



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

Refer to  
Legislative Secretary

JUN 07 1999

OFFICE OF THE LEGISLATIVE SECRETARY	
ACCORDANCE RECEIPT	
Received by:	<i>Pa</i>
Time:	4:45
Date:	6/7/99

The Honorable Antonio R. Unpingco  
Speaker  
I Mina'Bente Singko na Liheslaturan Guåhan  
Twenty-Fifth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 166 (COR), "AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, AND TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANICS' LIEN LAW", which I have signed into law today as **Public Law No. 25-35**.

Very truly yours,

Carl T. C. Gutierrez  
I Maga'Lahen Guåhan  
Governor of Guam

Attachment: copy attached for signed bill or overridden bill  
original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown  
Legislative Secretary

01270

Office of the Speaker  
ANTONIO R. UNPINGCO  
Date: 6-7-99  
Time: 1110  
Rec'd by: *Pa*  
Print Name: *Adlene*

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN  
1999 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN


This is to certify that Substitute Bill No. 166 (COR), "AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, AND TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANICS' LIEN LAW," was on the 24<sup>th</sup> day of May, 1999, duly and regularly passed.

  
ANTONIO R. UNPINGCO  
Speaker

Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by *I Maga'lahen Guahan* this 26<sup>th</sup> day of May, 1999,  
at 4:55 o'clock P.M.

  
Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

  
CARL T. C. GUTIERREZ  
*I Maga'lahen Guahan*

Date: 6-7-99

Public Law No. 25-35

**MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**1999 (FIRST) Regular Session**

**Bill No. 166 (COR)**

As substituted by the Committee on  
Judiciary, Public Safety, Consumer Protection  
and Human Resources Development and  
further substituted on the Floor.

Introduced by:

K. S. Moylan  
V. C. Pangelinan  
F. B. Aguon, Jr.  
E. C. Bermudes  
A. C. Blaz  
J. M.S. Brown  
E. B. Calvo  
M. G. Camacho  
Mark Forbes  
L. F. Kasperbauer  
A.C. Lamorena, V  
C. A. Leon Guerrero  
J. C. Salas  
S. A. Sanchez, II  
A. R. Unpingco

**AN ACT TO REPEAL PUBLIC LAW NUMBER 24-  
323 IN ITS ENTIRETY, AND TO REENACT  
CHAPTER 33 OF TITLE 7 OF THE GUAM CODE  
ANNOTATED, RELATIVE TO THE MECHANICS'  
LIEN LAW.**

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

2           **Section 1. Legislative Intent.**           Based upon public hearing  
3 testimony, *I Liheslaturan Guåhan* finds that it is in the best interest of the  
4 people of Guam that Public Law Number 24-323 be repealed. Some concerns

1 have been expressed with respect to the extinguishment of stop notices under  
2 Public Law Number 24-323. *I Liheslaturan Guåhan* is also concerned by the  
3 interests of third-party lenders and the financial instability created by the  
4 legislation. Considering the importance of maintaining financial stability in  
5 these times of economic crisis, Public Law Number 24-323 should be repealed.  
6 *I Liheslaturan Guåhan* also recognizes that certain persons may have relied on  
7 the time periods allotted under Public Law Number 24-323 for purposes of  
8 determining when the period to record a claim of lien commences. In order to  
9 ensure that those persons' right to record a claim of lien is protected, *I*  
10 *Liheslaturan Guåhan* feels that a transitional period is required.

11 **Section 2. Legislative Statement.** *I Liheslaturan Guåhan* finds that  
12 while the enactment of Bill Number 201 (COR), Public Law No. 24-323, makes  
13 a comprehensive revision of the mechanics' lien laws; it did *not* resolve many  
14 of the concerns of the private contractors and subcontractors; thereby placing  
15 further burden on both the government and the contractor. To resolve this  
16 problem, *I Liheslaturan Guåhan* is of the opinion that Public Law Number 24-  
17 323 be repealed and the old mechanics' lien law be reenacted, until such time  
18 that a comprehensive measure is presented and passed by *I Liheslaturan*  
19 *Guåhan*.

20 **Section 3. (a) Repeal.** Public Law Number 24-323 is hereby  
21 *repealed* in its entirety.

22 **(b) Reenact.** Chapter 33 of Title 7 of the Guam Code  
23 Annotated, existing prior to the passage of Public Law Number 24-323,  
24 is hereby *reenacted* in its entirety.

1       **Section 4. Transition Time Frames.**   (a) Notwithstanding any  
2       provision of Chapter 33 of Title 7 of the Guam Code Annotated, as  
3       hereby reenacted, the deadline by which a person must record a claim of  
4       lien shall be the *earlier* of:

5               (i) the deadline that would have been established under  
6               Public Law Number 24-323; *or*

7               (ii) the deadline as established by Chapter 33 of Title 7 of  
8               the Guam Code Annotated, as hereby reenacted.

9       (b) For purposes of §4(a)(ii) above, the date of completion shall  
10       be the later of:

11               (i) the date of enactment of this public law; *or*

12               (ii) the date of completion as established under Chapter 33  
13               of Title 7 of the Guam Code Annotated, as hereby reenacted;  
14               provided, however, any person whose deadline to file a claim of  
15               lien shall be determined to be less than thirty (30) days after the  
16               date of enactment of this Act shall *not* have to provide the owner  
17               with a fifteen (15) day notice of claim as required by §33301 of  
18               Title 7 of the Guam Code Annotated, as hereby reenacted.

19       **Section 5. Severability.**   *If* any of the provisions of this Act or the  
20       application thereof to any person or circumstance are held invalid, such  
21       invalidity shall *not* affect any other provision or application of this Act, which  
22       can be given effect without the invalid provision or application, and to this  
23       end the provisions of this Act are severable.

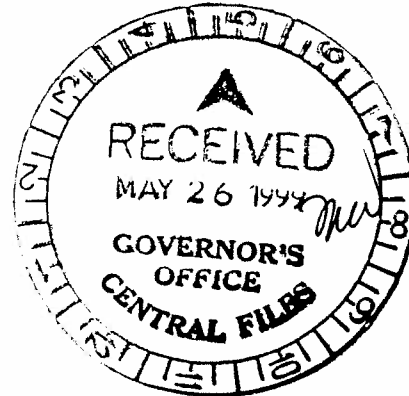


COPY

**MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN**  
**TWENTY-FIFTH GUAM LEGISLATURE**  
155 Hesler Street, Hagåtña, Guam 96910

May 26, 1999

The Honorable Carl T.C. Gutierrez  
*I Maga'lahaen Guahan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*



Dear *Maga'lahi* Gutierrez:

Transmitted herewith are Substitute Bill Nos. 136 (COR), 166 (COR), and 177 (COR) and Bill Nos. 149 (COR) and 94 (COR) which were passed by *I Mina'Bente Singko Na Liheslaturan Guahan* on May 24, 1999.

Sincerely,

JOANNE M.S. BROWN  
Senator and Legislative Secretary

Enclosure (5)


MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN  
1999 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN


This is to certify that Substitute Bill No. 166 (COR), "AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, AND TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANICS' LIEN LAW," was on the 24<sup>th</sup> day of May, 1999, duly and regularly passed.

  
\_\_\_\_\_  
ANTONIO R. UNPINGCO  
Speaker

Attested:

  
\_\_\_\_\_  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by *I Maga'lahaen Guahan* this 26<sup>th</sup> day of May, 1999,  
at 4:55 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'lahaen's Office*

APPROVED:

\_\_\_\_\_  
CARL T. C. GUTIERREZ  
*I Maga'lahaen Guahan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

**MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**1999 (FIRST) Regular Session**

**Bill No. 166 (COR)**

As substituted by the Committee on  
Judiciary, Public Safety, Consumer Protection  
and Human Resources Development and  
further substituted on the Floor.

Introduced by:

K. S. Moylan  
V. C. Pangelinan  
F. B. Aguon, Jr.  
E. C. Bermudes  
A. C. Blaz  
J. M.S. Brown  
E. B. Calvo  
M. G. Camacho  
Mark Forbes  
L. F. Kasperbauer  
A.C. Lamorena, V  
C. A. Leon Guerrero  
J. C. Salas  
S. A. Sanchez, II  
A. R. Unpingco

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20       application thereof to any person or circumstance are held invalid, such  
21       invalidity shall *not* affect any other provision or application of this Act, which  
22       can be given effect without the invalid provision or application, and to this  
23       end the provisions of this Act are severable.

# I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

1999 (FIRST) Regular Session

Date: 5/24/99

## VOTING SHEET

Bill No. 166 (COR)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT ROLL CALL
AGUON, Frank B., Jr.					EA
BERMUDES, Eulogio C.					✓
BLAZ, Anthony C.	✓				
BROWN, Joanne M.S.	✓			✓	
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

18 - \_\_\_\_\_ 1 2

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence

✓ - out during roll call



**MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**TWENTY-FIFTH GUAM LEGISLATURE**  
155 Hesler Street, Hagåtña, Guam 96910

**FILE**  
**COPY**

MAY 13, 1999  
( DATE )

Memorandum

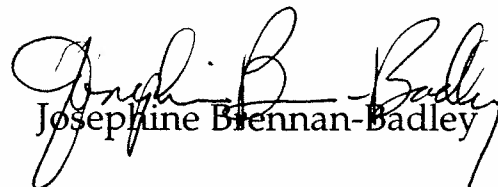
To: Senator KALEO S. MOYLAN

From: Clerk of the Legislature

Subject: Report on Bill No. 166 (COR)

Pursuant to §7.04 of Rule VII of the 25<sup>th</sup> Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 166 (COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.

