



Territory of Guam
Federacion Guam

OFFICE OF THE SPEAKER
DATE: 3-23-94
TIME: 1:50 pm
RECD BY: *ML*

OFFICE OF THE GOVERNOR
LEFINAN I MAGA'LAH
AGANA, GUAM 96910 U.S.A.

REFER TO
LEGISLATIVE SECRETARIAT

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

Dear Mr. Speaker:

Transmitted herewith is Bill No. 381, which has been designated as Public Law
No. 22-96.

Sincerely yours,

JOSEPH F. ADA
Governor

220589

Attachment

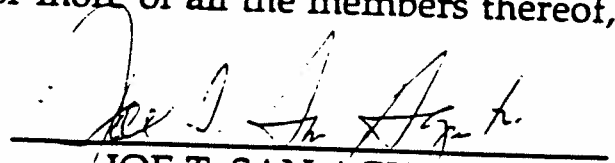


Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

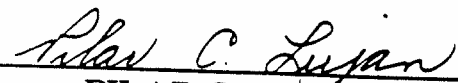
CERTIFICATION TO THE GOVERNOR OF PASSAGE OF AN ACT

This is to certify that Substitute Bill No. 381 (LS), "AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE," returned to the Legislature without the approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 8th day of March, 1994, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of sixteen (16) members.




JOE T. SAN AGUSTIN
Speaker

Attested:



PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 31st day of March,
1994, at 10:59 o'clock A.M.



Assistant Staff Officer
Governor's Office

Public Law No. 22-96

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 381 (LS)

As substituted by the
Committee on Rules

Introduced by:

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

AN ACT TO REPEAL AND REENACT SUBSECTION (b)
OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO
REQUIRE THE GOVERNOR TO SUBMIT PROPOSED
AGENCY RULES TO THE LEGISLATURE IN BILL
FORMAT FOR ADOPTION, MODIFICATION OR
REJECTION BY STATUTE.

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

1 Section 1. Subsection (b) of §9303, Title 5, Guam Code Annotated, is
2 hereby repealed and reenacted to read:

3 "(b) Submit the original approved copy to the Governor who,
4 if he approves the same, shall transmit the proposed rules to the
5 Legislature in the form of a bill for adoption, amendment,
6 modification or rejection by the Legislature; provided, however, that
7 the Election Commission shall submit its proposed rules in the form
8 of a bill directly to the Legislature and not through the Governor.
9 The Legislative Secretary shall maintain a permanent register of all
10 such rules, whether filed by the Governor or the Election
11 Commission, which shall include a notation of the date and hour of
12 such filing thereon.

13 Unless otherwise specifically provided by law, no rule shall be
14 effective until either approved by statute or it shall have complied
15 with the provisions of this law and forty-five (45) calendar days have
16 elapsed from the date of receipt by the Legislature of its transmittal,
17 and seven (7) legislative days have elapsed after the elapse of the
18 forty-five (45) calendar days. If the Legislature does not act upon the
19 proposed rules within such combined period, the rules shall be
20 deemed adopted. The Legislative Secretary may request that the
21 agency submit all or part of the record of any public hearings on the
22 rules filed. The Legislature may approve, disapprove or amend any
23 rule or rules so transmitted within the combined period of the forty-
24 five (45) calendar days and the seven (7) legislative days. When the
25 Legislature has passed a bill approving, disapproving or amending
26 rules or a rule so transmitted to it, the operation of such rules or rule
27 shall be stayed for fifteen (15) calendar days after such bill is

1 submitted to the Governor, and in the event such bill is vetoed by the
2 Governor, the rules or rule shall be stayed for an additional seven (7)
3 legislative days. If such bill is approved by the Governor, the rules or
4 rule shall thereupon go into effect. For the purposes of this
5 subparagraph (b) only, 'legislative day' means a calendar day during
6 which the Legislature is in actual session, and during which it
7 engages or may engage in debate; excluded are calendar days in
8 which the Legislature convenes principally for ceremonial purposes,
9 such as for state funerals, and for addresses by the Governor, the
10 Presiding Judge, or the Guam Delegate."

