



Office of the Governor of Guam

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Office of the People's Speaker
vicente f. pangelinan

JUL 07 2004

TIME: 10:11 AM
RECEIVED BY: [Signature]

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

06 JUL 2004

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheslaturan Guåhan
155 Hessler Place
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith is Bill No. 303 (COR), "AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESS IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM BY AMENDING §§ 58128.7 AND 54103 OF TITLE 12, AND §26203(k) OF TITLE 11, GUAM CODE ANNOTATED, TO BE KNOWN AS THE 'GUAM COMPETITIVENESS ACT OF 2004,'" which I have signed into law on June 30, 2004 as Public Law 27-103.

Guam offers various incentives to promote the viability of our local businesses. Bill No. 303 modifies incentives offered to BOS Contractors and Subcontractors to assist Guam-based Contractors and Subcontractors. I commend Senator Sanford's effort to permit Guam-based businesses to compete more effectively with larger off-island interests.

The Administration encourages our local businesses to thrive and prosper with the assistance of various government programs. However, with any tax rebate, I am concerned with the effect it would have on our government's revenue. Bill No. 303 provides a one hundred percent (100%) tax rebate of income tax and gross receipt tax (GRT) to Guam based BOS contractors or subcontractors. With the loss of revenue, we need to work together in implementing revenue enhancements and reducing redundant government operations yet maintaining efficiency through reorganization.

Furthermore, I am concerned that the Bill would not preclude foreign corporations from creating a "dummy" corporation to qualify for the tax benefit allowing foreign owned corporations to take advantage of the tax incentive and further reduce the revenue base of the government, which is clearly not the intent of the Bill. A foreign corporation could take advantage of this tax incentive by owning less than fifty percent (50%) of the local business.

Our island businesses deserve the opportunity to prosper from the commercial activities on the military bases on Guam. The Administration is committed to working with *I Liheslaturan Guåhan* to provide incentives to our people without jeopardizing valuable government services.

*Sinsere yan Magåhet,*

A handwritten signature in black ink, appearing to read 'Felix P. Camacho', with a long horizontal flourish extending to the right.

**FELIX P. CAMACHO**  
*I Maga'lahaen Guåhan*  
Governor of Guam

Attachment

cc: The Honorable Tina Rose Muña-Barnes  
Senator and Legislative Secretary



**MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN**  
TWENTY-SEVENTH GUAM LEGISLATURE  
155 Hessler Place, Hagåtña, Guam 96910

June 18, 2004

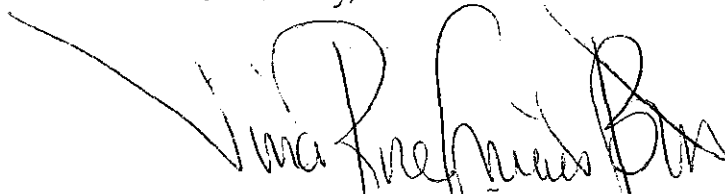
The Honorable Felix P. Camacho  
*I Maga'lahaen Guåhan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill No. 306(COR), and Substitute Bill Nos. 278(COR), 281(COR), 286(LS) and 303(COR) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on June 18, 2004.

Sincerely,

  
TINA ROSE MUÑA BARNES  
Legislative Secretary

Enclosures (5)

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN  
2004 (SECOND) Regular Session

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


This is to certify that Substitute Bill No. 303 (COR), "AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM BY AMENDING §§ 58128.7 AND 54103 OF TITLE 12, AND §26203(k) OF TITLE 11, GUAM CODE ANNOTATED, TO BE KNOWN AS THE 'GUAM COMPETITIVENESS ACT OF 2004,'" was on the 18<sup>th</sup> day of June, 2004, duly and regularly passed.

Attested:

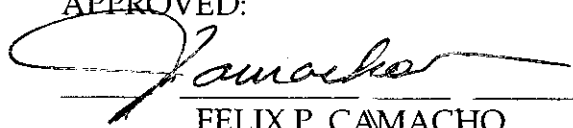
  
Tina Rose Muña Barnes  
Senator and Legislative Secretary

\_\_\_\_\_  
vicente (ben) c. pangelinan  
Speaker

-----  
This Act was received by *I Maga'lahaen Guåhan* this 18<sup>th</sup> day of June, 2004,  
at 4:30 o'clock P.M.

  
Assistant Staff Officer  
*Maga'lahaen's* Office

APPROVED:

  
FELIX P. CAMACHO  
*I Maga'lahaen Guåhan*

Date: 6/30/04

Public Law No. 27-103

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN  
2004 (SECOND) Regular Session

**Bill No. 303 (COR)**

As substituted by the Committee on  
Economic Development, Investments,  
Retirement, Public Works and Regulatory Functions,  
and amended on the Floor.

