

*I Mina'trentai Singko Na Liheslaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
218-35 (COR)	James C. Moylan	AN ACT TO AMEND § 58104(f) AND TO ADD § 58104.1, BOTH OF CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO CREATING A QUALIFYING CERTIFICATE FOR THE ENTICEMENT AND POTENTIAL ESTABLISHMENT OF A PROCESSING TRADE, AND A DISTRIBUTION, TRANSFORMATION OR FULFILLMENT CENTER INDUSTRY ON GUAM.	10/9/19 9:29 a.m.	11/20/19	Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response	2/11/20 9:00 a.m.	10/30/20 2:27 p.m.	11/18/19	



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response*

October 9, 2020

Honorable Tina Rose Muña Barnes

Speaker

*I Mina'rentai Singko na Liheslaturan Guåhan*

163 Chalan Santo Papa

Hagåtña, Guam 96910

**Via: Honorable Régine Biscoe Lee** 

Chairperson, Committee on Rules

**Re: Committee Report on Bill No. 218-35 (COR)**

*Håfa adai* Speaker Barnes:

Transmitted herewith is the Committee Report on Bill No. 218-35 (COR) – An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam,” introduced by James C. Moylan.

Committee votes are as follows:

  2   TO DO PASS

  0   TO NOT PASS

  2   TO REPORT OUT ONLY

  0   TO ABSTAIN

  0   TO PLACE IN INACTIVE FILE

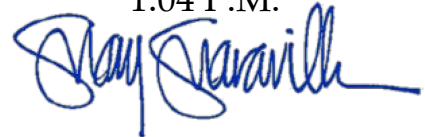
Si Yu'os ma'åse',

  
Clynton E. Ridgell

**COMMITTEE ON RULES  
RECEIVED:**

October 9, 2020

1:04 P.M.





**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response*

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## **COMMITTEE REPORT**

### **Bill No. 218-35 (COR)**

Introduced by James C. Moylan

“An Act to Amend § 58104(f) and to Add § 58104.1,  
Both of Chapter 58, Title 12, Guam Code Annotated,  
Relative to Creating a Qualifying Certificate for the  
Enticement and Potential Establishment of a Processing  
Trade, and a Distribution, Transformation or Fulfillment  
Center Industry on Guam.”



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response*

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October 8, 2020

**MEMORANDUM**

**To: All Members**

Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response

**From: Senator Clynton E. Ridgell**

Committee Chairperson

**Subject: Committee Report on Bill No. 218-35 (COR)**

Transmitted herewith for your consideration is the Committee Report on Bill No. 218-35 (COR) – “An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam,” as introduced by James C. Moylan.

This report includes the following:

- Copy of COR Referral of Bill No. 218-35 (COR)
- Notices of Public Hearing & Other Correspondence
- Copy of the Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Submitted Testimonies
- Committee Report Digest
- Copy of Bill No. 218-35 (COR)
- Copy of Fiscal Note from Bureau of Budget and Management Research
- Committee Vote Sheet

Please take the appropriate action on the attached vote sheet; your attention to this matter is greatly appreciated. Should you have any questions or concerns, please contact my office.

Si Yu'os ma'åse'

Senator Régine Biscoe Lee,  
Chair

Senator Amanda L. Shelton,  
Vice Chair

Speaker Tina Rose Muña Barnes,  
Member

Vice Speaker Telen Cruz Nelson,  
Member

Senator Kelly Marsh (Taitano), PhD,  
Member

Senator Sabina Flores Perez,  
Member



**COMMITTEE ON RULES**  
**I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN**  
**35<sup>TH</sup> GUAM LEGISLATURE**

November 20, 2019

Senator Clynton E. Ridgell,  
Member

Senator Joe S. San Agustin,  
Member

Senator Jose "Pedro" Terlaje,  
Member

Senator Therese M. Terlaje,  
Member

Senator James C. Moylan,  
Member

Senator Mary Camacho Torres,  
Member and Chair, Subcommittee on Protocol

## MEMO

**To:** **Rennae Meno**  
Clerk of the Legislature  
**Attorney Ana Won Pat-Borja**  
Legislative Legal Counsel

**From:** **Senator Régine Biscoe Lee**  
Chair, Committee on Rules

**Re:** **Referral of Bill No. 218-35 (COR)**

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*Buenas yan Håfa adai.*

As per my authority as Chair of the Committee on Rules and subject to §6.01(d), Rules VI of our Standing Rules, I am forwarding the referral of Bill No. 218-35 (COR).

Please ensure that the subject bill is referred to the **Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response**, chaired by Senator Clynton E. Ridgell.

I also request that the same be forwarded to the prime sponsor of the subject bill.

If you have any questions or concerns, please feel free to contact Mary Maravilla, Committee on Rules Director at 472-2461.

Thank you for your attention to this important matter.

Respectfully,

  
**Senator Régine Biscoe Lee**  
Chair, Committee on Rules





Erin M. Grajek &lt;egrajek@guamlegislature.org&gt;

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**FIRST NOTICE of Public Hearing: Tuesday, Feb. 11, 2020 - 9:00 am**

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Erin M. Grajek &lt;egrajek@guamlegislature.org&gt;

Tue, Feb 4, 2020 at 12:06 PM

Bcc: phnotice@guamlegislature.org

**FOR IMMEDIATE RELEASE**

February 4, 2020

**MEMORANDUM**

To: All Senators, Stakeholders, Media  
From: Senator Clynton E. Ridgell

**Re: FIRST NOTICE of Public Hearing: Tuesday – February 11, 2020**

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will conduct a Public Hearing on Tuesday – February 11, 2020 and will take place in the Public Hearing Room at the Guam Congress Building in Hagåtña, Guam.

The Committee will hear and accept testimony on the following agenda items:

- 9:00 am – Bill No. 217-35 (COR) An Act to Add § 58104® to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam.
- 10:00 am – Bill No. 218-35 (COR) An Act to Amend § 58104(f) and to Add § 58104.1, both of Chapter 58, title 12, guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam.

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The Public Hearing will broadcast LIVE on local television (GTA Channel 21, Docomo Channel 117/60.4) and stream online via i Liheslaturan Guåhan's live feed. Written testimonies may be hand-delivered to the Office of Senator Clynton E. Ridgell at 238 Archbishop Flores Street, Suite 906 – DNA Building, Hagåtña, Guam 96910; sent via email at [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net); or sent via fax at (671) 475-4768.

All government activities, programs, and services are accessible for people with disabilities in compliance with Title II of the Americans with Disabilities Act (ADA). Should you or interested parties require assistance or special accommodations to fully participate in this public hearing, please contact Angela Santos at (671) 475-4983 or via email at [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net).

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Si Yu'os ma'åse',

**Erin M. Grajek - Office Manager**

The Office of Senator Clynton E. Ridgell  
238 Archbishop Flores St.  
Suite 906  
Hagåtña, GU 96910  
671-475-4983

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

**2020-02-04 FIRST NOTICE of Public Hearing - Feb 11, 2020.pdf**

195K



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

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**FOR IMMEDIATE RELEASE**

February 4, 2020

**MEMORANDUM**

**To: All Senators, Stakeholders, Media**

**From: Senator Clynton E. Ridgell**

**Re: FIRST NOTICE of Public Hearing: Tuesday – February 11, 2020**

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will conduct a Public Hearing on **Tuesday – February 11, 2020** and will take place in the Public Hearing Room at the Guam Congress Building in Hagåtña, Guam.

The Committee will hear and accept testimony on the following agenda items:

- **9:00 am** – [Bill No. 217-35 \(COR\)](#) An Act to Add § 58104® to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam.
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Si Yu'os ma'åse'

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Si Yu'os ma'åse'



Erin M. Grajek &lt;egrajek@guamlegislature.org&gt;

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**SECOND NOTICE of Public Hearing: Tuesday, Feb. 11, 2020 - 9:00 am**

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Erin M. Grajek <egrajek@guamlegislature.org>  
To: emgrajek@gmail.com

Wed, Feb 5, 2020 at 10:43 AM

**FOR IMMEDIATE RELEASE**

February 4, 2020

**MEMORANDUM**

To: All Senators, Stakeholders, Media  
From: Senator Clynton E. Ridgell

**Re: SECOND NOTICE of Public Hearing: Tuesday – February 11, 2020**

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will conduct a Public Hearing on Tuesday – February 11, 2020 and will take place in the Public Hearing Room at the Guam Congress Building in Hagåtña, Guam.

The Committee will hear and accept testimony on the following agenda items:

- 9:00 am – Bill No. 217-35 (COR) An Act to Add § 58104® to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam.
- 10:00 am – Bill No. 218-35 (COR) An Act to Amend § 58104(f) and to Add § 58104.1, both of Chapter 58, title 12, guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam.

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Si Yu'os ma'åse',

**Erin M. Grajek - Office Manager**

The Office of Senator Clynton E. Ridgell  
238 Archbishop Flores St.  
Suite 906  
Hagåtña, GU 96910  
671-475-4983

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*



**2020-02-09 SECOND NOTICE of Public Hearing - Feb 11, 2020.pdf**  
205K



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

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**FOR IMMEDIATE RELEASE**

February 9, 2020

**MEMORANDUM**

**To: All Senators, Stakeholders, Media**

**From: Senator Clynton E. Ridgell**

**Re: SECOND NOTICE of Public Hearing: Tuesday – February 11, 2020**

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will conduct a Public Hearing on **Tuesday – February 11, 2020** and will take place in the Public Hearing Room at the Guam Congress Building in Hagåtña, Guam.

The Committee will hear and accept testimony on the following agenda items:

- **9:00 am** – [Bill No. 217-35 \(COR\)](#) An Act to Add § 58104(r) to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam.
- **10:00 am** – [Bill No. 218-35 \(COR\)](#) An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam.

Si Yu'os ma'åse'

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Erin M. Grajek &lt;egrajek@guamlegislature.org&gt;

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**CORRECTED Notice of Public Hearing – Bill Nos. 217-35 (COR), 218-35 (COR)**

1 message

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Erin M. Grajek <egrajek@guamlegislature.org>

Tue, Feb 4, 2020 at 11:55 AM

To: mel.mendiola@investguam.com

Cc: Austin Grant &lt;austin.grant@investguam.com&gt;, Selina Onedera-Salas &lt;sonedera-salas@guamlegislature.org&gt;, Senator Clynt Ridgell &lt;clyntridgell@guamlegislature.org&gt;

Håfa adai Ms. Mendiola:

This is to inform you that Senator Clynton E. Ridgell and the Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will conduct a Public Hearing on **Tuesday – February 11, 2020 at 9:00am**. The hearing will take place at the Public Hearing Room of the Congress Building in Hagåtña, Guam.