  
Josephine Brennan-Badley

Attachment

ACKNOWLEDGMENT RECEIVED  
Received By: [Signature]  
Time: 0800  
Date: 5/14/99



COMMITTEE ON JUDICIARY, PUBLIC SAFETY,  
CONSUMER PROTECTION, AND HUMAN RESOURCES  
DEVELOPMENT

I MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN

JOHN CAMACHO SALAS, CHAIRMAN

May 13, 1999

The Honorable Antonio R. Unpingco  
Speaker  
Mina' Bente Kuattro na Liheslaturan Guahan  
155 Hesler Street  
Hagatna, Guam 96910

Dear Mr. Speaker:

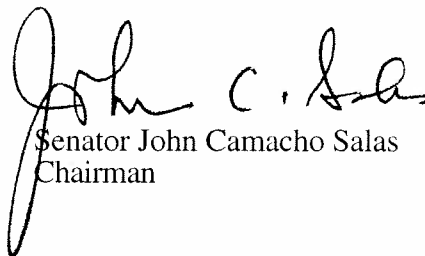
The Committee on Judiciary, Public Safety, Consumer Protection & Human Resources Development to which was referred Bill No.166, has had the same under consideration and now wishes to report back the same with the recommendation **TO DO PASS**, as substituted.

The Committee votes are as follows:

To Do Pass	<u>4</u>
Not To Pass	<u>0</u>
Abstain	<u>0</u>
Other (Off-Island)	<u>1</u>

A copy of the Committee's report and other pertinent documents are attached for your reference and information.

Sincerely,



Senator John Camacho Salas  
Chairman



**COMMITTEE ON JUDICIARY, PUBLIC SAFETY,  
CONSUMER PROTECTION, AND HUMAN RESOURCES  
DEVELOPMENT**


**I MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**

**JOHN CAMACHO SALAS, CHAIRMAN**

May 13, 1999

To: Senator Kaleo S. Moylan, Vice Chairperson  
Speaker Antonio R. Unpingco, Ex-officio  
Senator Frank B. Aguon, Jr.  
Senator Joanne M.S. Brown

Senator Mark Forbes  
Senator Alberto C. Lamorena, V  
Senator Carlotta A. Leon Guerrero

From: John Camacho Salas, Chairman 

Subject: Voting

Please find the attached committee report and voting sheet for the following:

Bill 166: An act to repeal Public Law Number 24-323 in its entirety, to reenact Chapter 33 of Title 7 of the Guam Code Annotated, relative to the Mechanic's Lien Law. *Sponsored by Senator Kaleo S. Moylan and Vicente C. Pangelinan.*

If you have any questions on the above, please contact my Chief-of-Staff, Rowena Bartonico, for assistance. Thank you for your cooperation.



25th GUAM LEGISLATURE

# SENATOR JOHN CAMACHO SALAS

CHAIRMAN

COMMITTEE ON JUDICIARY, PUBLIC SAFETY, CONSUMER PROTECTION AND HUMAN RESOURCES DEVELOPMENT

## VOTING SHEET

BILL NUMBER 166

TITLE AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANIC'S LIEN LAW

	TO DO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
 John Camacho Salas, Chairman	✓			
Kaleo S. Moylan, Vice-Chairman				
Frank B. Aguon, Jr., Member				
 Joanne M.S. Brown, Member	✓			
<del> Mark Forbes, Member</del>	✓			
 Alberto C. Lamorena V, Member	✓			
Carlotta A. Leon Guerrero, Member				
 Antonio R. Unpingco, Ex-Officio	✓			

Committee on Judiciary, Public Safety, Consumer Protection, and  
Human Resources Development  
Committee Report on Bill 166  
Publicly Heard Monday, May 3, 1999

*Bill 166: An act to repeal Public Law Number 24-323 in its entirety, to reenact Chapter 33 of Title 7 of the Guam Code Annotated, relative to the Mechanic's Lien Law. Sponsored by Senator Kaleo S. Moylan*

**I. ATTENDANCE**

- Senator John C. Salas, Chairman
- Senator Kaleo S. Moylan, Co-Chairman
- Senator Frank B. Aguon, Jr., Member
- Senator Joanne M.S. Brown, Member
- Senator Carlotta Leon Guerrero, Member
- Senator Anthony C. Blaz
- Senator Lawrence F. Kasperbauer
- Senator Vicente C. Pangelinan

**II. MAIN SPONSORS**

Senator Kaleo S. Moylan  
Senator Vicente C. Pangelinan

**III. SYNOPSIS**

Bill 166 proposes to repeal the current *Mechanics Lien Law* created by Public Law 24-323 and reenact the old law found in Chapter 33 of Title 7, GCA. The bill was created out of concern that P.L. 24-323 did not resolve many issues that the old law imposed, further adding to the confusion and burden to the contractor and the government of Guam. The bill also suggests that the current law be repealed until a new, comprehensive measure is presented and passed by the Legislature.

**IV. TESTIMONY**

**Senator Vicente C. Pangelinan, Bill's Co-sponsor**, provided an overview, explaining that P.L. 24-323 was passed into law and concerns were raised that new requirements were introduced and this caused confusion and concern. Senator Pangelinan noted that Senator Moylan and he then drafted legislation that would repeal the current Mechanics Lien Law (P.L. 24-323) and reenact the old law (Chapter 33, Title 7, GCA) until such time that amendments to the P.L. 24-323 could be completed and introduced.

**Karen Storts, Executive Director of the Guam Contractors Association (GCA)**, testified in opposition to Bill 166. Ms. Storts noted that Bill 166 does not state that a revision of the current law would take place. Senator Pangelinan noted that making amendments to the bill is the intent of the legislation. She read from her written testimony (attached) and noted that repealing P.L. 24-323 will not serve any good purpose. She further noted she felt it would be very difficult to repeal a law and try to reintroduce it and get it passed. She noted that the Guam Contractors Association is in favor of keeping the existing law and working on amendments.

**Chairman Salas** asked Ms. Storts if the amendments the GCA proposes would be ready by the next Legislative Session tentatively scheduled for late May. Ms. Storts noted that the amendments could be ready.

**Chris Murphy, Guam Bankers Association (GBA)**, testified in support of the bill. He read from written testimony (attached). He made clear that the GBA does not oppose amendments to the current law, but only asks that all parties affected participate in the process.



**Jere Johnson, President of Hawaiian Rock Products**, testified in opposition to the bill. His written testimony is attached to this committee report. Mr. Murphy expressed his concern that if the current law is repealed, it may take another 2 years to introduce an amended lien law. He requested that if the Legislature wants to proceed with Bill 166, language needs to be put in Bill 166 protecting those that have relied on P.L. 24-323 for the last four (4) months.

**Chairman Salas** asked Mr. Johnson if amendments would be ready by the next Legislative Session tentatively scheduled for late May. **Mr. Johnson** noted that 85% of this law mirrors California Law. All parties would need to sit down and work out the changes needed.

**Mr. Murphy** noted that from the bankers point of view, any delay in repealing the current law is adding confusion and uncertainty in which law, old or new, to loans. The bankers would like to see the old law reinstated because of familiarity with established rules and guidelines. The banking and construction communities can then improve P.L. 24-323 and incorporate these improvements into one law and phase it in for a smooth transition to the new law. A piecemeal effort will not benefit the consumer nor the banking community. Consumers are sitting on turnkey projects but bankers do not know how to proceed and costs and delays are occurring.

**Chairman Salas** asked again if the panel of witnesses felt it possible for all the parties involved to sit down and work out all the amendments and get this new version ready for the upcoming May legislative session.

**Michael Ysrael, Tanota Partners**, testified in support of the bill. He noted his concern that Hawaiian Rock Products feels that the only amendments needed are clerical in nature to clean-up the existing law. He noted that problems with the current law are more fundamental and affect policy decisions of the government. The current law brings the banking industry into disputes between contractors and owners. He felt that the more the banking industry has to involve itself at this level, increased costs that banks would incur will spill over to construction industry. Another issue he noted is the ability of a contractor or subcontractor to claim work done on a jobsite years prior without any documentation to prove work was done. The Guam statute gives these unscrupulous individuals the power to file these claims without any accountability. Further, the responsibility of identifying and knowing who did work on a job is now in the hands of the contractor and no longer in the hands of the property owner. This is an issue that the contractors refuse to acquiesce. He therefore felt that it will take much longer than just sitting down and working out simple typographical errors. This will require the Legislature to make a hard policy decision. He noted, however, that he does agree with the GCA that the old law still needs improvement as it contains archaic notions. But he felt that the old law kept things running and had much less confusion.

**Chairman Salas** asked Mr. Ysrael if he felt if it is realistic to assume that if we got everyone together over the next 15 days, could we get a workable version introduced. Mr. Ysrael felt that it would not be possible as the GCA made certain decisions in creating the current law that the industry must now live with. It would be dependent upon how substantial a change the GCA would be willing to accept.

**Ms. Storts** noted that when the GCA drafted the Lien law, they did not foresee how it would affect all the other industries. She noted that there is a definite need to work together with the affected parties and work it out.

**Vice Chairman Moylan** noted that the issues are indeed substantive and not merely typographical in nature. Further, he noted that there is no case law that supports the current law but there is a large amount of case law that supports the old law. By repealing the current law and fixing the current law, there would be a certain level of certainty in dealing with the law. Further, he felt that most homeowners would not understand the law and the law puts homeowners at a disadvantage.

**Senator Pangelinan** expressed his concern with the current law and its effect on certain projects out in the community and on individuals closing their loans. He noted that he has

been working on amendments but did not feel that a resolution could happen in 15 days. He felt that 3-6 months would be required to make the right changes through working groups, gain other public input, etc.

**Senator Carlotta Leon Guerrero** noted her support of the bill. Although she supports amending the current law to make it work, she agreed that it is not a simple matter of correcting a few typographical errors. The bill will require the various groups to sit together to work out a solution and this will take some time. In the meantime, she noted that getting the old law back in place is the best course of action.

**Chairman Salas** noted that as the panel of witnesses and the majority of senators present expressed, the best course of action would be to go with Bill 166 and over the next several months work with a taskforce comprising all the affected industries to create a new Mechanics Lien Law.

Further, the Committee agreed to add a transitional clause to Bill 166 to ensure those projects started prior to the enactment of P.L. 24-323 are not affected by the law. Projects initiated after the enactment of P.L. 24-323 will fall under the provisions of the current law and projects initiated after the enactment of Bill 166 will be governed by reenacted Chapter 33, Title 7 of the Guam Code Annotated.

