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) As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts; and further amended in the Committee of the Whole	Telo T. Taitague Amanda L. Shelton Sabina Flores Perez Joanne Brown Frank F. Blas, Jr. Jose "Pedo" 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.	2/21/22 12:21 p.m.	3/2/22	Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts	5/2/22 9:00 a.m.	8/23/22 5:16 p.m. As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts	Request: 3/2/22 3/14/22	

SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	NOTES
9/23/22	AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A NEW SPECIAL QUALIFYING CERTIFICATE FOR THE DEVELOPMENT OF ELDERLY RESIDENTIAL LIVING HOUSING COMPRISING OF INDEPENDENT LIVING, ASSISTED CARE AND NURSING HOME ACCOMMODATIONS; AND TO BE KNOWN AS THE "*ÅKTON GUMA* (GROUP USE *MANÅMKO* ACCOMMODATIONS) INCENTIVE ACT."	9/30/22	9/30/22	10/12/22	

COPY

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
Thirty-Sixth Guam Legislature

September 30, 2022

The Honorable Lourdes A. Leon Guerrero
I Maga'hågan Guåhan
Ufisinan I Maga'håga
Hagåtña, Guam 96910

Dear *Maga'håga* Leon Guerrero:

Transmitted herewith are **Bill Nos. 191-36 (COR), 259-36 (LS), 278-36 (COR), 303-36 (COR),** and **309-36 (LS);** and **Substitute Bill Nos. 284-36 (LS)** and **333-36 (COR)** which were passed by *I Mina'trentai Sais Na Liheslaturan Guåhan* on September 30, 2022.

Sincerely,

AMANDA L. SHELTON
Legislative Secretary

Enclosure (7)

P03 c c chong
9/30/22 7:30pm

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

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

This is to certify that **Bill No. 259-36 (LS), "AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A NEW SPECIAL QUALIFYING CERTIFICATE FOR THE DEVELOPMENT OF ELDERLY RESIDENTIAL LIVING HOUSING COMPRISING OF INDEPENDENT LIVING, ASSISTED CARE AND NURSING HOME ACCOMMODATIONS; AND TO BE KNOWN AS THE "*ÅKTON GUMA* (GROUP USE *MANÅMKO* ACCOMMODATIONS) INCENTIVE ACT,"** was on the 30th day of September 2022, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda Shelton

Amanda D. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 30TH day of Sept., 2022, at 7:30 o'clock P.M.

P. Cle
POS Clerk

Assistant Staff Officer
Maga'håga's Office

APPROVED:

_____
Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date:_____

Public Law No._____

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

Bill No. 259-36 (LS)
As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts; and further amended in the Committee of the Whole.

Introduced by: Telo T. Taitague
Amanda L. Shelton
Sabina F. Perez
Joanne S. Brown
Frank Blas, Jr.
Jose "Pedo" Terlaje
V. Anthony Ada
Christopher M. Dueñas
James C. Moylan
Tina Rose Muña Barnes
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Therese M. Terlaje
Mary Camacho Torres

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

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

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

The Qualifying Certificate Program, created under Public Law 8-80 and amended by Public Laws 20-178 and 22-159, is an economic incentive tool that encourages investments to strengthen the island economy, enrich its growth, and

enhance the quality of life in Guam. The Qualifying Certificate Program has proven to be highly successful, ensuring the appropriate stimulation of legitimate investment of new economic development that is necessary to advance senior housing development in Guam.

Senior living development costs are averaging Two Hundred Fifty-six Thousand Dollars ($256,000) per unit, or Two Hundred Eighty-three Dollars ($283) per square foot, according to a report from the world's largest real estate services and investment firm Coldwell Banker Richard Ellis Group (CBRE). Guam relies heavily on importing resources, building materials, and labor costs that affect local developments and are mostly more expensive and possibly as much as forty percent (40%) higher in Guam.

Currently, the Guam Housing and Urban Renewal Authority (GHURA) has seven hundred fifty (750) public housing units, of which eighty-two (82) of those units are for the elderly. Additionally, GHURA has forty-nine (49) elderly units located throughout Guam; and this makes the total number of units for the elderly to be one hundred thirty-one (131). The Government of Guam receives funds from the U.S. Department of Housing and Urban Development (HUD) to administer housing for low-income residents at rents they can afford, and GHURA administers these funds for the Government of Guam. Developers need to leverage available federal and local tax incentive opportunities in developing and managing senior residences since there is a recognition that a significant need and a vacuum exists for Guam's elderly residential living opportunities.

The *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act Qualifying Certificate provides developers with alternatives in providing needed *manåmko* residential living accommodations. Additionally, the Act attempts to migrate the development and operations of *manåmko* residential living

accommodations from the Government of Guam to non-profit and private sector operators.

