEPH F. ADA
Governor of Guam

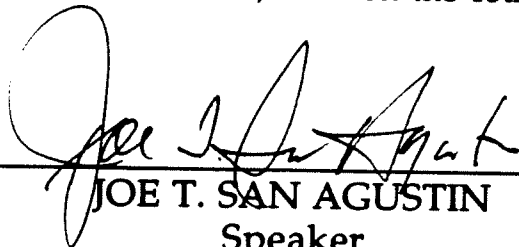
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Attachment

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

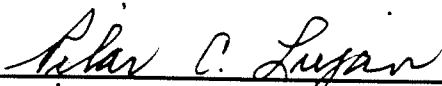
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 21 (LS), "AN ACT TO ADD ITEM (21) TO SUBSECTION (c) OF §32201, AND TO ADD SUBSECTION (s) TO §32103, ALL OF TITLE 5, GUAM CODE ANNOTATED, TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER, AND TO AUTHORIZE ADDITIONAL POSITIONS AT THE DEPARTMENT OF LAW," was on the 15th day of September, 1993, duly and regularly passed.



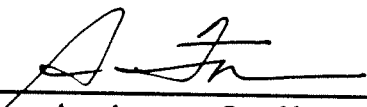
JOE T. SAN AGUSTIN
Speaker

Attested:



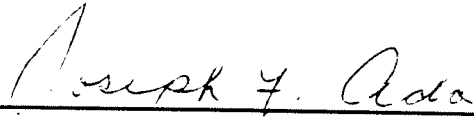
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 17th day of September,
1993, at 10:15 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: SEP 27 1993

Public Law No. 22-34

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 21 (LS)

As substituted by the Committee on
Electrical Power and Consumer
Protection and as further substituted
by the Committee on Rules

Introduced by:

D. Parkinson
T. C. Ada
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
P. C. Lujan
T. S. Nelson
V. C. Pangelinan
E. D. Reyes
J. T. San Agustin
D. L. G. Shimizu
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD ITEM (21) TO SUBSECTION (c) OF §32201,
AND TO ADD SUBSECTION (s) TO §32103, ALL OF TITLE 5,
GUAM CODE ANNOTATED, TO PROTECT CONSUMERS BY
PREVENTING PRICE GOUGING AFTER DISASTERS, TO
ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL
GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENT
RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER
AND TO AUTHORIZE ADDITIONAL POSITIONS AT THE
DEPARTMENT OF LAW.

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

2 **Section 1.** A new item (21) is hereby added to subsection (c) of §32201,
3 Title 5, Guam Code Annotated, to read as follows:

4 “(21) **Price gouging in time of disaster prohibited.** (i) It shall
5 be an unfair trade practice for any merchant or landlord to increase
6 the price of any goods, services, or dwelling rentals on the basis of
7 shortage anticipated or caused by any disaster. A merchant may add
8 to the normal sales price of goods normally imported by sea
9 incremental freight costs caused as a result of air freight actually
10 incurred, and may pass on to customers actual overtime labor costs
11 for services in addition to regular charges.

12 (ii) After a disaster in which there is serious damage to five
13 hundred (500) or more of the permanent residential units on the
14 island caused by the disaster, after a typhoon bringing sustained
15 winds to Guam of 100 miles per hour or more, or after an earthquake
16 that affects Guam with a reading on Guam greater than 7.0 on the
17 **Richter Scale**, the Governor may, by executive order, freeze
18 residential rents to levels in effect the day before the disaster, for up
19 to 120 days from the date of the disaster, which freeze may not be
20 thereafter extended.

21 (iii) On declaration of Typhoon Condition 1, 2 or 3, or after a
22 disaster in which five hundred (500) or more of the permanent
23 residential units on the island are substantially damaged by the
24 disaster, after a typhoon bringing sustained winds to Guam of 100
25 miles per hour or more, or after an earthquake that affects Guam
26 with a reading on Guam greater than 7.0 on the **Richter Scale**, the
27 Governor may, by executive order, freeze mark-ups and prices on

1 designated goods and services which he finds to be in short supply or
2 in danger of being in short supply as a result of the disaster to levels
3 in effect the day before the disaster, for up to thirty (30) days after the
4 disaster, which freeze may not be extended. A merchant may add to
5 the normal sales prices of the goods the increased import cost of the
6 goods, for all goods normally imported by sea, and incremental
7 freight costs caused as a result of air freight actually incurred.

