



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

26 OCT 2007

Honorable Edward J.B. Calvo
Acting Speaker
I Mina' Bente Nuebe Na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

29-07-1004
Office of the Speaker

MARK FORBES

Date: 10/26/07
Time: 4:54pm
Rec'd by: JL
Print Name: Tom U

Dear Mr. Speaker:

Delivered By: Tom

Please find attached Bill No. 132, "AN ACT TO AMEND TITLE 21GCA § 80104(E) OF THE GUAM CODE ANNOTATED RELATIVE TO THE POWERS AND DUTIES OF THE ANCESTRAL LANDS COMMISSION TO MANAGE AND DEVELOP FORMER SPANISH CROWN LANDS AND OTHER NON-ANCESTRAL LANDS," which I have vetoed.

While I understand the intent of the Legislature to "ensure maximization of just compensation for those dispossessed ancestral landowners." Bill No. 132 will in fact have the effect of limiting the Ancestral Lands Commission's ability to fulfill this mandate.

Upon review by my Legislative Review Committee with input from the Ancestral Lands Commission, we also find Bill No. 132 to raise more questions than it addresses. It is unclear how the provision "without the approval of I Liheslatura through provisions of the Administrative Adjudication Act," is intended to be applied; to restrict the manner in which future the Legislature may approve leases exceeding fifty (50) years in duration, or whether the qualification applies to restrict the Commission's authority to issue any leases, even with a duration of less than fifty (50) years by requiring compliance with an undefined procedure within the Administrative Adjudication Law

If this phrase is intended to restrict the Legislature's authority to approve leases exceeding fifty (50) years in duration, this restriction violates the Organic Act of Guam. This Legislature cannot bind future Legislatures to act in a manner consistent with the Administrative Adjudication Law in an attempt to restrict future Legislatures' ability to take legislative action. The Organic Act is the sole source for defining and limiting the legislative power and function of the Legislature. A current Legislature cannot restrict the legislative powers of future Legislature's as Bill No. 132 appears to attempt.

The alternative in interpretation of the phrase is that it restricts the Commission's and not the Legislature ability to enter into leases, by requiring compliance with the Administrative Adjudication Law. This interpretation is even more harmful to the overall purpose of the Commission. Because the phrase lacks clarity, it will create uncertainty over the Commission's authority to enter into leases even when the leases are for the less than fifty (50) years in duration.

There is no guidance in the Bill how the Commission is expected to comply with the Administrative Adjudication Law in issuing leases. Administrative adjudication, as defined by the Administrative Adjudication Law "means that administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties." 5 G.C.A. §9108. It is unclear in the Bill how an "administrative adjudication" process will be applied by the Commission to lease crown land. There is also no guidance in the Bill defining whether the Administrative Adjudication Law must be followed even for leases with less than fifty (50) years in duration.

This confusion dilutes the Commission's clear authority to act in signing any leases. This potential ambiguity to the Commission's clear authority to act, will necessarily translate in to a lower level of interest in entering into any leasehold arrangements by private parties who will not wish to assume the risk of a contest to their leasehold interests. Ultimately, any lease executed by the Commission, due to this extra risk to potential lessees, will result in lower leasehold revenues to the Commission and ultimately lower revenues to the dispossessed ancestral landowners. Such a situation undermines the statutorily mandated function of the Commission to maximize revenues from the crown ancestral land under its jurisdiction "to provide just compensation for those dispossessed ancestral landowners."

By requiring the Legislature's approval for leases exceeding fifty (50) years in duration, Bill No. 132 politicizes the leasing process for crown ancestral lands under the Commission's control.

The fundamental objective that should guide our actions and concerns in relation to the Commission and its leasing activities is to ensure that the Commission has the tools to maximize revenues from crown ancestral lands to create the largest possible revenue pool to provide the highest possible compensation to "dispossessed ancestral landowner[s]". The Commission, in conjunction with the Guam Economic Development and Commerce Authority, has the specialized expertise and authority to fulfill this mandate. Politicizing the leasing process undermines the Commission's ability to negotiate optimal revenue generating lease terms with any potential lessees to maximize revenues from crown ancestral lands under the Commission's control. If Bill No. 132 were in fact to become law, it would likely reduce the compensation available to the dispossessed ancestral landowners by making it more difficult for the Commission to maximize its leasehold revenues. It simply dilutes and contradicts the basic purpose for which the Commission was initially established and does this for indeterminate benefits.

There is additional cause for concern with the philosophical intent underpinning Bill No. 132. It seeks to undermine the authority of a Commission previously established by Legislature and

provided with the specific expertise and mandate to maximize use of crown ancestral land, and to use the “resulting income...to provide just compensation for those dispossessed landowners.” The Commission, in conjunction with the Guam Economic Development and Commerce Authority, who acts as consultant and guide to the Commission, are jointly best suited to carry out this mandate to maximize the revenues from crown ancestral lands to benefit “dispossessed ancestral landowner[s].” Maintaining the integrity of the Commission’s mandate is critical to allowing the Commission to maximize its leasehold revenues. Maximizing leasehold revenues to enhance compensation to the dispossessed ancestral landowners is critical to doing justice for the dispossessed ancestral landowners. This bill only undermines the Commission’s mandate and ultimately the dispossessed ancestral landowners will suffer its consequences.

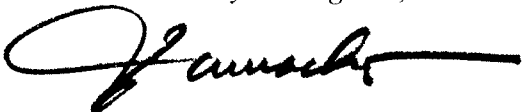
In the final analysis, the bill reflects a fundamental philosophical contradiction. Whether intentional or not, it usurps the Commissioner’s authority with the purpose of preserving a semblance of public ownership and control over crown ancestral lands. However, the Legislature recognized that it would be in the greater public interest to compensate these dispossessed ancestral landowners for the fact that their lands cannot be returned and by the creation of the Commission and its mandates the government acknowledged and seeks to rectify this inequity.