11 **Section 2. Chapter not applicable to rules resulting from Supreme**
12 **Court Act.** The procedures for approving agency rules and procedures as set
13 out in this Act and as contained in Chapter 9 of Title 5, Guam Code
14 Annotated, do not apply to the rules of court described in §1103 of Chapter 1,
15 Title 7, Guam Code Annotated (the "Frank G. Lujan Memorial Court
16 Reorganization Act of 1992"), and such rules shall be adopted and
17 promulgated as provided in said Chapter.

TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 3/8/94

VOTING SHEET (AS REVISED)

Vetoed
Bill No. 381

Resolution No. _____

Question: Shall vetoed B381 be enacted into law, notwithstanding the Governor's objection?"

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 C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.		✓		
UNPINGCO, Antonio R.			✓	

TOTAL 16 2 3



Territory of Guam
Territorio de Guam

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

REC. 1-19-94
7:25 PM
by Palaw C. Lujan

P.L. 22-96

REFER TO
LEGISLATIVE COUNCIL

RECEIVED
OFFICE OF THE SPEAKER
DATE: 1-20-94
TIME: 8:45
RECD BY: [Signature]

January 19, 1994

The Honorable Joe T. San Agustin
Speaker
Twenty Second Guam Legislature
Agana, Guam 96910

[Signature]

Dear Mr. Speaker:

Enclosed herewith is Substitute Bill No. 381 which I have vetoed in its entirety.

I do not object to the changes made in the first paragraph of 5 GCA §9303 (b) but I do object to the lengthening and uncertainty of the time period that the Legislature has reserved to itself for consideration of proposed rules. It will completely frustrate the rule-making procedure to have to wait months and months for legislative action.

If the Legislature desires to give itself more time for considering rules then I suggest that rather than adding the uncertain seven (7) "legislative days" that the extension be through the conclusion of the next continuing regular monthly session after the 45 calendar days elapse. I ask you and your colleagues to reconsider this issue to make rule-making more expeditious.

I also request that the Legislature exempt rules which increase fees for services rendered by agencies from the extended process. In Public Law 22-51 the Legislature authorized the agencies to set such fees by rule.

I ask that you and your colleagues reconsider your action on this measure.

Cordially,
[Signature]
JOSEPH F. ADA,
Governor of Guam


220497



TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

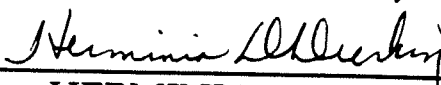
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

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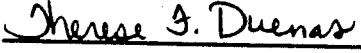
JOE T. SAN AGUSTIN
Speaker

Attested:



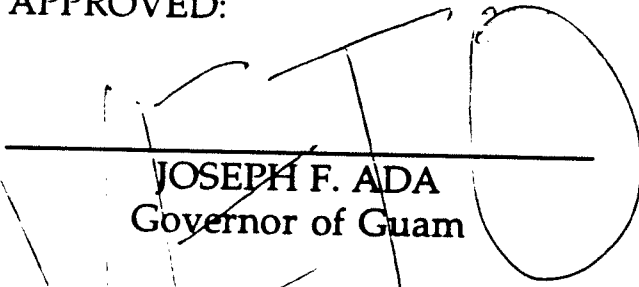
HERMINIA D. DIERKING
Senator and Acting Legislative Secretary

This Act was received by the Governor this 7th day of January
1994, at 4:30 o'clock p.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: _____

Public Law No. _____

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 381 (LS)
As substituted by the
Committee on Rules

Introduced by:

J. P. Aguon
V. C. Pangelinan
T. S. Nelson
D. Parkinson
J. T. San Agustin
H. D. Dierking
C. T. C. Gutierrez
T. C. Ada
E. P. Arriola
D. F. Brooks
M. Z. Bordallo
P. C. Lujan
E. D. Reyes
F. E. Santos
D. L. G. Shimizu
A. R. Unpingco
J. G. Bamba
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F. P. Camacho
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5 Legislature in the form of a bill for adoption, amendment,
6 modification or rejection by the Legislature; provided, however, that
7 the Election Commission shall submit its proposed rules in the form
8 of a bill directly to the Legislature and not through the Governor.
9 The Legislative Secretary shall maintain a permanent register of all
10 such rules, whether filed by the Governor or the Election
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12 such filing thereon.