V. **COMMITTEE FINDINGS & RECOMMENDATION**

It is clear that the passage of Public Law 24-323 has caused a great deal of uncertainty in the banking and construction industries, as well as causing concern to the homeowner attempting to finance and build a home. The remedy, the Committee feels, is to repeal Public Law 24-323 and revert to the original Mechanics Lien Law as found in Chapter 33, Title 7 of the Guam Code Annotated until a working group of all those affected by this law can work out a compromise version over the next 3-6 months. Therefore, the Committee recommends **TO DO PASS Bill 166, as substituted.**

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN  
1999 (FIRST) Regular Session

**Bill No. 166 (COR)**

As substituted by the Committee on  
Judiciary, Public Safety, Consumer Protection,  
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IN ITS ENTIRETY, TO REENACT CHAPTER 33 OF  
TITLE 7 OF THE GUAM CODE ANNOTATED,  
RELATIVE TO THE MECHANIC'S LIEN LAW.

1           BE IT ENACTED BY THE PEOPLE OF GUÅHAN

2           **Section 1. Legislative Statement.** *I Liheslaturan Guåhan* finds that  
3 while the enactment of Bill No. 201 (COR), Public Law No. 24-323, makes a  
4 comprehensive revision of the mechanic's lien laws; it did not resolve many of  
5 the concerns of the private contractors and subcontractors; thereby placing  
6 further burden on both the government and the contractor. To resolve this  
7 problem, *I Liheslaturan Guåhan* is of the opinion that Pubic Law 24-323 be  
8 repealed and the old mechanic's lien law be reenacted, until such time that a  
9 comprehensive measure is presented and passed by *I Liheslatura*.

10          **Section 2. (a) Repeal.** Public Law Number 24-323 is hereby  
11 repealed in its entirety.

12          **(b) Reenact.** Chapter 33 of Title 7 of the Guam Code Annotated,  
13 prior to the passage of Public Law Number 24-323 is hereby reenacted in its  
14 entirety.

1           **Section 3. Transitional Time Line.**       (a) All projects initiated prior  
2 to December 29, 1998, the enactment date of Public Law Number 24-323, shall  
3 not affect the rights and duties that matured, penalties that were incurred,  
4 and proceedings that were begun, before its effective date.

5           (b) All projects initiated after December 30, 1998, up to the enactment  
6 date of this Act, shall fall under the provisions prescribed in Public Law  
7 Number 24-323.

8           (c) All projects initiated after the enactment of this Act, shall be  
9 governed by the reenactment of Chapter 33 of Title 7 of the Guam Code  
10 Annotated provided for in Section 2(b) of this Act.

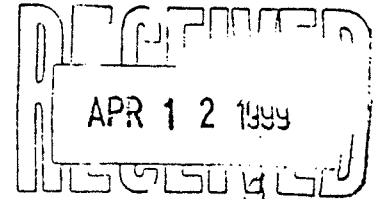
11           **Section 4. Severability.**       *If* any of the provisions of this Act of the  
12 application thereof to any person or circumstance are held invalid, such  
13 invalidity shall *not* affect any other provision or application of this Act, which  
14 can be given effect without the invalid provision or application, and to this  
15 end the provisions of this Act are severable.



**MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN**  
Kumitean Areklamento, Refotman Gubetnamento Siha, Inetnon di Nuebu, yan Asuntion Fidirat

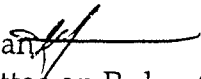
*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurat*

APR 12 1999



**MEMORANDUM**

TO: Chairman  
Committee on Judiciary, Public Safety, Consumer Protection  
and Human Resources Development

FROM: Chairman   
Committee on Rules, Government Reform, Reorganization  
and Federal Affairs

SUBJECT: Principal Referral – Bill No. 166

The above bill is referred to your Committee as the Principal Committee. In accordance with Section 6.04.05. of the Standing Rules, your Committee "shall be the Committee to perform the public hearing and have the authority to amend or substitute the bill, as well as report the bill out to the Body." It is recommended that you schedule a public hearing at your earliest convenience.

Please note that a Secondary referral of this bill has been made to the Committee on Housing, General Government Services and Foreign Affairs.

Thank you for your attention to this matter.

**MARK FORBES**

Attachment

MAR 26 1999

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN  
1999 (FIRST) Regular Session

Bill No. 166 (COR)

Introduced by:

K. S. Moylan ✓  
V. C. Pangelinan

AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANIC'S LIEN LAW.

1 BE IT ENACTED BY THE PEOPLE OF GUÅHAN

2 Section 1. **Legislative Statement.** *I Liheslaturan Guåhan* finds that  
3 while the enactment of Bill No. 201 (COR), Public Law No. 24-323, makes a  
4 comprehensive revision of the mechanic's lien laws; it did not resolve many of  
5 the concerns of the private contractors and subcontractors; thereby placing  
6 further burden on both the government and the contractor. To resolve this  
7 problem, *I Liheslaturan Guåhan* is of the opinion that Public Law 24-323 be  
8 repealed and the old mechanic's lien law be reenacted, until such time that a  
9 comprehensive measure is presented and passed by *I Liheslatura*.

10 Section 2. (a) **Repeal.** Public Law Number 24-323 is hereby  
11 repealed in its entirety.

12 (b) **Reenact.** Chapter 33 of Title 7 of the Guam Code Annotated,  
13 prior to the passage of Public Law Number 24-323 is hereby reenacted in its  
14 entirety.

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IN THE SUPERIOR COURT OF GUAM TERRITORY OF GUAM

EDWARD C. ARRIOLA, et al.,  
Plaintiffs  
vs.  
ESTELIA SUMBANG, ANGELA T. DAGUIO, and RAUL T. NORMANDIA  
Defendants.

CIVIL CASE NO. CV 0233-99  
ALIAS SUMMONS

TO THE ABOVE-NAMED DEFENDANT:  
RAUL T. NORMANDIA  
POST OFFICE BOX 9536  
DEDEDO, GUAM 96912  
POST OFFICE BOX 24477  
FEDERAL WAY WASHINGTON  
98093-1477

You are hereby summoned and required to serve upon JOAQUIN C. ARRIOLA, JR., ESG, plaintiffs' attorney, whose address is ARRIOLA COWAN & ARRIOLA 259 MARTYR STREET SUITE 201, C & A PROFESSIONAL BLDG. HAGATNA, GUAM 96910

An Answer to the complaint which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated: APR 15 1999

ALFREDO M. BORLAS, Clerk  
SUPERIOR COURT OF GUAM

By: Pete C. Miyasaki  
DEPUTY CLERK

IN THE SUPERIOR COURT OF GUAM

RUMC, INC.,  
Plaintiffs  
vs.  
JOHNNY C. REYES and TOMMIE REYES,  
Defendants.

CIVIL CASE NO. CV0784-99

SUMMONS

To the above-named defendant  
TOMMIE REYES  
Compadres Mall Building  
Dededo, Guam 96931

YOU ARE HEREBY SUMMONED and required to serve upon James M. Maher, whose address is: 140 Aspinall Avenue, Suite 201, Agaña, Guam 96910, an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: APR 6, 1999

ALFREDO M. BORLAS  
Clerk of Court  
Superior Court of Guam

By: Ester L.S. Pinzola  
Deputy Clerk

IN THE SUPERIOR COURT OF GUAM

TRANS PACIFIC EXPORT COMPANY,  
Plaintiff,  
vs.  
LAWRENCE JOHNSRUD and ANTONIA NGEWAKI aka ANTONIA JOHNSRUD,  
Defendant.

CIVIL CASE NO. CV1381-97  
AMENDED NOTICE OF EXECUTION SALE OF REAL PROPERTY TO: DEFENDANT LAWRENCE JOHNSRUD AND ANTONIA NGEWAKI AKA ANTONIA JOHNSRUD AND TO ALL INTERESTED PERSONS:

PLEASE TAKE NOTICE that, I, the Marshal of the Superior Court of Guam, will, pursuant to the Writ of Execution issued by the Superior Court of Guam in the above-entitled case, and the Notice of Levy dated December 9, 1998 and posted on the property on Friday, February 5, 1999. The property will be sold on April 27, 1999 10:00 A.M. at the Office of the Mayor of the Municipality of Yigo of Guam, at public auction, to the highest bidder for cash, all of the right, title and interest of the Defendants LAWRENCE JOHNSRUD and ANTONIA NGEWAKI aka ANTONIA JOHNSRUD in and to the real properties more particularly described in Exhibit "A" attached hereto and incorporated therein, as is necessary to satisfy the judgement taken against it.

DATED: 3/26/99  
/s/ JOSEPH M. CRUZ  
CHIEF MARSHAL

EXHIBIT "A"  
LOT NUMBER 1, TRACT NUMBER 10410, (SUBDIVISION OF LOT NUMBER 7135-3-7-R1), MUNICIPALITY OF YIGO, TERRITORY OF GUAM, ESTATE NUMBER 56151, SUBURBAN, as said lot is marked and designated on Drawing Number L-11-78-132, as L.M. Check Number 138 FY 79, as described in that Agricultural Subdivision Map, dated February 5, 1979 and recorded February 7, 1979, at the Department of Land Management, Government of Guam, under Instrument No. 299636.  
AREA: 3.0706 Square Meters.  
LAST CERTIFICATE OF TITLE NO.: 64216  
LAST REGISTERED OWNER: ANTONIA NGEWAKI, the owner of record being ANTONIA NGEWAKI \*\*\*\*\*

LOT NUMBER 2, TRACT NUMBER 10410, (SUBDIVISION OF lot number 7135-3-7-R1), MUNICIPALITY OF YIGO, TERRITORY OF GUAM, ESTATE number 56152, suburban, as said lot is marked and designated on Drawing Number L-11-78-132, as L.M. Check Number 138 FY 79, as described in that Agricultural Subdivision Map, dated February 5, 1979 and recorded February 7, 1979, at the Department of Land Management, Government of Guam, under Instrument No. 299636.  
AREA: 3.0706 Square Meters.  
LAST CERTIFICATE OF TITLE NO.: 64217  
LAST REGISTERED OWNER: ANTONIA NGEWAKI, the owner of record being ANTONIA NGEWAKI \*\*\*\*\*

LOT NUMBER 3, TRACT NUMBER 10410, (SUBDIVISION OF LOT NUMBER 7135-3-7-R1), MUNICIPALITY OF YIGO, TERRITORY OF GUAM, ESTATE NUMBER 56153, SUBURBAN, as said lot is marked and designated on Drawing Number L-11-78-132, as L.M. Check Number 138 FY 79, as described in that Agricultural Subdivision Map, dated February 5, 1979 and recorded February 7, 1979, at the Department of Land Management, Government of Guam, under Instrument No. 299636.  
AREA: 3.0706 Square Meters.  
LAST CERTIFICATE OF TITLE NO.: 64218  
LAST REGISTERED OWNER: ANTONIA NGEWAKI, the owner of record being ANTONIA NGEWAKI \*\*\*\*\*

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**NOTICE OF PUBLIC HEARING**  
*Mina Bente Singko Na Liheslaturan Guåhan*  
Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs.  
Senator Eddie Baza Calvo, Chairman

Monday, April 26, 1999 8:30 a.m.

