

I Mina'trentai Sais 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
259-36 (LS)	Telo T. Taitague Amanda L. Shelton Sabina Flores Perez Joanne Brown Frank F. Blas, Jr. Jose "Pedo" Terlaje	"ÁKTON GUMA" (GROUP USE MANÁMKO ACCOMMODATIONS) INCENTIVE ACT, AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING NEW SPECIAL QUALIFYING CERTIFICATE INCENTIVES FOR THE DEVELOPMENT OF ELDERLY RESIDENTIAL LIVING HOUSING COMPRISING OF INDEPENDENT LIVING, ASSISTED CARE AND NURSING HOME ACCOMMODATIONS.	2/21/22 12:21 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 259-36 (LS)

Introduced by:

Telo T. Taitague 

Amanda L. Shelton 

Sabina F. Perez 

Joanne S. Brown 

Frank F. Blas, Jr. 

Jose "Pedro" Terlaje 

“ÅKTON GUMA” (GROUP USE MANÅMKO ACCOMMODATIONS) INCENTIVE ACT, AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 58, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING NEW SPECIAL QUALIFYING CERTIFICATE INCENTIVES FOR THE DEVELOPMENT OF ELDERLY RESIDENTIAL LIVING HOUSING COMPRISING OF INDEPENDENT LIVING, ASSISTED CARE AND NURSING HOME ACCOMMODATIONS.

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

2 **Section 1.** This Act shall be known as the “*Åkton GUMA*” (Group Use
3 *Manåmko* Accommodations) Incentive Act.”

4 **Section 2. Legislative Intent.** *I Liheslaturan Guåhan* finds that with the rising
5 cost of housing for the growing population of seniors on fixed incomes in Guam, the
6 need to plan to meet the changing needs of Guam’s growing *manåmko* population
7 has become a vital necessity. Local incentives to promote the private development of
8 elderly residential living communities are limited to federal housing subsidies for the
9 elderly and federal development programs for eligible elderly developments.

1 Although specific federally supported opportunities exist to develop elderly
2 residential living communities, St. Dominic's, a nursing home built in 1987, is the
3 only privately operated elderly continuum of care facility in Guam. Currently, Guam
4 has no assisted care housing opportunities that fill the void between elderly
5 independent living facilities and nursing home facilities. There is a recognition for
6 developing privately owned and operated elderly residential living communities both
7 locally and nationally.

8 Elderly residential care housing development is gaining recognition with
9 investors, developers, and future residents alike. The trend is driven by the impending
10 arrival of baby boomers to the senior living space and the broader shift from acute
11 care to wellness and prevention, paving the way for more health-focused
12 development to be integrated with traditional senior housing opportunities.

13 Land, construction, labor, and materials costs have skyrocketed, especially in
14 2021. In the face of tighter construction margins, a developer looking to build senior
15 residential care development may find itself unable to get a community built. That is
16 where subsidies such as tax credits and incentives become essential tools to make a
17 development balance sheet work.

18 The Qualifying Certificate Program, created under Public Law 8-80 and
19 amended under P.L. 20-178 and P.L. 22-159, is an economic incentive tool that
20 encourages investments to strengthen the island economy, enrich its growth, and
21 enhance the quality of life in Guam. The Qualifying Certificate program has proven
22 to be highly successful, ensuring the appropriate stimulation of legitimate investment
23 of new economic development necessary to advance senior housing development in
24 Guam.

25 Senior living development costs are averaging \$256,000 per unit, or \$283 per
26 square foot, according to a report from the world's largest real estate services and

1 investment firm Coldwell Banker Richard Ellis Group (CBRE.) Although Guam
2 relies heavily on importing resources, building materials and labor costs that affect
3 local developments are mostly more expensive and possibly as much as forty percent
4 (40%) higher in Guam.

5 Currently, the Guam Housing and Urban Renewal Authority (GHURA) has
6 750 public housing units, of which 82 of those units are for the elderly. Additionally,
7 GHURA has 49 elderly units located throughout Guam. This makes the total number
8 of units for the elderly to be 131. The Government of Guam receives funds from the
9 U.S. Department of Housing and Urban Development (HUD) to administer housing
10 for low-income residents at rents they can afford. GHURA administers these funds
11 for the Government of Guam. Developers need to leverage available federal and local
12 tax incentive opportunities in developing and managing senior residences. There is
13 recognition that a significant need and vacuum exist for Guam's elderly residential
14 living opportunities.