I have attached the official copy of the Bill for your review and comments. We ask that written testimony be received at least two days in advance.

Written testimony will be accepted up to ten days after the date of the hearing and can be sent to our office at [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net).

Please let me know if you have any questions or concerns.

--

Si Yu'os ma'åse',

**Erin M. Grajek - Office Manager**

The Office of Senator Clynton E. Ridgell  
238 Archbishop Flores St.  
Suite 906  
Hagåtña, GU 96910  
671-475-4983

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

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**3 attachments**

**2020-02-04 Melanie Mendiola (GEDA) - Notice of Public Hearing (Bill Nos. 217-35 (COR), 218-35 (COR)).pdf**  
191K



**Bill No. 218-35 (COR).pdf**  
786K



**Bill No. 217-35 (COR).pdf**  
839K



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

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February 4, 2020

**Transmitted via electronic mail**

mel.mendiola@investguam.com

Melanie Mendiola, Administrator  
Guam Economic Development Authority  
590 South Marine Corps Drive  
ITC Building, Suite 511  
Tamuning, Guam 96913

**Re: Notice of Public Hearing on Bill No. 217-35 (COR) and Bill No. 218-35 (COR): February 11, 2020**

Håfa adai Ms. Mendiola:

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response invites you to submit testimony on the following Bills:

**Bill No. 217-35 (COR) An Act to Add § 58104(r) to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam.**

**Bill No. 218-35 (COR) And Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Industry on Guam.**

The Public Hearing is scheduled for **Tuesday – February 11, 2020 at 9:00 am** and will take place at the Public Hearing Room of *i Liheslaturan Guåhan*.

Statements may be submitted via hand delivery to the Office of Senator Clynton E. Ridgell at 238 Archbishop Flores Street, Suite 906 – DNA Building, Hagåtña, Guam; via email at [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net); or via fax at (671) 475-4768. Please submit written statements at least two days prior to the date of the hearing.

If you have any questions or concerns, please call our office at 475-4983 or send email to [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net).

Si Yu'os ma'åse',



Clynton E. Ridgell



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response*

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**Public Hearing Agenda**  
**Tuesday – February 11, 2020**  
**Public Hearing Room**  
**Guam Congress Building – Hagåtña, Guam**

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response will hear and accept testimony on the following agenda items:

- **9:00 am** – Bill No. 217-35 (COR) – An Act to Add § 58104(r) to Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Commercial Drone Industry on Guam, introduced by James C. Moylan.
- **10:00 am** – Bill No. 218-35 (COR) – An Act to Amend § 58104(f) and to Add § 58104.1, both of Chapter 58, title 12, guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam, introduced by James C. Moylan.

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**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and  
Emergency Response

**PUBLIC HEARING SIGN-IN SHEET**

**Tuesday, February 11, 2020 · 10:00 am**

**Bill No. 218-35 (COR)** An Act to Amend § 58104(f) and to Add § 58104.1, both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam. - Senator James C. Moylan

NAME	AGENCY/ ORGANIZATION	PHONE NUMBER	EMAIL ADDRESS	TESTIMONY	POSITION
Artemio Ricky Hernandez	GEDA	647-4332	a.hernandez@investguam.com	<input type="checkbox"/> Written <input checked="" type="checkbox"/> Oral	<input type="checkbox"/> Support <input type="checkbox"/> Oppose
Art Dawley	Aviation Concepts	864-8291	ardawley@acpacific.com	<input type="checkbox"/> Written <input checked="" type="checkbox"/> Oral	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
CHARLIE HERMOZA	APL	988-5809	CHARLIE.HERMOZA@APL.COM	<input type="checkbox"/> Written <input checked="" type="checkbox"/> Oral	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose
				<input type="checkbox"/> Written <input type="checkbox"/> Oral	<input type="checkbox"/> Support <input type="checkbox"/> Oppose
				<input type="checkbox"/> Written <input type="checkbox"/> Oral	<input type="checkbox"/> Support <input type="checkbox"/> Oppose
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				<input type="checkbox"/> Written <input type="checkbox"/> Oral	<input type="checkbox"/> Support <input type="checkbox"/> Oppose

February 10, 2020

Honorable Clynton E. Ridgell

Chairperson, Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response

*I Mina'trentai Singko Na Liheslaturan Guahan*

238 Archbishop Flores St.

DNA Building, Suite 906

Hagåtña, Guam 96910

**Subject: Testimony on Bill No. 218-35 (COR) – An Act Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam**

*Håfa Adai*, Chairperson and Senator Clynt Ridgell and members of the Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response (Committee). My name is Artemio "Ricky" Hernandez and thank you for the opportunity to provide testimony on Bill No. 218-35 – An Act Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam (Bill 218).

Bill 218 seeks to add the "processing trade company and/or a distribution transformation or fulfillment center" under the existing § 58104(f) as eligible activities for the Qualifying Certificate (QC) Program administered by the Guam Economic Development Authority (GEDA). The bill defines a processing trade company as one that *shall* import all or part of the raw materials from abroad, and exports the finished product(s) after processing, transforming, or assembling on Guam with a requirement that at least fifty percent (50%) of the finished product *shall* be assembled on Guam to qualify for the incentives. The bill also defines a distribution, transformation, or fulfillment center which *shall* be a warehouse or specialized building which is stocked with products to be redistributed to consumers off island, and *shall* be the processing function of the order completion structure and *shall* also provide services such as product mixing, cross docking, and packaging.

Section 3 of Bill 218 also requires that the Governor of Guam *shall* approve of a QC applicant after consent that is provided by the GEDA Board of Directors and also explicitly excludes the Guam Legislature from the QC approval process.

The GEDA is in favor of fiscal policy that aims to **create economic activity of value** to Guam – which is one of the requirements necessary for the approval of a QC application.

Although the GEDA believes that nothing in the current QC statute precludes any interested company in applying for a QC for activities identified in Bill 218 in either the services or manufacturing categories

under § 58104, Chapter 58, Title 12 of the Guam Code Annotated, the GEDA understands that there may be economic benefits associated with the growth of this industry on Guam and is supportive of the intent of the Bill.

The GEDA suggests the Committee's consideration of ensuring the following items are addressed in Bill 218:

1. Under the definition of a processing trade company, there is a requirement that at least fifty percent (50%) of the finished product *shall* be assembled on Guam to qualify for tax incentives. Because the monitoring and compliance review that would be necessary to ensure that this requirement is met would be quite onerous to the GEDA's Compliance Division, it is recommended to either reconsider this requirement or authorize that such funds as necessary *shall* be paid for by the QC beneficiary.
2. Under the definition of a distribution, transformation, or fulfillment center, the Bill states that products are to be redistributed to consumers off-island. It appears that this language may prohibit or prevent such businesses from selling locally which may or may not have been the intent of this language.
3. Section 3 of Bill 218 mandates that the Governor of Guam *shall* approve all QCs after consent is provided by the GEDA Board of Directors. This language is contrary to the current process the GEDA undertakes as it relates to all new QC applications. The GEDA Board of Directors approves a QC application and sends such approval to the Governor of Guam for her final determination. The GEDA recommends that this Section be amended or deleted in its entirety.

Related to Section 3 of the Bill, the GEDA previously requested the Office of the Attorney General (OAG) provide guidance as it related to the requirement that all QC applications be approved by the Guam Legislature prior to submission to the Governor of Guam. The OAG deemed this requirement to be inorganic and unenforceable. The GEDA recommends the deletion such requirement from the pertinent portions of Section 3, Part I, Chapter XIII of Public Law 35-36 and Section 8, Part I, Chapter XIII of Public Law 34-116 given the legal guidance from the OAG.

The GEDA is excited at the prospect of new industries on Guam and with the Committee's consideration of the aforementioned items, is available for continuing dialogue toward the goal of diversifying Guam's economy and introducing new investments to our island.

Once again, thank you for the opportunity to provide testimony on Bill 218-35 (COR). Should you have any questions, please contact me at 647-4332 or via email at [a.hernandez@investguam.com](mailto:a.hernandez@investguam.com).

*Si Yu'us Ma'åse,*



Artemio "Ricky" Hernandez, Ph.D.  
Deputy Administrator

March 5, 2020

**Transmitted via Electronic Mail and Hand Delivery**

sen.cridgell@teleguam.net

The Honorable Clynton E. Ridgell

Senator, 35<sup>th</sup> Guam Legislature

Committee on Economic Development, Agriculture, Maritime Transportation, Power and  
Energy Utilities, and Emergency Response

238 Archbishop Flores Street

Suite 906 – DNA Building

Hagåtña, Guam

**Subject: Committee Requests re: Bill 218-35**

*Håfa Adai* Senator Ridgell,

At the request of members of the Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response (Committee), the GEDA hereby provides the Information and Guidance letter from the Office of the Attorney General as it relates to the Organicity of Legislative Approval of First-Time Qualifying Certificates under the Qualifying Certificate Program.

Furthermore, to answer your question related to whether (1) a Processing Trade Company or (2) a Distribution, Transformation, or Fulfillment Center as defined in Bill 218-35 is considered an Export Trading Company as defined in § 58104(l), Chapter 58, Title 12 GCA as eligible activities under the Qualifying Certificate (QC) Program, provided below is the GEDA's discussion.

As previously stated, § 58104(l), Chapter 58, Title 12 GCA identifies Export Trading Company activities as eligible activities under the QC Program. Export Trading Companies are defined under § 26101(d), Chapter 26, Title 11 GCA as:

A person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of Guam and which is organized and operated principally for purposes of (1) exporting goods or services produced in Guam; or (2) facilitating the exportation of goods or services produced in the United States or Guam by unaffiliated persons by providing one or more export trade services. ***An Export Trading Company must qualify under United States Public Law 97-290 and conform to the requirements and procedures of that Act regarding Export Trading Companies.*** (emphasis added)

Further defined under § 26101(e), Chapter 26, Title 11 GCA is an export trade service which shall mean, but not be limited to:

Consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and procession of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate and export of goods and services produced in the United States and Guam.

The limitation that such an Export Trading Company must qualify under U.S. Public Law 97-290, also known as the Export Trading Company Act of 1982, presents the major difference between an Export Trading Company and the two general activities identified in Bill 218-35 where Bill 218-35 does not require any qualification under any federal laws to be eligible for a QC. To date, the GEDA does not have any existing QC beneficiaries that qualify under this eligible activity and further, is not aware of the requirements to qualify as an Export Trading Company under the Export Trading Company Act of 1982 at this time.

