



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor



07 SEP 2007

The Honorable Edward J.C. Calvo
Acting Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

29-07-0825
Office of the Speaker

MARK FORBES

Date: 9/7/07

Time: 5:30pm

Rec'd by: [Signature]

Print Name: Carl Airate

Dear Mr. Speaker:

Transmitted herewith is Bill No. 62 "AN ACT TO IMPOSE A TEMPORARY MORATORIUM ON THE ISSUANCE, EXTENSION, RENEWAL AND MODIFICATION OF QUALIFYING CERTIFICATES; AND TO ADD A NEW §58148 TO CHAPTER 58, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO CREATING A QUALIFYING CERTIFICATE ASSESSMENT WORKGROUP," which I have vetoed.

While we acknowledge the need to review and improve the laws governing Guam's Qualifying Certificates as well as enforcement of the QC provisions, we believe it would be imprudent to place an indiscriminate moratorium on the entire QC program for an indefinite period. The author of the bill agrees that some industries still require support and incentives as he exempted captive insurance. The same acknowledgement should be made for other developing industries.

Rather than suspend an on-going and successful program, we recommend that the Qualifying Certificate law be amended so that the program will still be made available to new investments and industries while being reviewed and improved to be more in-line with the needs of our changing economy.

With the anticipated military buildup over the next few years, investors from all over the globe are now considering Guam as a potential investment domicile. Currently, the Qualifying Certificate program is the "only" investment incentive Guam offers in the now highly competitive global market.

At the time the Qualifying Certificate program was adopted by law, Guam did not have the diversified private sector it has today. The past focus of the program had been on our

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young tourism and light manufacturing industries. Clearly, the program was successful in establishing one of the main pillars of our economy, tourism, which now boasts of portfolio of 15 hotels and numerous services and attractions. In this industry, we have documented the creation of jobs with premium training, competitive wages and employee benefits packages. Guam now enjoys world class facilities and an improved infrastructure. The program also supports the promotion of Guam's culture, local products, services and art.

Since 1965, more than \$1.5 billion in tax revenues from payroll, GRT, Withholding and Use taxes have been realized as a direct result of industries and businesses established under Guam's Qualifying Certificate program.

Even greater potential exists in our new economy, as hundreds of international businesses are looking to Guam as a potential investment domicile. However, in order for companies to remain competitive while using Guam as their base to increase their global market share, the QC program must be amended to meet the realities of doing business in today's global marketplace. Eliminating the program in its entirety would take away our advantage in a time of great opportunity.

In addition to being disadvantageous to our island, the wholesale moratorium on QC's proposed in Bill No. 62 would subject the government to lawsuits that would be too costly to defend.

Bill No. 62 is inorganic and unconstitutional. The Constitution of the United States and the Organic Act of Guam prohibit the enactment of legislation which would impair the terms and conditions of existing contracts, including government contracts such as a Qualifying Certificate. Bill No. 62 would deny QC recipients from exercising the provisions in its contract with the government by placing a moratorium on the modification of current Qualifying Certificates. Further, dictating through legislation amendments to existing government contracts may be denying QC recipients due process protection afforded by the Organic Act. The flurry of costly lawsuits if this bill were to become law would be inevitable and at the expense and detriment of our already financially challenged government.

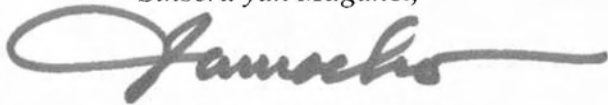
In closing, we respectfully request the opportunity to allow GEDCA to propose for your review, amendments to the current QC law that could be introduced within the next 120 days to update the QC program so that it is advantageous for new investors and Guam's economy. The amendments will target the primary areas of concern in the program:

- Eligibility Categories – to focus programs on new and non-competitive industries;
- Benefits Structure – to ensure that benefits are not provided to existing taxpayers so there will be no continued erosion to Guam's existing tax base;
- Renewal, extensions and modifications – to eliminate the ambiguities in the QC law that allows transfer of benefits for established enterprises;

- Compliance Requirements – would set forth transparent and enforceable rules that are missing or vague under existing QC law i.e. claw-back clause

This would allow Guam to continue our marketing efforts to investors in order to realize greater economic development; allow existing and potential QC program participants to continue viewing Guam as investor friendly; allow the program to service clients with the knowledge that they are protected from arbitrary changes to the benefit structures of the Qualifying Certificates; ensure immediate and proper enforcement of all QC provisions; and provide a restructuring of the program that will be based on rational criteria to balance the needs of investors and the island community.