15 The "*Ākton GUMA*" (Group Use *Manāmkō* Accommodations) Incentive Act"
16 qualifying certificate provides developers alternatives in providing needed *manāmkō*
17 residential living accommodations. Additionally, the Act attempts to migrate the
18 development and operations of *manāmkō* residential living accommodations from the
19 Government of Guam to the non-profit and private sector operators.

20 The Act allows for new construction and substantial renovations of existing
21 elderly residential accommodations that embrace independent or assisted care living.
22 The tax incentives provided through GEDA's qualifying certificate program enable
23 developers to develop elderly low-income residential living facilities by partnering
24 with federal and local funding and tax incentive opportunities and allows for the
25 development of middle-income elderly residential facilities that do not qualify
26 coverage under available federal housing subsidies and tax incentive sources.

1 This Act allows the government to leverage solution-based objectives to
2 private and non-profit entities to shoulder much of Guam’s elderly housing vacuum.
3 The *Ākton GUMA*” (Group Use *Manāmkō* Accommodations) Incentive Act allows
4 developers to concurrently leverage federal and local funding and tax incentives to
5 construct and operate elderly residential living housing for independent living,
6 assisted care, and nursing home facilities. The Act also provides tax incentives for
7 developing middle-income residential living homes. Most federally subsidized
8 programs, loans, and tax incentives are available for low-income elderly housing
9 projects and their operations. Developers wishing to develop elderly middle-income
10 residential living facilities are not eligible for most federal programs and incentives.

11 This Act intends to embrace elderly residential living communities to meet
12 future elderly housing needs that promote dignity, individuality, privacy,
13 independence, and autonomy, fostering a continuum of care for the *manākos*.

14 **Section 3. Name of Act.** The name of this Act is the “*Ākton GUMA*” (Group
15 Use *Manāmkō* Accommodations) Incentive Act.”

16 **Section 4.** A new Article 3 is hereby *added* to Chapter 58 of Title 12, Guam
17 Code Annotated, to read as follows:

18 **“ARTICLE III**

19 **SPECIAL QUALIFYING CERTIFICATE**

20 **“ĀKTON GUMA” (GROUP USE MANĀMKO ACCOMMODATIONS)**

21 **INCENTIVE ACT”**

22 § 58301. Legislative Intent of the “*Ākton GUMA*” (Group Use *Manāmkō*
23 *Accommodations*) Incentive Act.

24 § 58302. Collaboration and Partnerships.

25 § 58303. Application of Act.

26 § 58304. Definitions.

1 § 58305. Special Qualifying Certificate; Defined.

2 § 58306. Fees.

3 § 58307. Savings for the Tenants.

4 § 58308. Construction With Other Laws.

5 § 58309. “Sunset” Provision.

6
7 **§ 58301. Legislative Intent of the *Ākton GUMA*” (Group Use *Manāmkō***
8 **Accommodations) Incentive Act.** *I Liheslaturan Guahan* finds that there is a need
9 to create a Special Qualifying Certificate Program, the “*Ākton*
10 *GUMA*” (Group Use *Manāmkō* Accommodations) Incentive Act, stimulating
11 economic activity through the construction of new elderly housing development
12 projects or the substantial renovation of existing multi-family structures for
13 conversion to elderly residential living accommodations that increases the
14 availability of elderly housing accommodations.

15 The Act attempts to foster the development and operations of *manāmkō*
16 residential living accommodations from the Government of Guam to the non-profit
17 and private sector operators. Incentivizing elderly development would assist
18 developers in offsetting the rising costs of construction, supplies, and the limitations
19 associated with labor availability and cost.

20 **§ 58302. Collaboration and Partnerships.** The developer or operator shall
21 outreach to the Government of Guam agencies, federal agencies, and non-profit
22 organizations to identify available funding and services that serve the elderly
23 minorities and the elderly with disabilities providing an elderly continuum of care to
24 eligible development covered by this Article.

25 **§ 58303. Application of Act.**

- 26 a. An establishment seeking tax credits under this Act shall obtain and
27 maintain the necessary licenses, permits, certificates, Zoning Law, federal

1 laws, and other governmental approvals required in the process of
2 implementing the project.

