

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

2022 (SECOND) Regular Session

VOTING RECORD

| | Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building September 30, 2022 | | | | | |
|---|--|-----|--------------------------|-------------------------|--------|---------|
| NAME | Aye | Nay | Not Voting/ Abstained | Out During Roll Call | Absent | Excused |
| Bill No. 259-36 (LS) As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts; and further amended in the Committee of the Whole. | | | | | | |
| Senator V. Anthony Ada | ✓ | | | | | |
| Senator Frank Blas Jr. | ✓ | | | | | |
| Senator Joanne Brown | ✓ | | | | | |
| Senator Christopher M. Dueñas | ✓ | | | | | |
| Senator James C. Moylan | ✓ | | | | | |
| Vice Speaker Tina Rose Muña Barnes | ✓ | | | | | |
| Senator Telen Cruz Nelson | ✓ | | | | | |
| Senator Sabina Flores Perez | ✓ | | | | | |
| Senator Clynton E. Ridgell | ✓ | | | | | |
| Senator Joe S. San Agustin | ✓ | | | | | |
| Senator Amanda L. Shelton | ✓ | | | | | |
| Senator Telo T. Taitague | ✓ | | | | | |
| Senator Jose "Pedo" Terlaje | ✓ | | | | | |
| Speaker Therese M. Terlaje | ✓ | | | | | |
| Senator Mary Camacho Torres | ✓ | | | | | |

TOTAL

15

0

Aye

Nay

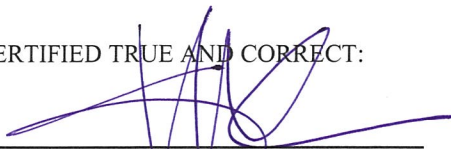
Not
Voting/
Abstained

Out
During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA 'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 259-36 (LS)

As amended by the Committee on Economic Development,
Agriculture, Power and Energy Utilities, and the Arts;
and further amended in the Committee of the Whole.

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Introduced by:

Telo T. Taitague
Amanda L. Shelton
Sabina F. Perez
Joanne S. Brown
Frank F. Blas, Jr.
Jose "Pedo" Terlaje

**AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 58
OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE
TO ESTABLISHING A NEW SPECIAL QUALIFYING
CERTIFICATE FOR THE DEVELOPMENT OF
ELDERLY RESIDENTIAL LIVING HOUSING
COMPRISING OF INDEPENDENT LIVING, ASSISTED
CARE AND NURSING HOME ACCOMMODATIONS;
AND TO BE KNOWN AS THE "*ÅKTON GUMA* (GROUP
USE *MANÅMKO* ACCOMMODATIONS) INCENTIVE
ACT."**

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

2 **Section 1.** This Act shall be known as the "*Åkton GUMA*" (Group Use
3 *Manåmko* Accommodations) Incentive Act."

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
5 that with the rising cost of housing for the growing population of seniors on fixed
6 incomes in Guam, the need to plan to meet the changing needs of Guam's growing
7 *manåmko* population has become a vital necessity. Local incentives to promote the

1 private development of elderly residential living communities are limited to federal
2 housing subsidies for the elderly and federal development programs for eligible
3 elderly developments.

4 Although specific federally supported opportunities exist to develop elderly
5 residential living communities, St. Dominic's, a nursing home built in 1987, is the
6 only privately operated elderly continuum of care facility in Guam. Currently, Guam
7 has no assisted care housing opportunities that fill the void between elderly
8 independent living facilities and nursing home facilities. There is a recognition for
9 developing privately owned and operated elderly residential living communities
10 both locally and nationally.

11 Elderly residential care housing development is gaining recognition with
12 investors, developers, and future residents alike. The trend is driven by the
13 impending arrival of baby boomers to the senior living space and the broader shift
14 from acute care to wellness and prevention, paving the way for more health-focused
15 development to be integrated with traditional senior housing opportunities.

16 Land, construction, labor, and materials costs have skyrocketed, especially in
17 2021, and in the face of tighter construction margins, a developer looking to build
18 senior residential care development may find itself unable to get a community built.
19 That is where subsidies such as tax credits and incentives become essential tools to
20 make a development balance sheet work.

21 The Qualifying Certificate Program, created under Public Law 8-80 and
22 amended by Public Laws 20-178 and 22-159, is an economic incentive tool that
23 encourages investments to strengthen the island economy, enrich its growth, and
24 enhance the quality of life in Guam. The Qualifying Certificate Program has proven
25 to be highly successful, ensuring the appropriate stimulation of legitimate
26 investment of new economic development that is necessary to advance senior
27 housing development in Guam.