13 Unless otherwise specifically provided by law, no rule shall be
14 effective until either approved by statute or it shall have complied
15 with the provisions of this law and forty-five (45) calendar days have
16 elapsed from the date of receipt by the Legislature of its transmittal,
17 and seven (7) legislative days have elapsed after the elapse of the
18 forty-five (45) calendar days. If the Legislature does not act upon the
19 proposed rules within such combined period, the rules shall be
20 deemed adopted. The Legislative Secretary may request that the
21 agency submit all or part of the record of any public hearings on the
22 rules filed. The Legislature may approve, disapprove or amend any
23 rule or rules so transmitted within the combined period of the forty-
24 five (45) calendar days and the seven (7) legislative days. When the
25 Legislature has passed a bill approving, disapproving or amending
26 rules or a rule so transmitted to it, the operation of such rules or rule
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8 which the Legislature convenes principally for ceremonial purposes,
9 such as for state funerals, and for addresses by the Governor, the
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11 **Section 2. Chapter not applicable to rules resulting from Supreme**
12 **Court Act.** The procedures for approving agency rules and procedures as set
13 out in this Act and as contained in Chapter 9 of Title 5, Guam Code
14 Annotated, do not apply to the rules of court described in §1103 of Chapter 1,
15 Title 7, Guam Code Annotated (the "Frank G. Lujan Memorial Court
16 Reorganization Act of 1992"), and such rules shall be adopted and
17 promulgated as provided in said Chapter.

TWENTY-SECOND GUAM LEGISLATURE
 1994 (SECOND) Regular Session

Date: 1/5/94

VOTING SHEET
 (AS REVISED)

Resolution No. 381
 Question: _____

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>ABSENT/ OUT DURING ROLL CALL</u>
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 C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 21



December 13, 1993

Committees:

CHAIRPERSON:

Rules

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

VICE CHAIRPERSON:

Ways & Means

MEMBER:

**Economic-
Agricultural
Development,
and Insurance**

Education

**Electrical
Power and
Consumer
Protection**

**Federal and
Foreign Affairs**

**General
Governmental
Operations and
Micronesian Affairs**

**Health,
Ecology and
Welfare**

**Judiciary
and
Criminal Justice**

**Tourism and
Transportation**

**Youth, Senior
Citizens and
Cultural Affairs**

Dear Mr. Speaker:

The Committee on Rules, to which was referred Bill No. 381 (AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE.), wishes to report back to the Legislature with its recommendation to pass Bill No. 381, as amended by the Committee.

The Committee votes are as follows:

TO PASS	<u>14</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
OFF-ISLAND	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached for your reference and information.

Sincerely,

Herminia Dierking
HERMINIA D. DIERKING



COMMITTEE ON RULES

Twenty-Second Guam Legislature
155 Hesler St., Agana, Guam 96910

VOTING SHEET

BILL 381

AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE.

MEMBER	TO PASS	NOT TO PASS	ABSTAIN	OFF ISLAND
<i>H. Dierking</i> Sen. Herminia D. Dierking, Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>C. Gutierrez</i> Sen. Carl T. G. Gutierrez, Vice-Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>J. San Agustin</i> Speaker Joe T. San Agustin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>J. Aguon</i> Sen. John P. Aguon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>T. C. Ada</i> Sen. Thomas C. Ada	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>E. Arriola</i> Sen. Elizabeth P. Arriola	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Doris F. Brooks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>M. Z. Bordallo</i> Sen. Madeline Z. Bordallo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>P. Cruz</i> Sen. Pilar Cruz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>T. Nelson</i> Sen. Ted Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>V. C. Bangelinan</i> Sen. Vicente C. Bangelinan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>D. Parkinson</i> Sen. Don Parkinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>E. D. Reyes</i> Sen. Edward D. Reyes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>F. E. Santos</i> Sen. Francis E. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>D. L. G. Shimizu</i> Sen. David L. G. Shimizu	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>A. R. Unpingco</i> Sen. Antonio R. Unpingco	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Need to discuss this more.

**COMMITTEE ON RULES
TWENTY SECOND GUAM LEGISLATURE
155 Hesler Street, Agana, Guam 96910**

**Committee Report on
BILL NO. 381**

An act to repeal and reenact subsection (b) of §9303, Title 5, Guam Code Annotated, to require the Governor to submit proposed agency rules to the Legislature in bill format for the adoption, modification or rejection by statute.