Introduced by:

Toni Sanford  
v. c. pangelinan  
Mark Forbes  
F. B. Aguon, Jr.  
J. M.S. Brown  
F. R. Cunliffe  
C. Fernandez  
L. F. Kasperbauer  
R. Klitzkie  
L. A. Leon Guerrero  
J. A. Lujan  
T. R. Muña Barnes  
J. M. Quinata  
R. J. Respicio  
Ray Tenorio

**AN ACT TO INCREASE THE COMPETITIVENESS OF  
GUAM-BASED BUSINESSES IN ORDER TO IMPROVE  
THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST  
BUSINESS ACTIVITY IN GUAM BY AMENDING §§ 58128.7  
AND 54103 OF TITLE 12, AND §26203(k) OF TITLE 11,  
GUAM CODE ANNOTATED, TO BE KNOWN AS THE  
"GUAM COMPETITIVENESS ACT OF 2004".**

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

2 **Section 1. Title.** This Act shall be known and shall be cited as the

3 *"Guam Competitiveness Act of 2004".*

1           **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
2 finds that an increase in economic activity on Guam is the best and most  
3 effective way to increase employment, boost tax revenues and improve  
4 government services for residents and visitors. Our island’s location, far  
5 from the United States, frequently increases costs and expenses, providing  
6 additional challenges to many Guam-based businesses, since economic  
7 pressures force nearly every business to continually monitor costs, reduce  
8 expenses and increase productivity in order to keep prices in line with  
9 those of their competitors.

10           *I Liheslaturan Guåhan* finds that our location is often the single most  
11 difficult hurdle to overcome when Guam-based businesses attempt to  
12 compete with off-island interests. Tax incentives are frequently used by  
13 state and local governments across the United States in order to give local  
14 businesses an advantage and improve their ability to compete, and *I*  
15 *Liheslaturan Guåhan* believes that tax incentives may help Guam-based  
16 businesses become more competitive.

17           It is for this reason that *I Liheslaturan Guåhan* intends to provide  
18 additional tax incentives to Guam-based businesses so that they may  
19 compete more effectively, thereby increasing local employment, boosting  
20 local tax revenues and helping to improve local government services for  
21 our people.

22           **Section 3. Income Tax Incentives.** §58128.7 of Division 2 of Title 12,  
23 Guam Code Annotated, is *amended* to read as follows:

24                   “§58128.7. Assistance in Military Outsourcing and  
25                   Downsizing.

1 (a) **Definitions.** For purposes of this Section,

2 (1) **A-76.** 'A-76' means the policy of the United  
3 States government to perform recurrent commercial  
4 activities in the manner established by 'The August 1983  
5 Office of Management and Budget (OMB) Circular No. A-  
6 76,' known as the 'A-76 Performance of Commercial  
7 Activities.'

8 (2) **BOS.** 'BOS' means a Base Operations Services  
9 contract issued to perform such recurring commercial  
10 activities on the military bases on Guam.

11 (3) **BOS Contractor.** 'BOS Contractor' means the  
12 company awarded a BOS contract.

13 (4) **BRAC.** 'BRAC' means the process and  
14 procedure whereby military bases on Guam are realigned  
15 and closed in conformance with Federal law.

16 (5) **Extraneous Capacity.** 'Extraneous Capacity'  
17 means extraneous or excess capacity within the military  
18 or BOS system that could be used to compete with local  
19 businesses, including local public utilities.

20 (6) **GWA.** 'GWA' means the Guam Waterworks  
21 Authority, a utility agency of the government of Guam  
22 which distributes water and disposes of wastewater.

23 (7) **Outsourcing.** 'Outsourcing' means the  
24 contracting of commercial activities on military bases to  
25 private entities, permitting Federal managers to make

1 sound business decisions by making cost and service  
2 comparisons.

3 **(8) Private Water Contractor.** 'Private Water  
4 Contractor' means a beneficiary that operates, in a joint  
5 operating agreement with GWA, a community-wide  
6 water production and distribution system, or a  
7 wastewater disposal system, or both such systems.

8 **(9) SBA.** 'SBA' means the U.S. Small Business  
9 Administration.

10 **(10) Guam-based Contractor or Subcontractor.**  
11 'Guam-based Contractor or Subcontractor' means:

12 i. If in existence three (3) or more years, any  
13 Contractor or Subcontractor licensed to transact  
14 business within Guam whose income reported on  
15 its Guam Territorial income tax return for each of  
16 the three (3) immediately preceding years was at  
17 least forty percent (40%) of the aggregate of the  
18 income required to be reported by such person and  
19 any of its affiliates on any United States or Guam  
20 Territorial income tax return for such taxable years;

21 ii. If in existence less than three (3) years,  
22 stockholders who together hold a majority of shares  
23 or hold a majority interest in any Contractor or  
24 Subcontractor licensed to transact business within  
25 Guam, each of whose income reported on their



1                   Guam Territorial income tax return for each of the  
2                   three (3) immediately preceding taxable years was  
3                   at least forty percent (40%) of the aggregate of the  
4                   income required to be reported by such stockholder  
5                   on any United States or Guam Territorial income  
6                   tax return for such taxable years.