**AGENDA**

CONFIRMATION, Daniel A. Lizama, Director, Department of Public Works. (8:30 a.m.)  
CONFIRMATION, Filomena M. Cantoria, Member, Public Utilities Commission. (9:00 a.m.)  
BILL NO. 43 "AN ACT TO ADD §§26203(K)(28) AND (29) TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO RELIEVING CONSUMERS OF THE BURDEN OF HAVING GROSS RECEIPTS TAX IMPOSED ON THEIR RETAIL PURCHASE OF FOODS AND MEDICINES." (9:30 a.m.)  
BILL NO. 88 "AN ACT TO REPEAL AND REENACT SECTION 3 OF PUBLIC LAW 24-127, RELATIVE TO AUTHORIZING THE MERIZO MUNICIPAL PLANNING COUNCIL AND THE SAN DIMAS CHURCH PARISH COUNCIL TO ESTABLISH RULES AND REGULATIONS AND TO CHARGE FEES FOR THE MAINTENANCE AND UPKEEP OF THE MERIZO PUBLIC CEMETERY." (10:00 a.m.)  
BILL NO. 164 "AN ACT TO REPEAL AND REENACT SECTION 4108 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO EARNED INCOME TAX CREDIT FOR THE PEOPLE OF GUAM." (10:30 a.m.)

Hearings will take place in the Public Hearing Room, *I Liheslaturan Guåhan*, 155 Hesler Street, Hagåtña. Guam 96910  
TEL: 472-4040/4518 FAX: 472-4100  
THE PUBLIC IS INVITED

**COMMITTEE ON WAYS AND MEANS**  
Senator Anthony C. Blaz, Chairman

**NOTICE OF PUBLIC HEARING**

**BILL 34(COR) A.C.BLAZ:** "AN ACT TO CREATE A "TAX AND OTHER RECEIVABLES COLLECTION TASK FORCE" WITHIN THE DEPARTMENT OF REVENUE AND TAXATION AND EARMARK ALL COLLECTION OF TAXES AND OTHER RECEIVABLES; TO SET ASIDE ALL COLLECTION OF TAXES AND OTHER RECEIVABLES TO BE APPROPRIATED BY I LIHESLATURAN GUAHAN EXCLUSIVELY FOR CAPITAL IMPROVEMENT PROJECTS."

**BILL 41(COR) A.C.BLAZ:** AN ACT TO AMEND ARTICLES 1 AND 2 AND ADD A NEW ARTICLE 3 TO CHAPTER 2, DIVISION 1 OF TITLE 11, GUAM CODE ANNOTATED (GCA) TO MANDATE THE PRIVATIZATION OF THE OPERATIONS OF WEIGHING CERTAIN LARGE COMMERCIAL VEHICLES USING THE HIGHWAYS OF GUAM AND REQUIRE THE DEPARTMENT OF REVENUE AND TAXATION TO DEVELOP RULES AND REGULATIONS TO INSURE COMPLIANCE WITH U.S.C. TITLE 23, CHAPTER 1, SECTION 127, SECTION 104(B)(1), SECTION 118 (B) (1) AND SECTION 3111 TO SECTION 3114 OF TITLE 49, U.S.C.."

**BILL 85 (COR) A.C. BLAZ:** AN ACT TO AMEND PUBLIC LAW 24-1317 RELATIVE TO CONVERTING THE EMPLOYER'S AND EMPLOYEE'S RETIREMENT CONTRIBUTION PAYMENTS REQUIRED PURSUANT TO THE EARLY RETIREMENT CREDIT PROGRAM AUTHORIZED IN PUBLIC LAW # 24-327 FROM A RECEIVABLE DUE TO THE RETIREMENT FUND TO A BONA FIDE INVESTMENT BY THE RETIREMENT FUND IN THE GOVERNMENT OF GUAM BACKED BY THE GOVERNMENT OF GUAM'S FULL FAITH AND CREDIT; AND TO ADD A NEW SECTION 22429 TO CHAPTER 22, ARTICLE 4, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED (GCA), RELATIVE TO AUTHORIZING I MAGALAHEN GUAHAN TO ISSUE TWO OR MORE ISSUES OF GENERAL OBLIGATION BONDS THROUGH PRIVATE PLACEMENT EXCLUSIVELY WITH THE GOVERNMENT OF GUAM RETIREMENT FUND FOR THE PAYMENT OF BOTH EMPLOYER'S AND EMPLOYEE'S RETIREMENT CONTRIBUTION PURSUANT TO P.L. # 24-327."

**BILL 184 (COR) A.C.BLAZ:** AN ACT TO REPEAL SECTION 4 OF CHAPTER II, SECTION 10, 18, 20, 31 AND 36 OF CHAPTER III AND SECTIONS 13 OF 14 OF CHAPTER V OF P.L. #25-03 IN THEIR ENTIRETY; RETSTORE P.L. #24-160 AND 24-239 ACCORDINGLY; ADD A NEW SECTION 5110 TO CHAPTER V, DIVISION 1 OF TITLE 7, GUAM CODE ANNOTATED (GCA), RELATIVE TO MANDATING THE PERFORMANCE OF A MANAGEMENT AUDIT, CONVERSION OF CURRENT BUDGETARY PRACTICES INTO A PROGRAM AND PERFORMANCE BUDGET SYSTEM AND DEVELOPMENT OF A THREE (3) YEAR STRATEGIC PLAN FOR THE SUPREME COURT AND SUPERIOR COURT OF GUAM; MANDATING THE JUDICIAL COUNCIL TO LIQUIDATE THE OUTSTANDING BALANCE OF THE JUDICIAL BUILDING LOAN; AND FOR OTHER PURPOSES.

**MONDAY, APRIL 26, 1999 AT 10:00AM**  
**AT SEN. BLAZ CONFERENCE ROOM**

The public is invited to attend and present testimony; contact 472-7557 53 60. Please note that, due to time constraints, the above schedule is subject to change. Please contact the Office of Sen Blaz for verification.

**Notice of Public Hearing**  
Senator John Camacho Salas  
Chairman of the Committee on Judiciary, Public Safety, Consumer Protection & Human Resources Development

**Bill 166:** An act to repeal Public Law Number 24-323 in its entirety, to reenact Chapter 33 of Title 7 of the Guam Code Annotated, relative to the Mechanic's Lien Law. *Sponsored by Senator Kaleo S. Moylan*

**Bill 184:** An act to repeal Section 4 of Chapter II, Sections 10, 18, 19, 20, 31 and 36 of Chapter III and Section 13 and 14 of Chapter V of Public Law Number 25-03 in their entirety; restore Public Law numbers 24-160 and 24-239 accordingly; add a new §5110 to Chapter 5, Division 1 of Title 7, Guam Code Annotated (GCA), relative to mandating the performance of a management audit, conversion of current budgetary practices into a program and performance budget system and development of a three (3) year strategic plan for the Supreme Court and Superior Court of Guam; mandating the Judicial Council to liquidate the outstanding balance of the Judicial Building Loan; and for other purposes. *Sponsored by Senator Anthony Blaz*

Monday, May 3, 1999, starting at 7:00 pm  
Legislature's Public Hearing Room

address: 777 Sraagna Commercial Building, Route 4, Sraagna, Guam 96926  
telephone: 472-3431, fax: 472-3433 e-mail: jcaias@senasalas.guam.net  
website: KUENTOS-<http://www.guam.net/senasalas> TALAYA-<http://www2.legisnet/senasalas>  
American Disabilities Association Coordinator John Meno tel: 472-3431



COMMITTEE ON JUDICIARY, PUBLIC SAFETY,  
CONSUMER PROTECTION, AND HUMAN RESOURCES  
DEVELOPMENT

I MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN

JOHN CAMACHO SALAS, CHAIRMAN

## AGENDA

Monday, May 3, 1999

7:00 pm

Legislature's Public Hearing Room

Bill 166: An act to repeal Public Law Number 24-323 in its entirety, to reenact Chapter 33 of Title 7 of the Guam Code Annotated, relative to the Mechanic's Lien Law. *Sponsored by Senator Kaleo S. Moylan*

Bill 184: An act to repeal Section 4 of Chapter II, Sections 10, 18, 19, 20, 31 and 36 of Chapter III and Section 13 and 14 of Chapter V of Public Law Number 25-03 in their entirety; restore Public Law numbers 24-160 and 24-239 accordingly; add a new §5110 to Chapter 5, Division 1 of Title 7, Guam Code Annotated (GCA), relative to mandating the performance of a management audit, conversion of current budgetary practices into a program and performance budget system and development of a three (3) year strategic plan for the Supreme Court and Superior Court of Guam; mandating the Judicial Council to liquidate the outstanding balance of the Judicial Building Loan; and for other purposes. *Sponsored by Senator Anthony Blaz*





Mina Bente Singko na  
Liheslaturan Guahan

# SENATOR JOHN CAMACHO SALAS CHAIRMAN

## COMMITTEE ON JUDICIARY, PUBLIC SAFETY, CONSUMER PROTECTION AND HUMAN RESOURCES DEVELOPMENT

### TESTIMONY SIGN IN SHEET

Monday, May 3, 1999

Bill Number 166

Title An act to repeal Public Law Number 24-323 in its entirety, to reenact Chapter 33 of Title 7 of the Guam Code Annotated, relative to the Mechanic's Lien Law