*Sinseru yan Magåhet,*



**FELIX P. CAMACHO**

*I Maga'låhen Guåhan  
Governor of Guam*

cc: The Honorable Ray Tenorio  
Senator and Legislative Secretary



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

August 27, 2007

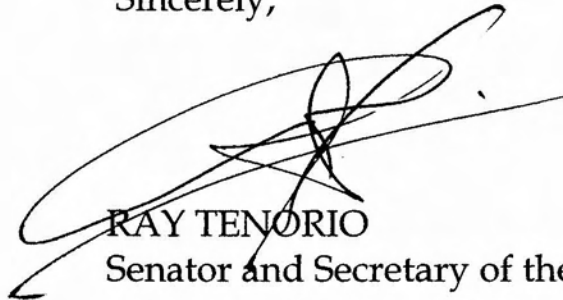
The Honorable Felix P. Camacho  
*I Maga'lahaen Guåhan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 3(LS), 6(LS), 27(EC), 53(EC), 57(EC), 60(EC), 61(EC), 62(EC), 100(LS) and Substitute Bill Nos. 2(LS), 17(EC), 22(EC), 40(EC), 52(EC), 97(LS) & 112(EC) which were passed by *I Mina'Bente Nuebi Na Liheslaturan Guåhan* on August 23, 2007.

Sincerely,



RAY TENORIO  
Senator and Secretary of the Legislature

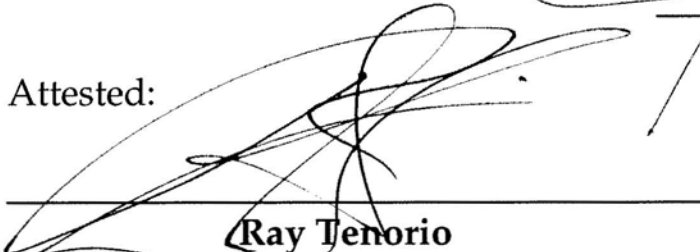
Enclosures (16)

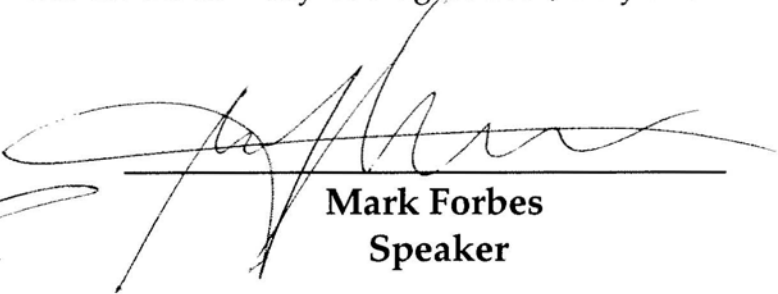
I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN  
2007 (FIRST) Regular Session

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

This is to certify that Bill No. 62 (EC), "AN ACT TO IMPOSE A TEMPORARY MORATORIUM ON THE ISSUANCE, EXTENSION, RENEWAL AND MODIFICATION OF QUALIFYING CERTIFICATES; AND TO ADD A NEW §58148 TO CHAPTER 58, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO CREATING A QUALIFYING CERTIFICATE ASSESSMENT WORKGROUP," was on the 23<sup>rd</sup> day of August 2007, duly and regularly passed.