1 Senior living development costs are averaging Two Hundred Fifty-six
2 Thousand Dollars (\$256,000) per unit, or Two Hundred Eighty-three Dollars (\$283)
3 per square foot, according to a report from the world’s largest real estate services
4 and investment firm Coldwell Banker Richard Ellis Group (CBRE). Guam relies
5 heavily on importing resources, building materials, and labor costs that affect local
6 developments and are mostly more expensive and possibly as much as forty percent
7 (40%) higher in Guam.

8 Currently, the Guam Housing and Urban Renewal Authority (GHURA) has
9 seven hundred fifty (750) public housing units, of which eighty-two (82) of those
10 units are for the elderly. Additionally, GHURA has forty-nine (49) elderly units
11 located throughout Guam; and this makes the total number of units for the elderly to
12 be one hundred thirty-one (131). The Government of Guam receives funds from the
13 U.S. Department of Housing and Urban Development (HUD) to administer housing
14 for low-income residents at rents they can afford, and GHURA administers these
15 funds for the Government of Guam. Developers need to leverage available federal
16 and local tax incentive opportunities in developing and managing senior residences
17 since there is a recognition that a significant need and a vacuum exists for Guam’s
18 elderly residential living opportunities.

19 The *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act
20 Qualifying Certificate provides developers with alternatives in providing needed
21 *manåmko* residential living accommodations. Additionally, the Act attempts to
22 migrate the development and operations of *manåmko* residential living
23 accommodations from the Government of Guam to non-profit and private sector
24 operators.

25 The Act allows for new construction and substantial renovations of existing
26 elderly residential accommodations that embrace independent or assisted care living.
27 The tax incentives provided through GEDA’s Qualifying Certificate Program enable

1 developers to develop elderly low-income residential living facilities by partnering
2 with federal and local funding and tax incentive opportunities and allows for the
3 development of middle-income elderly residential facilities that do not qualify for
4 coverage under available federal housing subsidies and tax incentive sources.

5 This Act allows the government to leverage solution-based objectives to
6 private and non-profit entities to shoulder much of Guam’s elderly housing vacuum.
7 The *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act allows
8 developers to concurrently leverage federal and local funding and tax incentives to
9 construct and operate elderly residential living housing for independent living,
10 assisted care, and nursing home facilities. The Act also provides tax incentives for
11 developing middle-income residential living homes as most federally subsidized
12 programs, loans, and tax incentives are available for low-income elderly housing
13 projects and their operations, and developers wishing to develop elderly middle-
14 income residential living facilities are not eligible for most federal programs and
15 incentives.

16 Therefore, this Act intends to embrace development of elderly residential
17 living communities to meet future elderly housing needs that promote dignity,
18 individuality, privacy, independence, and autonomy; and foster a continuum of care
19 for the *manåmkos* of Guam.

20 **Section 3.** A new Article 3 is hereby *added* to Chapter 58 of Title 12, Guam
21 Code Annotated, to read as follows:

22 **“ARTICLE 3**

23 **SPECIAL QUALIFYING CERTIFICATE**

24 **ÅKTON GUMA (GROUP USE MANÅMKO ACCOMMODATIONS)**

25 **INCENTIVE ACT**

26 § 58301. Legislative Intent of the *Åkton GUMA* (Group Use *Manåmko*
27 Accommodations) Incentive Act.

- 1 § 58302. Collaboration and Partnerships.
2 § 58303. Application of Article.
3 § 58304. Definitions.
4 § 58305. Special Qualifying Certificate; Defined.
5 § 58306. Fees.
6 § 58307. Savings for the Tenants.
7 § 58308. Construction With Other Laws.
8 § 58309. “Sunset” Provision.
9 **§ 58301. Legislative Intent of the *Åkton GUMA* (Group Use *Manåmko***
10 **Accommodations) Incentive Act.**

11 *I Liheslaturan Guåhan* finds that there is a need to create a Special
12 Qualifying Certificate Program, to be known as the *Åkton GUMA* (Group Use
13 *Manåmko* Accommodations) Incentive Act, stimulating economic activity through
14 the construction of new elderly housing development projects or the substantial
15 renovation of existing multi-family structures for conversion to elderly residential
16 living accommodations that increases the availability of elderly housing
17 accommodations.

18 This Article attempts to foster the development and operations of *manåmko*
19 residential living accommodations from the Government of Guam to non-profit and
20 private sector operators. Incentivizing elderly development would assist developers
21 in offsetting the rising costs of construction, supplies, and the limitations associated
22 with labor availability and cost.