3 b. A project covered by this Article shall comply with the Fair Housing Act
4 for elderly housing projects.

5 c. The integration of all structural, building and operational requirements
6 may optimize the integration of use in the project design and layout that
7 may be productive in securing federal funding or federal loan guarantees
8 to accomplish the same.

9 **§ 58304. Definitions.** For purposes of this Article, the following definitions
10 shall apply:

11 a. “Affordable” where used in this Article shall be up to One Hundred
12 Fifteen percent (115%) and less of the median income average threshold
13 where rental dwellings are deemed affordable if the annual rent does not
14 exceed Thirty Percent (30%) of the maximum income level for low-
15 income households, adjusted for household size.

16 b. “Assisted Care or Assisted Living” refers to elderly housing facilities that
17 provide apartment-style housing to assure that certain services are
18 available to maintain independence where needed that offers units
19 containing, at a minimum, one unfurnished room, a private bathroom, a
20 kitchenette, and a lockable door on the unit entrance. Assisted living units
21 are skilled nursing home care services as provided in accordance with §
22 7102 (a) of Chapter 7, Title 10 GCA.

23 c. “Authority” refers to the Guam Economic Development Authority
24 (GEDA).

25 d. “Business Privilege Tax (BPT)” is the tax that is levied on business
26 revenues as imposed by § 26201 of Article 2, Chapter 26, Title 11, GCA.

- 1 e. “Construction Costs” are expenses incurred by a developer to construct
2 any new Elderly assisted living and independent living housing
3 development or substantially renovate, expand, or covert existing
4 structure comprising Elderly assisted living, independent living housing,
5 convalescent development in Guam. Such costs include land
6 acquisition, building and site improvements, Architectural and
7 Engineering (A&E), furniture, fixtures, and equipment (FF&E).
- 8 f. “Developer” means the individual, partnership, corporation, association,
9 or other person who develops land through construction and becomes the
10 owner of an elderly residential living housing establishment.
- 11 g. “Development” means a senior or elderly housing project of single or
12 multiple dwelling units with accessory uses and structures for construction
13 or substantial renovation located on property in accordance with this Act.
- 14 h. “Dwelling” shall be consistent with § 61103 (j) of Chapter 61, Title 21
15 GCA, Zoning Law.
- 16 i. “Expansion or Renovation” means existing elderly residential living
17 housing accommodations pursuant to this Article may be eligible for this
18 Special Qualifying Certificate if new capital investment is to be made that
19 will either add to the building or significantly renovate the property.
- 20 j. “Elderly” means individuals that are fifty-five (55) years of age or older.
- 21 k. “Elderly Home or Housing” refers to an elderly dwelling, domicile, or
22 space used as a permanent or semi-permanent residence for an individual,
23 group or family.
- 24 l. “Independent Living” refers to housing units and associated facilities
25 designed for the elderly who are self-sufficient and require no on-site
26 personal or health care services. An Independent Living housing unit
27 consists of a room or group of rooms designed or intended to provide a

habitable unit for one or more persons with provisions for cooking, living, sanitation, and sleeping for the exclusive use of the household unit. Associated facilities may include substantial common and socializing areas and other amenities.

m. “Multiple-family Dwelling” contains three (3) or more dwelling units. A dwelling unit shall be defined as one or more rooms and a single kitchen, designed as a unit for occupancy by one family for living and sleeping purposes. For the purpose of this Article, a duplex, townhomes, apartment, or condominium shall be considered a multiple-family dwelling. A hotel shall not be considered a multiple-family dwelling provided that the developer intends to substantially renovate the hotel use for elderly housing.

n. “Nursing Home” shall be consistent with § 7102 (a) of Chapter 7, Title 10 GCA.

o. “Project” refers to constructing or renovating structures or buildings for elderly residential living housing.

p. “Property Value” means the current appraised value of the land and improvements. The developer shall bear the cost of such appraisal. An applicant may provide an appraisal completed within one hundred eighty (180) days prior to the date of application filing.

q. “Property Tax Assessment” shall mean the real estate and improvement taxes assessed on the Project.

r. “Renovation Cost” are expenses incurred from modernizing the elements within a structural part located on real property for elderly housing, whose total costs are no less than forty percent (40%) of the property value and that either:

1. materially increases the value of the property;

- 1 2. substantially prolongs the useful life of the property; or
2 3. adapts the property to a new or better use for elderly residential living
3 accommodations.