8 (iv) Merchants and landlords violating this subsection (21)
9 shall be subject to the same damages, penalties and other liabilities
10 provided in this chapter and for damages equal to three (3) times the
11 amounts of all gross profits on overcharged goods or five (5) times
12 the amount of overcharges for services or rentals, in addition to all
13 other damages and remedies allowed by law or equity, and may be
14 temporarily and permanently restrained and enjoined from further
15 violation without the applicant therefor being required to post bond.

16 (v) The price on all wholesale and retail goods shall be frozen
17 at any time the Governor of Guam declares Guam to be in Typhoon
18 Condition I or Typhoon Condition II and thereafter for 72 hours
19 after Guam goes back into Typhoon Condition IV. The normal sales
20 prices of goods shall include the increased import costs of the goods
21 for all goods normally imported by sea, and incremental freight costs
22 caused as a result of air freight actually incurred."

23 **Section 2.** A new subsection (s) is added to §32103, Title 5, Guam Code
24 Annotated, to read as follows:

25 "(s) "Disaster" means any typhoon, flood, high water, wind-
26 driven water, tidal wave, tsunami, earthquake, volcanic eruption,
27 landslide, mudslide, drought, fire, explosion, or other catastrophe

1 which may require emergency assistance to save lives, or to protect
2 property, public health and safety or to avert an emergency."

3 **Section 3.** Subject to the availability of funds, the Department of Law is
4 authorized three (3) additional full-time equivalent positions for non-
5 attorney positions, all to work primarily on consumer issues and enforcement
6 of Chapter 32, Title 5, Guam Code Annotated.

TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

*2nd roll call
as corrected*

Date: 9/15/93

VOTING SHEET

Bill No. 21

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.				
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

20 0 0 0

SENATOR DON PARKINSON
22nd GUAM LEGISLATURE
192 ARCHBISHOP FLORES ST. - ROOM 203
AGANA, GUAM 96910

MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION

August 20, 1993

Honorable Joe T. San Agustin
Speaker, Twenty-Second
Guam Legislature
Temporary Building
155 Hesler St.
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Electrical Power and Consumer Protection wishes to report out its findings on **BILL NO. 21: (AS SUBSTITUTED BY THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION) AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER.**

The Committee's Voting Record is as follows:

TO PASS: -7-

NOT TO PASS: -0-

ABSTAIN: -0-

**TO PLACE IN
INACTIVE FILE:** -0-

A copy of the Committee Report and other pertinent information are attached for your information.

Sincerely,

Senator Don Parkinson
Chairman, Committee on
Electrical Power and
Consumer Protection

**COMMITTEE ON ELECTRICAL POWER
AND CONSUMER PROTECTION**

VOTING SHEET ON:

BILL NO. 21: (AS SUBSTITUTED BY THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION) AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER.

<u>COMMITTEE ON MEMBERS:</u>	<u>INITIAL:</u>	<u>TO PASS:</u>	<u>NOT TO PASS:</u>	<u>ABSTAIN:</u>	<u>TO PLACE IN INACTIVE FILE:</u>
Sen. Don Parkinson	<i>DP</i>	✓			
Sen. Thomas Ada	<i>TA</i>	✓			
Sen. George J. Bamba	<i>GB</i>	✓			
Sen. Anthony Blaz					
Sen. Madeliene Bordallo	<i>MB</i>	✓			
Sen. Doris Brooks					
Sen. Herminia Dierking	<i>HD</i>	✓			
Sen. Marilyn Manibusan					
Sen. Vicente Pangelinan	<i>VP</i>	✓			
Sen. Frank Santos					
Sen. Antonio Unpingco					
Spkr. Joe T. San Agustin	<i>JS</i>	✓			

REPORT OF THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION ON BILL NO. 21: (AS SUBSTITUTED BY THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION) AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER.