23 **§ 58302. Collaboration and Partnerships.**

24 The developer or operator shall reach out to Government of Guam agencies,
25 federal agencies, and non-profit organizations to identify available funding and
26 services that serve the elderly minorities and the elderly with disabilities, and
27 provide an elderly continuum of care to eligible development covered by this Article.

1 **§ 58303. Application of Article.**

2 (a) An establishment seeking tax credits under this Article shall obtain and
3 maintain the necessary licenses, permits and certificates, comply with zoning laws,
4 federal laws, and obtain other governmental approvals required in the process of
5 implementing the project.

6 (b) A project covered by this Article shall comply with the Fair Housing
7 Act for elderly housing projects.

8 (c) The integration of all structural, building and operational requirements
9 may optimize the integration of use in the project design and layout that may be
10 productive in securing federal funding or federal loan guarantees to accomplish the
11 same.

12 **§ 58304. Definitions.**

13 For purposes of this Article, the following definitions shall apply:

14 (a) *Affordable* where used in this Article shall be up to one hundred
15 fifteen percent (115%) and less of the median income average threshold where
16 rental dwellings are deemed affordable if the annual rent does not exceed
17 thirty percent (30%) of the maximum income level for low income
18 households, adjusted for household size. The income thresholds established
19 herein may be adjusted by GEDA from time-to-time through an approved
20 board resolution consistent with recommendations from the Guam Housing
21 and Urban Renewal Authority and/or federal agencies, including, but not
22 limited to, the U.S. Department of Housing and Urban Development and the
23 U.S. Department of Agriculture.

24 (b) *Assisted Care* or *Assisted Living* refers to elderly housing
25 facilities that provide apartment-style housing to ensure that certain services
26 are available to maintain independence where needed that offers units
27 containing, at a minimum, one (1) unfurnished room, a private bathroom, a

1 kitchenette, and a lockable door on the unit entrance. Assisted living units are
2 skilled nursing home care services as provided in accordance with 10 GCA §
3 7102(a).

4 (c) *Authority* refers to the Guam Economic Development Authority
5 (GEDA).

6 (d) *Business Privilege Tax (BPT)* is the tax that is levied on
7 business revenues as imposed by 11 GCA § 26201.

8 (e) *Construction Costs* are expenses incurred by a developer to
9 construct any new elderly assisted living and independent living housing
10 development or substantially renovate, expand, or convert existing structures
11 comprising Elderly assisted living, independent living housing, or
12 convalescent development in Guam. Such costs include land acquisition,
13 building and site improvements, Architectural and Engineering (A&E),
14 furniture, fixtures, and equipment (FF&E).

15 (f) *Developer* means an individual, partnership, corporation,
16 association, or other person who develops land through construction and
17 becomes the owner of an elderly residential living housing establishment.

18 (g) *Development* means a senior or elderly housing project of
19 multiple dwelling units with accessory uses and structures for construction or
20 substantial renovation located on property in accordance with this Article.

21 (h) *Dwelling* shall be consistent with the definition contained in 21
22 GCA § 61103(j).

23 (i) *Elderly* means individuals that are fifty-five (55) years of age or
24 older.

25 (j) *Elderly Home or Housing* refers to an elderly dwelling,
26 domicile, or space used as a permanent or semi-permanent residence for an
27 individual, group or family.

1 (k) *Expansion or Renovation* means existing elderly residential
2 living housing accommodations pursuant to this Article that may be eligible
3 for this Special Qualifying Certificate if new capital investment is to be made
4 that will either add to the building or significantly renovate the property.

5 (l) *Independent Living* refers to housing units and associated
6 facilities designed for the elderly who are self-sufficient and require no on-
7 site personal or health care services. An Independent Living housing unit
8 consists of a room or group of rooms designed or intended to provide a
9 habitable unit for one (1) or more persons with provisions for cooking, living,
10 sanitation, and sleeping for the exclusive use of the household unit. Associated
11 facilities may include substantial common and socializing areas and other
12 amenities.

13 (m) *A Multiple-Family Dwelling* contains three (3) or more dwelling
14 units. A dwelling unit shall be defined as one (1) or more rooms and a single
15 kitchen, designed as a unit for occupancy by one (1) family for living and
16 sleeping purposes. For the purposes of this Article, duplexes, townhomes,
17 apartments, or condominiums shall be considered a multiple-family dwelling.
18 A hotel shall not be considered a multiple-family dwelling unless the
19 developer intends to substantially renovate the hotel use for elderly housing.