NAME	ORGANIZATION	TESTIMONY	
KAREN STORTS	GUAM CONTRACTORS ASSN	<input type="checkbox"/> FOR	<input checked="" type="checkbox"/> WRITTEN
CONTACT: 647-4840	MAILING ADDRESS: 718 N. MARCHE DRIVE #203 Upper Tumor	<input checked="" type="checkbox"/> AGAINST	<input type="checkbox"/> ORAL
Q MURPHY	GBA	<input checked="" type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input checked="" type="checkbox"/> ORAL
JERIE JOHNSON	HAWAIIAN REK	<input type="checkbox"/> FOR	<input checked="" type="checkbox"/> WRITTEN
		<input checked="" type="checkbox"/> AGAINST	<input checked="" type="checkbox"/> ORAL
Michael Ysrael	TANOTA PARTNERS	<input checked="" type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input checked="" type="checkbox"/> ORAL
<del>KATHERINE DORRANCEY</del>	<del>PHH</del>	<input type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input type="checkbox"/> ORAL
		<input type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input type="checkbox"/> ORAL
		<input type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input type="checkbox"/> ORAL
		<input type="checkbox"/> FOR	<input type="checkbox"/> WRITTEN
		<input type="checkbox"/> AGAINST	<input type="checkbox"/> ORAL



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GUAM CONTRACTORS' ASSOCIATION

May 3, 1999

Committee on Judiciary, Public Safety, Consumer Protection, and Human Resources  
Development  
777 Sinajana Commercial Building, Routes 4 & 5  
Sinajana, Guam 96926

RE: Bill 166: An act to repeal P.L. 24-323 in its entirety, to reenact Chapter 33 of  
Title 7 of the Guam Code annotated, relative to the Mechanic's Lien Law

Senator Salas & Members of the Committee:

Thank you for the opportunity to provide testimony on Bill 166, which would repeal the current Mechanics Lien Law and would reenact the old law which was used prior to December 29, 1998.

Since P.L. 24-323 was passed into law, we have discovered changes from the old law which have caused some confusion in our industry. The confusion has prompted us to re-examine the new Mechanics Lien Law, and we have tried to educate our members through articles and seminars on how the new law's changes affect our business. Throughout this process, we have come to the conclusion that repealing P.L. 24-323 would not meet the needs of the construction industry. Reverting back to the old law for a limited period of time would cause even more confusion.

Bill 166 states that the concerns of private contractors and subcontractors were not resolved in P.L. 24-323. Admittedly, there are some problems with the new law, but we believe that they can be addressed through the amendment process. If we repeal P.L. 24-323, the entire cumbersome process of writing a law begins again; if we do not repeal P.L. 24-323, we are encouraged to move quickly to amend the problem areas. P. L. 24-323 was long overdue, and only needs to be fine-tuned in order to bring the desired results, which is protection for contractors, subcontractors and suppliers who should be paid for goods and services they have provided.

In conclusion, the Guam Contractors' Association would like Bill 166 to be replaced with a bill amending P.L. 24-323, and we would be available to assist in the amendment process. We do not favor passing Bill 166 as it is written.

Sincerely,

Karen M. Storts  
Executive Director



Hawaiian Rock Products

The Honorable John C. Salas  
Senator/Chairman of the Committee On  
Judiciary, Public Safety, Consumer Protection,  
And Human Resources Development  
TWENTY-FIFTH GUAM LEGISLATURE  
Suite 5-A Sinajana Shopping Mall Phase II  
777 Route 4  
Sinajana, Guam 96926

RE: PROPOSED BILL NO. 166  
PUBLIC HEARING  
May 3, 1999

Mr. Chairman, my name is Jere Johnson and I am the President of Hawaiian Rock Products and a past President of the Guam Contractor's Association. Thank you for allowing me to present my views on the proposed legislation, Bill No. 166.

First of all, I would like to discuss the reasons that I supported the previous Bill 24-201, which became Public Law 24-343. Back in 1994, I was informed that there were several shortcomings in the then existing Guam Lien Law, that had not been revised since it was enacted in 1962. The original Guam's Mechanic's Lien law was modeled after the California statutes in place at that time of enactment (1962). The California Lien Laws had been updated several times over the more than thirty-year period, but the Guam Mechanics Lien Law had never been updated.

The main shortcomings in the old Guam Law were described to me as follows:

1. Multiple rules and facts needed to be considered to determine a projects completion date. It was extremely difficult to know when one should or could file a mechanics lien.
2. The previous law provided for a relatively short pre-claim lien notice for subcontractors and material suppliers. A 15-day pre claim notice was required before a lien could be filed. If a notice of completion or notice of cessation had been filed at land management unknown to the contractor, subcontractor or material supplier and without any other public notification, the time to file a lien was reduced to a very short time period.

## Hawaiian Rock Products

3. The previous law did allow liens to be filed by material suppliers and subcontractors before the completion of the project, but these liens could not bind the property for more than 90 days unless foreclosure was initiated. The law required that no foreclosures could be initiated until 60-90 days after the "project completion." This conflict could cause many liens to expire before foreclosure could be initiated.
4. The previous law did not contain any "Stop Notice" provisions that would allow a means for lien claimants to give notice to owners and construction lenders that there had been a lack of payment for materials and labor on the project.
5. The previous law did not have any procedure for "stale" liens to be expunged if they had not been foreclosed upon. These liens could show up on Title reports for years.
6. The previous law did not allow for any recovery of legal fees for the expense of filing liens.
7. There was also a conflict between the Guam Mechanics Lien Law and the Guam Land Registration Act.

At that time, I could see that updating the more than 30 year-old legislation would be monumental task. I asked Attorney Tom Tarpley to draw up a proposed legislation in order to give Guam's Legislators a place to start. Our intent was to draft a bill that was fair to all concerned and that was modeled after the present California Statutes, as was the previous Guam Lien law. In his draft, Mr. Tarpley did propose a few changes to the California law that were based on statutes from other Jurisdictions.

The proposed bill was turned over to the 24th Legislature and it went through the entire legislative process. Numerous modifications were made after public and written testimony. Unfortunately, the bill was not passed until the very end of the last Legislative Session and without some important, although minor, corrections being made by the legislative secretary. I agree that these corrections need to be made and I have attached a redlined version of the signed law, which shows the changes that were supposed to have been made in the final draft of the approved bill.

The enactment of this new Law has obviously made many people and organizations more aware of Mechanics Liens. I believe that this is positive. The more education and knowledge by all concerned parties about the Mechanics Lien and the new

## Hawaiian Rock Products

Stop Notice process and the consequences, the less likely that problems with payments on construction projects will occur.

All 50 States and Territories have Mechanics Lien Laws. These laws are intended to benefit those who bestow labor and materials to Construction projects. I have heard of comments and rumors that this new bill was only proposed in order to protect the interests of Hawaiian Rock Products. Hawaiian Rock and most other members of the Guam Contractor's Association are in the business of supplying labor and material to construction projects. It is very important to us that Guam has a fair law that has very clear guidelines and timetables as to how the Mechanics Lien process takes place. This was not the case in the previous law. I believe that this process will be clear in the new Public Law 24-343, after the minor corrections are made.

I also heard in previous testimony on proposed Bill No. 166 that the changes from the California Law were made by deception. As you can see from correspondence that I have included with the corrected draft of the Bill 24-201, these changes were well documented and justified by the author.

The new Law does provide for substantial provisions to provide notice to owners and lending institutions about potential Mechanic Liens and Stop Notices, which was not the case in the Previous Law. It does put the responsibility of notifying the owner as to who is supplying labor and materials to a project on the "Original Contractor". After all it is the "Original Contractor" who should have total control over his subcontractors and material suppliers.

A public notice in one of the local newspapers now makes everyone aware of the project completion and sets the final date to file liens. I checked with the Pacific Daily News and the cost of running these notices in that newspaper is \$180, not \$600 as reported in a recent newspaper article. The same newspaper article stated that the new Law extends the time period to file liens to 180 days. This is provision was taken from the Hawaii Mechanics Lien law which extends the period to 360 days. This provision only comes into effect if the notices of completion are not published. If these notices are published, the final time to file liens is 60 days from the noticed completion for material suppliers and subcontractors and 90 days from noticed completion for General Contractors.

A major concern that you should consider is that some of those who are requesting for a repeal of Public Law 24-343 would really like to see the Lien rights of Contractors, Subcontractors, and Material suppliers weakened. I agree that the new law requires an additional documentation by all concerned parties. It would have been wiser for the 24<sup>th</sup> Legislature to delay the implementation of the Law in order to allow for those

**Hawaiian Rock Products**

parties to prepare this documentation and train their staff in its implementation. However, at this time I and most of the members of the Guam Contractor's Association feel that it is best to make the necessary changes to the new law through an amendment rather than repealing it and going back to the old law with all its problems. We are very concerned that the legislature will take another two (2) or more years to enact new Mechanic's Lien legislation.

If you do proceed with Bill 166, please provide additional language to protect those that have depended upon Public Law 24-343 for the last four months.

Thank you again for allowing me the opportunity to testify today.

Respectfully,



J. C. Johnson

President

Hawaiian Rock Products

**Senator Kaleo S. Moylan**  
**Chairperson, Committee on Housing,**  
**General Government Services and Foreign Affairs**  
*Mina'Bente Singko Na Liheslaturan Guåhan*  
**Twenty-Fifth Guam Legislature**

May 3, 1999

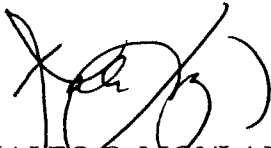
MEMORANDUM

To: Senator John C. Salas

From: Chairman, Committee on Housing, General Government Services and Foreign Affairs

Subject: Bill No. 166

Attached for your consideration are testimonies received by the Committee on Bill No. 166 (COR) AN ACT TO REPEAL PUBLIC LAW NUMBER 24-323 IN ITS ENTIRETY, TO REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE MECHANIC'S LIEN LAW.