As mentioned in previous testimony for Bill 218-35, the GEDA believes that nothing in the current QC statute precludes any interested company in applying for a QC for the activities identified in the bill in the services or manufacturing categories. Furthermore, the requirements that are within the definitions of the activities of a Processing Trade Company and a Distribution, Transformation, or Fulfillment Center include stricter requirements to provide such services such as "fifty percent (50%) of the finished product shall be assembled in Guam" as compared to the service activity eligibility.

The GEDA does suggest that a definition of what "fifty percent (50%)...assembled in Guam" means be included in Bill 218-35 as it will pose a unique challenge for the GEDA as there are no guidelines to determine such a metric. Such questions include, "How should the fifty percent (50%) be calculated?;" "What will be considered eligible Guam costs in such calculation?;" "Does the fifty percent (50%) only involve the actual cost of materials, or will it be based on value added similar to the Guam Product Seal requirements?"

In addition to the GEDA's testimony provided on February 11, 2020, please include this response with such prior testimony with the GEDA's recommendation that a more thorough analysis of the fifty percent (50%) assembly requirement identified in Bill 218-35.

If you have any questions or concerns, please feel free to contact me. *Si Yu'os Ma'åse!*

*Senseraamente,*



**Artemio "Ricky" Hernandez, Ph.D.**  
Deputy Administrator

Enclosure

CC: [egrajek@guamlegislature.org](mailto:egrajek@guamlegislature.org)



# Office of the Attorney General of Guam

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Hon. Leevin Taitano Camacho  
Attorney General of Guam

December 18, 2019

## INFORMATION AND GUIDANCE

Ref.: GEDA 19-0147

TO: Chief Executive Officer/Administrator, Guam Economic  
Development Agency

VIA: Attorney General<sup>u</sup>

FROM: Assistant Attorney General, Solicitors Division

SUBJECT: Organicity of Legislative Approval of First-Time Qualifying Certificates  
under the Qualifying Certificate Program



This is in response to your request for assistance and guidance on the organicity of the requirement that first-time Qualifying Certificates (QC) be approved by the Legislature prior to approval by the Governor.

### Question Presented

Does Public Law 35-36:XXIII:I:3 impermissibly encroach upon the executive functions of the Governor of Guam by requiring that the Guam Legislature approve any first-time Qualifying Certificates?

The answer is Yes. The Legislature has no authority to negotiate, review, or approve executive branch contracts. The provision of the General Budget Appropriations Act of 2020 requiring legislative approval of first-time Qualifying Certificate applications and contracts is inorganic and unenforceable.

### Background

In an effort to address a \$120 to \$160 million shortfall anticipated to result in Fiscal Year 2019 from decreased tax revenues caused by the federal *Tax Cuts and Jobs Act*,<sup>1</sup> the Guam Legislature enacted P.L. 34-116, the General Appropriations Act of 2019, which contained a number of cost-cutting measures. Part of this effort included the

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<sup>1</sup> U.S. Public Law No. 115-97.

enactment of a moratorium suspending any renewals or extensions of existing Qualifying Certificates.

In addition to the moratorium, P.L. 34-116:XIII:I:8 also required that any “new first-time” QC applications be approved by the Legislature prior to approval by the Governor. P.L. 34-116 expired by its own terms on September 30, 2019.<sup>2</sup> However, the identical language and provision has been included and continued in the FY 2020 General Appropriations Act through P.L. 35-36:XIII:I:3 which reads:

**Suspension of Renewals or Extensions of Qualifying Certificates.**  
Notwithstanding any other provision of law, rule, or regulation, there shall be a suspension of all renewals and extensions of Qualifying Certificates. The Guam Economic Development Authority *shall not* issue, approve, or grant any renewals or extensions of any Qualifying Certificates. Nothing herein shall affect the consideration of new first-time applications for a Qualifying Certificate that are duly submitted pursuant to applicable Guam laws and regulations. *Notwithstanding any other provision of law, rule, or regulation, any new first-time applications for Qualifying Certificates shall be approved by I Liheslaturan Guåhan prior to the approval by I Maga'hågan Guåhan.*<sup>3</sup>

### Discussion

1. The requirement that the Legislature approve first-time Qualifying Certificate applications impermissibly infringes on the Governor's authority to approve executive branch contracts.

It is settled that the Governor and the Governor alone has Organic Act authority to approve contracts. The Guam Supreme Court has held that the negotiation, approval, and execution of contracts is an executive power reserved exclusively to the Governor of Guam under Section 1422 of the Organic Act which grants the Governor the power to supervise and control the executive branch. In the case of *In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1, the 26th Guam Legislature passed a series of measures that

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<sup>2</sup> P.L. 34-116:1 (“Except as otherwise provided by this Act, the appropriations made by this Act shall be available to pay for Fiscal Year 2019 obligations incurred on or after October 1, 2018 but not later than September 30, 2019.”)

<sup>3</sup> P.L. 35-36:XIII:I:3 at p. 138 (FY2020); P.L. 34-116:XIII:I:8 at p. 173 (FY2019).

collectively comprised the FY2002 budget.<sup>4</sup> One of the measures, P.L. 26-55:11, concerned the terms of a lease for office space to be used by the Department of Law's Family Division. The provision ordered the Family Division to terminate its existing lease agreement and enter into a new agreement containing specific terms and conditions.

Upon review of P.L. 26-55:11, the Supreme Court declared that the Legislature's insertion of itself into the negotiation and approval of contracts and leases violated the doctrine of separation of powers because it usurped the Governor's Organic Act authority to oversee the executive branch without articulating any overriding constitutional need, and therefore was inorganic and unconstitutional:

The provisions of [P.L. 26-55:11] that dictate terms of the lease are. . . problematic. In *Chaffin v. Ark. Game & Fish Comm'n*, 757 S.W.2d 950 (Ark. 1988), the court was presented with a constitutional challenge to an appropriations bill. Specifically, the challenged legislation prohibited the Fish and Game Commission from entering into contracts for professional and consultant services which either extend more than 20 working days, or exceed \$5,000.00, without first seeking the advice of the legislature. After receiving a contract, a committee of the Legislative Council reviews the contract and stamps it favorable or unfavorable. Although the stamp of approval or disapproval was not binding on the agency, the court found that "the 'advice' offered by the [legislative] committee to an agency is tantamount to a legislative order on how to execute a contract." *The court held the requirement that the agency submit its contracts for legislative advice to be in violation of the separation of powers doctrine, and therefore unconstitutional.*

The instant case is analogous to *Chaffin*, and supports a finding of a more egregious violation of the separation of powers doctrine. In the instant case, the Legislature has not merely reserved for itself the power to give "advice" on the specifics of the contract; rather, the Legislature has dictated the exact terms of the contract. As *Chaffin* instructs, *it is the executive's function to determine how to execute a contract. The execution of a contract necessarily includes determining the terms of the contract.* By determining the terms of the lease, the Legislature has engaged in a clear executive function.

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<sup>4</sup> The FY2002 budget law was originally enacted as P.L. 26-35. The law was subsequently amended by Public Laws 26-36, 26-47, 26-49, and 26-55.

*In re Request of Governor Gutierrez*, 2002 Guam 1 ¶¶ 53-54, 66 (internal citations omitted) (emphasis added).

Just as the executive branch cannot exercise legislative power, the Legislature cannot exercise executive power. By law, all contracts of whatever nature are considered executed upon approval by the Governor without regard to approval by the Legislature. 5 GCA § 2260. A Qualifying Certificate is a legally binding contract between the government and the QC beneficiary. According to 12 GCA § 58101,

*A Qualifying Certificate is a contract* valid for a given period of time, executed by the Governor upon recommendation of the Authority, between the government of Guam and the Beneficiary, which has qualified for certain tax rebates or tax abatements or for both in return for meeting certain employment, investment, and other requirements.

By requiring that new first-time applications for a QC receive approval of the Legislature before they can be executed by the Governor, the law is “in violation of the separation of powers doctrine, and therefore unconstitutional.” *In re Request of Governor Gutierrez*, 2002 Guam 1 ¶ 53.

This Office has also opined that requiring legislative approval of contracts made by the executive branch is an inorganic intrusion into the exclusive powers of that branch of government. *See Legality of Section 2 of P.L. 30-227; Legislative Final Approval of Group Health Care Contract*, Guam Atty. Gen. Op. No. DOA 11-0397 (June 20, 2011). In 2010, Public Law 30-227:2 was enacted to require that proposals for the annual Government of Guam group health insurance contract be forwarded to the Legislature for final approval prior to execution by the Governor. Based upon the Supreme Court’s holding in the *Gutierrez* case cited above, we determined that approval of executive branch contracts was not a valid exercise of legislative authority and that P.L. 30-227:2 was “inorganic as a violation of the separation of powers doctrine to the extent that it interposes the legislature into the approval and decision-making process of the development, negotiation and execution of the group healthcare contract.” For reference, a copy of our opinion, which includes a more detailed and developed analysis of the separation of powers doctrine in relation to the Organic Act of Guam, is attached.

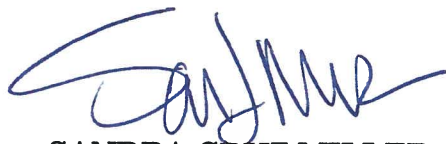
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Conclusion

The Guam Supreme Court has made it clear that the Legislature may not dictate when and under what circumstances the Governor and the executive branch can or cannot negotiate and execute a contract. By requiring that Qualifying Certificates (whether first-time or renewal) obtain legislative approval prior to the Governor's approval, P.L. 35-36:XIII:I:3 infringes upon the Governor's Organic Act authority and is therefore inorganic and unenforceable.<sup>5</sup>



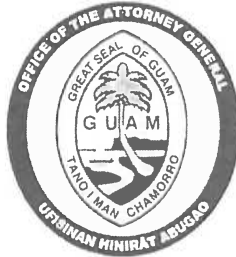
**SANDRA CRUZ MILLER**  
Assistant Attorney General

Enclosure

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<sup>5</sup> An inorganic law is *void ab initio* and unenforceable. *Nelson v. Ada*, 1988 WL 242618, at \*3 (D. Guam App. Div. June 8, 1988); *aff'd*, 878 F.2d 277 (9th Cir. 1989).

Leonardo M. Rapadas  
Attorney General



Phillip J. Tydingco  
Chief Deputy Attorney General

## OFFICE OF THE ATTORNEY GENERAL

June 20, 2011

### ATTORNEY GENERAL OPINION

Ref. DOA 11-0397

**TO:** Director, Department of Administration

**FROM:** Attorney General of Guam

**SUBJECT:** Legality of Section 2 of P.L. 30-227; Legislative Final Approval of Group Health Care Contract

On December 30, 2010 Public Law 30-227, the Healthcare Insurance Transparency Act of 2010, became law. The law added subsections (1), (2) and (3) to 4 GCA §4302 (c). Subsection (2) states:

(2) The negotiating team upon selection and review of the best available proposals by participating healthcare respondents/providers which reflect the most economical and beneficial healthcare insurance proposal plan for Government of Guam employees and retirees, shall forward the accepted proposals to *I Maga'lāhen Guåhan* for consideration, and to *I Liheslaturan Guåhan* for final approval no later than July 31, and prior to the annual Legislative Sessions wherein the upcoming Fiscal Year Budget for the Government of Guam is before *I Liheslaturan Guåhan* for consideration; ...