20 (n) *Nursing Home* shall be consistent with 10 GCA § 7102(a).

21 (o) *Project* refers to constructing or renovating structures or
22 buildings for elderly residential living housing.

23 (p) *Property Value* means the current appraised value of the land and
24 improvements. The developer shall bear the cost of such appraisal and an
25 applicant may provide an appraisal completed within one hundred eighty
26 (180) days prior to the date of application filing.

1 (q) *Property Tax Assessment* shall mean the real estate and
2 improvement taxes assessed on the Project.

3 (r) *Renovation Cost* are expenses incurred from modernizing the
4 elements within a structural part located on real property for elderly housing,
5 whose total costs are no less than forty percent (40%) of the property value
6 and that either:

7 (1) materially increases the value of the property;

8 (2) substantially prolongs the useful life of the property; or

9 (3) adapts the property to a new or better use for elderly
10 residential living accommodations.

11 (s) *Residential Living* means a housing arrangement meeting ADA
12 compliance and the Fair Housing Act for the elderly that is chosen voluntarily
13 by persons fifty-five (55) years of age or over, or their authorized
14 representative, where independent living accommodations, assisted care
15 accommodations, and/or nursing home accommodations or any combination
16 thereof, involving varying levels and intensities of care and supervision,
17 protective supervision, or personal care are provided, based upon their varying
18 needs that are located within the elderly housing facility.

19 (t) *Special Qualifying Certificate* shall refer to tax incentives on
20 developments that are eligible or approved for the *Åkton GUMA* (Group Use
21 *Manâmkô* Accommodations) Incentive Act.

22 (u) *Senior Housing* means age-restricted residential housing
23 intended and operated for occupancy by persons fifty-five (55) years of age
24 or older.

25 (v) *Substantial Improvement* or *Substantial Renovation* means any
26 combination of repairs, reconstruction, alteration, or improvements to a
27 structure that is ADA compliant in which the cumulative cost equals or

1 exceeds forty percent (40%) of the market value of the structure and real
2 estate.

3 (w) *Supportive Services* means resources available to the resident in
4 the community that helps to maintain their functional ability and meet their
5 needs as identified in the individual resident assessment. Supportive services
6 may include any of the following: medical, dental, and other health care
7 services; transportation; recreational and leisure activities; social services; and
8 counseling services.

9 (x) *Use* is the purpose for which land or a structure is designed,
10 arranged, intended, occupied, or maintained.

11 (y) *Use Tax* is the tax that is levied on the landed value of or
12 consumption of all property as defined by Chapter 28 of Title 11 GCA.

13 (z) *Zoning Law* refers to the Zoning Law of Guam, Chapter 601 of
14 Title 21, Guam Code Annotated.

15 **§ 58305. Special Qualifying Certificate; Defined.**

16 Notwithstanding any other provision of law, rule, or regulation to the
17 contrary, the Special Qualifying Certificate (QC) of the *Åkton GUMA* (Group Use
18 *Manåmko* Accommodations) Incentive Act is a contract valid for a given period that
19 is executed by *I Maga'hågan Guåhan* (the Governor of Guam) upon the
20 recommendation of the Authority. This QC shall be limited to the construction of
21 new elderly residential living housing accommodations and/or the substantial
22 renovation of existing multiple-family dwellings where its use shall be for elderly
23 residential living housing accommodations, as defined in this Article. The QC,
24 once issued and unless suspended, rescinded, or revoked, shall constitute
25 conclusive evidence of entitlement to the tax rebates, abatements, or exemptions
26 set forth on its face.

1 (a) New Construction and Substantial Renovation/Improvement for
2 Elderly Residential Living Accommodations Tax Rebate and Abatement.
3 There shall be allowed to each developer for elderly residential living projects
4 that exceed the affordable income threshold as shall be determined by the
5 Authority, a tax rebate, exemption, and abatement in an amount equal to
6 twenty-five percent (25%) of their total construction cost.

7 (b) New Construction and Substantial Renovation/Improvement
8 for Affordable Elderly Residential Living Accommodations Tax Rebate and
9 Abatement. There shall be allowed to each developer for the new construction
10 or substantial renovation/improvement of affordable elderly residential
11 living projects a tax rebate, exemption, and abatement in an amount equal to
12 thirty percent (30%) of their total construction cost.