COMMITTEE MEMBERS:

Chairperson: Herminia D. Dierking
Vice-Chairperson: Carl T. C. Gutierrez

Speaker Joe T. San Agustin
Sen. Thomas C. Ada
Sen. Doris F. Brooks
Sen. Pilar C. Lujan
Sen. Vicente C. Pangelinan
Sen. Edward D. Reyes
Sen. David L. G. Shimizu

Sen. John P. Aguon
Sen. Elizabeth P. Arriola
Sen. Madeleine Z. Bordallo
Sen. Ted S. Nelson
Sen. Don Parkinson
Sen. Francis E. Santos
Sen. Antonio R. Unpingco

PROFILE ON BILL NO. 381

Official Title: AN ACT TO REPEAL AND REENACT
SUBSECTION (b) OF §9303, TITLE 5,
GUAM CODE ANNOTATED, TO
REQUIRE THE GOVERNOR TO
SUBMIT PROPOSED AGENCY RULES
TO THE LEGISLATURE IN BILL
FORMAT FOR ADOPTION,
MODIFICATION OR REJECTION BY
STATUTE.

Main Sponsor(s): J. P. Aguon, V. C. Pangelinan, T. S. Nelson

Referral: Committee on Rules on April 8, 1993.

Committee Public Hearing: 9:00 a.m. Friday, May 28, 1993
Public Hearing Room, Guam Legislature
Temporary Bldg., Agana

Recommendation: To Do Pass as substituted by the
Committee on Rules..

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 381
As substituted by the
Committee on Rules

Introduced by:

J. P. Aguon *[Signature]*
V. C. Pangelinan *[Signature]*
T. S. Nelson *[Signature]*

H. D. Dierking *[Signature]*
C. T. C. Gutierrez
J. T. San Agustin *[Signature]*
T. C. Ada *[Signature]*
E. P. Arriola *[Signature]*
D. F. Brooks
M. Z. Bordallo *[Signature]*
P. C. Lujan *[Signature]*
D. Parkinson
E. D. Reyes
F. E. Santos
D. L. G. Shimizu
A. R. Unpingco

AN ACT TO REPEAL AND REENACT
SUBSECTION (b) OF §9303, TITLE 5, GUAM
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GOVERNOR TO SUBMIT PROPOSED AGENCY
RULES TO THE LEGISLATURE IN BILL
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4 "(b) Submit the original approved copy to the Governor who, if he
5 approves the same, shall transmit the proposed rules to the Legislature in the

1 form of a a bill for adoption, amendment, modification or rejection by the
2 Legislature.

3 No rule shall be effective until after the compliance with the provisions of
4 this law and fifteen (15) Legislative days have elapsed from the date of receipt
5 by the Legislature of the transmittal by the Governor. If the Legislature does
6 not act upon the proposed rules within fifteen (15) Legislative days, the rules
7 shall be deemed adopted."

PURPOSE AND ESSENTIAL ELEMENTS

The purpose of Bill No. 381 is to standardize the process by which agency rules are adopted, approved, disapproved and/or amended. Bill No. 381 also provides a time limit by which this process occurs, that time limit being ten (10) legislative days, after such time rules become effective.

TESTIMONY

There was no oral testimony offered at the Public Hearing. The following written testimony was submitted to the Committee:

Charles H. Troutman, Compiler of Laws from the Office of the Attorney General, submitted written testimony expressing the opinion that Bill No. 12 is unconstitutional, as well as a violation of the Organic Act. Troutman cited numerous cases in support of his opinion, namely **Buckley v. Valeo**, **INS v. Chada**, **Bowsher v. Synar**, **Legislative Research Commission v. Brown**, and locally, **People v. Camacho, et al.** According to Troutman, these cases describe the powers of the Legislature over the rule-making policies of the executive branch. Troutman contends that each case shows that the Legislature does not have the power of approval, disapproval, modification or otherwise active intervention of the executive agencies' rule-making policy, according to existing laws.

Troutman suggests that the Legislature make uniform the delay period for all executive branch agencies' rule-making, based on calendar days only, as legislative days are ambiguous and difficult to confirm. Troutman suggests deleting any reference to legislative approval, disapproval or modification.

COMMITTEE ACTION

The Committee on Rules, after consideration of the testimony offered, changed the time limit from ten (10) legislative days to fifteen (15) legislative days. All other provisions of the bill remain intact.