Attested:

  
\_\_\_\_\_  
**Ray Tenorio**  
Senator and Secretary of the Legislature

  
\_\_\_\_\_  
**Mark Forbes**  
Speaker

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This Act was received by I Maga'lahaen Guåhan this 27<sup>th</sup> day of Aug, 2007, at 2:25 o'clock P.M.

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

APPROVED:

**VETO**

\_\_\_\_\_  
FELIX P. CAMACHO  
I Maga'lahaen Guåhan

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

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

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

**Bill No. 62 (EC)**

As amended by the author.

Introduced by:

v. c. pangelinan  
Judith Paulette Guthertz  
J. T. Won Pat  
Frank F. Blas, Jr.  
James V. Espaldon  
Edward J.B. Calvo  
Mark Forbes  
Frank T. Ishizaki  
J. A. Lujan  
Tina Rose Muña Barnes  
A. B. Palacios, Sr.  
R. J. Respicio  
David L.G. Shimizu  
Ray Tenorio  
A. R. Unpingco

**AN ACT TO IMPOSE A TEMPORARY MORATORIUM ON THE ISSUANCE, EXTENSION, RENEWAL AND MODIFICATION OF QUALIFYING CERTIFICATES; AND TO ADD A NEW §58148 TO CHAPTER 58, DIVISION 2 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO CREATING A QUALIFYING CERTIFICATE ASSESSMENT WORKGROUP.**

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

2 **Section 1. Legislative Findings and Intent.** The Qualifying Certificate  
3 Program administered by the Guam Economic Development and Commerce  
4 Authority is intended to attract new investment and to create new industries in  
5 Guam through the granting of certain tax rebates and tax abatements. A

1 Qualifying Certificate allows tax abatements for up to ten (10) years for real  
2 property tax and an abatement of up to twenty (20) years for gross receipts tax as  
3 set forth in Chapter 58 of Title 12, Guam Code Annotated.

4 The Qualifying Certificate Program was not originally intended to re-issue  
5 Certificates to existing, mature, and established recipients, thereby permitting a  
6 recipient to claim exemptions twice or more. This practice has become the rule  
7 rather than the exception. Therefore, the process of and criteria for granting  
8 Qualifying Certificates must be re-evaluated to restore the initial purpose of  
9 bestowing economic incentives to new investors.

10 Therefore, *I Liheslaturan Guåhan* imposes a temporary moratorium that  
11 suspends the issuance of new Qualifying Certificates and prohibits both the  
12 modification of and the granting of extensions to existing Qualifying Certificates.  
13 This enactment creates a Qualifying Certificate Assessment Workgroup to evaluate  
14 the effectiveness of the Qualifying Certificate Program and to submit  
15 recommendations.

16 **Section 2. Temporary Moratorium on Issuance of New and Extension**  
17 **of Expiring Qualifying Certificates.** (a) There *shall* hereby be a temporary  
18 moratorium placed on the issuance of new Qualifying Certificates and to the  
19 extension, renewal, and modification of current Qualifying Certificates pursuant to  
20 Title 12 GCA, Chapter 58. Until further action by *I Liheslatura*, the Guam  
21 Economic Development and Commerce Authority *shall* not issue new Qualifying  
22 Certificates and *shall* not extend, renew or modify existing Qualifying Certificates.

23 (b) This moratorium *shall* not apply to captive insurance companies writing  
24 risk outside of Guam *or* risk in which coverage is currently not available on Guam.

25 **Section 3.** A new §58148 is hereby *added* to Chapter 58, Division 2 of Title  
26 12 Guam Code Annotated to read as follows:

27 **“§58148. (a) Establishment of the Qualifying Certificate Assessment**

1 **Workgroup.** There is hereby established a Qualifying Certificate Assessment  
2 Workgroup which *shall* conduct a cost and benefit analysis regarding the  
3 effectiveness of Qualifying Certificates previously issued in the Territory and *shall*  
4 formulate a permanent plan for the future of the Qualifying Certificate program.  
5 The Workgroup *shall* issue, *no later than* six (6) months from its initial meeting, a  
6 written report to the Speaker of *I Liheslaturan Guåhan* and *I Maga'lahen Guåhan*  
7 which *shall* include, but *not* be limited to:

- 8 (1) Analysis of the criteria used to grant Qualifying Certificates and  
9 the effectiveness of the program as currently administered by the  
10 Guam Economic Development and Commerce Authority;
- 11 (2) Quantification of revenues from tax rebates and tax abatements  
12 that are deferred *or* lost by the government because of abatements and  
13 rebates;
- 14 (3) Quantification of the economic benefits derived by the granting  
15 of Qualifying Certificates;
- 16 (4) Historical analysis of extending expiring Qualifying  
17 Certificates;
- 18 (5) Breakdown on beneficiaries engaged in different industry  
19 activities availing themselves of Qualifying Certificates;
- 20 (6) Strategies to increase investment other than the Qualifying  
21 Certificate program;
- 22 (7) A plan to restructure the Qualifying Certificate program that  
23 encourages investment, considers greater benefits for the public, and  
24 reviews the tax abatement and tax rebate periods;
- 25 (8) Effectiveness of the monitoring and compliance system  
26 currently in place and recommendations for change;
- 27 (9) Recommendations in draft bill form for consideration by *I*



1            *Liheslatura* to amend or repeal the existing statutes, laws and  
2            regulations governing the Qualifying Certificate Program.

3            The Workgroup may invite government, private sector, community entities  
4            and individuals to testify, submit reports, and provide information that may assist  
5            the Workgroup. The Workgroup is authorized to create sub-committees as needed.

6            **(b) Composition of the Qualifying Certificate Assessment Workgroup.**

7            The Workgroup *shall* be composed of seven (7) members as follows:

8            (1)    The Speaker of *I Liheslaturan Guåhan* or his designee;

9            (2)    The Administrator of the Guam Economic Development and  
10            Commerce Authority;

11            (3)    The Director of the Department of Revenue and Taxation *or* his  
12            designee;

13            (4)    The Director of the Department of Administration *or* his  
14            designee;

15            (5)    The Attorney General of Guam *or* his designee;

16            (6)    A representative from the private business community who  
17            possesses a degree in economics, finance *or* a business related field  
18            appointed by *I Maga'lahi*; and

19            (7)    A representative from the Guam Small Business Development  
20            Center appointed by *I Maga'lahi*.

21            The Chairperson of the Workgroup *shall* be the Administrator of the Guam  
22            Economic Development and Commerce Authority. The Vice Chairperson *shall* be  
23            elected by the Workgroup at its first meeting. All Workgroup meetings *shall* be  
24            subject to the Open Government Law. *If I Maga'lahi* fails to appoint members as  
25            specified above within thirty (30) days of enactment hereof, the Speaker of *I*  
26            *Liheslatura shall* make the appointment.

27            **(c) Term and Vacancy of Qualifying Certificate Assessment**

1 **Workgroup.** The Workgroup *shall* be formed and meet no later than forty-five  
2 (45) days after the enactment hereof. The members of the Workgroup *shall* serve  
3 for the duration of its existence. A vacancy shall be filled in the same manner as  
4 the pertinent original appointment. Workgroup members *shall* serve without  
5 compensation. The Workgroup *shall* be terminated upon submission of its report  
6 to the Speaker of *I Liheslaturan Guåhan* and *I Maga'lahen Guåhan* or one  
7 hundred eighty (180) days after its first meeting, *if* the first meeting is held within  
8 forty-five (45) days after enactment hereof, otherwise the Workgroup *shall*  
9 terminate two hundred fifty (250) days after enactment.

10 **(d) Support Services.** All government of Guam agencies and officers *shall*  
11 assist the Workgroup in the performance of its duties and provide the Workgroup  
12 with appropriate studies, data and other information as it requests.”

13 **Section 4. Effective Date.** Section 2 of this Act *shall* become effective  
14 immediately and *shall* remain in effect until *I Liheslatura* either enacts the  
15 Workgroup’s recommendations *or* lifts the moratorium.