13 A tax rebate, exemption, and abatement as provided in Subsections (a)
14 or (b), supra, can be applied by the developer at their discretion to the
15 following taxes:

16 (1) up to one hundred percent (100%) Business Privilege Tax
17 (BPT) abatement for twenty (20) years as long as the tax credits are
18 available at the point they are taken. This BPT abatement shall not
19 apply to the levy of three percentage points (3%), out of the total
20 percentage points levied from time to time, of the BPT, the revenues
21 from which are pledged to the Government of Guam Business Privilege
22 Tax Bonds;

23 (2) up to seventy-five percent (75%) Income Tax Rebate for
24 twenty (20) years;

25 (3) up to one hundred percent (100%) Real Property Tax
26 Abatement for twenty (20) years; provided, that the fee simple owner

1 taxpayer is the Qualifying Certificate beneficiary and that the real
2 property is identified in their Qualifying Certificate; and

3 (4) up to one hundred percent (100%) of Use Tax Exemption
4 with respect to the property used to construct, furnish, and equip the
5 new multiple-family dwelling. The exemption shall be claimed no later
6 than one (1) year from the issuance of the facility's occupancy permit.

7 (c) Application Period. Eligible developers with new residential
8 living developments applying for this special QC pursuant to Subsections (a)
9 and (b), supra, shall file their application prior to issuance of the construction
10 project building permit. Eligible developers with substantial
11 renovation/improvement residential living projects applying for this special
12 QC pursuant to Subsections (a) and (b), supra, shall be able to apply at any
13 time, granted that for the purposes of calculating their tax benefit amount as
14 provided in Subsections (a) and (b), supra, any construction costs invoiced
15 prior to the official application submission date shall be deemed ineligible.

16 (d) Benefit Negotiations. The Authority has the sole authority to
17 negotiate the terms of the QC. Negotiations shall be completed prior to the
18 issuance of the housing project or multiple-family dwelling's building permit,
19 if applicable.

20 (e) Any new construction or substantial renovation project as
21 provided in this Article where the federal government offers tax credits,
22 rebates, abatements, or exemptions shall remain eligible for this Special
23 Qualifying Certificate.

24 (f) This Article shall be in compliance with the Arts in Public
25 Buildings and Facilities pursuant to 1 GCA § 852.

26 **§ 58306. Fees.**

1 The Authority shall establish the fees for the Special Qualifying Certificate
2 pursuant to this Article. As to the annual compliance monitoring fees, the fee shall
3 be assessed annually until such time as the QC beneficiary has exhausted the total
4 dollar amount of its QC benefit.

5 **§ 58307. Savings for the Tenants.**

6 If the purpose of the construction of a new elderly housing project or
7 residential living facility, or the substantial renovation of an existing elderly
8 residential living facility is for the developer to either resale, rent, or lease, as part
9 of the application process for the QC, pursuant to this Article, the beneficiary
10 shall provide a plan to the Authority as to how the approval of the QC shall translate
11 to monetary savings for the tenants of the new or renovated residential care facility
12 for the elderly. Failure to comply with this plan once the QC is approved and issued
13 shall result in a suspension or revocation of the QC.

14 **§ 58308. Construction With Other Laws.**

15 Insofar as the provisions of the *Åkton GUMA* (Group Use *Manåmko*
16 Accommodations) Incentive Act are inconsistent with the provisions of any other
17 laws or regulations, in whole or in part, the provisions of this Act shall be controlling;
18 and in particular but not by way of limitation, except as may be provided in this
19 Article, no provision of any law or regulation shall have cause or effect in carrying
20 out the purpose of the provisions of the *Åkton GUMA* (Group Use *Manåmko*
21 Accommodations) Incentive Act unless *I Liheslatura* shall specifically so state.

22 **§ 58309. “Sunset” Provision.**

23 This Article shall take effect upon its approval by *I Maga'hågan Guåhan*
24 and shall remain in effect for ten (10) years.

25 The GEDA Board, at its discretion, with input from *I Liheslatura* (the
26 Legislature), the Guam Housing and Urban Renewal Authority, the Department of
27 Public Health and Social Services, *I Maga'hågan Guåhan*, and the community, shall

1 re-examine the effectiveness and need of the program to determine if it should be
2 extended, and may extend the effectiveness of this Article for up to an additional
3 five (5) years by adopting a resolution to such effect prior to the expiration date.
4 Any QC issued under the conditions of this Article shall remain in full force and
5 effect until its term expires or it is canceled on other grounds.”

6 **Section 4. Severability.** If any provision of this Act or its application to any
7 person or circumstance is found to be invalid or contrary to law, such invalidity shall
8 not affect other provisions or applications of this Act that can be given effect without
9 the invalid provision or application, and to this end the provisions of this Act are
10 severable.

11 **Section 5. Effective Date.** This Act shall be effective upon enactment.