7                   **(b) A-76 BOS Contractor Requirements.** If the BOS  
8                   Contractor is selected and awarded a BOS contract pursuant to  
9                   the A-76 Policy or such subsequent policies, then the Authority  
10                  requires the BOS Contractor:

11                  (i) to give first consideration for employment to  
12                  former civil service employees employed in those  
13                  activities taken over by the BOS Contractor, and that their  
14                  salaries shall be consistent with the United States wages  
15                  in the same positions;

16                  (ii) to avoid utilizing extraneous capacity in  
17                  competition with Guam businesses or with Guam public  
18                  utilities;

19                  (iii) to require all employees and persons working  
20                  on the project, including its Subcontractors and their  
21                  employees, to be U.S. citizens or resident aliens; and

22                  (iv) to require at least seventy-five percent (75%) of  
23                  the BOS Contractor and its Subcontractors to be former  
24                  civil service employees employed in full-time positions in  
25                  those activities taken over by the BOS Contractor. In the

1 event the BOS Contractor develops extraneous capacity,  
2 the Authority, as the Local Redevelopment Agency  
3 ('LRA') under the BRAC process, shall endeavor to have  
4 such extraneous capacity processed through BRAC and  
5 transferred to the LRA. In the event the BOS Contractor  
6 fails to cooperate with the Authority in limiting or  
7 eliminating the adverse effect of such extraneous capacity  
8 on local businesses, such failure may constitute grounds  
9 for suspending or revoking the Qualifying Certificate of  
10 such BOS Contractor pursuant to §58111 of this Chapter.

11 **(c) Rebate on Income Received by Private Water**  
12 **Contractors.** A rebate of up to one hundred percent (100%) of  
13 all income tax paid to the government of Guam by a beneficiary  
14 on income received from operations as a private water  
15 contractor may be issued for a period to run with the term of  
16 the joint operating agreement between the beneficiary and  
17 GWA, and any extensions of such term, for a maximum period  
18 not to exceed twenty (20) consecutive years from the effective  
19 date of a Qualifying Certificate therefore, which period may be  
20 extended in the event the beneficiary maintains its joint  
21 operating agreement for additional periods not to exceed in the  
22 aggregate an additional twenty (20) years.

23 **(d) Rebate on Income Received.** A rebate of up to one  
24 hundred percent (100%) of all income tax paid to the  
25 government of Guam by a beneficiary on income received

1 exclusively from BOS contract operations, as a Guam-based  
2 BOS Contractor on a military base in Guam or a 'Guam-based  
3 Subcontractor' to a BOS Contractor, may be issued for the  
4 period covered under the BOS Contract, or such independent  
5 contract as the entity may have, and may be extended for an  
6 aggregate period not to exceed twenty (20) consecutive years  
7 from the effective date of a Qualifying Certificate therefore, if  
8 beneficiary's operations are duly extended accordingly."

9 **Section 4. Business Privilege Tax Incentives for Guam-Based**  
10 **Support.** Paragraph 34 of Subsection (k) of §26203, Division 2 of Title 11,  
11 Guam Code Annotated, is *amended* to read as follows:

12 "34) Any amounts received by businesses participating in the  
13 Performance of BOS Activities, defined in §58128.7 of Title 12 of the  
14 Guam Code Annotated, as a BOS Contractor, or Subcontractors of the  
15 BOS Contractor, provided that such business is a 'Guam-based  
16 Contractor or Guam-based Subcontractor' for purposes of §58128.7,  
17 Title 12, Guam Code Annotated."

18 **Section 5. Business Development for Guam-Based Support.**  
19 Subsection (b) of §54103, Division 2, of Title 12, Guam Code Annotated, is  
20 *amended* to read as follows:

21 "(b) The Authority shall place special emphasis on assisting  
22 local companies in the proposed outsourcing of BOS functions in  
23 Guam, as defined in §58128.7, Title 12, Guam Code Annotated.  
24 Consequently, pursuant to the powers, duties and responsibilities  
25 given the Authority in Division 2 of Title 12 of the Guam Code

1 Annotated, the Authority is directed to ensure that those Guam-  
2 based business concerns participating in the Performance of BOS  
3 Activities as Contractors or Subcontractors, or otherwise, are granted  
4 special consideration, without necessarily compromising the credit-  
5 worthiness of each specific project in granting them loans or in taking  
6 equity interests therein to encourage, assist, develop and expand this  
7 particular aspect of the business private sector in Guam's economy."

8 **Section 6. Severability.** *If* any provision of this Law or its  
9 application to any person or circumstances is found to be invalid or  
10 contrary to law, such invalidity shall *not* affect other provisions or  
11 applications of this Law which can be given effect without the invalid  
12 provisions or applications, and to this end the provisions of this Law are  
13 severable.