In your April 28, 2011 memorandum to the Attorney General, you ask:

1. Based on current language of Section 2, P.L. 30-227, when the accepted proposals are submitted to the Governor for consideration does he still have the authority to reject proposals if final approval is now with the Guam Legislature?
2. Based on the current language of Section 2, P.L. 30-227, if final approval of proposals is now with the Guam Legislature, who will sign the health insurance contract, the Governor of Guam or the Speaker of the Guam Legislature?
3. Are the requirements of section 2, P.L. 30-227 an encroachment of the executive functions of the Governor of Guam?

An answer to the third question will be dispositive of all of the questions. Section 2 of P.L. 30-227 is not particularly clear. The most likely intent is to require the "final approval" of the legislature to the terms and conditions of a contract for group life insurance for government employees and retirees prior to the Governor entering into such a contract. It may also be the intent of section 2 to give to the legislature final authority to approve a group health insurance proposal prior to the initiation of contract negotiations with the offeror. In either case, the effect of section 2 of 4 GCA 4302(c) is to grant to the legislature executive powers accorded to the Governor by the Organic Act of Guam. As such, 4 GCA §4392(c) (2) is a violation of the separation of powers doctrine and is, therefore, inorganic and unenforceable.

### **Discussion**

Since at least the 10<sup>th</sup> Guam Legislature, the government of Guam has been authorized to provide group health insurance for its employees, retirees and their families. The Governor is authorized to enter into contracts and reject proposals for group health insurance. In addition, the Guam Legislature and the Superior Court of Guam are authorized to either consent or not consent to join the executive branch in the contract for group health insurance. The group insurance law for government employees and retirees states:

(a) *I Maga'lahi* (the Governor) is authorized to enter contracts and reject proposals, with the written concurrence of the Speaker of *I Liheslaturan Guahan* (the Guam Legislature) or the Presiding Judge of the Superior Court of Guam whose consents may be withheld in their sole discretion, with one(1) or more insurance companies, authorized to do business on Guam, for group insurance, including, but *not limited to*, hospitalization, medical care, life and accident, for all employees *or* separate groups of employees of the government of Guam. *If* the Legislative *or* Judicial Branches of government elect to enter into separate contracts for their employees as authorized in § 4301 (c), *I Maga'lahi* shall obtain the written concurrence of the Branch electing to remain with the Executive Branch before the group insurance contract is entered into *or* a proposal rejected.

...

4 GCA §4301 (a).<sup>1</sup> In practice, the Governor of Guam has negotiated and entered into contracts for group health and group life insurance for government employees in all three branches.<sup>2</sup> There has been no concurrence sought or received from either the legislative or judicial branches of government prior to entering into these group insurance contracts, nor has either the

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<sup>1</sup> P.L. 24-143:19 added the provisions requiring written concurrence of the Speaker and or the Presiding Judge to a group insurance contract to be entered into by the Governor. P.L. 24-143 was vetoed by the Governor. One reason given for the veto was the violation of the separation of powers doctrine of the Organic Act of Guam by Section 19. The veto was overridden by the Legislature and P.L. 24-143 became law.

<sup>2</sup> As an example, in May 2011, the Governor entered into a three year contract for group life insurance for all three branches of government, and for retirees. The Governor did not seek, nor did the legislative or the judicial branch provide, concurrence for this contract.

legislative branch or the judicial branch opted out, to seek its own group health or group life insurance, as permitted by law. 4 GCA §4301(c).

### Separation of Powers and the Organic Act of Guam

There is a thorough review of the separation of powers doctrine, which is clearly established by the Organic Act of Guam and of the case law that has interpreted and applied that doctrine to cases on Guam, found at the recent Opinion of the Attorney General, issued to the Honorable Edward J.B. Calvo, Governor of Guam, concerning the organicity of the Guam First Commission. See, Organicity of I Kumision Guahan Fine'nana (Guam First Commission); P.L. 29-128, codified at 1 GCA§2401 *et seq.*, Op. Att'y Gen. No. AG 09-0170 (Feb. 25, 2011).

The statutory and case history set out in the Attorney General opinion is relevant to this analysis, is relied upon, and need not be repeated here. "Under the Organic Act, the government of Guam is comprised of three separate but co-equal branches of government." *In re Request of Governor Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1 ¶ 32; *Hamlet v. Charfauros*, 1999 Guam 18 ¶ 9; *Taisipic v. Marion*, 1996 Guam 9 ¶ 26.

The separation of powers doctrine exists to "prevent[] the abuses that can flow from centralization of power." *Mo. Coalition for Env't v. Joint Comm. on Admin. Rules*, 948 S.W. 2d 125, 132 (Mo. 1997) (en banc) (citation omitted); see also *Book v. State Office Bldg. Comm'n*, 238 Ind. 120, 149 N.E. 2d 273, 293 (1958) (recognizing that the purpose of separating the powers of each branch is "to preclude a commingling of these essentially different powers of the government in the same hands") (citation omitted). The concentration of the separately delineated powers in the hands of one branch "may justly be pronounced the very definition of tyranny." *Beckert v. Warren*, 497 Pa. 137, 439 A.2d 638, 642 (1981).

*In re Request of Governor Gutierrez*, 2002 Guam 1 ¶ 33.

The Organic Act authority of the Guam Legislature is set forth at 48 U.S.C. § 1423a, which provides: "The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam ..." As well, the Governor's powers are provided for. The Organic Act states: "The executive power of Guam shall be vested in an executive officer whose official title shall be the 'Governor of Guam'." 48 U.S.C. § 1422.

The Governor shall have general supervision and control of all departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. ... He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable to Guam.

48 U.S.C. §1422.

Quoting the Supreme Court of Guam:

We recognize that, under the separation of powers doctrine, one branch of government is prohibited from either delegating its enumerated powers to another branch of the government or aggrandizing its powers by reserving for itself the powers given to another branch. (citations omitted) At least one court has noted that "the *taking* of power is more prone to abuse and therefore warrants an especially careful scrutiny." *Communications Workers*, 617 A.2d 223 at 232 (emphasis added). Even absent a finding that one branch has usurped a power exclusively reserved for another branch, a separation of powers violation may be found if "one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers." *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex.Crim.App. 1990)(citations omitted); see *Perez*, 1999 Guam 2 at 17.

*In re Request of Governor Gutierrez*, 2002 Guam 1 ¶ 35 (indicated citations omitted; footnote omitted; emphasis supplied by the court).

The development, negotiation and execution of contracts for executive departments and agencies of the government of Guam are executive functions that are carried out by the Governor pursuant to his Organic Act powers. In *Santos v. Calvo*, 1982 WL 30790 (D.Guam A.D. 1982), the District Court of Guam Appellate Division considered an appeal by the Governor of Guam from a Superior Court decision granting Senator Santos an injunction to prevent the Governor from entering into and executing an agreement to make severance payments to the Attorney General in exchange for the Attorney General resigning from his position. In granting the injunction, the trial court relied on a provision of Guam law: "No officer of the government of Guam including the Governor of Guam, shall: ... (3) Involve the government of Guam in any contract or other obligation, for the payment of money for any purpose, in advance of an appropriation made for such purpose." Senator Santos contended that the law prohibited the severance pay agreement because there was no specific appropriation authorizing this severance pay agreement and, therefore, the Governor exceeded his statutory authority.

The Appellate Division disagreed. It found that the legislature had appropriated funds. The court held that whereas the legislature has plenary power over appropriations, and may attach conditions on the expenditure of appropriated funds, the legislature cannot extend that power to exercising authority over how the executive branch should administer its appropriated funds.

In the present case, Santos is essentially attempting to give the legislature the power to determine how the executive branch should spend its appropriated funds. Such an authorization would greatly hinder the Governor in carrying out his duty to supervise and control the executive branch as required by 48 U.S.C. § 1422.

The few state court decisions that have dealt with this issue have held that the executive branch is responsible for the administration of appropriations. (citations omitted)

*Id.*, 1982 WL 30790 \*4 \*5. The court held that it would be an unconstitutional exercise of executive powers for the legislature to attempt to retain authority to oversee the expenditure of funds once appropriated.

Thus, the legislature has plenary or absolute power over appropriations, and it may attach conditions upon the expenditure of appropriated funds. See *MacManus v. Love*, 179 Colo. 218, 499 P.2d 609, 610 (Colo.1972); *State ex rel. Meyer v. State Board of Equalization and Assessment*, 185 Neb. 490, 176 N.W.2d 920, 926 (Neb.1970). The doctrine of separation of powers, however, restricts the power of the legislature to legislative functions. As a general rule, the legislature cannot exercise executive power, and the executive branch cannot exercise legislative power. *Springer v. Philippine Islands*, 277 U.S. 189, 202 (1928). Legislative power extends to making laws, but not to enforcing them. *Id.* In a recent opinion, the United States Supreme Court recognized that although total separation of the three branches is never mandatory, the separation of powers is a "vital check against tyranny;" each branch should avoid assuming the "constitutional field of another branch." *Buckley v. Valeo*, 424 U.S. 1, 121-22 (1976).

*Id.*, 1982 WL 30790 \*3

The Guam Supreme Court has addressed directly the question of whether the legislature can insert itself into the development, negotiation and execution of contracts, and has held that to do so is a violation of the separation of powers doctrine. In *In re Request of Governor Gutierrez*, 2002 Guam 1, the Governor sought a declaratory judgment, invoking the Guam Supreme Court's original jurisdiction, requesting the Court "to declare specific provisions of Public Laws 26-35, 26-36, 26-47, 26-49, and Bill No. 205 void under both the Organic Act of Guam and the Constitution of the United States." *Id.*, 2002 Guam 1 ¶ 1. The Governor raised "four separation of powers challenges in the Budget Bill, each of which allege that the Legislature has either reserved for itself powers specifically given to the Governor in the Organic Act or interfered with the Governor's ability to perform his constitutional functions." *Id.*, 2002 Guam 1 ¶ 23.