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

This Act allows the government to leverage solution-based objectives to private and non-profit entities to shoulder much of Guam's elderly housing vacuum. The *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act allows developers to concurrently leverage federal and local funding and tax incentives to construct and operate elderly residential living housing for independent living, assisted care, and nursing home facilities. The Act also provides tax incentives for developing middle-income residential living homes as most federally subsidized programs, loans, and tax incentives are available for low-income elderly housing projects and their operations, and developers wishing to develop elderly middle-income residential living facilities are not eligible for most federal programs and incentives.

Therefore, this Act intends to embrace development of elderly residential living communities to meet future elderly housing needs that promote dignity, individuality, privacy, independence, and autonomy; and foster a continuum of care for the *manåmkos* of Guam.

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

"ARTICLE 3

SPECIAL QUALIFYING CERTIFICATE
ÅKTON GUMA (GROUP USE *MANÅMKO* ACCOMMODATIONS) INCENTIVE ACT

§ 58301. Legislative Intent of the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act.
§ 58302. Collaboration and Partnerships.
§ 58303. Application of Article.
§ 58304. Definitions.
§ 58305. Special Qualifying Certificate; Defined.
§ 58306. Fees.
§ 58307. Savings for the Tenants.
§ 58308. Construction With Other Laws.
§ 58309. "Sunset" Provision.

§ 58301. Legislative Intent of the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act.

I Liheslaturan Guåhan finds that there is a need to create a Special Qualifying Certificate Program, to be known as the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act, stimulating economic activity through the construction of new elderly housing development projects or the substantial renovation of existing multi-family structures for conversion to elderly residential living accommodations that increases the availability of elderly housing accommodations.

This Article attempts to foster the development and operations of *manåmko* residential living accommodations from the Government of Guam to non-profit and private sector operators. Incentivizing elderly development would assist developers in offsetting the rising costs of construction, supplies, and the limitations associated with labor availability and cost.

§ 58302. Collaboration and Partnerships.

The developer or operator shall reach out to Government of Guam agencies, federal agencies, and non-profit organizations to identify available funding and services that serve the elderly minorities and the elderly with disabilities, and provide an elderly continuum of care to eligible development covered by this Article.

§ 58303. Application of Article.

(a) An establishment seeking tax credits under this Article shall obtain and maintain the necessary licenses, permits and certificates, comply with zoning laws, federal laws, and obtain other governmental approvals required in the process of implementing the project.

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

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

§ 58304. Definitions.

For purposes of this Article, the following definitions shall apply:

(a) *Affordable* where used in this Article shall be up to one hundred fifteen percent (115%) and less of the median income average threshold where rental dwellings are deemed affordable if the annual rent does not exceed thirty percent (30%) of the maximum income level for low income households, adjusted for household size. The income thresholds established herein may be adjusted by GEDA from time-to-time through an approved board resolution consistent with recommendations from the Guam Housing and Urban Renewal Authority and/or federal agencies, including, but not

limited to, the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture.

(b) *Assisted Care* or *Assisted Living* refers to elderly housing facilities that provide apartment-style housing to ensure that certain services are available to maintain independence where needed that offers units containing, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance. Assisted living units are skilled nursing home care services as provided in accordance with 10 GCA § 7102(a).

(c) *Authority* refers to the Guam Economic Development Authority (GEDA).

(d) *Business Privilege Tax (BPT)* is the tax that is levied on business revenues as imposed by 11 GCA § 26201.

(e) *Construction Costs* are expenses incurred by a developer to construct any new elderly assisted living and independent living housing development or substantially renovate, expand, or convert existing structures comprising Elderly assisted living, independent living housing, or convalescent development in Guam. Such costs include land acquisition, building and site improvements, Architectural and Engineering (A&E), furniture, fixtures, and equipment (FF&E).

(f) *Developer* means an individual, partnership, corporation, association, or other person who develops land through construction and becomes the owner of an elderly residential living housing establishment.

(g) *Development* means a senior or elderly housing project of multiple dwelling units with accessory uses and structures for construction or substantial renovation located on property in accordance with this Article.

(h) *Dwelling* shall be consistent with the definition contained in 21 GCA § 61103(j).

(i) *Elderly* means individuals that are fifty-five (55) years of age or older.

(j) *Elderly Home or Housing* refers to an elderly dwelling, domicile, or space used as a permanent or semi-permanent residence for an individual, group or family.

(k) *Expansion or Renovation* means existing elderly residential living housing accommodations pursuant to this Article that may be eligible for this Special Qualifying Certificate if new capital investment is to be made that will either add to the building or significantly renovate the property.