PREFACE

The Committee on Electrical Power and Consumer Protection conducted a public hearing on Tuesday, February 2, at 1:30 p.m., in the Legislative Public Hearing Room, Guam Legislature Temporary Building, 155 Hesler Street, Agana, Guam on BILL NO. 21: (AS SUBSTITUTED BY THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION) AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER. The Committee Members present at the hearing include: Senator Don Parkinson, Chairman; Senator Thomas Ada, Vice-Chairman; Senator Madeliene Bordallo, member; Senator George Bamba, member; Senator Vicente Pangelinan, member; Senator Antonio Unpingco, member and Senator Doris F. Brooks, member.

TESTIMONY

Mr. Pat Mason, Deputy Attorney for Litigation, Office the Attorney General of Guam, gave oral testimony in support of Bill No. 21. Mr. Mason explained that at the present time, the Attorney General's Office does not have any mandate that would allow their office to take criminal action towards businesses who price gouge and that in the past the Attorney General's Office has gone out to various businesses to try to do what they can to "encourage businesses not to price gouge". Mr. Mason stated that currently, the Attorney General's Office can only conduct an investigation of the business or businesses when reported by consumers to price gouge, and that the Attorney General's Office can only ask the business or businesses not to price gouge. Furthermore, Mr. Mason included that there are businesses on Guam who are cooperative, but others who do raise their prices to try and make a quick profit. Mr. Mason informed the Committee that the Attorney General's Office has taken an initiative to prevent further price gouging by advertising in the Pacific Daily News that if any business or businesses are reported by consumers for price gouging, they will be investigated by the Attorney General's Office. Mr. Mason suggested several amendments to Bill No. 21., these amendments have been taken into consideration in

Bill No. 21 as substituted by the Committee on Electrical Power and Consumer Protection.

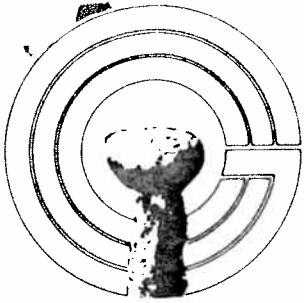
Mrs. Antoninette D. Sanford, Chairwoman, Board of Directors, Guam Chamber of Commerce, submitted written testimony which is labeled as exhibit "B". Mrs. Sanford indicated in the letter accompanying the Chamber's testimony dated November 2, 1992 relative to the same basic issues proposed in Bill No. 995 which was introduced in the 21st Guam Legislature. In the written testimony of the Guam Chamber of Commerce, Mrs. Sanford stated that the Chamber of Commerce does not believe that price control is the answer and that consumers of Guam would be better served through increased competition in marketplaces. The Chamber of Commerce further indicated that Consumers should practice "defensive buying". What would be best for consumers is to avoid most problems by not doing business with those businesses who increase the price of products to make quick profits. According to Mrs. Sanford the Guam Chamber of Commerce has taken concrete steps to encourage ethical practices within its membership.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee on Electrical Power and Consumer Protection finds BILL NO. 21: (AS SUBSTITUTED BY THE COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION) AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS AFTER A MAJOR DISASTER, would mandate a prohibition on price gouging before and after a disaster. It would give the Governor of Guam the authority to freeze prices for up to 30 days and to freeze rents for up to 180 days after a disaster has occurred and would allow the Attorney General's Office the authority to pursue an investigation and take criminal action towards businesses who price gouge. After the event of a natural disaster, the People of Guam suffer from the loss of employment, homes, food, clothing, etc., these are necessary items for survival. Bill No. 21 would help to protect the people of Guam, before and after a disaster occurs, from paying higher prices for goods during those trying times. Also, the people of Guam would have spent most of what they can afford to prepare for the a disaster. And then again during disasters, consumers find themselves spending on restoration in the aftermath of disasters at higher prices than what the Consumers would normally spend when the island is in normal conditions. Therefore, the Committee on Electrical Power and Consumer Protection recommends that Bill No. 21 as substituted by the Committee on Electrical Power and Consumer Protection be passed by the 22nd Guam Legislature.

