

Supp. 1992). There, the statutes contain separate definitions for "emergency" and "major disaster" that are aimed mainly at the natural disaster contingencies contemplated in the civil defense authorities:

As used in this Act--

(1) Emergency. "Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) Major disaster. "Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

42 U.S.C.A. § 5122(1) and (2).

The disaster relief statutes explicitly apply to Guam. 42 U.S.C.A. § 5122(4).

Provisions dealing with temporary housing assistance, 42 U.S.C.A. § 5174, with food coupons and distribution, id. § 5179, and with food commodities, id. § 5180, suggest federal intervention aimed mainly at increasing supplies or at easing burdens on low income households. There is no explicit reference to federal government exercise of price and rent control authorities; nor is

there any explicit preclusion of their exercise by states or by an unincorporated territory such as Guam,.

On balance it seems reasonable to infer that the Congress did not intend within the civil defense and disaster relief statutes to authorize the federal Executive Branch to impose price and rent controls without separate express legislative authorization. Nor does it appear that the Congress intended to preclude state imposition of such controls to the extent that the states may constitutionally do so.

The major constitutional conflict between federal and state authority would be state trenching upon the exclusive Congressional war power, U.S. Const. art. I, § 8, cl. 11, during responses to enemy attack. If, as discussed above, the "necessary and proper clause," id. art. I, § 8, cl. 18, is the basis of Congressional authority to legislate for disaster relief in non-war situations, the explicit federal nonwar authorities in the civil defense and disaster relief statutes raise supremacy clause concerns. Id. art. VI, § 2. But, again, the absence of express federal provisions on price and rent controls, suggests that the states in natural disaster situations may impose such controls unless and until Congress invades the sphere, provided that the state controls do not run afoul of other constitutional provisions, such as the Commerce Clause, U.S. Const. art I, § 8, cl. 3.

Guam, although treated as a "state" in both the civil defense and disaster relief statutes, cannot invoke state sovereignty, and the question of Congressional inaction or express price and rent controls means something more for Guam than the sovereign states.

At this point the issue reduces to whether for Guam and the other incorporated territories the Congressional silence on price and rent controls in natural disasters does preclude their imposition by Guam; or whether, subject to other possible constitutional constraints, Guam may impose such controls under a broad construction of Guam's exercise of the police power pursuant to the Organic Act. In short, can Guam prepare by legislation to impose the controls and actually impose them in a disaster situation within the four corners of the Organic Act, or must the Congress expressly authorize imposition? A corollary concern is Congressional authority to repudiate actions by the Guam Legislature. This relevant concern is difficult to address without first considering, as a threshold matter, whether the Guam Legislature can set up the controls in the first instance without running afoul of constitutional and Organic Act constraints.

It appears for both price and rent controls that the Organic Act, read in context with the federal civil defense and disaster relief authorities, can support the proposed bill. This judgment is based in part on the evident Congressional intent in the area of nonwar disasters that the states, exercising their police

power, bear the primary burdens with varying degrees of federal assistance. Because Guam is treated as a State in the federal statutes, it seems safe to assume that Guam's nonwar disaster preparations and actions proceed under the exercise of the police power recognized for the unincorporated territories.

One authoritative commentator on the legal status of the territories states that "[u]nless specifically limited, the legislative powers of a territory are normally as broad as the police powers of a state." Liebowitz, "The Applicability of Federal Law to Guam," 16 Va. J. Int'l L. 21, 36 (1975) (citing to District of Columbia v. John R. Thompson Co., 346 U.S. 100, 110 (1956)). Liebowitz states that as a general rule

enactments of the Guam legislature will generally not be overturned so long as they do not exceed the bounds of: (a) subjects of local application; (b) subjects not inconsistent with the provisions of the Organic Act; and (c) subjects not inconsistent with the law of the United States regarding Guam.

Liebowitz, supra, 16 Va. J. Int'l L. at 36.

The provisions in the proposed bill regarding local merchants and landlords, "normal sales price" and permissible additions for air-freight and overtime, and "increased acquisition costs paid to the merchant's suppliers," all appear to focus on island situations while accepting, but not attempting to control, exogenous variables that may involve outside carriers and suppliers. In short, the proposed bill appears to fit within "all subjects of local application" in 48 U.S.C.A. § 1423a.