COMMITTEE RECOMMENDATION

The Committee on Rules wishes to report out Bill No. 381 to the full legislature to do pass, as substituted by the Committee.



PUBLIC HEARING

Friday, May 28, 1993

Public Hearing Room

Temporary Legislative Building, Agana

9:00 am

AGENDA

Bill No. 12 "An Act to Amend Subsection 24202 of the Government Code on the Time for the Legislature to Act on Rules and Regulations."

Bill No. 381 "An Act to Repeal and Re-enact Subsection (b) of Section 9303, Title 5, Guam Code Annotated, to Require the Governor to submit proposed agency rules to the Legislature in bill format for adoption, modification or rejection by statute."

Bill No. 30 "An Act to Repeal and Re-enact Subsection (b) of Subsection 419 of Title 1, Guam Code Annotated, to set Limits on Appropriations for State Funerals."

*The General Public is Invited to Attend
and Express its views.*

Committees:

CHAIRPERSON:

Rules

VICE CHAIRPERSON:

Ways & Means

MEMBER:

Economic-
Agricultural
Development,
and Insurance

Education

Electrical
Power and
Consumer
Protection

Federal and
Foreign Affairs

General
Governmental
Operations and
Micronesian Affairs

Health,
Ecology and
Welfare

Judiciary
and
Criminal Justice

Tourism and
Transportation

Youth, Senior
Citizens and
Cultural Affairs

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 381

Introduced by:

J. P. AGUON
V. C. PANGELINAN
T. S. NELSON

AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE.

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2 rules within ten (10) Legislative days, the rules shall be deemed
3 adopted."



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Hon. Herminia C. Dierking
Chairperson
Committee on Rules
22nd Guam Legislature
Agana, Guam

Dear Senator Dierking,

Recently, when I was at the Legislature on other business, I heard that the Rules Committee had held a hearing on Bills No. 12 and No. 381, both extending the time administrative rules must lie before the Legislature before coming into effect. As the one who must ultimately publish these rules, I feel that there are both practical and constitutional problems to both proposals.

Practically, Bill 381 would require all administrative rules to be approved by the Governor before adoption. This is a reversion to the old, appointed-governor days on Guam. It also slows things down by providing another layer of review. If the Governor wishes to review all or some rules before they become effective, he has the powers within the executive branch to deal with this. No law is required. (Bill No. 381)

Bill No. 12 continues current law in this respect, leaving the methods of rules approval to the various laws authorizing the rules to be adopted. Actually, there should be one, uniform, procedure for adoption of rules for all of the executive branch. If you want this, then I suggest that adoption be upon promulgation by the agency involved, with a subsequent delay in order to give time for publication. But, to do this, you should go in and amend all of the substantive law so that there do not remain conflicts between this Chapter and the substantive law on rule-making.

I oppose any time delay based upon Legislative Days. The Legislature has no regular schedule of "Legislative Days". The delay could be anywhere from three days to three months, depending upon the time of year and the schedule of the Legislature in any given year. It is very difficult to plan for enforcement of a given rule when one cannot plan on when to start. Also, it would be very

difficult to confirm, at a later date, the effective date of any given rule.

For the constitutional reasons below, I believe that such an exercise is entirely unnecessary and, in fact, in violation of the Organic Act.

Legislative powers with respect to control over the executive branch have been clarified in recent years, beginning with *Buckley v. Valeo*, through *INS v. Chad* and, most recently, *Bowsher v. Synar*. Contrary to what I have heard (third-hand) for the reason behind Bills 12 and 381, these and similar cases from the states show that the Legislature has less, not more control over executive branch rules and regulations.

All that was said in *Chada* was that the Legislature, when mandating action by another branch of government, or person outside itself, must do so by the route of presentment as provided in the Constitution. In Guam, that route is passage by a majority of a quorum present and voting, presentation to the Governor, who then has 10 days to act, and then further legislative action if the Governor vetoes that bill. *Chada* said nothing about the substantive powers of the Legislature and how far it could control the executive. *Chada* did not mandate that the Legislature approve, by bill, administrative rules and regulations. It is silent on this matter. It said only that, when the Legislature acted, it must do so by bill and presentment.