EXHIBITS

- Exhibit "A" Testimony of Mrs. Antoinette D. Sanford,
Chairwoman, Board of Directors, Guam Chamber
of Commerce.
- Exhibit "B" Report on Price Gouging conducted by Francis
A. Hennigan, Senior Research Attorney,
National Research Group, Incorporated.
- Exhibit "C" Bill No. 21 as introduced.
- Exhibit "D" Bill No. 21 as substituted.
- Exhibit "E" Witness Sign-In Sheet displayed at the public
hearing.
- Exhibit "F" Fiscal Notes on Bill No. 21 from BBMR.



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

Date/Time Recd	2/2/93 10:36 AM
Received by	<i>[Signature]</i>
Exec. Ass't	_____
SENATOR	_____
Chrono File by	_____
Orig. Filed at	#21 / 9.3.8
Orig. Filed by	_____
Other Action	_____

February 1, 1993

Senator Don Parkinson
Chairman
Committee on Electrical Power and
Consumer Protection
22nd Guam Legislature
192 Archbishop Street - Room 203
Agana, Guam 96910

Dear Senator Parkinson:

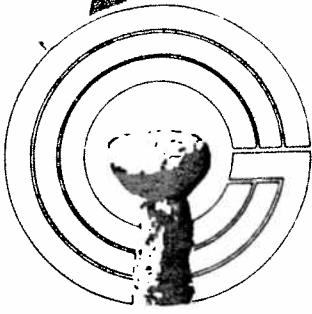
Thank you for your invitation to the Guam Chamber of Commerce to submit testimony on Bill No. 21, concerning consumer protection through price controls. Enclosed is a copy of the Chamber's testimony dated November 2, 1992, relative to the same basic issues proposed in Bill No. 995 in the last Legislature. As both Bill No. 995 and Bill No. 21 purport to instigate intervention into free market economics, we believe our previous testimony is applicable, in full, to Bill No. 21. Therefore, please accept the enclosed as our formal written testimony on Bill No. 21.

Thank you for your time and attention.

Sincerely,

ANTOINETTE D. SANFORD
Chairwoman, Board of Directors

Enclosure



**GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS**

**GUAM CHAMBER OF COMMERCE TESTIMONY
ON BILL NO. 995**

**PRESENTED BEFORE THE COMMITTEE ON ENERGY, UTILITIES, AND
CONSUMER PROTECTION, 21ST GUAM LEGISLATURE**

BY

**ANTOINETTE D. SANFORD
VICE CHAIRPERSON OF THE BOARD
NOVEMBER 2, 1992**

We thank you for the invitation extended to the Guam Chamber of Commerce to submit testimony on Bill No. 995. With me this morning are Ms. Eloise Baza, President of the Chamber and Mr. Frank Campillo, Secretary-Treasurer of the Chamber Board.

It is important to note that the vast majority of businesses in Guam and elsewhere are honest and ethical. Unfortunately there will always be that small minority that engages in unethical business practices, and the public is certainly entitled to protection from disreputable businesses.

We do not believe, however, that price controls measures proposed in Bill No. 995 are the answer. We do believe the consumers of Guam will be best served through increased competition in the marketplace. Consumers should also practice "defensive buying" and endeavor to do business with reputable members of our business community. The best way to avoid most problems is simply not to do business with fly-by-night or shoddy businesses.

The public should know that members of the Guam Chamber of Commerce have taken concrete steps to encourage ethical practices within its membership. In order to police its own members, the Chamber formed an ethics committee and promulgated a code of ethics with which its members must comply in order to be in good standing. The Chamber's code of ethics

Testimony on Bill No. 995, November 2, 1992, page 2

expressly provides that a member shall refrain from taking unfair advantage of its customers, suppliers, competitors and employees.

One of the advantages of doing business with a member of the Guam Chamber of Commerce is that Chamber members are subject to the guidelines of the Chamber's code of ethics and an aggrieved consumer can file a complaint with the Chamber when the consumer thinks he or she has been damaged by any unethical practice.

We know this "reported" price gouging episode after Typhoon Omar and Typhoon Brian is indeed a "minute minority." Senator, it shouldn't take "new legislation" to "stamp it out." This current energy is better directed towards the implementation and enforcement of applicable sections of our existing Consumer Protection laws.