# Office of Senator Antoinette (Toni) Sanford Assistant Majority Leader

TWENTY-SEVENTH GUAM LEGISLATURE

Chairwoman, Committee on Economic Development, Retirement, Investments, Public Works and Regulatory Functions  
Suite 15B Sinajana Mall, 777 Route 4 Sinajana, Guam 96926 / Telephone (671) 479-TONI Fax (671) 479-8667

June 3, 2004

Senator Lou Leon Guerrero  
Chairperson, Committee on Rules & Health  
TWENTY-SEVENTH GUAM LEGISLATURE  
155 Hesler Street  
Hagatna, Guam 96910

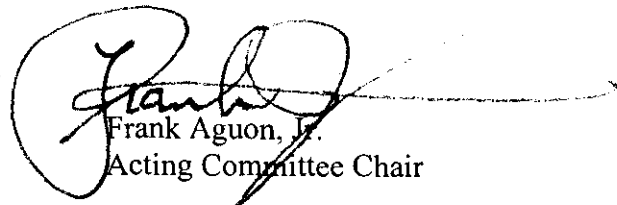
Dear Senator Leon Guerrero,

The Committee on Economic Development, Retirement, Investments, Public Works and Regulatory Functions, to which **BILL NO. 303 AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM** was referred, wishes to report its findings and recommendation **TO DO PASS** as substituted by the Committee.

The voting record is as follows:

TO PASS	<u>7</u>	.....
NOT TO PASS	<u>0</u>	
ABSTAIN	<u>0</u>	
TO PLACE IN INACTIVE FILE	<u>0</u>	

Copies of the Committee report and other pertinent documents are attached.



Frank Aguon, Jr.  
Acting Committee Chair

Attachment.



Office of Senator Antoinette (Toni) Sanford  
Assistant Majority Leader

TWENTY-SEVENTH GUAM LEGISLATURE

Chairwoman, Committee on Economic Development, Retirement, Investments, Public Works and Regulatory Functions  
Suite 15B Sinajana Mall, 777 Route 4 Sinajana, Guam 96926 / Telephone (671) 479-TONI Fax (671) 479-8667

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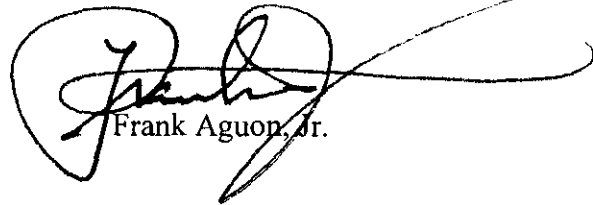
June 3, 2004

MEMORANDUM

TO: Committee Members  
FROM: Chairwoman  
SUBJECT: Committee Report and Voting

Transmitted herewith for your information and action is the report on **BILL NO. 303 AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM.**

Please review the report and take the appropriate action on the voting sheet. Your prompt attention and action on this matter is greatly appreciated. Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

  
Frank Aguon, Jr.

Attachment.



# Office of Senator Antoinette (Toni) Sanford Assistant Majority Leader

TWENTY-SEVENTH GUAM LEGISLATURE

Chairwoman, Committee on Economic Development, Retirement, Investments, Public Works and Regulatory Functions  
Suite 15B Sinajana Mall, 777 Route 4 Sinajana, Guam 96926 / Telephone (671) 479-TONI Fax (671) 479-8667

**BILL NO. 303 AS AMENDED, AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM.**

	TO PASS	NOT TO PASS	TO ABSTAIN	INACTIVE FILE
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<i>AS</i> TONI SANFORD Chairperson	✓			
<i>Frank</i> FRANK B. AGUON, JR. Vice-Chairperson & Acting Chairperson	✓			
<i>Larry Kasperbauer</i> LARRY KASPERBAUER Member				
<i>Lou Leon Guerrero</i> LOU LEON GUERRERO Member	✓			
<i>Jesse A. Lujan</i> JESSE A. LUJAN Member	✓			
<i>Tina Muna-Barnes</i> TINA MUNA-BARNES Member	✓			
<i>John M. Quinata</i> JOHN M. QUINATA Member				
<i>Rory J. Respicio</i> RORY J. RESPICIO Member				
<i>Ben C. Pangelinan</i> BEN C. PANGELINAN Speaker & Ex-officio Member				

**COMMITTEE ON ECONOMIC DEVELOPMENT, RETIREMENT,  
INVESTMENTS, PUBLIC WORKS, AND REGULATORY  
FUNCTIONS**

Twenty-Seventh Guam Legislature  
155 Hesler Street, Hagatna Guam 96910



**COMMITTEE REPORT  
ON**

**BILL NO. 303 AN ACT TO INCREASE THE COMPETITIVENESS  
OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE  
ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS  
ACTIVITY IN GUAM.**

**COMMITTEE MEMBERS**

Chairperson Senator Toni Sanford  
Vice-Chairperson Senator Frank B. Aguon, Jr.