If, as discussed above, the proposed bill is a proper exercise of the police power in a manner similar to its exercise by a state, the bill does not appear inconsistent with the provisions of the Organic Act. The basic conformity of the proposed bill with the federal civil defense and disaster relief statutes, as discussed above, appears to satisfy generally the requirement of consistency with the laws of the United States regarding Guam.

While an enactment of the Guam Legislature does not enjoy the general presumption of validity accorded state law. Liebowitz, supra, 16 Va. J. Int'l L. at 38, the prospects of surviving a basic validity challenge in relation to the present federal statutory framework appear good. There are constitutional concerns, however, and these are addressed separately below for price and rent controls.

B. Validity of Price Controls

The constitutionality of price controls finds its modern justification in the landmark milk price control decision in Nebbia v. People of State of New York, 291 U.S. 502 (1934) (upholding State Milk Control Board's order fixing milk prices), and in the experiences of the nationwide price controls imposed during World War II and the early 1970s. Before the Nebbia decision, the Court had interpreted the Constitution to allow the states to regulate business prices only of firms "affected with a public interest" and during a temporary emergency. See, e.g.,

Block v. Hirsch, 256 U.S. 135 (1921) (letting of buildings in District of Columbia clothed with public interest so as to justify rent controls during period of World War I emergency); Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924) (cessation of World War I housing emergency in District of Columbia sundered justification for rent controls). With Nebbia the Court eliminated the "affected with a public interest" and emergency requirements. The authority of the states to regulate prices as part of their general power to promote the public welfare was upheld.

But there can be no doubt that upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells.

So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio. "Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine." Northern Securities Co. v. United States, 193 U.S. 197, 337, 338, 24 S. Ct. 436, 457, 48 L. Ed. 679.

Nebbia v. People of State of New York, supra, 291 U.S. at 537.

Nebbia marked the beginning of the acceptance of price regulation as part of governmental control of the marketplace with

commodity price controls as a conspicuous nonemergency example. The special sphere of utility rate regulation was already well-established. The claim that a particular price-setting or rate regulation scheme is excessive or confiscatory and requires just compensation under the takings clause, U.S. Const. amends. V and XIV, is the standard objection to price controls.

The Supreme Court upheld the federal price control programs instituted during World War II against takings claims. See, e.g., Bowles v. Willingham, 321 U.S. 503 (1944), where the war emergency was a paramount justification for the controls program.

We need not determine what constitutional limits there are to price-fixing legislation. Congress was dealing here with conditions created by activities resulting from a great war effort. . . . A nation which can demand the lives of its men and women in the waging of that war is under no constitutional necessity of providing a system of price control on the domestic front which will assure each landlord a "fair return" on his property.

Id. at 519 (citations omitted).

The price controls imposed in the early 1970's did not involve a massive war emergency. The nation was engaged in the Vietnam conflict, but the controls were justified on grounds of controlling inflation and stimulating unproductive sectors of the economy. See, e.g., Fry v. United States, 421 U.S. 542, 548 (1975) (Congress enacted Economic Stabilization Act as emergency measure to counter severe inflation that threatened nation's economy). The Supreme Court did not hear any takings or substantive due process challenges to the controls imposed in the early

1970s. Drobrack, "Constitutional Limits on Price and Rent Control: The Lessons of Utility Regulation," 64 Wash. U.L.Q. 107 (1986). A takings claim was rejected in Western Meat Packers Association v. Dunlop, 482 F.2d 1401 (Temp. Emerg. Ct. App. 1973), on the temporary emergency basis of Bowles v. Willingham, supra.

On balance, the cases upholding the constitutionality of the nationwide price controls imposed "during World War II and the early 1970s demonstrate the importance of . . . these factors-- the justification of the regulation, the duration of the controls and the ability of the regulated firm to avoid the regulation by withdrawing from the regulated business." Drobak, supra, 64 Wash. U.L.Q. at 112. These factors generally arise in combination and their relative importance is difficult to discern. Id. A war emergency is not a necessary condition, as is evident in the upholding of controls in the early 1970s. On the other hand, a temporary duration as intended by the legislation authorizing controls in the 1970s, appears necessary apart from the indefinite situation of a massive war emergency. Although the relative difficulty for firms in withdrawing from a regulated business may be considered, it does not appear to be a decisive factor for short duration controls. Id. at 113.

