



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

29-07-0805
Office of the Speaker
MARK FORBES

Date: Aug 24, 2007
Time: 5:41 PM
Rec'd by: [Signature]
Print Name: [Signature]

The Honorable Mark Forbes
Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910



24 AUG 2007

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[Handwritten mark]

Dear Mr. Speaker:

Transmitted herewith is Bill. No 68(EC) entitled "AN ACT TO MANDATE THE ISSUANCE OF CERTIFICATES OF CLAIM TO COLA AWARDEES BY ADDING A NEW SUBSECTION 6404(d) TO TITLE 5 GUAM CODE ANNOTATED; SAID ACT TO BE KNOWN AS 'THE COLA RELIEF ACT'" which I have vetoed.

By law, almost any creditor of the government of Guam may request from our government a promissory note. These notes may be used for payment of tax or other obligation due our government. Unfortunately, the issuance of these notes is fraught with devastating effects to our critical government services. Bill No. 68 has the same devastating impact.

This measure will drastically reduce future government anticipated cash collections used to pay for critical and vital services to the people of Guam. One Hundred Twenty Three Million Dollars plus seven percent interest per annum setoff against taxes owed to our government is over twenty-five percent of annual government revenue. Our government's deficit is approximately Five Hundred Million Dollars. The deficit is the same amount as anticipated annual government revenue to operate our government in a fiscal year. Should creditors of our government use these notes authorized in 5 G.C.A. § 22415 and Bill No. 68 to offset their taxes that could amount to an entire year of government services. It would shut down our schools, hospital and police services.

The issuance of certificates without cash to support it potentially would have devastating impact on the entire government of Guam and the health, safety and education of our people. While the intent of Bill 68 acknowledges the limited practical value of the promissory notes authorized in 5 G.C.A. § 22415, it too does not support the issuance of these certificates with actual cash thus creating even more of a debt burden on the already half-a-billion dollar deficit of this government and would further complicate our cash flow crisis.

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Additionally, these notes will not do justice to the COLA class. In order to realize actual cash, the rightful recipients of the past due COLA payments will be made to sell these certificates to other people and companies who will then use the certificates to offset their obligations to our government. If they are able to purchase notes at greatly discounted prices, they will be able to offset their obligations for less than they owe thus creating an even greater cash deficit. In the end, the government would have met its full obligation in payments out and these individuals or companies would have offset their obligations at the full dollar value. The only ones left to suffer, yet again, would be the rightful recipients of the COLA payments who would have been forced to receive only a fraction of their judgment amount in actual cash.

Our government should instead tackle its debt by identifying a repayment source and developing a repayment plan such as the deficit refinancing bond proposal that we have been discussing. The bond would deliver real cash and full payment to each COLA claimant and allow this government to pay down the debt obligation over a manageable period of time.

There are other concerns as well with Bill 68. It does not protect against fraud and theft that potentially would ensue from the issuance of these certificates. It does not address misplaced, lost or destroyed certificates which lead to another potential problem. Bill 68 does not provide security against counterfeit notes. In fact, it only mandates that the government recognize the notes as legal tender for all business conducted with the government.

The Bill does not address the government's inability to issue and track some 4,000 individual notes. The affected agencies, Retirement, Administration and Revenue and Taxation would need to communicate daily to track certificate transactions to monitor the certificate's value and the bearer of the note. Bill 68 would require resources beyond this government's current capacity, especially given the limited enactment period, the re-issuance requirements and the lack of appropriation to support this measure.

Further, the legislation allows the first person to register a transaction to have superior right against all subsequently registered claims to the Certificate even after relinquishing his entire interest in the note.

While I appreciate the Legislature's desire to find immediate solutions to the COLA issue, measures such as Bill 68 would create even greater financial difficulties for this government, potentially threaten critical health, safety and education services and would leave the COLA recipients vulnerable to receiving far less than the courts have rightfully assigned to them.

I encourage the Legislature to consider a bond measure that would give the COLA class immediate cash payment of their entire amount owed to them and also would address the outstanding debts this government owes its taxpayers, the Guam Power Authority and critical vendors.

Sinseru 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'låhen Guåhan
Governor of Guam

cc: The Honorable Ray Tenorio
Senator and Secretary of the Legislature

August 24, 2007

The Honorable Felix P. Camacho
Governor of Guam
Ricardo J. Bordallo Governors Complex
Adelup, Guam 96910

Re: Substitute Bill No. 68 (EC) and Bill No. 149

Dear Governor Camacho:

After a review of the above captioned Bills and discussions with your legal office and bond counsel, we are concerned with their potential impact on the Government of Guam's financial condition.