Majority Members

Senator Lou Leon Guerrero  
Senator Tina Muna Barnes  
Senator John M. Quinata  
Senator Rory Respicio  
Speaker ben c. pangelinan (ex-officio)

Minority Members

Senator Jesse A. Lujan  
Senator Larry Kasperbauer



## I. OVERVIEW

### A. Purpose and Essential Elements

#### TITLE:

**AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM.**

#### **Intent**

To amend Guam Base Operating System Legislation to provide tax advantages for local businesses

#### **Section by Section**

**Section 1. Title.** This Act shall be known and shall be cited as the “Guam Competitiveness Act of 2004.”

**Section 2. Legislative Findings and Intent.** Finds that an increase in economic activity in Guam is the best way to increase employment, boost tax revenues and improve government services. Finds that Guam’s location is the most difficult hurdle for Guam-based businesses to overcome to remain competitive with off-island interests. Tax incentives may help Guam-based businesses become more competitive. I Liheslaturan Guahan intends to provide additional tax incentives to Guam-based businesses so that they may compete more effectively, thereby increasing employment, boosting tax revenues and helping to improve local government services.

**Section 3. Income Tax Incentives.** Amends §58128.7 of Division 2 of Title 12 Guam Code Annotated, Assistance in Military Outsourcing and Downsizing (GEDCA statute), as follows:

(a) Definitions modified include:

(2) BOS;

(3) BOS Contractor;

(7) Outsourcing;

(8) Private Water Contractor;

and definition added is (10) Guam-based Contractor or Subcontractor, which defines such an entity as one either in existence 3 or more years with at least 40% of gross income earned and reported having been earned in Guam; or if in existence less than 3 years, then the stockholders who together hold a majority of shares or majority interest in the business with at least 40% of gross income earned and reported having been earned in Guam for the past 3 years.

(b) deletes rebates for BOS Contractor but leaves requirements for BOS Contractor who must:

(i) give first consideration for employment to former civil service employees in jobs taken over by the BOS Contractor; salaries shall be consistent with the Mainland U.S. wages in the same positions;

- (ii) avoid utilizing extraneous capacity in competition with Guam businesses or with Guam utilities;
  - (iii) require all employees and persons working on the project, including its subcontractors and their employees, to be U.S. Citizens or resident aliens; and
  - (iv) require at least seventy-five percent (75%) of the BOS Contractor and its subcontractors to be former civil service employees employed in full-time positions in those activities taken over by the BOS Contractor. BOS Contractor can lose qualifying certificate if they do not transfer extraneous capacity to the LRA which in this case is GEDCA.
- (c) Rebate on Income Received by Private Water Contractors is unchanged;
- (d) Rebate on Income Received by Small Business Entity is modified to make language more specific regarding "Guam-based subcontractors."

**Section 4.** Amends Paragraph 34 of Section (k) of §26203, Division 2, of Title 11, Guam Code Annotated (tax code) to identify "Guam-based" contractors and subcontractors as eligible for tax incentives.

**Section 5.** Amends Section (b) of §54103, Division 2, of Title 12, Guam Code Annotated (GEDCA statute) to make sure that small business concerns participating in Performance of BOS Activities as contractors or subcontractors are granted special consideration.

**Section 6.** Severability Clause.

### **B. Public Hearing Conducted**

The Committee on Economic Development, Retirement, Investments, Public Works and Regulatory Functions conducted a public hearing at 9:00 am, Tuesday, June 1, 2004 in the Legislative Public Hearing Room, I Liheslaturan Guahan, in Hagatna. Public notice was provided on May 25, 2004 and May 28, 2004.

Committee Chairwoman Toni Sanford called the public hearing to order at 2.25 pm in the Legislative Public Hearing Room. Committee members present were: Speaker Ben C. Pangelinan. Non-committee members present were Senators Robert Klitzkie and Joanne Brown.

Subsequent to the public hearing and on June 3, 2004, the Committee received written testimony in opposition to Bill 303 (attached and summarized in Section II of this report).

## **II. SUMMARY OF TESTIMONY**

Senator Sanford stated the intent of Bill 303 is to try to allow for a greater success story for the Guam based business where federal contracts are to be let. She explained current statutes were enacted at the time the A-76 sub-contracting process was ongoing, and some modifications proposed and contained in Bill 303 attempts to update the statutory language to meet current and future needs of the community. Section 3 tries to define

BOS meaning base operating services contractor and it tries to add new subsection 10 to define a Guam based contractor or sub contractor.

Senator Sanford stated by definition, a Guam based contractor or subcontractor is an entity that has been in business and has filed at least last 3 preceding years of Guam income taxes returns here and show that at least 40 percent of their income is derived from Guam source revenues. In the event that this is a new entity and that has not had three years of history in business, then we are going to request that the major stockholders meet the same criteria and that they individually have filed Guam income tax returns for the last 3 years; at least 40% of their income is derived from Guam source.

