EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

May 10, 2017

GL# 34-17-503
Speaker Benjamin J.F. Cruz
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Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåtro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Dear Mr. Speaker:

Attached is Bill No. 23-34 (COR) entitled, *"An act to add a new § 3132. . . Relative to Authorizing the Establishment of Operational Continuity Plans for Each Agency of the Government of Guam."* I have **VETOED** this bill.

By requiring the directors of each agency to establish an "operational continuity plan" to address matters related to personnel, office equipment, file and record keeping, etcetera, the bill unlawfully usurps the Governor's authority of "general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam" that is granted to him by Organic Act Section 1422. The bill violates the doctrine of separation of powers and attempts to legislate and micro-manage executive branch operational activities over which it has no business.

Sincerely,

RAY TENORIO
Acting Governor of Guam

0503

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 23-34 (COR), "AN ACT TO *ADD* A NEW § 3132 TO ARTICLE 1 OF CHAPTER 3, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF OPERATIONAL CONTINUITY PLANS FOR EACH AGENCY OF THE GOVERNMENT OF GUAM,"** was on the 27th day of April 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 28 day of APRIL, 2017, at 6:02 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date:

Public Law No.

VETO

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 23-34 (COR)
As amended on the Floor.

Introduced by: Michael F.Q. San Nicolas
Fernando Barcinas Esteves
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B.J.F. Cruz
James V. Espaldon
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW § 3132 TO ARTICLE 1 OF CHAPTER 3, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF OPERATIONAL CONTINUITY PLANS FOR EACH AGENCY OF THE GOVERNMENT OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act *shall* be cited as the "Responsible Operational Continuity Plans Act."

Section 2. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the continuity of operations for the government of Guam in the event of any emergency resulting from a natural or other disaster or hostile action is necessary for

the security of individuals and property on Guam. Additionally, some circumstances may adversely impact operational continuity for agencies that do not arise from emergency conditions, such as loss of personnel by attrition, breakdown of equipment, the loss of records due to a systems failure, unavailability of a facility necessary for the provision of services, or a reduction in available funding during the fiscal year due to unforeseen circumstances.

I Liheslaturan Guåhan finds that in recent years, system failures have undermined quality and timely service at the Department of Public Health and Social Service's Office of Vital Statistics and the Department of Revenue and Taxation. The establishment of an operational continuity plan for each agency can address establishing protocols to minimize the loss of electronic records from such failures when they occur in the future.

I Liheslatura finds that on Monday, August 31, 2015, a fire had broken out in the Cabras 3 and 4 power stations. The temporary loss of the Cabras 3 and 4 power stations, respectively, posed significant challenges for the Guam Power Authority. The establishment of operational continuity plans for the loss of generating capacity under a number of alternative plausible scenarios could ultimately translate to better preparation of personnel and capital equipment in such events, if they may occasionally occur in the future.

I Liheslatura further finds that unforeseen circumstances, such as a natural or man-made disaster, a sudden downturn in tourism due to an unanticipated geopolitical situation, or the enactment of a large income tax cut while Guam's territorial income tax remains mirrored on the federal income tax, could have negative effects on the funding levels available to support government operations.

I Liheslaturan Guåhan finds that, as Governor Edward J.B. Calvo wrote in a letter dated November 27, 2013 to Speaker Judith T.P. Won Pat, Ed.D. on this issue, "Public health and safety is a priority for this Administration and the Government of

Guam." In that spirit, *I Liheslatura* intends that the policy framework be established to ensure the health and safety of our community during and after disasters, natural or otherwise.

I Liheslatura further finds that such agency operational continuity plans as outlined in this Act may become components of an overall plan to assure the continuity of operations in government.

I Liheslaturan Guåhan finds that operational continuity is a basic function of any agency of the government. Disasters occur, whether there are operational continuity plans in place or not. When a disaster occurs, a government that plans in advance is in a better position to respond than a government that is not guided by established procedures and plans.

It is, therefore, the intent of *I Liheslaturan Guåhan* that each agency of the government of Guam should establish and maintain an up-to-date operational continuity plan to achieve maximum operational continuity during events that would disrupt the ability of the agency to operate.

Section 3. Agency Operational Continuity Plans. A new § 3132 is hereby *added* to Article 1 of Chapter 3, Title 5, Guam Code Annotated, to read:

"**§ 3132. Agency Operational Continuity Plans.**

The Director or equivalent officer of each agency and instrumentality of the government of Guam *shall* establish an operational continuity plan. Each such plan *shall* be reviewed annually for adequacy and so ratified by the governing board or, in the absence of a governing board, *I Maga'låhen Guåhan*, on or before October 1st with amendments. Copies of each plan, to include those annually reviewed, *shall* be transmitted to *I Maga'låhen Guåhan* and the Speaker of *I Liheslaturan Guåhan* no later than five (5) working days following the ratification thereof. Such plan *shall* include, but not be limited to, provisions for:

(a) events that would disrupt the ability of the agency to operate, such as:

(1) loss of personnel by retirement, whether known or unknown in advance, national guard deployment, military reserve deployment, sickness, death, or other contingencies;

(2) loss, malfunction, or breakdown of equipment necessary for the efficient provision of services;

(3) loss of physical or electronic records necessary for the efficient provision of services;

(4) unavailability of a facility necessary for the efficient provision of services;

(5) unanticipated reduced funding levels during the fiscal year relative to the appropriated level by ten percent (10%), twenty percent (20%), or thirty percent (30%);

(6) any combination of the above through reasonably foreseeable instances, such as a natural or other disaster or act, or omission of the agency or other entities, including hostile acts; or

(7) any additional areas so identified by the governing board, or in the absence of a governing board, *I Maga'låhen Guåhan*;

(b) the maintenance of maximum operational continuity in the event of any situation that would disrupt the ability of the agency to operate pursuant to Subsection (a) of this Section; and

(c) a statement of actions to be taken to prevent or mitigate any vulnerabilities, pursuant to Subsection (a) of this Section, which pose a significant risk to the continuity of operations of the agency."