The above review of state and federal economic controls indicates that the states have the power to regulate prices, and that nationwide federal control programs during World War II and

the early 1970s indicate that Congress may act on grounds either of the war powers, U.S. Const. art. I § 8, cl. 18, or the Commerce Clause, id. art. I, § 8, cl. 3, or more broadly, perhaps, under the necessary and proper clause. Id. art. I, § 8, cl. 18.

Presumably the states could enact temporary natural disaster price controls under the authority of Nebbia v. People of State of New York, supra, provided there was no trenching upon the Congressional war power (irrelevant in any case in a natural disaster) or the Commerce Clause.

We have identified no case authorities dealing with state-imposed natural disaster price controls. A combination of rapid emergency responses by the public and private sectors from unaffected areas both pre- and postemergency (an advantage not enjoyed by Guam in its relative isolation), plus Commerce Clause concerns, may explain the absence of case authorities. The federal civil defense and natural disaster statutes addressed earlier do seem to sanction state emergency economic planning for the imposition of natural disaster price controls, but we have identified no direct evidence of standing state legislative authorizations to impose controls within the budgetary limits of this assignment. All factors considered, Commerce Clause concerns may be strong inhibiting factors for the states. But the Commerce Clause need not inhibit the Guam Legislature in light of the ruling in Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285 (9th Cir. 1985), cert. denied, 475 U.S. 1081 (1986).

By combining the broad price regulation freedom granted the states under Nebbia v. People of New York, supra, the authority of Congress to impose nationwide price controls of temporary duration, as in the early 1970s, apart from massive war emergencies, and reliance on the war powers, the freedom of the Guam Legislature from Commerce Power inhibitions under Sakamoto v. Duty Free Shoppers, Ltd., supra, and the relative isolation of Guam in natural disaster situations, it seems reasonable to conclude that the imposition of price controls through the proposed bill, except in a massive war emergency which would invoke an exercise of the Congressional war power, satisfies the three criteria of local application, consistency with the Organic Act, and consistency with the laws of the United States. Liebowitz, supra, 16 Va. J. Int'l L. at 36.

Again, the federal civil defense and natural disaster statutes provide a context for characterizing the proposed bill as basically an exercise of the police power by the Guam Legislature, in the special legal and geographic situations of the island, in response to the Congressional intent reflected in those statutes.

C. Validity of Rent Controls

Were it not for recent United States Supreme Court decisions on regulatory takings, virtually all of the above discussion on price controls would apply to rent controls with the significant

difference lying in the essentially local and property law-based features of rent control.

The discussion of the federal civil defense and natural disaster acts as touchstones of legitimacy; of the Guam Legislature's exercise of the police power; and of satisfying the criteria of local application, consistency with the provisions of the Organic Act, and consistency with the laws of the United States, apply almost equally to emergency price and rent controls.

The fundamental difference in light of the recent Supreme Court decisions is that the deferential "whatever economic policy may reasonably be deemed to promote public welfare" standard of Nebbia v. People of State of New York, *supra*, 291 U.S. at 537, is no longer likely to be applied in a contemporary challenge to the validity of emergency rent controls.

Several recent land use decisions of the Court have added considerable flesh to the bare bones of Justice Holmes' indeterminate standard in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922), that "[w]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."

In Pennell v. City of San Jose, 485 U.S. 1 (1988), the Court's majority refused to strike down the San Jose rent control ordinance on taking grounds because the factual setting was not sufficiently definite to adjudicate the merits. The majority did

note that rent control is not unconstitutional per se. Id. at 12 n.6.

Justices Scalia and O'Connor dissented from the majority's conclusion that the taking challenge was premature. Justice Scalia argued that the taking merits should have been addressed on the grounds that knowledge of the nature of the property and the exact degree of impairment is irrelevant when the owner is denied by regulation all economically viable use of the property. Id. at 18. The dissenting views echoed positions taken in Justice Scalia's majority opinion a year earlier in Nollan v. California Coastal Commission, 483 U.S. 825 (1987). In Nollan the property owners had applied for a permit to demolish a small beach bungalow and replace it with a larger single-family residence. The California Coastal Commission conditioned the permit on conveyance of an easement to the state granting the public access over one third of the beachfront property. The owners sought invalidation of the permit condition as a taking without compensation. Id.