Senator Sanford stated the opportunity for the prime contractor to have availed themselves of tax incentives through the qualifying certificates via the Guam Economic Development and Commerce Authority was put in place as a carrot for the prime contractors back in the A-76 subletting process. However, because none of the prime contractors availed themselves to this tax incentive - I think they perceived applying for the incentive as having had too many strings attached - we saw it fitting to remove that section in the current law and expand this section that will allow greater participation of local businesses.

Senator Sanford stated it used to be that any subcontractor would receive the 4% GRT tax exemption from revenues generated from this particular outsourcing of federal contracts. Bill 303 streamlines that local tax giveaway and gives it to the Guam based businesses which adds a new definition to the statute so we can allow the entities that have been here or the individuals that have lived here; are vested in the community and have made Guam their home; have really invested through thick, and thin throughout our financial challenges and created employment for our people. This amendment is intended to assist them, in being a little more competitive when they go out to bid for federal contract and gives them a 4% advantage over somebody that is not a Guam based business. I have received email from some local businesses and they have asked me to entertain the definition of giving it to small businesses. Just leave it to Guam business will not qualify under the definition of the U.S. Small Business. Yet they have been here a long time and employing our people and creating economic activity for our families. It also removes anything specific to say that this particular statute relates to only A-76 and it makes it more general and intended to be applied to all base operation services contract that will happen now and in the future.

Mr. Monty McDowell CEO of Advance Management and of Pacific Technical Services Guam appeared before the Committee and provided oral testimony in favor of Bill 303. Mr. McDowell stated both his companies are locally owned 'Chamorro-owned and are small businesses. I am very interested in seeing this bill passed and was a bit of a driving force because I went to GEDCA and met with them to see if there is any way they could assist us, which your bill is trying to do. This is trying to give the local businesses on Guam an advantage with the prospective BOS contractor.

Mr. McDowell stated the intention of Bill 303 is to put us in an advantageous position with these prime contractors; solidifying relationships with businesses and occasions taking those businesses when they capture more markets in other areas. Guam businesses here would like to get the business for ourselves. We are very selfish because this is our rice bowl for whoever ends up being the prime contractor. What can we do to differentiate ourselves from those people? What would make it more advantageous for the prime contractor? And to provide them a lower price is obviously the incentive that this bill would offer so if we could be 4% more competitive this particular BOS contract is going to be cost reimbursable. Cost are fixed, they tell you what the cost will be, by either the service contract that weighs determination or the collective bargaining agreement with what Raytheon currently operates under. Either one of those is what your GNA is going to be what it is, so what are you going to do? They will reimburse the cost of it and then you make the profit on the award fee year. if your cost can be reduced by any amount then it would be more attractive.

Mr. McDowell stated if the Legislature intends to act on Bill 303, then they should act immediately - we are doing our pricing right now, those of us businesses who are being entertained by the prospective BOS contractors - the bids need to be in June 22<sup>nd</sup> the drop dead date is this month.

Referring to page 2 of the bill under definitions, Mr. McDowell asked whether the terms 'A-76' are still necessary as he believes the 'A-76' contract was already awarded to Raytheon and that contract is history - there will never be another one unless they do Andersen (Airforce Base)? Senator Sanford responded we do not know if there is any ongoing contracts that are still open with the A-76.

Mr. McDowell why is there language on page 4 talking about a private water contractor if the bill is intended to impact the BOS contract, due in June 22<sup>nd</sup> and intended to give a price advantage to local businesses of Guam? Why does the bill make references to A-76, BRAC, and private water contractors? Referring to the bottom of page 6, 'If the BOS contractor selected and awarded a BOS contract pursuant to the A-76 policy, " Mr. McDowell stated we don't have an A-76. Then (i) sub paragraph says "first consideration for employment to former civil service employees..." there are no civil employees. That is already done with a few years ago. In BOS contractor and their salary shall be consistent with the mainland us wages", you can't tell them the wages are. Mr. McDowell stated the federal government says you will pay in accordance with the wage determination or the collective bargaining agreement that the union has.

Senator Sanford stated the reason why we left this language in place in the statute is because we were thinking that if the other arm of the military decides to go out then it would be following an A-76 process where you go from military to a prime (outsourced private contractor) and leaving that language in the statute will impact the intent of Bill 303.

Mr. McDowell stated that there are many entities that ended this at Anderson Air Force Base that they are considering for A-76 and asked whether that is the intent of the retaining the language in the bill? Senator Sanford affirmed.

Mr. McDowell stated that he thought the bill was solely intended to enhance the position of Guam businesses for the current BOS contractor that is due on June 22, 2004. Senator Sanford stated that this is to change current statute so that it can accommodate the new intent of trying to streamline the giveaway of the 4% GRT. That is the intent of this bill and what ever relates to A-76 we will leave in there, because you never know if it going to happen again.

Mr. McDowell asked what the references to 'private water contractor'? Senator Sanford stated that is language that relates to the A-76 process. Mr. McDowell stated that he would like to prepare and submit written testimony on Bill 303. It's the intent to enhance the business posture of Guam businesses as contained in Bill 303 that is the most important provision he is most concerned about. If leaving these references in the bill are necessary if other entities of the military or federal government do get A-76 then that is fine.