  
KALEO S. MOYLAN  
Chairperson

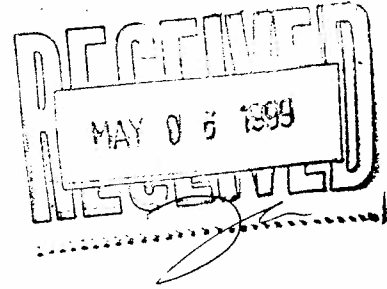
Attachment:

First  
Hawaiian  
Bank

First Hawaiian Bank  
Guam Business Banking Center  
400 Route 8  
Mongmong, Guam 96927-2010

April 21, 1999

Honorable Kaleo Moylan  
Chairman  
COMMITTEE ON HOUSING, GENERAL  
GOVERNMENT SERVICES AND FOREIGN  
AFFAIRS  
TWENTY-FIFTH GUAM LEGISLATURE  
Suite 16B  
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**RE: BILL NO. 166 (COR)**

Dear Mr. Chairman:

Thank you for inviting First Hawaiian Bank to provide testimony on Bill No. 166 (COR).

Since we learned of the enactment of Public Law 24-323, we have been extremely concerned about its implications, both for existing and future construction projects which we are funding through construction loans. With respect to existing loans, we are concerned about failure of the law to speak at all about whether the law applies to projects which were underway when it was passed. We were also concerned that the law took effect immediately upon its signature by the Governor without there being any time for people to examine the law and change their internal policies and procedures to deal with it.

For the first time, the law directly involves banks in disputes between



subcontractors and contractors and contractors and owners. The stop notice provisions of the law in particular require the Bank to take certain types of action. However, there is little guidance on precisely how banks are required to act. As an example, if a bank financing a construction project receives a stop notice, does it simply block off an amount necessary to cover the stop notice from the back end of the loan or is required immediately to withhold sums from the next increment due to the contractor and set them aside. The statute does not answer the question.

The law has left us, and we assume other lenders, in the unfortunate position of having to immediately move to restructure our internal policies and our documentation to meet the challenges of the new law. This is difficult to do. The law is confusing to read in the first place. The numerous typographical errors in the law, which are obvious to anyone who reads it, makes things even more confusing and hardly instills confidence.

In short, we are extremely worried about the impact that this law can have upon us and our borrowers. As I write this letter, our management is considering how to react. Construction loans and loans to take out turnkey projects have already been delayed while we determine what to do. A repeal of the existing law will move us back to the situation which existed beforehand and allow us to continue as we did.

Honorable Kaleo Moylan

April 21, 1999

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before the enactment of Public Law 24-323. We, thus, strongly support the enactment of Bill No. 166 (COR) as it will give everyone time to take a deep breath and ensure that business can continue as usual until a replacement bill, properly drafted and satisfactory to all, is introduced and enacted.

Sincerely,

FIRST HAWAIIAN BANK

A handwritten signature in black ink, appearing to read "Christopher Murphy", written in a cursive style.

CHRISTOPHER MURPHY  
Vice President

**GUAM BANKERS ASSOCIATION**  
**Position Statement Regarding Bill 166**

April 21, 1999

The Guam Bankers Association supports Bill No. 166 introduced by Senator K.S. Moylan and Senator Vicente (Ben) C. Pangelinan. Passage of Bill No. 166 would restore the mechanics lien law in existence prior to the passage of Public Law No. 24-323, thereby resolving some of the uncertainty in providing financing, especially in regard to take-out financing, which has arisen since the passage of Public Law No. 24-323. The Guam Bankers Association does not by its support of Bill No. 166 imply that the Guam Bankers Association opposes any changes to the mechanics lien laws of Guam, as long as any proposed changes are part of a process in which all segments of the community affected by mechanics lien laws are involved in the drafting process and given ample opportunity to provide their comments and concerns.

Public Law 24-323 contains several provisions which have been of concern to the financial community. The major concerns are the following.

1. Application of New Provisions. Public Law 24-323 which repealed and reenacted the mechanics lien law of Guam was signed by the Governor on December 29, 1998. Since there was no express effective date contained in the law itself, it would have gone into effect at midnight of December 29, 1998. Except for §33702 of Public Law 24-323 dealing with disbursement of retention proceeds,

which §33702 was made applicable with respect to all contracts entered into on or after January 1, 1999, there are no provisions regarding applicability of the law to projects commenced or completed prior to December 29, 1998. This has raised unanswered questions as to the applicable time frame for filing mechanic's liens and the applicable procedures for filing mechanic's liens for those projects which were started prior to December 29, 1998. Because the period for filing mechanic's liens is extended under Public Law 24-323 when the notice of completion is not published and recorded, the uncertainty as to which procedures apply to those projects commenced prior to December 29, 1998 has been a continuing problem for financial institutions.

2. Date of Completion/Publication of Notice. The new law contains a new definition of completion and requirements for the notice of completion, which are contained in §33105. The definition of completion contained in §33105 differs substantially from the prior Guam law. Under §33105, if the notice of completion is not published twice, seven days apart, as required, and the notice and the affidavit of publication filed, the date of completion "shall be deemed to be one hundred eighty days (180) after actual completion or abandonment." Thus the period during which liens could be filed would commence after the date of completion, which date of completion in the case of non-publication and filing of the affidavit of publication and notice of completion would occur 180 days after actual completion.

Section 33204 gives the original contractor ninety (90) days after the completion of the work as defined in §33105 to file a lien. All other claimants now have sixty (60) days after completion to file (7 GCA §33205). However, the concern of the financial community is that pursuant to §33105, completion may not occur until sometime after the work was actually finished if the required publication and filing of the notice was not properly done. Thus it is conceivable that liens could still be recorded on property up to two hundred seventy days after actual physical completion of the project. Because a financial institutions mortgage does not have priority over mechanics liens unless it is recorded prior to commencement of construction, banks providing takeout financing generally are concerned about whether the applicable time period for filing liens has passed before the bank records its mortgage to secure the takeout financing. Unless the notices required under §33105 were properly published and the affidavit and notice filed, the bank providing takeout or turnkey financing cannot be sure of the priority of its mortgage until 270 days have passed after actual completion of the project. This is an unreasonably long period of time.

In addition, §33105 provides that the Notice of Completion shall not be published by the contractor until after the contractor has first made written demand upon the owner to publish the Notice and the owner has failed to publish the Notice within five (5) days from the date of the demand. Therefore, contractors may

no longer record the notice without first demanding that the owner do so. However, it does give contractors an option when the owner resists doing the notice, thereby preventing an owner from holding up the running of the lien period. The problem for the financial institution is assuring that the contractor who publishes the notice actually followed the requirements of §33105.

3. Site Financing. Under the provisions of Public Law Number 24-323, a construction lender whose mortgage was obtained for the sole or primary purpose of financing site improvement work must have in place a binding agreement with the borrower to the effect that such proceeds are to be applied to the payment of claims of claimants and that no portion of such proceeds will be paid to the borrower in the absence of satisfactory evidence that all such claims have been paid or that the time of recording claims of liens has expired and no such claims have been recorded. If such is not done, the mortgage will not have priority even if recorded prior to commencement of the site work. If a construction lender commenced financing site improvement work prior to the passage of Public Law 24-323, it is highly unlikely that the lender would have in place the required agreement. Without any provision in Public Law 24-323 delaying the applicability of those provisions, it is possible that some financial institutions may not have the priority over mechanics lien which they thought they did.

4. Procedures. Financial institutions will have to make certain

changes to their procedures and forms to respond to the various provisions of P.L. 24-323. The prior mechanics lien law did not provide for stop notices.

Construction lenders now need to become familiar with the provisions regarding stop notices and their obligations thereunder. Public Law 24-323 provides for payment of attorney fees and costs to the prevailing party in any action against an owner or construction lender to enforce payment of a claim stated in a bonded stop notice.

Thus if a construction lender does not comply with the requirements of payment of claim stated in a bonded stop notice and lost in a suit filed by the claimant, the construction lender will have to pay the claimants attorneys fees and costs.

However, construction lenders were not provided with a period prior to which these provisions went into effect in order to set in place procedures and train their staff.

Public Law 24-323 also requires the use of specific lien waiver forms.

The financial institutions must now assure that they receive such waivers in the required formats. Since the contractors have in the past had their own particular forms, the transition has not been easy.

Public Law 24-323, Section 33702, which is applicable to all contracts entered into on or after January 1, 1999, relating to private works, adds certain provisions in regard to retention of proceeds which generally require release of the retention held by the owner to be released within 45 days of completion. While this Section is not by statute to be construed to apply to retentions withheld by a lender in

accordance with the construction loan agreement, it is likely that financial institutions will face pressure from owners and contractors to release retainages within 45 days even though the lien period does not run until after 90 days after completion (assuming that the notice of completion was published and filed in accordance with Section §33105).

In conclusion, the Guam Bankers Association supports the repeal of Public Law 24-323. The Guam Bankers Association is not opposed to the idea of making certain changes to the mechanics lien law which existed prior to Public Law 24-323, but any changes must be the result of consideration of proposed changes by all segments of the Guam community who are involved in construction projects, whether as owners, finances, general contractors, subcontractors, or sureties.



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April 21, 1999

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Honorable Kaleo Moylan  
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AND FOREIGN AFFAIRS  
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RE: BILL NO. 166 (COR)

Dear Mr. Chairman:

Thank you for inviting us to provide testimony with respect to this Bill. The purpose of this Bill is to repeal, in its entirety, Public Law No. 24-323 and reenact the prior provisions of Guam law regarding mechanic liens.

Public Law No. 24-323 was passed in the dying days of the 24th Guam Legislature. A quick read of that public law shows that very little care was taken in its drafting and in consideration of the implications it would have for the various parties involved in construction projects. By those parties, we refer to owners, contractors, subcontractors, materialmen, laborers, construction lenders, title insurers and sureties. Each of these parties plays a distinct and critical role in the construction process. Any law providing for mechanic liens must take their disparate interests into account and treat all of them as fairly as possible. In my opinion, Public Law 24-323 failed to do so. In addition, there are a number of glaring problems with the public law that should be pointed out at the outset.

To

Honorable Kaleo Moylan

Date April 21, 1999

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✓ First, there is absolutely no transitional provision in Public Law 24-323. As a consequence, with respect to projects which were pending at the time the law was passed, nobody knows which law applies, the old law or the new law. A simple transitional clause would have gone a long way towards clarifying this situation and avoiding time consuming and expensive litigation down the road which is now sure to occur unless something else is done. We would note that Bill No. 166 (COR) also contains no transitional clause. We would thus recommend that a provision be added to this bill to the effect that any person who has obtained the right to a mechanic's lien between the enactment of Public Law 24-323 and the enactment of Bill No. 166 (COR) shall not in any way be prejudiced by the repeal of the prior public law, but that the lien shall be recognized and shall be enforceable pursuant to the terms and conditions of the prior law. The exact language will need to be carefully drafted to ensure that nobody loses their claim unfairly.