4 s. “Residential Living” means a housing arrangement meeting ADA
5 compliance and the Fair Housing Act for the elderly chosen voluntarily by
6 persons fifty-five (55) years of age or over, or their authorized
7 representative, where independent living accommodations, assisted care
8 accommodations, and/or nursing home accommodations or any
9 combination thereof, involving varying levels and intensities of care and
10 supervision, protective supervision, or personal care are provided, based
11 upon their varying needs that are located within the elderly housing
12 facility.

13 t. “Special Qualifying Certificate” shall refer to tax incentives on
14 developments that are eligible or approved for the *Ākton GUMA*” (Group
15 Use *Manāmkō* Accommodations) Incentive Act.

16 u. “Senior Housing” means age-restricted residential housing intended and
17 operated for occupancy by persons fifty-five (55) years of age or older.

18 v. “Substantial Improvement or Substantial Renovation” means any
19 combination of repairs, reconstruction, alteration, or improvements to a
20 Structure that is ADA compliant in which the cumulative cost equals or
21 exceeds forty percent (40%) of the market value of the structure and real
22 estate.

23 w. “Supportive services” means resources available to the resident in the
24 community that helps to maintain their functional ability and meet their
25 needs as identified in the individual resident assessment. Supportive
26 services may include any of the following: medical, dental, and other

1 health care services; transportation; recreational and leisure activities;
2 social services; and counseling services.

3 x. “Use” is the purpose for which land or a structure is designed, arranged,
4 intended, occupied, or maintained.

5 y. Use Tax: The tax that is levied on the landed value of or consumption of
6 all property as defined by Chapter 28 of Title 11 GCA.

7 z. “Zoning Law” refers to the Zoning Law of Guam, Chapter 60 of Title 21
8 of the Guam Code Annotated.

9 **§ 58305. Special Qualifying Certificate; Defined.** Notwithstanding any
10 other provisions of the law, rule, or regulation to the contrary, the Special Qualifying
11 Certificate (QC); *Ākton GUMA*” (*Group Use Manâmkō Accommodations*) *Incentive*
12 *Act*, is a contract valid for a given period, executed by *I Maga’hågan Guåhan* (the
13 Governor of Guam) upon the recommendation of the Authority. This QC *shall* be
14 limited to the construction of new elderly residential living housing
15 accommodations and/or the substantial renovation of existing multiple-
16 family and/or single-family dwellings where its use shall be for
17 elderly residential living housing accommodations, as defined in this
18 Article. The QC, once issued and unless suspended, rescinded, or revoked, *shall*
19 constitute conclusive evidence of entitlement to the tax rebates, abatements, or
20 exemptions set forth on its face.

21 a. New Construction and Substantial Renovation/Improvement for Elderly
22 Residential Living Accommodations Tax Rebate and Abatement. There *shall*
23 be allowed to each developer for elderly residential living projects that exceed
24 the affordable income threshold as *shall* be determined by the Authority, a tax
25 rebate, exemption, and abatement in an amount equal to twenty-five percent
26 (25%) of their total construction cost; or

b. New Construction and Substantial Renovation/Improvement for Affordable Elderly Residential Living Accommodations Tax Rebate and Abatement.
There shall be allowed to each developer for the new construction or substantial renovation/improvement of affordable elderly residential living projects a tax rebate, exemption, and abatement in an amount equal to thirty percent (30%) of their total construction cost.

A tax rebate, exemption, and abatement as provided in Subsections (a) or (b) supra, can be applied by the developer at their discretion to the following taxes:

1. One Hundred percent (100%) Business Privilege Tax (BPT) for twenty (20) years as long as the tax credits are available at the point they are taken. This BPT exemption shall not apply to the levy of three percentage points (3%), out of the total percentage points levied from time to time, of the BPT, the revenues from which are pledged to the Government of Guam Business Privilege Tax Bonds;
2. Seventy-five percent (75%) Income Tax Rebate for twenty (20) years;
3. One hundred percent (100%) Real Property Tax Abatement for twenty (20) years; provided, the fee simple owner taxpayer is the Qualifying Certificate beneficiary and that the real property on which identified in their qualifying certificate; and
4. One hundred percent (100%) of Use Tax Exemption with respect to the property used to construct, furnish, and equip the new multiple-family dwelling. The exemption shall be claimed no later than one (1) year of the issuance of the facility's occupancy permit.