Senator Sanford stated that you would not want try and put it back after we have removed it this time.

Mr. McDowell stated that you need to take 75% of existing employees and things like that. The military is required by the federal acquisition regulation that the first right of refusal is those displaced employees. So dictating from the local level, I don't think it is necessary when the federal is already dictating. Senator Sanford agreed while that language is not necessary for the BOS, it is still needed for the A-76.

Mr. McDowell stated the pricing deadlines are due to the prime contractors by the first part of next week and if Bill 303 does not become effective before mid-June than the provisions that would benefit small businesses participating would be moot. He stated we in the private sector probably did not work fast enough with our elected officials to get this measure approved in time. However, if the project gets delayed, then it would not be too late. It will be moot if it is going to become effective June 22<sup>nd</sup>. You never know with the federal government. They have delayed every BOS contract, but they claim they cannot delay this particular one, otherwise it will never get to a January 1<sup>st</sup> start date 2005. Things have moved to the right many times before and it could move to the right now.

Speaker Pangelinan had no comments.

Senator Klitzkie stated that the convention of bill drafting is that when you are amending a statute, the new matter - the words that you're adding are underlined and the words you are taking out or repealing have strikethroughs. Language that does not have an underline or a strikethrough and a section that says it is amending the law and only sets forth the law as it is. Some of the things that you commented on are the law as it

currently is. The real action is Section 4 where a credit against our GRT is provided to Guam based contractors or subcontractors. Section 5 provides for a liberal lending policy in the part of GEDCA and Section 3 provides a 100% rebate on income tax for small businesses – but it is amended to include a Guam based sub-contractor. The complicated stuff really telling you what a Guam based subcontractor is.

Senator Sanford stated that what section b does is it removes the tax benefit for the prime. Bill 303 essentially streamlines the giveaway to the 4% GRT, which is already in place. Senator Klitzkie had stated your bid doesn't include the GRT and makes your company far more competitive.

Senator Sanford stated that the statutes allow it already, also allows the others that are competing with the Guam based the same tax credit and by streamlining it make him (the local Guam based businesses) more competitive.

Senator Klitzkie asked whether that is why the complicated definitional section must be the way it is? Mr. McDowell stated when Senator Sanford was writing this bill and circulating this through the business community, the question was raised, Raytheon Technical Services Guam, is that a local company that came to Guam? Or was it incorporated in Guam? We don't think they should be. I've been doing business on Guam for 14 years and I should be given more consideration. Mr. McDowell stated I want to commend you on the efforts for services for the local people with local businesses that have been established for a while, this has given them an advantage. This one defines local business. It gives a business preference to Guam businesses that have been established for at least three years.

Senator Joanne Brown had no comments

Senator Sanford stated that we are certainly trying to expedite this bill so that we can entertain this in our upcoming session so we will do our very best and hopefully when you do submit your bid that you will get the benefit of the 4% down the road.

Subsequent to the public hearing and on June 3, 2004 Mr. Artemio Ilagan, Director of Revenue and Taxation submitted written testimony in opposition to Bill 303. He stated that the intent of Bill 303 is to exempt Guam-based businesses' income from gross receipts tax for services performed on Base Operations Services contracts. The bill points out that our island's location is the single most difficult hurdle to overcome when Guam-based businesses attempt to compete with off-island interests and that tax incentives are frequently used by state and local governments across the United States in order to give local businesses an advantage and improve their ability to compete.

Mr. Ilagan testimony stated although it is commendable that the Legislature would like to even the playing field among the contractors performing services on the military bases on Guam, the exemption from the Gross Receipts taxes for these contractors will further erode the finances of the Government of Guam. Further cuts in taxes will gravely affect

the services that the government can provide. In FY 2004, the budget for education, health, public safety and welfare were insufficient.

Mr. Ilagan stated that we all suffered from the 32-hour workweek, freeze in salary increments and reduction in benefits. The government employees were not the only ones who have suffered. Even the retirees had their supplemental benefits greatly reduced due to the shrinking of the general fund. A further reduction of the general fund will further reduce not only the benefits but also the basic necessities that our people need.

Mr. Ilagan stated in his written testimony that recently, we received news that \$80M in military construction contracts has been approved for Guam. GRT on the \$80M is \$3.2M and if 50% of the jobs are sub-contracted to Guam-based contractors, the Government stands to lose more than \$1.6M in Gross Receipts Tax. The bill, as written in its present form, exempts 100% of the earnings of a qualified Guam-based business from Gross Receipts Tax as long as 40% of their income is from BOS contracts. Where is the equity here? Is this fair to other contractors who are not doing jobs under the BOS contract? Why not exempt only 40% of the contractor's income from Gross Receipts Tax instead of 100%?