Of interest here was the legislature's attempt in Bill 205 to dictate the terms of a lease of office space for the Family Division of the Department of Law. The Court applied the framework for analysis of separation of powers challenges adopted in *People of Guam v. Perez*, 1999 Guam 2. *Perez* involved a challenge to a provision of the Family Violence Act which permitted the court in its discretion and on motion of the defendant, to reduce a charge of family violence from felony to a misdemeanor. In *Perez*, the Guam Supreme Court adopted the United States Supreme Court's framework for analyzing claims that the doctrine of separation of powers has been violated:

The United States Supreme Court set forth a framework for evaluating separation of powers challenges:

In determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions. Only where the potential for disruption is present must we determine whether the impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.

*Nixon v. Administrator of General Services*, 433 U.S. 425, 443, 97 S.Ct. 2777, 2790, 53 L.Ed.2d 867 (1977)(citations omitted). Thus, two separate elements must be evaluated: (1) whether the statutory provision prevents the accomplishment of constitutional functions and (2) if so, whether the disruptive impact is justified by any overriding constitutional need.

*People of Guam v. Perez*, 1999 Guam 2 ¶ 17.

In its analysis of Bill 205, the Court in *In re Request of Governor Gutierrez* held that to dictate the terms of a lease for the rental of office space for the Attorney General was inorganic. It stated:

The provisions of Budget Bill that dictate terms of the lease are more problematic. In *Chaffin v. Ark. Game & Fish Comm'n*, 296 Ark. 431, 757 S.W.2d 950 (1988), the court was presented with a constitutional challenge to an appropriation bill. Specifically, the challenged legislation prohibited the Fish and Game Commission from entering into contracts for professional and consultant services which either extend more than 20 working days, or exceed \$5,000.00, without first seeking the advice of the legislature. *Chaffin*, 757 S.W.2d at 956. After receiving a contract, a committee of the Legislative Council reviews the contract and stamps it favorable or unfavorable. *Id.* Although the stamp of approval or disapproval was not binding on the agency, the court found that "the 'advice' offered by the [legislative] committee to an agency is tantamount to a legislative order on how to execute a contract." *Id.* The court held the requirement that the agency submit its contracts for legislative advice to be in violation of the separation of powers doctrine, and therefore unconstitutional. *Id.*

The instant case is analogous to *Chaffin*, and supports a finding of a more egregious violation of the separation of powers doctrine. In the instant case, the Legislature has not merely reserved for itself the power to give "advice" on the specifics of a contract; rather, the Legislature has dictated the exact terms of the contract. As *Chaffin* instructs, it is the executive's function to determine how to execute a contract. *See id.* At 956-57. The execution of a contract necessarily includes determining the terms of the contract. By determining the terms of the lease, the Legislature has engaged in a clear executive function.

*Id.*, 2002 Guam 1 ¶¶ 53, 54. (footnote omitted; editorial brackets in original). The Court, in applying the two step analysis required by *Perez*, found the legislature's attempt to dictate the terms of a lease in a legislative enactment a clear usurpation of the executive function of developing, negotiating and executing a contract for an executive agency. After determining that the Bill did prevent the accomplishment of an executive function, the Court turned to an analysis of whether the disruptive impact of the Bill had an overriding need justified by functions and roles of the legislature.

Section 11(c) of Bill 405 would be constitutionally proper if the "legislative action ... [was] necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes...." *Communications Workers*, 617 A.2d at 232-33.

*Id.*, 2002 Guam 1 ¶ 55. The Court found that the purpose of section 11(c) was to further fiscal policy and that this policy could be achieved by a direct appropriation without the need for the legislature to dictate specifications for rental space and other contract terms. The provision was found to be a violation of the separation of powers between the executive and legislative branches under the two-step analysis of *Perez*.

**An Analysis of the Healthcare Insurance Transparency Act of 2010; specifically P.L. 30-227:2; 4 GCA §4302(c)(2).**

The process for the acquisition of group health insurance entails the following steps:

1. The Department of Administration ("DOA") develops a Request For Proposals, receiving input from the Negotiating Team and professional support from an actuary consultant who takes the lead role in development of the specifications and the presentation of the required data and supportive information (As provided in group insurance law).
2. The Request For Proposal ("RFP") is published and a formal process ensues in which prospective offerors ask questions about the RFP and DOA and its consultant provide answers to all of the prospective offerors (As provided in procurement law).
3. As necessary, amendments to the RFP are published to all prospective offerors (Procurement law).
4. Offerors submit formal proposals on or before the due date for submission of proposals (Procurement law).
5. The consultant studies all submitted proposals and prepares a report for the Negotiating Team (Group insurance law).
6. The Negotiating Team, with the report on the proposals prepared by the consultant, and with direct input from the consultant during the evaluation process, evaluates and ranks the proposals from best to last. The Negotiating Team makes a recommendation to the Director of Administration on the rankings of the proposals, and the final ranking is determined and approved (Procurement law).

7. The Negotiating Team negotiates with one or more proposers until final agreements are reached on one or more group health contracts for government employees and retirees (Procurement law and group insurance law).
8. A briefing memorandum is sent to the Governor who ultimately approves the negotiated deal made with one or more contractors (Procurement law).
9. A contract is drawn up and the Governor, on behalf of the executive branch and the other branches of the government to be covered (traditionally both the legislative and the judicial branches of government have joined with the executive branch), executes the contract with the health care contractor. (Procurement law and group insurance law).

Into this established process, subsection 2 of §4302(c)(2) adds the following requirement:

The negotiating team ... shall forward the accepted proposals to *I Maga'lahañ Guahan* for consideration, and to *I Liheslaturan Guahan* for final approval no later than July 31, and prior to the annual Legislative Sessions wherein the upcoming Fiscal Year Budget for the Government of Guam is before *I Liheslaturan Guahan* for consideration:

It is noted that the Governor is permitted to 'consider' the accepted proposals, but the Legislature is to provide 'final approval'. As stated above, it is not entirely clear at what stage the "final approval" of the legislature, as mandated by §4302(c)(2), is required. This final approval takes place at either step #6 or step #8.

Both step #6 and #8 are integral parts of the development, negotiation, and execution of the health care contract.<sup>3</sup> By virtue of the powers granted to the Governor by the Organic Act, he is responsible for the development, negotiation, and execution of contracts for the executive branch of government. *In re Request of Governor Gutierrez*, 2002 Guam 1.<sup>4</sup> After the enactment of P.L. 30-227:2, the Governor would be relegated to the role of considering, and the Legislature would be promoted to the role approving.

The insertion of required legislative approval at a key stage of the contract development process prevents the accomplishment of an exclusively executive function accorded to the Governor under the Organic Act of Guam. *Id.* Thus, the first prong of the two prong analysis established by *People of Guam v. Perez*, 1999 Guam 2, for determining a separation of powers violation is met.

The second prong of the *Perez* analysis is to assess whether the disruptive impact caused by the imposition of the legislature into the executive function is justified by any overriding constitutional need. P. L. 30-227 at section 1, states legislative findings and intent:

<sup>3</sup> Note that both the legislative branch and the judicial branch of government can withdraw from the process undertaken by the Governor and develop, negotiate and execute a contract for group health insurance for their respective branches. 4 GCA §4301(c).

<sup>4</sup> However, the legislative and judicial branches, if each has not opted out of the process, are provided an important role in this process. Each branch appoints members to the Negotiating Team. 4 GCA §4302(c).

The Government of Guam will be burdened with expending monies, as much as \$17 Million Dollars, for an underfunded obligation, which is in direct contravention of accepted program budgeting and financial management standards for GovGuam.

It is the intent of *I Liheslaturan Guahan*, through the "HealthCare Insurance Transparency Act of 2010", to ensure the healthcare insurance negotiations reflect the most economical and beneficial health plans that provide the requisite medical care needs and services for Government of Guam employees, retirees and their families. As well, through this Act, the obligation of the approved health care insurance benefit *shall* be known prior to the annual "Open Enrollment" period as the process is brought into the standards of conformance with the annual Budget Act process of the island.

It is understood that the legislature wishes to provide economical and beneficial health plans to government employees and retirees. As well, it is necessary that the legislature know the potential cost of the group health insurance plan prior to undertaking the annual budget act process for the succeeding year. The potential cost of the group health plan does need to be known by the legislature on or about July 31<sup>st</sup> in order to be considered and accommodated in the annual budget process. These are understood to be the stated legislative intentions for the enactment of 4 GCA §4302(c)(2).

Accomplishing these legislative intentions does not require the ability to approve either the proposals before negotiations, or approve contract terms after negotiations. The legislature already has numerous means by which to accomplish these legislative goals. A few are stated here.

1. A representative of the legislature serves on the Negotiating Team that actually negotiates the contract for the executive branch. §4302(c).
2. Two legislators have been added to the Negotiating Team, as ex-officio, non-voting members. P.L. 31-24, amending §4302(c).
3. §4302(c) (2) sets a July 31 deadline for final approval of one or more health care proposals. Providing the details of the final approval to the legislature by July 31, and prior to the annual budget act process does not create an interference with executive functions.
4. The extent of the government financial commitment to group health care coverage for employees and retirees is determined. §4301(b).
5. The group health insurance statutes, at 4 GCA §§ 4301 and 4302, have been amended numerous times to provide clarity on health care benefits that are to be provided in the annual benefits package. Ample direction is provided to the executive in the existing statutes. §4301(e), (f) and (h), and §4302(d), (f) and (h) and (i).
6. Existing and recently enacted provisions of the group health care laws are directed at and intended to increase both the number of offerors who will participate in the process of offering health insurance programs to the government of Guam, to increase the

competitiveness of the process, and, as a result decrease the cost of the end product. See, as an example, P.L. 30-93:3, requiring companies currently offering insurance to provide detailed claims utilization and cost information annually and quarterly so that this information can (1) be provided to prospective offerors in subsequent years, making it easier for prospective offerors to understand the group to be insured and anticipate the cost of providing insurance to that group, and (2) provided to the Negotiating Team so that the government and its consultant can negotiate better and more economical terms. §4302(a), (b), (c) and (g).

With this much direction and limitation already provided in the group insurance laws, giving the executive ample guidance in acquiring group health care, there can be no legitimate justification for the legislature to interpose itself into the process of developing, negotiating and executing the actual healthcare contract. It may be argued that in the past, and particularly with regard to the fiscal 2011 group healthcare contract, the legislature did not have ample information about the cost of healthcare in a timely manner to successfully complete the budget and appropriation process. Involvement of legislative representatives in the negotiating process going forward will resolve this issue.

The disruptive imposition of the legislature into the executive function of contract development, negotiation and execution is not justified by any overriding constitutional need. *In re Request of Governor Gutierrez*, 2002 Guam 1; *People of Guam v. Perez*, 1999 Guam 2.