(l) *Independent Living* refers to housing units and associated facilities designed for the elderly who are self-sufficient and require no on-site personal or health care services. An Independent Living housing unit consists of a room or group of rooms designed or intended to provide a habitable unit for one (1) 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) A *Multiple-Family Dwelling* contains three (3) or more dwelling units. A dwelling unit shall be defined as one (1) or more rooms and a single kitchen, designed as a unit for occupancy by one (1) family for living and sleeping purposes. For the purposes of this Article, duplexes, townhomes, apartments, or condominiums shall be considered a multiple-family dwelling. A hotel shall not be considered a multiple-family dwelling unless the developer intends to substantially renovate the hotel use for elderly housing.

(n) *Nursing Home* shall be consistent with 10 GCA § 7102(a).

(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 and 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;

(2) substantially prolongs the useful life of the property; or

(3) adapts the property to a new or better use for elderly residential living accommodations.

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

(t) *Special Qualifying Certificate* shall refer to tax incentives on developments that are eligible or approved for the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act.

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

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

(w) *Supportive Services* means resources available to the resident in the community that helps to maintain their functional ability and meet their needs as identified in the individual resident assessment. Supportive services may include any of the following: medical, dental, and other health care services; transportation; recreational and leisure activities; social services; and counseling services.

(x) *Use* is the purpose for which land or a structure is designed, arranged, intended, occupied, or maintained.

(y) *Use Tax* is the tax that is levied on the landed value of or consumption of all property as defined by Chapter 28 of Title 11 GCA.

(z) *Zoning Law* refers to the Zoning Law of Guam, Chapter 6~~0~~1 of Title 21, Guam Code Annotated.

§ 58305. Special Qualifying Certificate; Defined.

Notwithstanding any other provision of law, rule, or regulation to the contrary, the Special Qualifying Certificate (QC) of the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act is a contract valid for a given period that is executed by *I Maga'hågan Guåhan* (the Governor of Guam) upon the recommendation of the Authority. This QC shall be limited to the construction of new elderly residential living housing accommodations and/or the substantial

renovation of existing multiple-family dwellings where its use shall be for elderly residential living housing accommodations, as defined in this Article. The QC, once issued and unless suspended, rescinded, or revoked, shall constitute conclusive evidence of entitlement to the tax rebates, abatements, or exemptions set forth on its face.

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

(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) up to one hundred percent (100%) Business Privilege Tax (BPT) abatement for twenty (20) years as long as the tax credits are available at the point they are taken. This BPT abatement 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) up to seventy-five percent (75%) Income Tax Rebate for twenty (20) years;

(3) up to one hundred percent (100%) Real Property Tax Abatement for twenty (20) years; provided, that the fee simple owner taxpayer is the Qualifying Certificate beneficiary and that the real property is identified in their Qualifying Certificate; and

(4) up to 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 from the issuance of the facility's occupancy permit.

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

(d) Benefit Negotiations. The Authority has the sole authority to negotiate the terms of the QC. Negotiations shall be completed prior to the issuance of the housing project or multiple-family dwelling's building permit, if applicable.

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

(f) This Article shall be in compliance with the Arts in Public Buildings and Facilities pursuant to 1 GCA § 852.

§ 58306. Fees.

The Authority shall establish the fees for the Special Qualifying Certificate pursuant to this Article. As to the annual compliance monitoring fees, the fee shall be assessed annually until such time as the QC beneficiary has exhausted the total dollar amount of its QC benefit.

§ 58307. Savings for the Tenants.

If the purpose of the construction of a new elderly housing project or residential living facility, or the substantial renovation of an existing elderly residential living facility is for the developer to either resale, rent, or lease, as part of the application process for the QC, pursuant to this Article, the beneficiary shall provide a plan to the Authority as to how the approval of the QC shall translate to monetary savings for the tenants of the new or renovated residential care facility for the elderly. Failure to comply with this plan once the QC is approved and issued shall result in a suspension or revocation of the QC.

§ 58308. Construction With Other Laws.

Insofar as the provisions of the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act are inconsistent with the provisions of any other laws or regulations, in whole or in part, the provisions of this Act shall be controlling; and in particular but not by way of limitation, except as may be provided in this Article, no provision of any law or regulation shall have cause or effect in carrying out the purpose of the provisions of the *Åkton GUMA* (Group Use *Manåmko* Accommodations) Incentive Act unless *I Liheslatura* shall specifically so state.

§ 58309. "Sunset" Provision.

This Article shall take effect upon its approval by *I Maga'hågan Guåhan* and shall remain in effect for ten (10) years.

The GEDA Board, at its discretion, with input from *I Liheslatura* (the Legislature), the Guam Housing and Urban Renewal Authority, the Department of Public Health and Social Services, *I Maga'hågan Guåhan*, and the community, shall re-examine the effectiveness and need of the program to determine if it should be extended, and may extend the effectiveness of this Article for up to an additional five (5) years by adopting a resolution to such effect prior to the expiration date. Any QC issued under the conditions of this Article shall remain in full force and effect until its term expires or it is canceled on other grounds."

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

Section 5. Effective Date. This Act shall be effective upon enactment.