Mr. Ilagan's testimony stated Bill 303 will require additional personnel at the Department of Revenue and Taxation because the government will have to make sure that 40% of the income of the Guam based businesses are from BOS contracts -- tax returns (both income and Gross Receipts Tax) will have to be examined. Mr. Ilagan stated the Department of Revenue and Taxation is opposed to any bill that will reduce the revenue base of the government and asked the Committee to remember that the government of Guam still owes \$72 million for 2003 refunds; \$22 million for 2002 refunds, vendor payments and Guam Economic Development and Commerce Authority (GEDCA) rebates.

### **III. COMMITTEE FINDINGS**

The Committee on Economic Development, Retirement, Insurance, Public Works, and Regulatory Functions finds the provisions contained in Bill 303 are consistent with established economic and tax policies relative to strengthening the competitiveness of Guam based businesses to participate in Guam's military economy. Bill 303 amends existing law by clarifying definitions and eligibility criteria improve the effectiveness in using tax credits as a tool to increase employment, boost tax revenues and ultimately, improve public services.

While the potential impact to GRT may have been estimated to reach \$1.6 million, the Committee conversely finds the potential reinvestment and circulation of tax credits granted to eligible Guam based businesses would also provide a viable and added economic stimulus to the local economy.

#### IV. COMMITTEE RECOMMENDATIONS

The Committee on Economic Development, Retirement, Investments, Public Works, and Regulatory Functions recommends Bill No. 303 as amended by the Committee to be reported out with a recommendation TO DO PASS.







Dipattamenton Kontriksiyon yan Adu'ana

DEPARTMENT OF

# REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guahan

FELIX P. CAMACHO, Governor Maga'lahi  
KALEO S. MOYLAN, Lt. Governor Tifiente Gubetnadot

ARTEMIO B. ILAGAN, Director  
Direktot  
JOHN P. CAMACHO., Deputy Director  
Segundo Direktot

OFFICE OF SENATOR  
ANTOINETTE (TONI) SANFORD  
JUN 03 2004  
4630

JUN 03 2004

TIME: \_\_\_\_\_ AM ) PM )  
REC'D BY: \_\_\_\_\_

The Honorable Antoinette(Toni) Sanford  
Assistant Majority Leader and Chairperson  
Committee on Economic Development, Retirement,  
Investments, Public Works and Regulatory Functions  
Twenty-Seventh Guam Legislature  
Hagatna, Guam 96912

RE: BILL No. 303 (COR) "AN ACT TO INCREASE THE COMPETITIVENESS OF GUAM-BASED BUSINESSES IN ORDER TO IMPROVE THE ECONOMIC CLIMATE, CREATE JOBS AND BOOST BUSINESS ACTIVITY IN GUAM."

Dear Madam Chairperson:

My name is Artemio B. Ilagan. I am the Director of the Department of Revenue and Taxation.

The intent of Bill 303 is to exempt Guam-based businesses' income from gross receipts tax for services performed on Base Operations Services contracts. The bill points out that our island's location is the single most difficult hurdle to overcome when Guam-based businesses attempt to compete with off-island interests and that tax incentives are frequently used by state and local governments across the United States in order to give local businesses an advantage and improve their ability to compete.

Although it is commendable that the Legislature would like to even the playing field among the contractors performing services on the military bases on Guam, the exemption from the Gross Receipts taxes for these contractors will further erode the finances of the Government of Guam. Further cuts in taxes will gravely affect the services that the government can provide. In FY 2004, the budgets for education, health, public safety and welfare were insufficient.

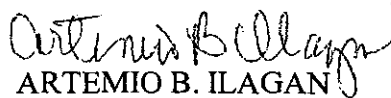
We have all suffered from the 32 hour work week, freeze in salary increments and reduction in benefits. The government employees were not the only ones who have suffered. Even the retirees had their supplemental benefits greatly reduced due to the shrinking of the general fund. A further reduction of the general fund will further reduce not only the benefits but also the basic necessities that our people need.

Recently, we received news that \$80M in military construction contracts has been approved for Guam. GRT on the \$80M is \$3.2M and if 50% of the jobs are sub-contracted to Guam-based contractors, the Government stands to lose more than \$1.6M in Gross Receipts Tax. The bill, as written in its present form, exempts 100% of the earnings of a qualified Guam-based business from Gross Receipts tax as long as 40% of their income is from BOS contracts. Where is the equity here? Is this fair to other contractors who are not doing jobs under the BOS contract? Why not exempt only 40% of the contractor's income from Gross Receipts tax instead of 100%?

Additionally, due to the fact that the government will have to make sure that 40% of the income of the Guam based businesses are from BOS contracts, tax returns (both income and Gross Receipts Tax) will have to be examined: therefore, additional personnel will be needed by the Department.

The Department of Revenue & Taxation is against any bill that will reduce the revenue base of the government. Please remember that the Government still owes \$72M for 2003 refunds, \$22M for 2002 refunds, vendor payments and GEDA rebates.

Sincerely,

  
ARTEMIO B. ILAGAN  
Director