As a protector of the "consumers", we urge you to recognize that we - members of the private enterprise - too, are consumers. Our employees and our families all shop in the stores and pay the same prices. It appears that perhaps you, and some of your fellow senators, may have forgotten this fact many times this past term.

In closing, I would like to remind you that many of our Chamber members just as recently as this weekend received letters of "si yuus maase" from the Ayuda Guam/ American Red Cross Special Committee for their "caring" assistance and very "generous financial assistance to those in need after Typhoon Omar. Senator, please remember that the business community recognizes its "consumers" and will always assist when we are needed. Will you?

Thank you very much.



ANTOINETTE D. SANFORD
Vice Chairperson of the Board

ANDREW MCCAUGHEY
 ALVIN R. H. MIRMELSTEIN, JR.
 EDWARD B. GERBER
 STEPHEN R. HART
 JAMES P. WITT
 MICHAEL D. JAFFE
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NATIONAL LEGAL RESEARCH GROUP
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 A RESEARCH GROUP COMPANY

2421 IVY ROAD
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 JOSEPH E. CONLEY
 JANICE M. HOPPER
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 RUTH E. KOCHARD
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 KATHLEEN C. RYAN
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 BRIAN E. KENNEDY
 ELIZABETH E. ANDERSON
 JOHN R. WIERZBICKI, JR.
 STEPHANIE B. WALLACE
 PAUL A. FERRER
 JEFFREY E. NOECKER
 LEILA J. RASSEKH
 EILEEN M. WIERZBICKI

December 11, 1992

The Honorable Don Parkinson
 Room 203
 21st Guam Legislature
 192 Archbishop Flores Street
 Agana, Guam 96910

Re: Guam/United States/Statutes/Natural Disasters--
 Authority To Control Prices And Rents

File: 54-95059-248

Your File: Bill # 995 (Anti-gouging Bill)

Dear Senator Parkinson:

Enclosed is our memorandum on proposed price and rent controls set forth in Bill No. 995 (3d draft version), as introduced in the Twenty-First Guam legislature, 1992 (Second) Regular Session.

We appreciate the extension of time. The research has been more difficult than usual to focus, and I have consulted periodically with several colleagues.

The legal capacity of the Guam Legislature to enact the controls pursuant to the Organic Act presented the usual threshold problems. As the memorandum indicates, we believe that the Legislature has that capacity, subject to the rather unpredictable power of the Congress either to repudiate or to enact as an amendment to the Organic Act.

Date/Time Recd	12/31/92
Received by	JSM
Exec Asst	
SENATOR	
Chrono File by	
Orig. Filed at	
Orig. Filed by	
Other Action	



More problematic was finding evidence and precedents regarding the limited natural disaster controls proposed. Both price and rent controls spring from war emergencies or the large economic stabilization efforts of the early 1970s. Price controls usually fade quickly after an emergency, and do so uniformly under federal statutes. Rent controls have developed a life of their own under state economic regulation. Although spawned by emergencies, they have persisted long after the triggering emergency and are usually justified over the long run in relation to ordinary housing shortages. Rent controls do not implicate the Commerce Power to the same extent as price controls, and the states are thus relatively less inhibited in enacting rent controls. Guam, of course, is not subject to Commerce power constraints.

In any event we must look back nearly two decades for significant price control experience. Although there is currently a fair amount of rent control activity among the states, it is not for the kind of short-term purposes proposed in Bill No. 995.

The budget constraint did not permit a thorough search among state statutes for evidence of standing authorizations to exercise emergency price and rent controls. Undoubtedly, a substantial number of States contemplate some mixture of federal and state emergency economic legislation in war situations, and the possibility of such legislation in large-scale natural disasters. If you want a thorough search of this kind, we probably could

The Hon. Don Parkinson
Page 3

obtain assistance from the Federal Emergency Management Agency in Washington, which would have the most reason to keep track of such planning developments.

We do not see serious constitutional problems with the proposed price controls, assuming we are correct that Guam has the capacity to enact them. The deferential rational purpose test should be relatively easy to meet. As noted above, the Commerce Power is not of direct concern here. There are potential difficulties with the rent controls in light of recent United States Supreme Court decisions that require heightened scrutiny in regulatory taking challenges. We believe that Guam could meet the new tests.