The Court's decision in Nollan substantially restructured regulatory taking jurisprudence, as developed earlier in, e.g., Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), and Agins v. Tiberon, 447 U.S. 255 (1980), by declaring that land use regulations would be struck down as takings if they fail to "substantially advance legitimate state interests," Nollan v. California Coastal Commission, supra, 483 U.S. at 834, or

if they deny an owner an "economically viable use," *id.*, of property. This is a threshold test that must be resolved in the government's favor before further analysis of a challenged regulation. A finding for the property owner on either prong of the test will result in a regulatory taking finding.

This heightened judicial scrutiny of measures challenged as nonphysical regulatory takings is a substantial departure from the deference to economic regulations challenged on due process grounds in Nebbia v. People of State of New York, *supra*, and its progeny, a clear practical effect of the two-pronged threshold test is to shift to the government the burden of proving that its regulation substantially advances a legitimate interest. In short, there is no presumption of legislative validity.

Measures that survive the Nollan threshold test may still fail under fact-specific inquiries, particularly where the property owner may demonstrate a grossly disproportionate regulatory impact. The Nollan court clearly stressed such a traditional equity-based test in addition to the new threshold test. Nollan v. California Coastal Commission, *supra*, quoting Armstrong v. United States, 364 U.S. 40, 49 (1960).

Commentators have noted that existing rent control programs may be particularly vulnerable to the Nollan two-pronged threshold test. The programs were spawned by temporary emergency conditions, either war emergencies or economic stabilization programs, that initially justified rent control measures which

continued to survive challenges under the deferential Nebbia test. Without that deferential test, existing rent control programs may be hard pressed to prove that they substantially advance legitimate state interests or do not deny property owners of an economically viable use. See, e.g., Ratford, "Regulatory Takings Law in the 1990s: The Death of Rent Control?" 21 Sw. U.L. Rev. 1019 (1992); Stout, "Making Room at the Inn: Rent Control as a Regulatory Taking," 38 J. Urb & Contemp. L. 305 (1990). Further support for the Nollan heightened scrutiny standard is found in Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992).

Unlike price control measures, which usually do not survive the emergencies that prompted their invocation, rent control measures have proved durable and pervasive.

The most concise summary statement on rent control measures dates from 1983, but appears reasonable in relation to less precise statements in later commentaries:

Prior to 1969, rent control laws were limited in application to war-generated "temporary housing emergencies," except in New York City where controls have been in effect continuously since 1942. Between 1969 and 1975, rent control legislation was adopted in Boston and several neighboring cities, over 100 New Jersey municipalities, Washington D.C., Miami Beach, Berkeley, and other localities. Most of these measures were adopted after federal rent controls terminated in January, 1973. Since 1978, rent controls have become widespread in California.

Baar, "Guidelines for Drafting Rent Control Laws: Lessons of a Decade," 35 Rutgers L. Rev. 723, 727-28 (1983) (footnotes omitted).

Significantly, no references have surfaced to specific standing rent control authorities to be triggered by natural disasters.

At all events, although any taking challenge to the rent control provisions of the proposed bill would have to meet the two-pronged Nollan threshold test and, surviving that, a factual equity-based inquiry on disproportionate impacts the rent control provisions do appear resistant to a regulatory taking challenge. A major anticipated or actual disaster is necessary to apply controls, and the maximum duration is 180 days. This is not the kind of long-standing rent control program addressed by the above-noted commentators. Nevertheless, facial challenges invoking the Nollan threshold test are possible. Guam authorities will then bear relatively heavy burdens of proof. The cushion provided by the deferential Nebbia test is no longer available in a taking challenge to rent control legislation enacted under the police power.

CONCLUSION

Guam's position as an unincorporated territory that is relatively isolated in natural disaster situations presents unique legal and factual situations to consideration of the proposed

bill. The federal civil defense and disaster relief statutes provide touchstones for legitimacy for the exercise of the police power by the Guam Legislature to enact the emergency price and rent control measures. Commerce Power concerns that may inhibit the enactment of price control measures by state legislatures are not constraints upon Guam. Satisfaction of criteria for local application, consistency with the Organic Act, and consistency with the laws of the United States, does not appear to present special problems.

Price control provisions enjoy the deferential Nebbia standard. The heightened judicial scrutiny in land use regulatory takings requires a relatively more complex defense of the rent control provisions, but the prospects appear good for sustaining them.