Bill No. 68, if authorized into public law, could potentially impact the Government's liquidity and deficit. Bill No. 68 allows the COLA class recipients to obtain promissory notes in lieu of payment for the settlement amounts that were awarded as a result of Superior Court Case No. SP0206-93. Our concerns with the Bill are as follows:


- It seems that the intent of the Bill is to provide an alternative to existing law Title 5 GCA §22415, which authorizes the issuance of promissory notes for claims made against the Government. The provisions of Title 5 GCA §22415 can single handedly bankrupt the Government, and must be repealed for the following reasons:
 - Any creditor of the Government who is not paid within 30 days can obtain promissory notes, bearing interest at 7%, which can be used for payment of tax or other obligation due to the Government.
 - According to the judgment, the COLA class has the ability to obtain these promissory notes, in the aggregate amount of \$123 million.
 - Each note recipient has the ability to, not only use their notes against payment of their own taxes due to the Government, but they also have the ability to transfer or sell the notes in the open market to anyone, including corporations, who can then use the notes to offset obligations due to the Government. This includes personal income taxes, corporate income taxes, gross receipts taxes and other taxes or fees levied by the Government.
 - These provisions only magnify the Government's obligations and transfers these existing liabilities to immediate and drastic cuts in Government revenues by \$123 million (approximately ¼ of total Government revenues), and potentially up to the entire amount of obligations owed by the Government (\$524 million), which could potentially make the Government of Guam insolvent.
 - Additionally, it is our understanding that tax payers and vendors, who are owed payments by the Government, can file for these promissory notes at any time.
- As there is no revenue to support the impact of Bill No. 68, the Bill would only further exacerbate the devastation, to the Government's financial condition and ability to provide basic services, that may occur under Title 5 GCA §22415.

Bill No. 149 allows for the assignment of the \$10 million Teleguam Holdings LLC promissory note as partial payment for the judgment resulting from Superior Court Case No. SP0206-93. According to the Bill, the assignment of the note and appropriation of its proceeds shall permit the COLA class to sell, pledge, assign, transfer or otherwise liquidate the note to another party for the purpose of distributing cash payments to eligible COLA class recipients. However, the Teleguam Holdings LLC note is restricted as to assignment and any breach of that covenant will cause the Government to be liable for breach of contract. Another major consideration is that a sale of the notes authorized by both Bill No. 68 and Bill No. 149 to a third party, may result in the COLA claimant receiving less than the full payment of the amount due to him or her under the judgment, since any sale would likely be at a discount.

In summary, we believe that the issuance of promissory notes, only exacerbates the problem and has the potential to shut down the Government. We believe that the best solution to the funding of the COLA judgment is a direct one, and your Fiscal Recovery and Deficit Elimination Plan provides a funding source for the entire amount of the judgment, thereby making both Bill No. 68 and Bill No. 149 unnecessary.

Best Regards,


Margaret Guarino
Managing Director


Aulii Limtiaco
Vice President

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

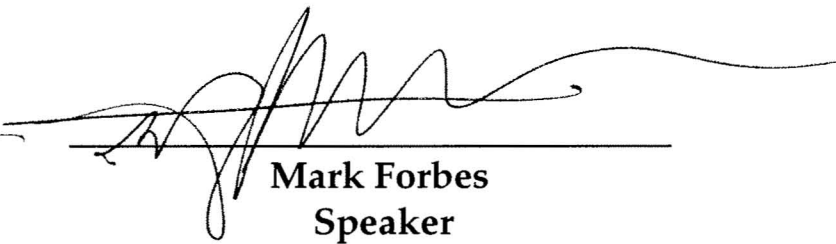
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 68(EC)**, "AN ACT TO MANDATE THE ISSUANCE OF CERTIFICATES OF CLAIM TO COLA AWARDEES BY *ADDING* A NEW SUBSECTION 6404(d) TO TITLE 5 GUAM CODE ANNOTATED; SAID ACT TO BE KNOWN AS "THE COLA RELIEF ACT," was on the 16th day of August, 2007, duly and regularly passed.

Attested:



Ray Tenorio
Senator and Secretary of the Legislature



Mark Forbes
Speaker

This Act was received by *I Maga'lahen Guåhan* this 17TH day of August, 2007, at 2:42 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 68 (EC)

As substituted by the Committee on
Finance, Taxation, Commerce and
Economic Development and
amended on the Floor.