### **Conclusion**

Public Law 30-227:2, as codified at 4 GCA §4302(c) (2), is inorganic as a violation of the separation of powers doctrine to the extent that it interposes the legislature into the approval and decision-making process of the development, negotiation and execution of the group healthcare contract by giving it authority to approve either (1) which proposals are to be chosen, leading to negotiating of a healthcare contract, or (2) the terms and conditions of the group healthcare contract. By virtue of the Organic Act of Guam these responsibilities are executive functions that properly belong with the Governor.



LEONARDO M. RAPADAS



**Clynton E. Ridgell**

Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response*

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## COMMITTEE REPORT DIGEST

### I. OVERVIEW

Bill No. 218-35 (COR) was introduced on **October 9, 2019** by **James C. Moylan** and was subsequently referred by the Committee on Rules to the Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response on **November 20, 2019**.

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response convened a public hearing on Bill No. 218-35 (COR) on **Tuesday, February 11, 2020** at **9:00 am** in *I Liheslaturan Guåhan*'s Public Hearing Room.

#### **Public Notice Requirements**

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets on **Tuesday, February 4, 2020** (5-Day Notice) and again on **Sunday, February 9, 2020** (48-Hour Notice).

#### **Senators Present**

Senator Clynton E. Ridgell, Chairperson

Senator James C. Moylan, Member

Senator Telo T. Taitague

Senator Kelly Marsh (Taitano), Ph.D.

### II. SUMMARY OF TESTIMONY & DISCUSSION

The public hearing was Called to Order at **9:02 am**.

**Senator Clynton E. Ridgell, Chairman – Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response:** Good morning. This public hearing, conducted by the Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response is now called to order at 9:02 a.m.

Notice of the hearing was disseminated to all local media outlets via electronic mail on February 4th of 2020, with the second notice provided on February 9th of 2020. Notice of the hearing was also made known on the Guam Legislature's website.

Today's agenda is on Bill Numbers 217-35 (COR) and 218-35 (COR), both introduced by Senator James C. Moylan. The first item on the agenda is Bill 217-35 (COR), introduced by Senator James C. Moylan; it's an act to add Section 58104(r) to Chapter 58, Title 12, Guam Code Annotated, relative to creating a qualifying certificate for the enticement and potential establishment of a commercial drone industry on Guam.

I'd like to recognize my colleagues who have joined us today, Senator Wil Castro, Senator Telo Taitague, and of course, the primary sponsor of the bill, Senator James C. Moylan, and I'd like to afford Senator Moylan the opportunity for an opening statement on his measure.

**[Proceedings on discussion of Bill 217-35 (COR)]**

And the next item on the agenda for today is Bill 218-25 (COR) introduced by Senator James C. Moylan. An act to amend Section 58104(f) and to add section 58104.1, both of Chapter 58, Title 12, Guam Code Annotated, relative to creating a Qualifying Certificate for the enticement and potential establishment of a processing trade and distribution, transformation or fulfillment center industry on Guam. And we will now hear from Senator Moylan, who is the primary sponsor, for his statement on Bill 218-35 (COR).

**Senator James C. Moylan, Primary sponsor of Bill Number 218-35 (COR):** Thank you, Mr. Chairman, and to my colleagues for the Public Hearing, today. Continuing on with the Bill 218 as similar to 217, the genesis, the intent, the bottom line is to create legislation to spur our economic activity by attracting new industries and creating jobs on the island. We've entertained, again, GEDA. We're looking at additional information to help us strengthen this bill but basically, we're looking for investors to come to the island to provide us such training 218, or industries as 218 does with distribution and fulfillment centers. With these industries being attracted to our island with qualifying certificates, we hope to build our economy. Thank you, Mr. Chairman, for the opportunity.

**Chairman Ridgell:** Thank you, Senator Moylan. At this time, I'd like to call up everyone who has signed up to testify. Mr. Ricky Hernandez from GEDA. Art Dawley, again. And Charlie Hermosa from APL. You can join us at the table if you're here, too. Okay, thank you. I'll begin with Mr. Hernandez. Please, again, just state your name, again, for the record.

**Dr. Artemio "Ricky" Hernandez, Deputy Administrator – Guam Economic Development Authority:** [Written testimony presented orally.]

**Chairman Ridgell:** Thank you, Mr. Hernandez. Mr. Hermosa? And if you could please introduce yourself? Turn on your microphone and introduce yourself for the record before you begin your testimony. Thank you.

**Charlie Hermosa, General Manager - American President Lines:** Yes, good morning, senators. My name is Charlie Hermosa. I'm the General Manager for American President Lines -- APL -- but, more importantly, I'm also someone who's very passionate about Guam and the capabilities of Guam. So, I'm going to talk through a lot of those capabilities as far as what this bill represents and the strength that it really, truly has. Right now, we're at a pivotal point in the way we manage logistics in this globalization that we live in, today. One of the things that I learned, very rapidly, was during my time working down in Puerto Rico, while living in Puerto Rico, I ran one of the largest distribution centers -- 3PL --

down in Puerto Rico, in the Caribbean, and we constantly try to manage the location with the capabilities of the island. And being able to promote on what it could actually stand from a logical standpoint for companies that do business globally. So, during that time, during 2006-2007, unfortunately Toyota was going through a rough period with the brake systems was one indication that we use as a tool for large corporations to show them the capabilities that they could have by decentralizing and creating a hub-and-spoke type distribution system worldwide. Meaning they could set up distribution centers, not only in North America, South America, but an offshore market such as Puerto Rico, Hawaii, Guam. In doing so, they would have the means to be able to have the capabilities where, if there's an issue with one side of the world, the other side of the world keeps moving forward.

As we move, today, and we see what the coronavirus is doing, today, on the Asia Chinese market, there's a lot of scrambling right now that's going on for manufacturing vendors trying to source products. They're trying to divert and source from other regions in the world and if they don't have those logistical pipelines set in places, there's going to be a lag in being able to produce the goods that the people around the world need. Currently, there's productions plants being shut down in Korea because there are no parts being made out of China. There's no assembly being made out in China, today, so there's a huge impact on what it has. So, when we look at Guam, it really shows a utilization that we can really present our brand.

Now, when we talk about brand, we also have to look at the Guam brand that we have. It's a very powerful one. It's a Guam brand that should be able to compete head-to-head with Hawaii. When we see products in the supermarkets on the mainland US, when we see things made in Hawaii, we should also have products that are made on Guam. On the mainland US and worldwide, our Guam brand is as strong as any other brand in the world. We talk about the workforce. Well, today I teach a class at the University of Guam. It's called 'Entrepreneurship'. And let me tell you, some of the students that we have on island, they're very powerful, very talented. It's unbelievable, the ideas and mechanisms that they think through. Right there, our new generations, our workforce, similar to Puerto Rico, we struggled with our young talent leaving the island. But in talking to our students, we see they want to stay here, they want to be able to have something that creates an ability for them to share their ideas and create a workforce environment, too.

I'm a combat veteran. I work with a veteran's group. They want jobs. None of us came back the same after we came back from war. Some are not able to find jobs that are the regular nine-to-five, but that mechanism has changed. The mechanism to be able to work nine-to-five has changed. We have single parents. We have a good workforce that we can utilize in a new industry such as what this bill is trying to create. This bill not only attracts investors, but this bill allows for an industry to be created within Guam that allows us to put our name on it. There is no reason why, today, we have any barriers for anything to come into Guam, today, and not being put together with the people that we have with the knowledge and the skills that we can produce with that. Thank you. And that's my testimony for today.

**Chairman Ridgell:** Thank you, Mr. Hermosa. Any questions from the members of the panel, my colleagues?

**Senator Telo T. Taitague:** Thank you, Mr. Chair, for the opportunity to make comment. Ricky, I thank you for your testimony. A copy for it, I see the amendments that you're making, you're requiring us to consider. My concern, here, is in a section of the law -- that I will get with the author, as well -- is the concern that the warehouse has to be fully stocked in order to provide someone with a QC. So, did you see that section of that, Ricky?

**Dr. Hernandez:** Yeah, I think just reading the bill, it doesn't say 'fully stocked'. It just says, 'stock with products to be distributed to consumers off-island,' specifically. So, there might be some flexibility that you might want to consider in terms of it being for off-island. We might, in terms of QCs, it would lower costs of importing. So, if you were able to possibly sell not only to off-island but on-island -

**Senator Taitague:** Also, it's the one that you mentioned, early. Lastly, if you can provide us with the opinion of the Attorney General's opinion that you received with regards to the section you asked us to -- do you have a copy of that?

**Dr. Hernandez:** I don't have it with me, but we can email it to the committee.

**Senator Taitague:** Yeah, I'd like to read what the Attorney General had to say about that. Thank you so much for your testimony.

**Chairman Ridgell:** Thank you, Senator Taitague. Mr. Hernandez, just a quick question. Are processing trade and distribution, transformation fulfillment companies similar to export trading companies which are defined in subsection one of the sections that this bill amends?

**Dr. Hernandez:** Senator, I'll have to get back to you on that.

**Chairman Ridgell:** Thank you. With that, any of my colleagues have any other questions or comments? Senator Kelly Marsh Taitano?

**Senator Marsh (Taitano):** Si Yu'os ma'åse', Mr. Chair. It was good to hear, as you were saying, Mr. Hermosa, I've felt for many years for our community members on Guam, we have an extremely talented pool of individuals, here. And then throughout the world, really, we're constantly hearing about how people from Guam, there're high level Disney executives, they're out there as game developers. But the list goes on and on and often achieving high accolades. So, I really appreciate the fact that you noted that, as well. I think that's really important. One question that I was thinking of, again, supporting the idea of diversifying our economy, supporting the idea of wanting to have more employment for our people and so forth. Just to look at the types of employment that this is going to provide so we can understand it a bit better. So the other bill that we were looking at was looking at those that are going to be entering a specialized field for this type, at least, with my understanding of manufacturing and so forth, are we largely talking about service industry

type of employment that could be offered within that? And then how much of it would, perhaps, be service industry type jobs?

**Mr. Hermosa:** Yes, absolutely. So when you look at the true picture, as far as when we talk about manufacturing, whether it's light manufacturing, you have jobs from as simple as being able to run a forklift, being able to manage the inventory, picking and the packing -- a lot of the picking pack for the parts that are being put together are still being done, manually. So, we have bins where we have specific components and we have different bins where we have other components. We physically go to those components, pick them up, put them in an assembly line and they get put together, manually at that point. We have folks that deal with IT-related managing the inventory, the in and out, being able to connect with the external systems where the orders are being placed. We have accounting. We have finance. I mean it's an entire business that not only takes to account from the forklift driver, the packer, the IT manager, finance, accounting. It's a whole world in itself. So, there're very specialized skills but there are also skills that are being trained day in and day out, today, and are in our schools.