Impairment of contracts is sometimes alleged in challenges to regulations of this sort. The constitutional doctrine has been heavily circumscribed over the years, and we do not see credible impairment challenges under the temporary emergency controls proposed. We did not believe it necessary to brief the impairment question.

At this stage, and given the budget constraint, we thought the broad-ranging memorandum enclosed would bracket the subject and our responses. A review of the memorandum should indicate whether we have misconstrued the Organic Act and the powers of the Guam Legislature, and whether we have targeted the issues of principal concern. After the review you may then choose to narrow the issues, or expand the search for state legislation and

The Hon. Don Parkinson
Page 4

emergency planning experience, or both. This two-step approach seemed more efficient than proposing budget extensions before you were sure that we had the subject in proper focus.

We have two concerns with the language of the proposed bill. The definition of "disaster" reflects some borrowing from federal civil defense and disaster relief authorities. Our memorandum cites to and quotes the key federal provisions.

You may wish to review the Guam definition with a view to the desired consistency with the federal versions. Here we think it important to restrict the controls to natural disasters and to man-caused nonwar emergencies. The aim would be to avoid any implication of trenching upon the Congressional war power.

Our second concerns involve the inclusion of the control provisions in the Deceptive Trade Practices--Consumer Protection Act. The term "deceptive trade practices" and similar terms are subject to definition by the Federal Trade Commission, and we do not believe that the Commission envisions emergency price and rent controls under its definitions. See F.T.C. v. Sperry & Hutchinson Co., 405 U.S. 233 (1972), for the judicial deference granted to the Commission's defining and proscription of unfair practices.

It may be more expedient to avoid the "unfair trade practice" characterization and to lodge the price and rent control authorizations with disaster preparedness and relief measures. Our concern is that in tight litigation on the facial validity of

The Hon. Don Parkinson
Page 5

the controls, it may be demonstrated that the "unfair trade practice" characterization is not consonant with Commission definitions recognized by the courts, and thus subject to invalidation on technical grounds.

It has been a pleasure to assist you in this matter. Please do not hesitate to call if we can be of further assistance. Your continuing reliance on our services is very much appreciated.

Sincerely,

Francis A. Hennigan / maw

Francis A. Hennigan
Senior Research Attorney

FAH/maw
Enclosures

SUMMARY MEMORANDUM

TO: Don Parkinson, Esquire

FROM: National Legal Research Group, Inc.
Francis A. Hennigan, Senior Research Attorney

RE: Guam/United States/Statutes/Natural Disasters--
Authority To Control Prices And Rents

FILE: 54-95059-248 December 11, 1992

YOUR
FILE: Bill # 995 (Anti-gouging Bill)

Date/Time Recd	12/23/92 9:48 P.M.
Received by	<i>[Signature]</i>
Exec A't	
SENATOR	
Monitored by	
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Other Action	

STATEMENT OF FACTS

Counsel is a Senator of the Guam Legislature. He has introduced Bill 995, entitled "An Act to Protect Consumers by Preventing Price Gouging After Disasters, and to Allow the Governor to Freeze Prices on Critical Goods for up to 30 Days and to Freeze Residential Rents for up to 180 Days After a Major Disaster."

The bill addresses experiences in recent typhoons of price rises for goods, services, and dwelling rentals immediately before and after the typhoons in response to artificial shortages.

There are provisions in the bill that permit the passing on of incremental freight costs caused as a result of air freight actually incurred, and of the actual overtime costs for services in addition to regular charges.

The Governor may, after a disaster, freeze rents to pre-disaster levels for up to 180 days from the date of disaster. No extensions are authorized.

Prices on all retail goods shall be frozen at any time the Governor declares Typhoon Condition I or II, and thereafter until 72 hours after Guam goes back into Condition IV.

After a disaster the Governor may by executive order freeze for up to 30 days mark-ups and prices on designated goods and services found to be in short supply, or in danger of being in short supply as a result of the disaster, to levels in effect 72 hours before the disaster. No extensions are authorized.