It is difficult in light of the above considerations to see how or why the Congress would repudiate the emergency provisions on their merits. On the other hand, it is possible in relation to the asserting of Congressional power over the implementation of the Organic Act, that the Congress would determine that it is the proper enacting authority by amendment of the Organic Act. See Guam v. Okada, 694 F.2d 565 (9th Cir. 1982) (Congress has power to legislate directly for Guam, or to establish government for Guam subject to Congressional control; Guam has no inherent right to govern itself). Such Congressional intervention, although unwelcome for the Guam Legislature, as a matter of form,

probably would result in a Congressional enactment substantially similar to the proposed bill.

SPADE SHEET

OUR FILE: 54-95059-248

SOURCES CHECKED

GOVERNING JURISDICTION

1. Legislation

5 Guam Code Ann. §§ 32101 et seq. and proposed amendments (provided by client)

NATIONAL

1. Legislation

48 U.S.C.A. §§ 1421 et seq. (West 1987 & Supp. 1992)

42 U.S.C.A. §§ 1521 et seq. (West 1978)

50 U.S.C.A. app. §§ 2251 et seq. (West 1991)

1950 U.S. Code Cong. & Admin. News 2840 et seq.

40 C.F.R. p. 205 (1991)

2. Encyclopedias

93 C.J.S. "War & National Defense" §§ 70-186

16 Am. Jur. 2d "Constitutional Law" §§ 318-359, 654

50 Am. Jur. 2d "Landlord & Tenant" §§ 1248, 1250-1251

72 Am. Jur. 2d "States, Terr. & Dependencies" §§ 22, 129-168

78 Am. Jur. 2d "War" §§ 30-32

SPADE SHEET CONTINUED

3. Legal Periodicals

- Leibowitz, "The Applicability of Fed. Law to Guam," 16 Va. J. Int'l L. 21 (1975)
- Leibowitz, "U.S. Federalism: The States & Terr." 28 Am. U.L. Rev. 449 (1979)
- Hayes, "Emergencies and Power of U.S. to Meet Them," 16 Temple U.L.Q. 173 (1942)
- Baar, "Guidelines for Drafting Rent Control Laws," 35 Rutgers U.L. Rev. 723 (1983)
- Comment, "The Takings Clause and Rent Control--Pennell," 12 Harv. J.L. & Pub. Policy 274 (1989)
- Stout, "Making Room at the Inn: Rent Control as Reg. Taking," 38 J. Urb. & Contemp. L. 305 (1990)
- Drobak, "Const. Limits on Price & Rent Control--Lessons of Utility Reg.," 64 Wash. U.L.Q. 107 (1986)
- Ratford, "Reg. Takings Law in the 1990's: The Death of Rent Control," 21 S.W.U.L. Rev. 1019 (1992)

ALL CASES SHEPARDIZED

JAN 04 '93

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) REGULAR SESSION

Bill No. 21 (LS)
Introduced By:

D. Parkinson *D*

EPCP
**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**

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

Section 1. A new sub-subsection (21) is added to subsection
(c) of 5 GCA 32201 to read as follows:

(21) Price Gouging in time of disaster prohibited.

(i) It shall be an unfair trade practice for any merchant or landlord to increase the price of any goods, services, or dwelling rentals on the basis of shortages anticipated or caused by any disaster or calamity. A merchant may add to the normal sales price of goods normally imported by sea incremental freight costs caused as a result of air freight actually incurred, and may pass on to customers actual overtime labor costs for services in addition to regular charges.

(ii) After a major disaster in which five hundred (500) or more of the permanent residential units on the island are destroyed or rendered uninhabitable for 60 days or more by the disaster, after a typhoon bringing sustained winds to Guam of 125 miles per hour or more, or after an earthquake with a strength on Guam of

38 greater than 5.5 on the richter scale, the Governor
39 may, -by executive order, freeze rents to levels in
40 effect the day before before the disaster or threat of
41 disaster, for up to 180 days from the date of the
42 disaster, which freeze may not be extended.