**Senator Marsh (Taitano):** Very good. It helps us understand the industry, as a whole. Overall, our island, we have a lot of service industry and so it also challenges us in certain ways because a lot of people aren't necessarily making high-level employment, they're not making high-level salaries but it is important for us to hear. I mean, every business is going to be its own set of proportions but it's important for us to hear that when we hear manufacturing, it's going to provide that type of employment. And for parts of our islands, that's important, it's going to be fitting right in with their skill set, it's going to be fitting in with what works for them. But the other part of what you shared, it is important, here, as well that there is going to be hopefully ample opportunity for these specialized skills that people are going to school for and can further our economy in varying ways and not just at one singular level. Because we are so close to Asia, do you see that as any competition for us? Or do you feel like -- do you assess that we have a strong ability to compete as we need to and be able to build as we need to?

**Mr. Hermosa:** I'll answer that in two parts. I think there's an organic manufacturing and if we really want to take a look at, for example, you know everybody -- well, most people know that I did start a small business called 'The Guam Gift Baskets' and the Guam Gift Basket was really a social entrepreneurship that takes into account all the products that are being made on Guam and to ship them, either to give them a localized gift or, primarily, it's been off island. It's mainly an online business. And what it does is it's I meet with different folks that make little trinkets at home. Just everywhere from small cards, obviously the chocolates and the cookies are well known on island, the mugs -- everything. So, you know the idea came about because the Guam brand is very strong back on the mainland and I had a lot of friends that were asking me, "Can you send me this?" So slowly we just started packaging these boxes and it's really like a travel mechanism to put things that are made on Guam together and ship them off island. So that alone, we have a little incubator where we can get folks that are making different trinkets just around the island to come together under one roof to manufacture a beautiful product that will be shipped off

island or made to stay here, locally. And sold our gifts for our tourism. So, organically, we have things that we can put together.

The second part is being able to compete against Asia. When you look at that market, we have to be looking at exactly what we're going to be competing against. For example, I met with a pharmaceutical manufacturer last week. In my mind, I thought that they were making their components or their parts in Asia. And they're making them in LA. And we talked about labor because let's talk about LA. There's some completely different stories. So, the mechanism they used to make the type of product that they make is a high margin product that allows for them to charge what needs to be charged and we can do the same. If we want to compete against a market that's making pens, and it's going to be a tough one because it's very saturated. You have multiple companies to do it in Asia. But when we get very technical and we really go after and bring in the investors that will utilize the talent that we have here, you'll see that the competition is completely different. So, you really have to divide the market into separate sort of categories, per se.

**Senator Marsh (Taitano):** Si Yu'os ma'åse' para ennao for that information. I really like hearing about our potential for which sounds like cottage industries, micro-industries, because I think there's a lot of potential here for that grassroots sort of entrepreneurship and it makes me think of -- I've already looked up the Guam Gift Basket online -- so it sounds kind of like we still send our kids, I have at least one, I have one child off island. So, we send care packages, of course. Right. And so, it's kind of like a care package from Guam. So, there's a lot of potential there and it helps me think of this industry in a different way.

But one of them and that's been going through my mind and, perhaps, we can talk afterwards just to understand the potential of it, is throughout Micronesia, we have different economic scales for FSM. I think their minimum wage is like \$1 an hour. For Palau it's like \$3.25 an hour and so forth. So it seemed to me that with some of the potential, here, for our local entrepreneurs, they could be branching out to those areas, be helping the economies there, be providing jobs there and having it work together so the economy is healthier. They're, perhaps, providing incentives and good things for Micronesia but also building up our industry, here, that we can figure out a role altogether. So, thank you for helping me think some of these issues through.

**Mr. Hermosa:** And I do apologize. That is one point, I'm a horrible -- I can't follow my notes sometimes. But that's one of my points, actually, is to look into the Micronesia market because that's another market that's thriving and we should be able to give them the capabilities and Guam can serve as that hub, being able to provide them with the capabilities to source the products, make them, we can bring them here and then distribute them from Guam out to anywhere in the world. And we should be able to tap in and that's a very untapped market, right now. We should be able to work with them to create a connection with them so that we can provide them with the services that they need.

**Senator Marsh (Taitano):** Right. And then it would fit exactly within this manufacturing and then it's all really local. It's local within the region because its sources and cottage

industries throughout the region but, kike you said, the manufacturing center can be here, the business can be here, and it can be a hub. So, like I said, thank you for helping me think some of those things through. Si Yu'os ma'ase', Mr. Chair.

**Chairman Ridgell:** Thank you, Senator. Thank you, Mr. Hermosa, and Mr. Hernandez, for your testimony.

**Mr. Hermosa:** Chairman, I'm sorry. Just one last thing. I also want to note that the bill, itself, we have to have that leverage so what it stands for and, I don't know if I made that a very strong point, to be able to have that passed as with the leverage to be able to put forth against the investor so that they know that this is in place, already. It's a huge, huge, huge step.

**Chairman Ridgell:** The committee will continue to accept written statements on today's hearing within five business days from today which may be delivered to my office at 238 Archbishop Flores Street, Suite 906 at the DNA building in Hagåtña. Statements may also be submitted via email to [sen.cridgell@teleguam.net](mailto:sen.cridgell@teleguam.net), or you may send it via fax at 475-4768. This hearing is now adjourned at 10:36 am. Thank you.

The public hearing was adjourned at **10:36 am**.

### **III. FINDINGS & RECOMMENDATIONS**

On February 11, 2020, the legislative Legal Bureau provided its review of Bill No. 218-35 (COR) as introduced, with recommendations for consideration to make amendments with respect to authority over the approval of Qualifying Certificates. Furthermore, testimony received by the Guam Economic Development Authority includes the recommendation for a more thorough analysis of the fifty percent (50%) assembly requirement contained in the bill.


The Committee consulted with the bill sponsor to review the recommendations for markup. The sponsor chose not to make any of the changes recommended by the Legal Bureau and has requested for the Committee to file the Committee Report for the bill as introduced.

The Committee on Economic Development, Agriculture, Maritime Transportation, Power and Energy Utilities, and Emergency Response hereby reports out Bill No. 218-35 (COR) As introduced by James C. Moylan – An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam, with the recommendation TO REPORT OUT ONLY.

***I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN***  
**2019 (FIRST) Regular Session**

Bill No. ~~218~~-35 (~~CO2~~)

Introduced by:

James C. Moylan 

**AN ACT TO AMEND § 58104(f) AND TO ADD § 58104.1,  
BOTH OF CHAPTER 58, TITLE 12, GUAM CODE  
ANNOTATED, RELATIVE TO CREATING A  
QUALIFYING CERTIFICATE FOR THE ENTICEMENT  
AND POTENTIAL ESTABLISHMENT OF A  
PROCESSING TRADE, AND A DISTRIBUTION,  
TRANSFORMATION OR FULFILLMENT CENTER  
INDUSTRY ON GUAM.**

2019 OCT -9 AM 9:29 

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that with Guam's proximity to Asia, we become an ideal destination for industries such as a processing trade and a distribution, transformation or fulfillment center. Not only would enticing such entities to consider investing on Guam be beneficial in terms of stimulating our economy, but there would be a great opportunity of job creation.

However the costs of labor or logistics may be a concern for potential investors, thus the need to create viable incentives to attract such industries to offset such distresses is paramount. The Qualifying Certificate offered by the Guam Economic Development Authority (GEDA) is an ideal tool and can be catered towards the needs or benefits of an entity, while assuring that job creation and other community contributions are prioritized.

1 This legislation does not dictate the benefits to be offered to investors (as  
2 that is a function of GEDA), rather includes new industries into the matrix of  
3 qualified trades for available incentives that can help establish additional economic  
4 activity on island. Processing Trade Companies would essentially import materials  
5 with the intent of assembling or transforming them locally, and then export them to  
6 buyers off island. The attraction of labeling the goods as “Made in Guam, USA”,  
7 may be an enticing factor. As for distribution, transformation, or fulfillment  
8 centers, Guam’s proximity to the Asian region benefits potential tariffs and  
9 timelines, thus allowing the goods to be imported, stored, processed and shipped  
10 from Guam. These types of industries would essentially create many jobs for  
11 island residents.

12 Further, by allowing such industries to apply for incentives may allow local  
13 companies to either invest in such ventures, or seek out outside entities to do the  
14 same. The greatest marketing tool to help manifest new industries on Guam would  
15 be the commerce community on Guam.

16 **Section 2.** § 58104(f) of Chapter 58, Title 12, Guam Code Annotated is  
17 hereby *amended* to read as follows:

18 (f) manufacturing, processing trade company, and/or a distribution  
19 transformation or fulfillment center;

20 For purposes of this Chapter, the following shall be the definitions of a  
21 processing trade company and a distribution, transformation or fulfillment center:

22 (1). a processing trade company which shall import all or part of the  
23 raw and auxiliary materials, parts and components, accessories, and  
24 packaging materials from abroad, and exports the finished product(s) after  
25 processing, transforming or assembly on Guam. At least fifty percent (50%)  
26 of the finished product shall be assembled on Guam to qualify for the  
27 incentives of this Chapter.

1           (2). a distribution, transformation or fulfillment center shall be a  
2           warehouse or specialized building which is stocked with products to be  
3           redistributed to consumers off island, and shall be the processing function of  
4           the order completion structure. They shall also be able to provide services  
5           such as product mixing, cross docking and packaging.

6           **Section 3.** § 58104.1 of Chapter 58, Title 12, Guam Code Annotated is  
7 hereby *added* to read as follows

8           **“§ 58104.1. Approval of New Qualifying Certificates.**

9           Notwithstanding any other provisions of the law, any new or first time  
10          application for a Qualifying Certificate pursuant to §58104 of this Chapter, shall be  
11          approved by I Maga'Haga Guahan, after consent provided by the Authority's  
12          Board of Directors. Any Qualifying Certificate pursuant to §58104 of this  
13          Chapter, shall be excluded from the approval process of I Liheslaturan Guåhan  
14          pursuant to Public Law 34-116 III:8.”

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

20          **Section 5. Effective Date.** The Act *shall* become effective upon enactment.