Therefore, the overriding concern should be to ensure that revenues from crown ancestral lands are maximized to provide maximum benefits to the dispossessed ancestral landowners. Bill No. 132 would in fact have the opposite effect of reducing the Commission’s ability to achieve the greatest revenue yield for these dispossessed ancestral landowners.

In closing, I want to reiterate that it was the Legislature’s intent to allow the Commission to obtain maximum economic returns from leasing crown ancestral lands. This was to allow the Commission to provide comparable benefits to the dispossessed ancestral landowners as that received by ancestral landowners whose land had been returned. To accomplishing this aim, the Commission was provided with the necessary authority to lease crown ancestral lands at optimal terms and for optimal revenues. By restricting the Commission’s ability to maximize revenues from optimally negotiated lease terms that may exceed fifty (50) year, the Bill once again, restricts and confiscates the potential economic benefits that the dispossessed ancestral landowners were eagerly expecting and are entitled to receive Plain and simply put, crown ancestral lands belong to the dispossessed ancestral landowners, and are held in trust for them by the Commission. The Legislature must not forget this basic intention in creating the Commission with the power it has to lease crown ancestral land on optimal terms.

For these reasons I have vetoed Bill No. 132.

Sinseru yan Magâhet,



FELIX P. CAMACHO
I Maga 'lâhen Guâhan
Governor of Guam

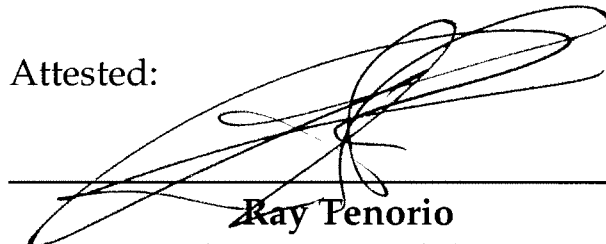
cc: All Senators

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session


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

This is to certify that Substitute Bill No. 132 (EC), "AN ACT TO AMEND TITLE 21 GCA § 80104(e), RELATIVE TO THE POWERS AND DUTIES OF THE ANCESTRAL LANDS COMMISSION TO MANAGE AND DEVELOP FORMER SPANISH CROWN LANDS AND OTHER NON-ANCESTRAL LANDS," was on the 10th day of October 2007, duly and regularly passed.

Attested:



Ray Tenorio
Senator and Secretary of the Legislature



Edward J.B. Calvo
Acting Speaker


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This Act was received by *I Maga'lahaen Guåhan* this 15 day of Oct, 2007, at 1:45 o'clock P.M.

APPROVED:

VETO

FELIX P. CAMACHO
I Maga'lahaen Guåhan



Assistant Staff Officer
Maga'lahaen's Office

Date: _____

Public Law No. _____

I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
(2007) FIRST REGULAR SESSION

Bill No. 132 (EC)

As substituted by the Committee on
Education, General & Omnibus Affairs and
amended.

Introduced by:

Judith Paulette Guthertz

R. J. Respicio

J. T. Won Pat

Tina Rose Muña Barnes

David L.G. Shimizu

Frank F. Blas, Jr.

Edward J.B. Calvo

James V. Espaldon

Mark Forbes

Frank T. Ishizaki

J. A. Lujan

A. B. Palacios, Sr.

v. c. pangelinan

Ray Tenorio

A. R. Unpingco

**AN ACT TO *AMEND* TITLE 21 GCA § 80104(e),
RELATIVE TO THE POWERS AND DUTIES OF
THE ANCESTRAL LANDS COMMISSION TO
MANAGE AND DEVELOP FORMER SPANISH
CROWN LANDS AND OTHER NON-ANCESTRAL
LANDS.**

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

2 **Section 1. Legislative Intent.** It is the intent of *I Liheslaturan Guåhan* to
3 ensure that the management and development of former Spanish Crown Lands and
4 other non-ancestral lands under the purview of the Ancestral Lands Commission is
5 not subverted or destabilized by outside interests, especially in this era of land
6 speculation and rising property values. Passage of this Act does not reflect a lack

1 of confidence in the Commission or its structure by *I Liheslaturan Guåhan*, but is
2 necessary to ensure maximization of just compensation for dispossessed ancestral
3 landowners.

4 **Section 2.** Title 21 GCA, § 80104, Subsection (e) is hereby *amended* as
5 follows:

6 “(e) Land Bank. The Commission *shall* take title, as Trustees, of
7 former Spanish Crown Lands and other non-ancestral lands that are
8 conveyed by the Federal Government to the Government of Guam after the
9 effective date of this Act, on behalf of ancestral landowners who, by virtue
10 of continued government or public benefit use, cannot regain possession or
11 title to their ancestral lands.

12 The Commission *shall* establish a Guam-based trust to administer all
13 assets and revenues of the land bank of the aforementioned lands and
14 manage the lands, and act as the developer of the lands, *if necessary*, to the
15 highest and best use with the following provision:

16 (1) The Commission *shall* only be authorized to make,
17 negotiate and enter into a lease, or issue a permit or license for the use
18 of the real property described herein for a term not to exceed fifty (50)
19 years without the approval of *I Liheslatura* through provisions of the
20 Administrative Adjudication Act.

21 The Commission *shall* establish rules and regulations pursuant to the
22 Administrative Adjudication Law for the Guam-based trust. The resulting
23 income *shall* be used to provide just compensation for those dispossessed
24 ancestral landowners.”