Introduced by:

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

**AN ACT TO MANDATE THE ISSUANCE OF CERTIFICATES
OF CLAIM TO COLA AWARDEES BY *ADDING* A NEW
SUBSECTION 6404(d) TO TITLE 5 GUAM CODE ANNOTATED;
SAID ACT TO BE KNOWN AS “THE COLA RELIEF ACT”.**

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

2 **Section 1. Legislative Intent.** The government of Guam is obligated to pay
3 each member of the successful class of COLA Awardees in *Rios v. Camacho*,
4 Superior Court Case No. SP0206-93. Without sufficient revenue on hand to meet
5 the earlier appropriations and the Judgment in said case, and in recognition of the
6 limited practical value of the promissory notes authorized by Title 5 GCA §22415,

1 *I Liheslatura* hereby authorizes a means to immediately provide claimants with the
2 full monetary value of their awards in a manner consistent with the Judgment and
3 Stipulation and Order of November 21, 2006 in the Rios case. *I Liheslatura*
4 adopts, ratifies and reaffirms the existing Superior Court of Guam Judgment and
5 joins with *I Maga'lahi* in ensuring that the Judgment is not appealed or challenged.
6 This Act compels issuance of a transferable, interest-bearing document stating the
7 settlement amount due each claimant that can be used to secure loans, pay taxes,
8 sell for cash, *or* otherwise conveyed in an open market. This Act *shall* be known
9 as “The COLA Relief Act.”

10 **Section 2.** A new Subsection (d) is *added* to §6404 of Chapter 6 of Title 5
11 Guam Code Annotated to read:

12 **“(d) Certificates Authorized for COLA Settlement.** (1) The
13 Government of Guam *shall* finally and permanently implement the settlement
14 agreement entered into between the Government of Guam and the COLA Class as
15 ordered by the Judgment in Rios v. Camacho, Superior Court Case No. SP0206-
16 93. *I Liheslatura* acknowledges, adopts, and affirms the government’s obligation
17 to immediately pay all monies due and ordered by said Judgment and the
18 Stipulation and Order of November 21, 2006.

19 (2) To expedite payment to COLA claimants in Rios v. Camacho, and in
20 addition to any other available remedies, the Director of Administration *shall* issue
21 to each COLA Awardee, within thirty (30) calendar days after enactment hereof, a
22 serial Certificate of Claim stating the amount due the awardee, excluding
23 attorney’s fees and costs, but including such terms as would affect the redeemable
24 value of the Certificate, such as the rate of interest on undisputed unpaid
25 government claims of seven percent (7%) per annum calculated from date of
26 settlement, that the Certificate is renewable, and confirmation that the entire
27 amount paid upon redemption *shall* be exempt from any and all Guam taxes.

1 Plaintiffs' Attorneys in the Rios case may request and receive a Certificate for no
2 more than fifty percent (50%) of the amount owed them pursuant to the Judgment.
3 The Director of Administration *shall* inscribe on the Certificates only those names
4 of awardees and corresponding amounts provided by the Guam Retirement Fund,
5 minus attorney's fees and costs, and *shall* create and retain a list of Certificates
6 issued. The Director of Administration may request that the Guam Retirement
7 Fund assist in the disbursement of Certificates to claimants, their successors and
8 assignees.

9 (3) Any person who willfully fails to perform a ministerial duty to prepare
10 *or* issue Certificates of Claim in a timely manner as directed herein, *shall* be
11 personally liable for the reasonable attorney's fees and costs incurred by claimants
12 to legally compel performance.

13 (4) Said Certificates are evidence of amounts payable by the government of
14 Guam, and are valid until redeemed *or* replaced by a Certificate issued to a
15 registered successor as subsequently provided in this Section. Certificates may be
16 sold, transferred *or* assigned to a third party. Any transferee *or* of a claimant *shall*
17 have the same rights as said claimant when the government disburses payments
18 pursuant to the judgment in Superior Court Case No. SP0206-93. The holder must
19 surrender the Certificate to receive payment of the award it represents. *If* a
20 Certificate is *not* redeemed by the end of a fiscal year, it *shall* be reissued to the
21 owner upon demand. Upon the sale, assignment *or* transfer of a Certificate of
22 Claim, the purchaser, assignee *or* transferee may register said sale, assignment *or*
23 transfer with the Department of Administration. The first person to register a sale,
24 assignment *or* transfer *shall* have a superior right against all subsequently
25 registered claims to the Certificate and *shall* be substituted by the Superior Court in
26 place of the claimant in Rios v. Camacho, Superior Court Case No. SP0206-93.

1 (5) Nothing in this Subsection restricts or eliminates any legal remedies
2 available to COLA claimants as obligees of the Rios Judgment, including the
3 remedies provided by Title 5 GCA §22415.”