Senator Régine Biscoe Lee,  
Chair

Senator Amanda L. Shelton,  
Vice Chair

Speaker Tina Rose Muña Barnes,  
Member

Vice Speaker Telen Cruz Nelson,  
Member

Senator Kelly Marsh (Taitano), PhD,  
Member

Senator Sabina Flores Perez,  
Member



**COMMITTEE ON RULES**  
*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN*  
**35<sup>TH</sup> GUAM LEGISLATURE**

November 18, 2019

Senator Clynton E. Ridgell,  
Member

Senator Joe S. San Agustin,  
Member

Senator Jose "Pedro" Terlaje,  
Member

Senator Therese M. Terlaje,  
Member

Senator James C. Moylan,  
Member

Senator Mary Camacho Torres,  
Member and Chair, Subcommittee on Protocol

# MEMO

**To:** Rennae Meno  
Clerk of the Legislature

**From:** Senator Régine Biscoe Lee  
Chair, Committee on Rules

**Re:** Fiscal Notes

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*Buenas yan Håfa adai.*

Attached, please find the fiscal notes for the following bills:

Bill No. 217-35 (COR)  
Bill No. 218-35 (COR)  
Bill No. 224-35 (COR)

Please forward the same to Management Information Services (MIS) for posting on our website.

For any questions or concerns, please feel free to contact Mary Maravilla, Committee on Rules Director at 472-2461.

Thank you for your attention to this important matter.



**Bureau of Budget & Management Research  
Fiscal Note of Bill No. 218-35 (COR)**

**AN ACT TO AMEND § 58104(f) AND TO ADD § 58104.1, BOTH OF CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO CREATING A QUALIFYING CERTIFICATE FOR THE ENTICEMENT AND POTENTIAL ESTABLISHMENT OF A PROCESSING TRADE, AND A DISTRIBUTION, TRANSFORMATION OR FULFILLMENT CENTER INDUSTRY ON GUAM.**

Department/Agency Appropriation Information	
Dept./Agency Affected: Guam Economic Development Authority (GEDA)	Dept./Agency Head: Melanie Mendiola, Administrator
Department's General Fund (GF) appropriation(s) to date:	\$0
Department's Other Fund (Specify) appropriation(s) to date:	\$0
	\$0

Fund Source Information of Proposed Appropriation			
	General Fund:	Special Fund	Total:
FY 2019 Unreserved Fund Balance		\$0	\$0
FY 2020 Adopted Revenues	\$0	\$0	\$0
FY 2020 Appro. (P.L. 35-36)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2020 (if applicable)	FY 2021	FY 2022	FY 2023	FY 2024
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Special Fund	\$0	\$0	\$0	\$0	\$0	\$0
Total 1/	\$0	\$0	\$0	\$0	\$0	\$0

- Does the bill contain "revenue generating" provisions? // Yes ☐ No ☒  
If Yes, see attachment
- Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A // Yes // No  
If no, what is the additional amount required? /X/ N/A
- Does the Bill establish a new program/agency? /X/ Yes // No  
If yes, will the program duplicate existing programs/agencies? // Yes // No  
Is there a federal mandate to establish the program/agency? // Yes /X/ No
- Will the enactment of this Bill require new physical facilities? // Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: /X/ Yes // No  
/X/ Requested agency comments not received by due date // Other:

Analyst: <u>Jose Salas Cruz, Jr., BMA II</u>	Date: <u>15 NOV 19</u>	Director: <u>Lester L. Carlson, Jr., Director</u>	Date: <u>NOV 15 2019</u>
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1/The intent of Bill 218-35 (COR) is to (1) amend §58104(f) and (2) to add §58104.1 to Chapter 58, Title 12, Guam Code Annotated. The amendment would allow for a qualified entity to apply for a qualifying certificate if the activity is relative to a processing trade company, and/or a distribution transformation or fulfillment center. The addition §58104.1 would require the approval of new qualifying certificates to be made by the Governor of Guam after the consent of the Guam Economic Development Authority's Board of Directors. It would also exclude the need legislative approval as stipulated to Public Law 34-116, Chapter XIII, Section 8.

Absent information from the Guam Economic Development Authority, the Bureau is unable to determine the overall impact on the Government of Guam, if an entity were to be granted a qualifying certificate. However, if an entity were to be granted a qualifying certificate, the Bureau notes that that the use of tax credits may reduce the expected revenues due to the government. This is so as the filing of tax credits take priority over annual appropriations and may have an adverse effect on the government programs.



**Clynton E. Ridgell**

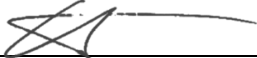
Senator – 35<sup>th</sup> Guam Legislature

*Committee on Economic Development, Agriculture, Maritime Transportation,  
Power and Energy Utilities, and Emergency Response*

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**COMMITTEE VOTE SHEET**

Bill No. 218-35 (COR) – “An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam,” introduced by James C. Moylan

SENATOR	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
<b>Senator Clynton E. Ridgell</b> Chairperson				✓		
<b>Speaker Tina Rose Muña Barnes</b> Vice Chairperson	e-Vote 10/08/2020			✓		
<b>Senator Régine Biscoe Lee</b> Member						
<b>Senator Jose T. “Pedro” Terlaje</b> Member	e-Vote 10/08/2020	✓				
<b>Senator Therese M. Terlaje</b> Member						
<b>Senator James C. Moylan</b> Member	e-Vote 10/08/2020	✓				
<b>Senator Mary Camacho Torres</b> Member						



Selina Onedera-Salas <[sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org)>

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## Re: e-Vote: Committee Report on Bill No. 218-35 (COR)

1 message

Senator Pedro Terlaje <[senatorpedo@senatorjpterlaje.com](mailto:senatorpedo@senatorjpterlaje.com)>

Thu, Oct 8, 2020 at 3:08 PM

To: Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)>

Cc: Selina Onedera-Salas <[sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org)>, Senator James Moylan <[senatormoylan@guamlegislature.org](mailto:senatormoylan@guamlegislature.org)>, Senator Régine Biscoe Lee <[senatorbiscoelee@guamlegislature.org](mailto:senatorbiscoelee@guamlegislature.org)>, Senator Senator Mary Camacho Torres <[senatormary@guamlegislature.org](mailto:senatormary@guamlegislature.org)>, "Senator Therese M. Terlaje" <[senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)>, Speaker Tina Rose Muña Barnes <[speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)>

To do pass.

On Thu, Oct 8, 2020 at 2:35 PM Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)> wrote:

Håfa Adai, Committee Members:

Please see the attached file, or click on the link to access the Committee Report for Bill No. 218-35 (COR) - An Act to Amend § 58104(f) and to Add § 58104.1, Both of Chapter 58, Title 12, Guam Code Annotated, Relative to Creating a Qualifying Certificate for the Enticement and Potential Establishment of a Processing Trade, and a Distribution, Transformation or Fulfillment Center Industry on Guam, introduced by James C. Moylan.

 [Committee Report - Bill No. 218-35 \(COR\).pdf](#)

Please indicate your preferred action, based on the following options:

- To Do Pass;
- To Not Pass;
- To Report Out Only;
- To Abstain; or
- To Place in Inactive File.

Please submit your response **no later than 5:00 pm, Friday - October 9, 2020**. Your responses will be logged into the Committee Vote Sheet for Bill No. 218-35 (COR) as introduced by James C. Moylan, which will be filed with the Committee on Rules.

If you have any questions or concerns, please contact Selina Onedera-Salas via email at [sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org).

Si Yu'os ma'åse'

--

### The Office of Senator Jose "Pedo" Terlaje

Committee on Public Safety, Border Safety,  
Military and Veterans Affairs, Mayors' Council,  
Infrastructure, and Public Transit

35th Guam Legislature

*I Mina'trentai Singko na Liheslaturan Guåhan*

140 Aspinall Avenue Ste. 202 Hagatna, Guam 96910

Tel: (671) 989-5301/ 3218

Email: [senatorpedo@senatorjpterlaje.com](mailto:senatorpedo@senatorjpterlaje.com)



Selina Onedera-Salas <[sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org)>

---

## Re: e-Vote: Committee Report on Bill No. 218-35 (COR)

1 message

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**James Moylan** <[senatormoylan@guamlegislature.org](mailto:senatormoylan@guamlegislature.org)>  
To: Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)>

Thu, Oct 8, 2020 at 3:27 PM

To do pass.

SYM.

--

**JIM C. MOYLAN**

Office of Senator James "Jim" C. Moylan  
I Mina'trentai Singko na Liheslaturan Guåhan  
35th Guam Legislature  
DNA Bldg. Ste. 407 | [238 Archbishop FC Flores St.](#) | Hagatna, GU 96910  
T: (671) 922/979 - [MORE](#) (6673)

On Thu, Oct 8, 2020 at 2:35 PM Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)> wrote:

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 [Committee Report - Bill No. 218-35 \(COR\).pdf](#)

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Si Yu'os ma'åse'



Selina Onedera-Salas <[sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org)>

## Re: e-Vote: Committee Report on Bill No. 218-35 (COR)

1 message

**Speaker's Office** <[speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)>

Thu, Oct 8, 2020 at 4:55 PM

To: Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)>

Cc: Senator Régine Biscoe Lee <[senatorbiscoelee@guamlegislature.org](mailto:senatorbiscoelee@guamlegislature.org)>, Senator James Moylan

<[senatormoylan@guamlegislature.org](mailto:senatormoylan@guamlegislature.org)>, Senator Jose Terlaje <[senatorpedo@senatorjpterlaje.com](mailto:senatorpedo@senatorjpterlaje.com)>, "Senator Therese M. Terlaje"

<[senatorterlajegum@gmail.com](mailto:senatorterlajegum@gmail.com)>, Senator Senator Mary Camacho Torres <[senatormary@guamlegislature.org](mailto:senatormary@guamlegislature.org)>, Selina Onedera-

Salas <[sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org)>

to report out only



*Sinseru yan Minagâhet,*

**Office of the Speaker • Tina Rose Muña Barnes**

Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature

*I Mina'trentai Singko na Liheslaturan Guáhan*

Guam Congress Building | [163 Chalan Santo Papa](#) | Hagatna, GU 96910

T: (671) 477-2520/1

[speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)

This e-mail message is intended only for the use of the individual or entity named above and may contain confidential and privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us by replying to [speaker@guamlegislature.org](mailto:speaker@guamlegislature.org) and delete the message immediately. Thank you very much.

Gumai pribilehu yan konfedensia este siha na mensâhi. Solo espesiátmente para hágu ma entsioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespátcha. Yanggen lachi rinisibu-mu nu este na mensâhi , put fabot ago' guatu gi I numa'huyong gi as [speaker@guamlegislature.org](mailto:speaker@guamlegislature.org) yan despues destrosa todú siha I kopian mensâhi. Si Yu'os ma'âse'.

On Thu, Oct 8, 2020 at 2:35 PM Clynt Ridgell <[clyntridgell@guamlegislature.org](mailto:clyntridgell@guamlegislature.org)> wrote:

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If you have any questions or concerns, please contact Selina Onedera-Salas via email at [sonedera-salas@guamlegislature.org](mailto:sonedera-salas@guamlegislature.org).

Si Yu'os ma'åse'