43 (iii) On declaration of Typhoon Condition 1 or 2,
44 or after a major disaster in which five hundred (500)
45 or more of the permanent residential units on the
46 island are destroyed or rendered uninhabitable for 60
47 days or more by the disaster, after a typhoon bringing
48 sustained winds to Guam of 125 miles per hour or more,
49 or after an earthquake with a strength on Guam of
50 greater than 5.5 on the richter scale, the Governor
51 may, by executive order, freeze mark-ups and prices on
52 designated goods and services which he finds to be in
53 short supply or in danger of being in short supply as a
54 result of the disaster to levels in effect the day
55 before the disaster or threat of disaster, for up to
56 thirty (30) days after the disaster, which freeze may
57 not be extended. A merchant may add to the normal
58 sales price of the goods, the increased import cost of
59 the goods, such increase is not related or directly
60 caused by the natural disaster, normally imported by
61 sea incremental freight costs caused as a result of air
62 freight actually incurred.

63 (iv) Merchants and landlords violating this sub-
64 subsection (21) shall be liable for [remedies/penalties
65 as prescribed in subsection 32307] damages equal to

Price Gouging
3 of 4

67 overcharged goods or five times the amount of
68 overcharges for services or rentals, in addition to all
69 other damages and remedies allowed by law or equity,
70 and may be temporarily and permanently restrained and
71 enjoined from further violation without the applicant
72 therefore being required to post bond.

73 (v) The price on all retailed goods shall be
74 frozen at any time the Governor of Guam declares Guam
75 to be in Typhoon Condition I or Typhoon Condition II
76 and thereafter for 72 hours after Guam goes back into
77 Typhoon Condition IV. The normal sales prices of goods
78 shall include the actual costs of the increased import
79 cost of the goods, such increase should not be related
80 or directly caused by the natural disaster, for all
81 goods normally imported by sea, incremental freight
82 costs caused as a result of air freight actually
83 incurred.

84 **Section 2.** A new subsection (s) is added to Title 5 Guam
85 Code Annotated section 32103 to read as follows:

86 "(s) "Disaster" means any typhoon, flood, high
87 water, wind-driven water, tidal wave, tsunami,
88 earthquake, volcanic eruption, landslide, mudslide,
89 drought, fire, explosion, or other catastrophe which
90 may require emergency assistance to save lives, protect
91 property, public health and safety or to avert an
92 emergency.

93
94 **Section 3.** The Department of Law is authorized three (3)
95 additional full-time equivalent positions for non-attorney

Price Gouging
4 of 4

96 positions, all to work primarily on consumer issues and
97 enforcement of Chapter 32, Title 5 Guam Code Annotated.
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3 TWENTY-SECOND GUAM LEGISLATURE
4 1993 (FIRST) REGULAR SESSION
5
6

7 Bill No. 21
8 (As substituted by the
9 Committee on Electrical
10 Power and Consumer Protection)
11 Introduced By:

D. Parkinson

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14
15 AN ACT TO PROTECT CONSUMERS BY PREVENTING PRICE
16 GOUGING AFTER DISASTERS, AND TO ALLOW THE GOVERNOR
17 TO FREEZE PRICES ON CRITICAL GOODS FOR UP TO 30 DAYS
18 AND TO FREEZE RESIDENTIAL RENTS FOR UP TO 180 DAYS
19 AFTER A MAJOR DISASTER
20

21
22 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

23 Section 1. A new sub-subsection (21) is added to subsection
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25 (21) Price Gouging in time of disaster prohibited.

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27 merchant or landlord to increase the price of any
28 goods, services, or dwelling rentals on the basis of
29 shortages anticipated or caused by any disaster [~~or~~
30 calamity]. A merchant may add to the normal sales
31 price of goods normally imported by sea incremental
32 freight costs caused as a result of air freight
33 actually incurred, and may pass on to customers actual
34 overtime labor costs for services in addition to
35 regular charges.

36 (ii) After a [~~major~~] disaster in which there is
37 serious damage to five hundred (500) or more of the
38 permanent residential units on the island are destroyed

39 or rendered uninhabitable [~~for 60 days or more~~] by the
40 disaster, after a typhoon bringing sustained winds to
41 Guam of 125 miles per hour or more, or after with an
42 earthquake that affects Guam with a [~~strength on Guam~~]
43 greater than 5.5 on the Richter scale the Governor may,
44 by executive order, freeze rents to levels in effect
45 the day before the disaster or threat of disaster, for
46 up to 180 days from the date of the disaster, which
47 freeze may not be extended.