Another major problem with Public Law 24-323 is the lack of cross references and the absence of various sections, chapters and articles of the law which were intended to be cross referenced. These were pointed out in the Governor's message to the Legislature when he approved Public Law 24-323. To date, nothing has been done to fix this problem.

In addition, there are numerous inconsistencies and redundancies in Public Law 24-323. For example, § 33218 makes reference to recording payment bonds being with the county recorder. Which, of course, does not exist. Terms are not adequately defined and their meanings appear to change from section to section which will lead to costly litigation in the future. While some might say these can easily be overlooked, courts generally assume that legislators put words in statutes for particular reasons. The courts are not liberty to simply disregard redundancies and minor inconsistencies. They are required to examine them and assume that the Legislature intended something by them. These should all be fixed.

Most important, however, is the fact that Public Law 24-323 tips the balances to a degree in favor of certain parties and against others. If subtier claimants, for example, follow the procedures set forth in the law, they gain significant power over, not only owners and contractors, but construction

To

Honorable Kaleo Moylan

Date April 21, 1999

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lenders and sureties. Assignments of contract balances in favor of sureties, a common source of collateral for sureties, are no longer safe from claims of subtier lien claimants. Construction loan funds which have yet to be disbursed are also subject to entanglement by such claimants during the course of the construction. By filing stop notices, subtier lien claimants can require that banks immediately withhold incremental payments to the contractor and owner. These have the potential to interfere greatly with the construction, particularly where they are inflated or bogus. Supporters of the bill will likely claim that all a bank needs to do is to file a surety bond in order to release these funds. Where, however, is the bank to get the money to purchase and collateralize the bonds? What happens if neither the owner nor the contractor have the additional financial wherewithal, after committing their resources to a project, to secure such additional bonds during the course of a project?

Our understanding of this law is that it is an amalgamation of laws from various jurisdictions. I fail to understand why this approach was taken. It would have seemed far preferable to obtain a single piece of legislation from another jurisdiction rather than attempting to piece together a new regime for disparate sources. If a single statute were taken and minor modifications were made, it must be presumed that there would be a wealth of case law in the jurisdiction from which the statute was borrowed upon which practitioners, contractors, banks, sureties and claimants could rely in making their decisions. Alternatively, the old law could have been supplemented and clarified to address legitimate concerns.

Public Law 24-323 has caused much consternation among our clients who are lenders and sureties. The lack of various transitional features and other confusing aspects of the law have also caused difficulty for lien claimants and subtier lien claimants whom we represent. Although the prior law could well have used some fine tuning, the whole process was working well enough prior to the enactment of Public Law 24-323. Lien claimants were protected by their ability to file claims of lien. Other parties had the certainty of an existing regime and interpretive case law on which they could rely. All that is gone. All parties are now reassessing the situation and determining whether they will continue to do business in this environment under this new law.

To Honorable Kaleo Moylan

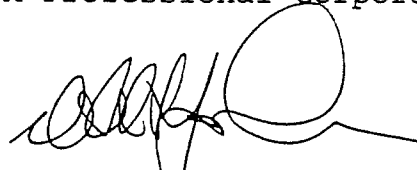
Date April 21, 1999

Page 4

We strongly recommend that Bill No. 166 be enacted with a savings provision to protect persons whose lien rights may have attached during its existence and that thereafter discussions commence with representatives from all aspects of the industry to ensure that whatever changes are made or new statutes are enacted in this area are ones that people can live and work with. If any sector of the construction community is unwilling to live with the existing regime, the entire process could grind to a screeching halt. Statutes like Public Law 24-323 need serious consideration and careful attention to detail before they are passed. Unfortunately, that did not occur.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON  
A Professional Corporation



RICHARD L. JOHNSON



THOMAS C. STERLING

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ARTHUR B. CLARK •  
RODNEY J. JACOB •

MICHAEL A. PANGELINAN •

April 21, 1999

- ex parte state  
liens

**VIA HAND DELIVERY**

The Honorable Kaleo S. Moylan  
25<sup>th</sup> GUAM LEGISLATURE  
CHAIRMAN, COMMITTEE ON HOUSING,  
GENERAL GOVERNMENT SERVICES  
AND FOREIGN AFFAIRS  
Sinajana Shopping Mall  
Phase II, Suite 16B  
Sinajana, Guam 96926

**RE: PUBLIC LAW 24-323**

Dear Senator Moylan:

I understand that your committee will be reviewing Public Law 24-323 - "An Act to Repeal and Reenact Chapter 33 of Title 7 of the Guam Code Annotated Relative to establishing New Mechanics Lien" this afternoon. I am writing to urge the 25th Guam Legislature to repeal Public Law 24-323.

I am a lifelong resident of the Island of Guam and am a member of the Guam Bar Association with ten years of experience in commercial and civil practice. As a part of my practice I have on several occasions reviewed and provided legal interpretations of Guam's prior Mechanics Lien Law. Recently, I have had the opportunity to review Public Law 24-323.

There are certain provisions of Public Law 24-323 which I find disturbing. I was lead to believe that Public Law 24-323 was intended to mirror California's Mechanics' Lien Law. After comparing the two laws, however, I wish to inform this body that any representation that Public Law 24-323 and its California counterpart are identical, or that their effects are identical, is misleading. A careful review of Public Law 24-323 and California's statute reveals that the Guam statute was carefully crafted to give the appearance of even-handedness but that, in fact, it favors potential mechanics' lien claimants to the detriment of real estate owners and developers; indeed, to the detriment of any potential development on the Island.

ABCIB90232.LTR

SAIPAN ADDRESS: AAA - 951, Box 10001, SAIPAN, MP 96950  
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• LICENSED IN GUAM AND CNMI

### Preliminary Notice Requirement

I wish to draw the legislature's attention to 7 GCA §33114 "Preliminary Notice (Private Work); Procedure." This statute requires the "original contractor" to provide the real estate owner with notice of potential lien claimants, presumably subcontractors, within twenty (20) days "after such potential lien claimant has commenced furnishing labor, service, equipment or material to the project." In addition to being totally incongruous to California's statutory counterpart, which I will address below, §33114 provides the real estate owner with absolutely no protection whatsoever with respect to potential lien claimants.

In 99.9% of the cases where a subcontractor records a lien against real property it is because the contractor breached its contract and did not pay the subcontractor. Yet ironically, §33114 expects the real estate owner to rely on the contractor to provide him with a list of subcontractors. This is the same contractor whose potential default would give rise to a subcontractor's claim of lien. And what remedies are available to a owner who did not receive the required notice? Pursuant to §33114(a), that contractor is subject to "disciplinary action by the Guam Contractor's License Board." I can assure you that this is small consolation to a real estate owner who finds out after a project is completed that a sub-contractor has placed a multi-million dollar lien on his property because the contractor didn't provide him with a complete list of subcontractors.

Another glaring problem with §33114 is the fact that it is highly unlikely that the original contractor will be aware of all potential claimants. Many subcontractors will enter into sub-sub-contracts. By statute, the sub-sub-contractors have potential liens, yet sub-contractors are not required to provide the owner or original contractor with notice of their sub-sub-contracts. Indeed, this scenario could go down several generations of sub-contractors. It is simply unreasonable and impractical to expect the original contractor to be aware of every potential lien claimant.

### Comparison of Preliminary Notice Requirement To California's Statute

An examination of the California statutory counterpart reveals that §33114 has been grossly modified to the detriment of the real estate owner. Attached to this letter is a copy of California Civil Code §3097. Contrary to the Guam statute, §3097 requires the potential lien claimants (i.e. all sub-contractors, sub-sub-contractors, etc.) to provide the owner and the construction lender with notice of the fact that they have started providing

labor or services to the real property. If that potential claimant fails to provide the required notice, that potential claimant will lose its right to place a lien against the property. See attached California Civil Code §3114.

The logic and equity behind requiring all potential claimants, not the original contractor, to provide owner with notice has been identified in several California court decisions, i.e. to provide the owner with an opportunity to ascertain the truth of a claim and to be able to take adequate measures to protect himself from claims arising from contracts to which the owner was not a party and of which he probably has no knowledge. *Wand Corp. v. San Gabriel Valley Lbr. Co.* (1965) 236 CA2d 855, 46 Cal. Rptr. 486; *Romak Iron Works v. Prudential Insurance Co.* (1980) 104 CA 3d 767, 163 Cal. Rptr. 869. This purpose cannot be served in Guam's law by expecting the original contractor to provide that notice to the real property owner.

A comparison of 7 GCA §33114 and California Civil Code §3097 makes it obvious that Public Law 24-323 is not the even-handed legislation it pretends to be but is, instead, special interest legislation which benefits a small segment of the community to the potential detriment of every land owner on Guam.

Time to File a Lien

The time period within which a lien must be filed is another provision of Guam's law which grossly modifies the law in favor of potential lien claimants to the detriment of real property owners. Under ~~33~~ GCA §§33204 and 33205, contractors and subcontractors have 90 and 60 days, respectively, after "completion" of a work of improvement to record their liens. ~~33~~ GCA §33105 defines "completion" as: a) recordation and publication of a Notice of Completion, or in the absence of a validly filed Notice of Completion, b) 180 days after substantial completion or abandonment of the improvement. Under California law, the contractor and subcontractor would have 60 and 30 days, respectively, to file a lien after recordation of a Notice of Completion, or if a Notice of Completion isn't filed, 90 days after substantial completion or abandonment of the improvement.

The maximum period available to a potential lien claimant under California law is 90 days after completion of a project. California Civil Code §3115. The Guam statute, however, triples the maximum lien period to 270 days (180+90) for contractors and 240 days (180+60) for subcontractors. Therefore, every real property owner has to be concerned that a contractor has nine (9) months after completing work to file a lien.