Buckley and *Bowsher* address substantive powers. *Buckley* holds that no legislative committee can exercise executive functions. *Bowsher* provides that no person who is a legislative employee may do likewise. All of this is clearly stated in *Legislative Research Commission v. Brown*, 664 S.W.2d 907, from the Supreme Court of Kentucky in 1984. While there are some differences between the Kentucky Constitution and the Organic Act, other cases have indicated that the separation of powers on Guam is stronger than that stated in the U.S. Constitution. See *People v. Camacho, et al.*, 1 Guam R. 501, Guam Supreme Court, 1975.

In Kentucky, the Legislative Research Council was given the duty of reviewing all administrative rules and regulations and approving them or sending them on to the Legislature for their approval. That body was declared to be an "independent" state agency, but the Supreme Court held that it was really an arm of the Legislature. As such, its actions approving or rejecting executive branch rules and regulations "have the effect of creating a legislative veto of the administrative policy of the executive branch of the government." at p. 918. The court found, further that this action was invalid both because it "effectively prevent[s] a regulation from having the force of law," and because "the legislature has statutorily attempted to deliver" this power to a body not entitled to use it. On Guam, these two bills violate only the first, but not the second objection, since the Legislature as a whole ultimately actions on the Rules.

The court concludes this portion of its opinion by stating:

The adoption of administrative regulations necessary to implement and carry out the purpose of legislative enactments is executive in nature and is ordinarily within the Constitutional purview of the executive branch of government. (citations omitted) We conclude that . . . which set out the

plan and the rules for providing legislative or LRC review of proposed regulations as those statutes are presently written are violative of Ky. Constitution §§27-28 and are a legislative encroachment into the power of executive branch. LRC at p. 919.

In addition, the court found an encroachment on the judiciary when the Legislature undertook to determine if the proposed rules "comported with statutory authority and if they carried out the Legislative intent. It requires no citation authority to state unequivocally that such a determination is a judicial matter and is within the purview of the judiciary, the Court of Justice."

Based on this and other cases, I conclude that it is not within the power of the Legislature to require that it approve, by action or silence, administrative rules and regulations. Once a matter has been delegated to the executive branch for action -- by the law authorizing the action and setting standards for it -- it is no longer a legislative function to approve or disapprove the rules necessary to carry out the legislature's will. Therefore, any law which requires, or presumes that, after any time, the rules are deemed approved by the Legislature or when the legislature must approve any rules by a specific law, is a violation of the separation of powers established by the Organic Act, and is void.

This does not mean that the Legislature cannot establish a reasonable time after promulgation for the rules to become effective. In normal cases, 45 days in a good enough delay. It allows notice to be given of the enforcement, it permits publication. However, the law should permit emergency rules of a local nature. Indeed, it may be that the Governor has this inherent power under existing law and the cases discussed here.

Further, I do not mean to imply that the Legislature does not have continuing, full powers to legislate on any matter within its competence either before or after rules have been promulgated. Just as where the legislature must change the law to correct an erroneous judicial interpretation not in agreement with actual legislative intent, so the legislature is free to change the law, or to limit its application, when it believes the executive to have a wrong interpretation of the law. What power the Legislature **does not have** is the power to actively intervene in the execution of the laws through approval, implied or direct, of executive branch rules and regulations.

Therefore, I suggest that you make uniform the delay period for all executive branch agencies' rule-making and delete any reference to legislative approval, disapproval or modification. If you have watched the U.S. Congress, you will see that there are ample ways to achieve your ends without violating the Organic Act.

Sincerely yours,

Charles H. Troutman
CHARLES H. TROUTMAN

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

APR 12 '93

Bill No. 381 (LS)

Introduced by:

J. P. AGUON
V. C. PANGELINAN
T. S. NELSON

AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE.

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

2 Section 1. Subsection (b) of §9303, Title 5, Guam Code Annotated, is
3 hereby repealed and reenacted to read:

4 “(b) Submit the original approved copy to the Governor
5 who, if he approves the same, shall transmit the proposed rules
6 to the Legislature in the form of a bill for adoption, amendment,
7 modification or rejection by the Legislature.

8 No rule shall be effective until after compliance with the
9 provisions of this law and ten (10) Legislative days have elapsed
10 from the date of receipt by the Legislature of the transmittal by
11 the Governor. If the Legislature does not act upon the proposed
12 rules within ten (10) Legislative days, the rules shall be deemed
13 adopted.”