48 (iii) On declaration of Typhoon Condition 1 or 2
49 and 3, or after a [~~major~~] disaster in which five
50 hundred (500) or more of the permanent residential
51 units on the island are destroyed or rendered
52 uninhabitable [~~for 60 days or more~~] by the disaster,
53 after a typhoon bringing sustained winds to Guam of 125
54 miles per hour or more, or after an earthquake with a
55 strength on Guam of greater than 5.5 on the Richter
56 scale, the Governor may, by executive order, freeze
57 mark-ups and prices on designated goods and services
58 which he finds to be in short supply or in danger of
59 being in short supply as a result of the disaster to
60 levels in effect the day before the disaster or threat
61 of disaster, for up to thirty (30) days after the
62 disaster, which freeze may not be extended. A merchant
63 may add to the normal sales price of the goods, the
64 increased import cost of the goods, such increase [~~is~~]
65 shall not be related or directly caused by the natural
66 disaster, for all goods normally imported by sea, and

67 incremental freight costs caused as a result of air
68 freight actually incurred.

69 (iv) Merchants and landlords violating this sub-
70 subsection (21) shall be ~~[liable for]~~ subject to the
71 same damages, penalties and other liabilities provided
72 in this chapter [remedies/penalties as prescribed in
73 subsection 32307] damages equal to three times the
74 amounts of all gross profits on overcharged goods or
75 five times the amount of overcharges for services or
76 rentals, in addition to all other damages and remedies
77 allowed by law or equity, and may be temporarily and
78 permanently restrained and enjoined from further
79 violation without the applicant therefore being
80 required to post bond.

81 (v) The price on all retailed goods shall be
82 frozen at any time the Governor of Guam declares Guam
83 to be in Typhoon Condition I or Typhoon Condition II
84 and thereafter for 72 hours after Guam goes back into
85 Typhoon Condition IV. ~~[The normal sales prices of~~
86 ~~goods shall include the actual costs of the increased~~
87 ~~import cost of the goods, such increase should not be~~
88 ~~related or directly caused by the natural disaster, for~~
89 ~~all goods normally imported by sea, incremental freight~~
90 ~~costs caused as a result of air freight actually~~
91 ~~incurred.]~~

92 **Section 2.** A new subsection (s) is added to Title 5 Guam
93 Code Annotated section 32103 to read as follows:

94 "(s) "Disaster" means any typhoon, flood, high
95 water, wind-driven water, tidal wave, tsunami,

96 earthquake, volcanic eruption, landslide, mudslide,
97 drought, fire, explosion, or other catastrophe which
98 may require were emergency assistance was required to
99 save lives, or to protect property, public health and
100 safety or to avert an emergency.

101 **Section 3.** The Department of Law is authorized three (3)
102 additional full-time equivalent positions for non-attorney
103 positions, all to work primarily on consumer issues and
104 enforcement of Chapter 32, Title 5 Guam Code Annotated.

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Bill No. 21
 Amendatory Bill YES NO Date Received 1-22-93
 Date Reviewed 2-1-93

Department/Agency Affected: Department of Law
 Department/Agency Head: Elizabeth Barrett-Anderson
 Total FY Appropriation to Date: \$11,856,200

Bill Title (preamble) : 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

Change in Law: To add a new subsection 21 to (c) of 5 GCA 32201 and to add a new (s) to Title 5 GCA Section 32103

Bill's Impact on Present Program Funding:
 Increase Decrease Reallocation No Change
 Dept. of Law - add'1 3 FTE

Bill is for: Operations Capital Improvement Other (_____)

FINANCIAL/PROGRAM IMPACT

PROGRAM CATEGORY	ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)		TOTAL
	GENERAL FUND	OTHER	
<u>Public Safety</u>	<u>1/</u>		

FUND	ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)					TOTAL
	1st	2nd	3rd	4th	5th	
GENERAL FUND	<u>1/</u>					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? YES/NO-IF NO, ADD'L AMOUNT REQUIRED \$ 1/
 AGENCY/PERSON/DATE CONTACTED: _____

FUND	ESTIMATED POTENTIAL MULTI-YEAR REVENUES					TOTAL
	1st	2nd	3rd	4th	5th	
GENERAL FUND	<u>N/A</u>					
OTHER						
TOTAL						

ANALYST A. Flores DATE 2/2/93 DIRECTOR Giovanni T. Sgambelluri DATE FEB 03 1993

FOOTNOTES: 1/ No appropriation is included to fund the authorization to increase FTE level by 3 under the Dept. of Law. Information on the budget breakdown is not available at this time.