Senator Kaleo S. Moylan  
April 21, 1999  
Page 4

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The negative impact of this statute on a real property owner is exacerbated by the fact that the Public Law 24-323 does not contain the 20-day preliminary notice requirement contained in California's law. Without this preliminary notice requirement, a real property owner has to be concerned that some subcontractor whom the owner has no knowledge about could file a lien on his property for up to eight (8) months after the work of improvement is completed.

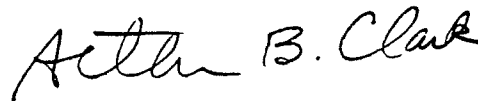
### Pre-Existing Contracts

Another significant problem with Public Law 24-323 is that it failed to contain a grandfather clause for pre-existing contracts; this would have been prudent. Several contracts for works of improvement were in existence prior to the enactment of Public Law 24-323. At the time these contracts were entered into, the parties rights with respect to mechanics' liens were outlined in the previous statute. Overnight, the contracting parties' relationship was altered. At the very least, Public Law 24-323 should have contained a grandfather clause maintaining the status quo of the previous law for parties' who entered into contracts for works of improvement prior to the enactment of the new law.

In conclusion, I wish to support any action by this legislature to repeal Public Law 24-323. If it does repeal Public Law 24-323, so as to protect the rights of parties who relied on the new law subsequent to its enactment, the legislature could consider providing a tolling clause for all lien claimants who perfected their claims under Public Law 24-323. This tolling clause would toll, for the period that Public Law 24-323 was in effect, the time frame that these lien claimants have to perfect their liens. Thank you for your consideration.

Respectfully submitted.

Sincerely,



Arthur B. Clark

Attachments  
ABC:rp

ABC\B90232.LTR



§ 3097. ["Preliminary 20-day notice (private work)"; Procedure.]

"Preliminary 20-day notice (private work)" means a written notice from a claimant that is given prior to the recording of a mechanic's lien and prior to the filing of a stop notice, and is required to be given under the following circumstances:

(a) Except one under direct contract with the owner or one performing actual labor for wages, or an express trust fund described in Section 3111, every person who furnishes labor, service, equipment, or material for which a lien otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, must, as a necessary prerequisite to the validity of any claim of lien, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(b) Except the contractor, or one performing actual labor for wages, or an express trust fund described in Section 3111, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, must, as a necessary prerequisite to the validity of any claim of lien, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(c) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite, and shall contain the following information:

(1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and if there is a construction lender, he shall be furnished with an estimate of the total price thereof in addition to the foregoing.

(2) The name and address of such person furnishing such labor, service, equipment, or materials.

(3) The name of the person who contracted for purchase of such labor, service, equipment, or materials.

(4) A description of the jobsite sufficient for identification.

(5) The following statement in boldface type:

**NOTICE TO PROPERTY OWNER**

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your con-

LAW OFFICES  
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April 20, 1999

HAND DELIVERED

The Hon. Kaleo S. Moylan  
Senator/Chairman  
COMMITTEE ON HOUSING, GENERAL  
GOVERNMENT SERVICES & FOREIGN AFFAIRS  
25<sup>TH</sup> Guam Legislature  
Sinajana, Guam 96926

Re: Bill No. 166

Dear Senator Moylan:

Thank you for meeting with me the other day and sending me copies of the comments of Mr. David Dooley and Mr. Michael Ysrael concerning Bill No. 166. Please consider this letter my testimony concerning that bill.

Bill No. 166 seeks to reinstate Guam's old mechanic lien laws. I believe this would be a serious mistake and it would do very little towards addressing the concerns voiced by Mr. Ysrael of Tanota Partners.

Guam's previous mechanic lien laws were enacted in 1962 and modeled on the California statutes which were in place at that time. California has substantially revised its mechanic lien laws. Therefore only Guam would have these outdated laws, and they had a lot of problems.

The first of these problems was the definition of a project's "completion" date. All 50 states and the CNMI have mechanic lien laws which give claimants so many days after a project's "completion" to record a lien, after which the lien is lost. Guam's old law created a moving window of opportunity for filing liens. Most of the litigation under the old law involved haggling over when a project was "completed" for mechanic lien purposes. Multiple rules and facts had to be considered in determining a project's completion date, such as: whether a "Notice of Completion" had been recorded with Land Management (which shortened the time period); or whether the project had been "accepted" by the

owner; whether there had been a "cessation of labor" for 60 days, which would create a new completion date (unless a Notice of Cessation had been recorded with Land Management, then the period could drop to 30 days); whether there had been "substantial completion" as opposed to actual completion. Accordingly, under the old law it was rather difficult to determine when one should file a mechanic lien, especially for material suppliers whom may never see the construction project. Uncertainty in the law is not good for anybody - not owners, not bankers, not prime contractors or subcontractors.

Second, the old law contained a curious loophole about foreclosures. The law allowed subcontractors and vendors to file liens as soon as they finished their own work. Therefore some liens could be recorded before project completion. However, the law also stated that no foreclosure could be initiated until after the period in which to file all claims of lien had expired (i.e., 60-90 days after project "completion"). However, the law also stated that no lien would bind any property for more than 90 days after recording unless foreclosure proceedings were initiated by filing suit in court. Thus it was possible under the old law that a lien duly recorded would necessarily expire without recourse because it would be incapable of being foreclosed upon.

Third, the old law contained no procedure whereby "stale" liens could be expunged if not foreclosed upon even though by law they had "expired". The Notice of Liens could therefore sit for years at Land Management and appear on title reports.

Fourth, although the old law required subcontractors and material suppliers to present "pre-claim" lien notices to the owner and prime contractors prior to recording a claim, these notices only had to be given 15 days prior to actually recording a lien. The old law would therefore not address Mr. Ysrael's desire of being provided with notice of potential liens prior to furnishing the materials.

Moreover, if a Notice of Completion had been filed, it would shorten the window of opportunity for material suppliers to record their liens to less than 15 days. This created a trap for unwary suppliers and subcontractors.

Fifth, the old law contained no "Stop Notice" provisions, which are common in many jurisdictions as alternative to liens on real property. Stop notices are liens against the prime contractor's construction funds, rather than liens on real property. Stop notices encourage quick resolution of claims without burdening real property with liens.

Because of these problems, several years ago I was asked to draft updates to Guam's old laws. A large portion of my law practice over the past 9 years has dealt exclusively with mechanic lien issues. My office represents not only suppliers such as Hawaiian Rock Products, but also prime contractors, architects and owners. My intent was to take a balanced approach that would consider the respective competing interest of all those involved in the construction project. I believed the best place to start was to look at the updated California law, since Guam's old law was taken from California. It is fair to say that 85-95% of what became Public Law 24-323 is taken verbatim from California's own updates to its mechanic lien laws. The deviations to the California counterpart were to address problems that I had encountered which are unique to Guam.

Most of what I wrote became Public Law 24-323. Unfortunately, the final edits and revisions which I sent to the 24<sup>th</sup> Guam Legislature last August for some reason never made it into the final draft of Bill 201 that was enacted into law. As a result, some portions of P.L. 24-323 are unintelligible. There are numerous typographical errors, misnumbered code sections, conflicting provisions, and language that should be deleted.

The solution, however, is not to throw out the proverbial baby with the bath water by repealing the new law and reenacting the old. Once the final edits are written into the law, the law becomes quite intelligible and workable. A redline version of these revisions to P.L. 24-323 are submitted with this letter. This is the version which was intended to become law. These amendments, along with others which address some of the new concerns of your constituents, would, in my opinion, be a more reasonable and positive method to address the problems with P.L. 24-323.

It must be remembered that mechanic lien laws are remedial statutes, intended to benefit those who bestow labor and furnish materials to a construction project, not for the benefit of third

Sen. Kaleo Moylan  
April 20 1999  
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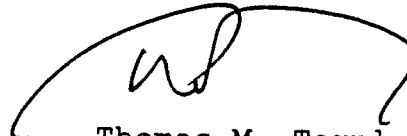
parties. These liens are for the benefit of unpaid contractors, not banks, or owners.

My concern is that many who are pushing for the complete repeal of P.L. 24-323 do not fall within the class of persons the statute is intended to protect; i.e. contractors.

For example, Tanota Partners are presently defendants in a lawsuit brought by a Korean steel manufacturer and a Guam contractor to enforce stop notices and mechanics liens totaling nearly \$1.5 million. Tanota Partners, through their attorney Michael Pangelinan, have stated they will "vigorously defend" the claims asserted by the plaintiffs. Such claims should be resolved by the courts, not the Legislature. At the very least, Bill No. 166 should be amended to include a provision whereby current claims and defenses will remain unaffected by any repeal of P.L. 24-323.

In closing, I respectfully request that there be no rush to repeal a law that was nearly 5 years in the making. Concerns over specific provisions of P.L. 24-323 can be addressed by specific amendments, and only after considered deliberation.

Sincerely,



Thomas M. Tarpley, Jr.  
A Professional Corporation

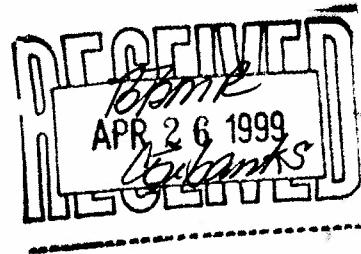


COMMITTEE ON JUDICIARY, PUBLIC SAFETY,  
CONSUMER PROTECTION, AND HUMAN RESOURCES  
DEVELOPMENT

I MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN

JOHN CAMACHO SALAS, CHAIRMAN

April 26, 1999



MEMORANDUM

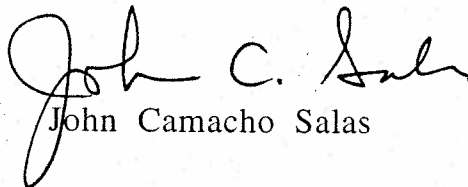
To: Director, Bureau of Budget & Management Research

From: Senator John Camacho Salas

Subject: Request for Fiscal Note

Please find attached Committee Bills 7, 26,77,120, 123, 125, 127, 129, 131, 132, 143, 148, 150, 158, 166, 174, 184, and 186 for which I respectfully request issuance of **Fiscal Notes**.

Your issuance of this fiscal note will be greatly appreciated. Thank you for your very kind assistance.

  
John Camacho Salas

Attachments