The bill provides that any price increase shall be presumed a violation of the subsection specifying the freeze authorities. The presumption may be rebutted by evidence that the increase reflects authorized air freight and overtime costs, and increased acquisition costs.

The provisions summarized above would be added as subsection (b) (30) of 5 Guam Code Ann. § 32201, a provision of article 2, "Deceptive Acts and Prohibited Practices," of the Guam Consumer Protection Act, 5 G.C.A. ch. 32.

The bill also provides for a new subsection(s) to 5 G.C.A. § 32103, the "Definitions" section of the Consumer Protection Act. The new definition defines a "Disaster" to mean any of the natural or man-made catastrophic occurrences "which may require emergency assistance to save lives, protect property, public health and safety or to avert an emergency."

Counsel requires as analysis of the constitutionality of the bill both in regard to goods and services and in regard to landlord-tenant relationships. Counsel also seeks information on similar or related statutes in other jurisdictions and suggestions for improving the bill or correcting any apparent errors in the language.

DISCUSSION OF AUTHORITY

A. Introduction

Guam's status as an unincorporated territory subject to the planning power of Congress expressed through the Organic Act, 48 U.S.C.A. §§ 1421 et seq. (West 1987), makes the legal status of any emergency price and rent controls enacted by the Guam Legislature somewhat anomalous.

Congressional impositions of such controls have been in response to major threats to the national security as perceived during World War II and, more recently, in the middle and waning years of the Vietnam War through the Economic Stabilization Act of 1970, Pub. L. No. 91-380, 84 Stat. 796, and subsequent amendments.

The Congress currently provides for "a system of civil defense for the protection of life and property in the United States from attack and from natural disasters." 50 U.S.C.A. app. § 2251 (West 1991) (emphasis added). An attack is defined as any attack by an enemy of the United States causing . . . substantial damage . . . " The term "catastrophe" in the proposed bill's § 32103(a) definitions of "disaster" probably could be construed to include "any attack by an enemy," if the Guam Legislature sees any advantage in maintaining full symmetry with the federal statutory civil defense authorities. More to the immediate concerns, however, the federal statute defines a "natural disaster" in

terms that apparently were borrowed in part for the proposed bill's definition:

The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of this Act [sections 2251 to 2303 of this Appendix], any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

50 U.S.C.A. app. § 2252(b).

The federal civil defense statutes specifically apply to the territories. 50 U.S.C.A. app. §§ 2252(g) and 2259. The federal provision on postdisaster economic recovery is included as one of 16 factors to be given consideration by the President in implementing the Congressional intent for an improved civil defense program. The statute provides in pertinent part:

(a) In order to carry out the sense of Congress expressed in section 501 [section 2301 of this Appendix], the President shall, to the extent practicable, develop and implement an improved civil defense program which includes--

(1) a program structure for the resources to be used for attack-related civil defense;

(2) a program structure for the resources to be used for disaster-related civil defense;
and

(3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably.

(b) In developing a program structure for attack-related civil defense pursuant to subsection (a), the President shall give consideration to including in such program structure the following elements:

. . . .

(13) The development of plans for postattack economic recovery and the development of plans for postdisaster economic recovery to the extent that planning for postdisaster economic recovery planning does not detract from planning for postattack economic recovery.

50 U.S.C.A. app. § 2302(b)(13).

The plain sense of the above provision is that the Congress intends that emergency economic planning for postnuclear attack situations should not be undermined by such planning for post-natural disaster situations. With the currently decreased threat of massive nuclear war, the provision can now be read as a slightly qualified authority to plan for postnatural disaster economic recovery. Such natural disaster planning could reasonably include consideration of emergency price and rent control as facets of emergency economic planning.

In any event, the civil defense statutes by combining post-enemy attack and postnatural disaster functions draw both on Congressional war powers, U.S. Const. art. I § 8, cl. 11, and on the broad grant of power in the "necessary and proper clause." Id. art. I, § 8, cl. 18. The latter clause is the apparent basis for those civil defense aspects dealing with natural disasters. This reasoning is reinforced by the separate and extensive disaster relief provision in 42 U.S.C.A. §§ 5121 et seq. (West 1983 &