e. Application Period. Eligible developers with new residential living developments applying for this special QC pursuant to Subsections (a) and (b) supra, shall file their application prior to issuance of the construction project building permit. Eligible developers with substantial

1 renovation/improvement residential living projects applying for this special
2 QC pursuant to Subsections (a) and (b), supra, shall be able to apply at any
3 time, granted that for the purposes of calculating their tax benefit amount as
4 provided in Subsections (a) and (b) supra, any construction costs invoiced
5 prior to the official application submission date shall be deemed ineligible.

6 f. Benefit Negotiations. The Authority has the sole authority to negotiate the
7 terms of the QC. Negotiations shall be completed prior to issuance of the
8 housing project or multiple-family dwelling's building permit, if applicable.
9 The Authority shall have up to thirty (30) days from the submittal of a
10 completed application to approve or deny a completed QC application,
11 pursuant to this Article.

12 g. Any new construction or substantial renovation project as provided in this
13 Article where the federal government offers tax credits, rebates, abatements,
14 or exemptions shall remain eligible for this Special Qualifying Certificate.

15 h. Compliance with the Arts in Public Buildings and Facilities pursuant to § 852
16 of Article 2, Chapter 8, Title 1 of the Guam Code Annotated.

17 **§ 58306. Fees.** The Authority shall have no more than thirty (30) days from
18 the enactment of this Act to establish the Fees for the Special Qualifying Certificate
19 pursuant to this Article. As to the annual compliance monitoring fees, the fee shall
20 be assessed annually until such time as the QC beneficiary has exhausted the
21 total dollar amount of its QC benefit.

22 **§ 58307. Savings for the Tenants.** If the purpose of the construction of a
23 new elderly housing project or residential living facility, or the substantial
24 renovation of an existing elderly residential living facility is for the developer to
25 either resale, rent, or lease, as part of the application process for the QC, pursuant
26 to this Article, the beneficiary shall provide a plan to the Authority as to how the
27 approval of the QC shall translate to monetary savings for the tenants of the new or

1 renovated residential care facility for the elderly. Failure to comply with this plan
2 once the QC is approved and issued shall result in a suspension or revocation of the
3 QC.

4 **§ 58308. Construction With Other Laws.** Insofar as the provisions of the
5 “Åkton GUMA” (Group Use Manåmko Accommodations) Incentive Act” are
6 inconsistent with the provisions of any other law or regulations, in whole or in part,
7 the provisions of this Act shall be controlling; and in particular but not by way of
8 limitation, except as may be provided in this Act, no provision of any law or
9 regulation shall have cause or effect in carrying out the purpose of the provisions of
10 the “Åkton GUMA” (Group Use Manåmko Accommodations) Incentive Act” unless
11 I Liheslatura shall specifically so state.

12 **§ 58309. “Sunset” Provision.** This Article shall take effect on its approval
13 by I Maga’hågan Guåhan and shall remain in effect for ten (10) years:
14 The GEDA Board, at its discretion, with input from I Liheslatura (the Legislature),
15 the Guam Urban Renewal Authority, Department of Public Health and Social
16 Services, I Maga’hågan Guåhan, and the community, shall re-examine the
17 effectiveness and need of the program to determine if it should be extended, and may
18 extend the effectiveness of this Article for up to an additional five (5) years by
19 adopting a resolution to such effect prior to the expiration date. Any QC issued
20 under the conditions of this Article shall remain in full force and effect until its
21 term expires or it is canceled on other grounds.”

22 **Section 5. Severability.** If any provision of the “Åkton GUMA” (Group
23 Use Manåmko Accommodations) Incentive Act” or its application to any person
24 or circumstance is found to be invalid or contrary to law, such invalidity shall not
25 affect other provisions or applications of this Act that can be given effect without
26 the invalid provision or application, and to this end the provisions of this Act are
27 severable.

1 **Section 6. Effective Date.** The “*Ākton GUMA*” (Group Use *Manāmkō*
2 Accommodations) Incentive Act” *shall* be effective upon enactment.