



GOV. COMM. 10-236
(HOUSE)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO
Governor

JESUS C. BORJA
Lt. Governor

Caller Box 10007
Saipan, MP 96950
Telephone: (670) 664-2200
Fax: (670) 664-2211

FEB. 28 1997

The Honorable Jesus R. Sablan
President of the Senate
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

The Honorable Diego T. Benavente
Speaker, House of Representatives
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

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FEB 28 1997
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Dear Mr. President and Mr. Speaker:

This acknowledges receipt of your certification of the Legislature's override of my veto of H.B. 10-48, H.D.1, S.S.1, the "Foreign Investment Act of 1996."

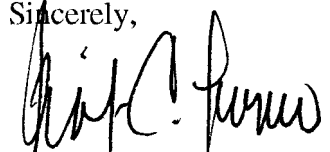
I must say that I think this action was not wise. This law has serious problems. It may well violate the constitutional requirement of equal protection, because it appears to discriminate against aliens, and it may also violate the Commerce Clause of the United States Constitution.

Even worse, it appears to me that this law will effectively kill certain types of foreign investment in the Commonwealth. Very few investors will want to acquire a foreign investment certificate when they must first deposit \$100,000 into an account in the name of the Secretary of Commerce.

I have asked the Attorney General to deliver a formal opinion on the constitutionality of this law. In the meantime, the Department of Commerce will enforce its provisions.

Pursuant to your action, this bill has become law as Public Law No. 10-44.

Sincerely,


FROILAN C. TENORIO



The House of Representatives
NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. Box 586
Saipan, MP 96950

PUBLIC LAW NO. 10-44

FEB. 07 1997

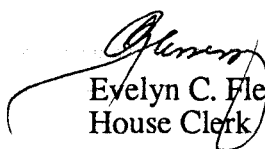
The Honorable Froilan C. Tenorio
Governor
Commonwealth of the Northern
Mariana Islands
Capitol ~~HTL~~
Saipan, MP 96950

Dear Governor Tenorio:

This is to inform you that the Tenth Northern Marianas Commonwealth Legislature repassed House Bill No. 10-48, HD1, SS1, the "Foreign Investment Act of 1996," over your veto, by the affirmative vote of two-thirds (2/3) of the members of each house, in the House of Representatives on February 4, 1997, and in the Senate on February 6, 1997.

House Bill No. 10-48, HD1, SS1 is now law. Please inform us of the Public Law number assigned to this Act.

Sincerely,


Evelyn C. Fleming
House Clerk

Rec 2/7/97


 GOV. COMM. 10-215
 (HOUSE)

COMMONWEALTH OF THE NORTHERS MARIANA ISLANDS

 FROILAN C. TENORIO
 Governor

Caller Box 10007

Saipan, MP 96950

 JESUS C. BORJA
 Lt. Governor

Telephone: (670) 664-2200

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 The Honorable Jesus R. Sablan
 President of the Senate
 Tenth Northern Marianas
 Commonwealth Legislature
 Saipan, MP 96950

DEC. 23 1998

 The Honorable Diego T. Benavente
 Speaker, House of Representatives
 Tenth Northern Marianas
 Commonwealth Legislature
 Saipan, MP 96950

 DEC 23 1998
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Dear Mr. President and Mr. Speaker:

This is to inform you that I have vetoed House Bill No. 10-48, The Foreign Investment Act of 1996. I have several reasons for vetoing this bill.

First, it appears that the primary intent of this bill is to prohibit garment factories and other such businesses from growing their own food. I do not see why we would want to do this. This would not significantly help our local farmers. Our farmers could not possibly grow enough food to feed thousands of garment workers. Instead, the result would be to increase costs for the garment factories. I do not see why we should place further burdens on this industry.

Second, I see a potential "equal protection" problem with Section 5 of the bill. Once foreigners have been properly admitted to the Commonwealth, we are not allowed to discriminate against them without a "compelling state interest". I do not see any such interest here. I think that a court would probably strike this section down as unconstitutional.

Third, there is another potential constitutional problem in that the **Act** may invade the authority of the Attorney General's Office. Section 6 of the bill would authorize the Secretary of Commerce to "bring a civil action in the Superior Court to enjoin any business from violations of this section". However, under our Constitution, the Commonwealth is to be represented by the Attorney General, not the Secretary of Commerce.

Fourth, the Act would prohibit Commonwealth-based foreign fishing fleets. There are not any such fleets at this time, but there may be one day; Palau and the Federated States of Micronesia have had foreign-owned fishing industries for many years.

Fifth, I do not think we should be converting the present Commerce regulations into statutes. In fact, I think these regulations are overdue for being rewritten.

Sincerely,

FROILAN C. TENORIO

HOUSE OF REPRESENTATIVES

**TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
FIRST SPECIAL SESSION, 1996**

Public Law No. 10-44

HOUSE BILL NO. 10-48. HD1. SS1

AN ACT

To prohibit the issuance of entry permits and new foreign investment certificates for commercial farming and fishing, except hydroponic agriculture, aquaculture, and mariculture with a minimum investment of \$2,000,000; to require foreign investors to maintain a security deposit of \$100,000 which may be withdrawn only upon dissolution of the business; to enact the current Department of Commerce rules and regulations concerning foreign investment as statutory law; and for other purposes.

Offered by Representatives:

Crispin I. Deleon Guerrero,

Maria (Malua) T. Peter, Jesus T. Attao, Joaquin G. Adriano, Vicente M. Atalig, Pete P. Reyes
and Manuel A. Tenorio

Date: January 17, 1996

HOUSE ACTION

Standing Committee Report: None

First Reading: January 17, 1996

Second Reading: January 19, 1996

Acceptance of Senate Amendment: November 18, 1996

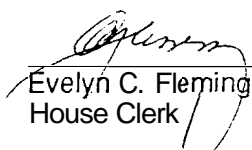
SENATE ACTION

Referred to: Committee on Resources, Development and Programs

Standing Committee Report No. 10-41

First Reading: February 23, 1996

Second and Final Reading: November 14, 1996


Evelyn C. Fleming
House Clerk

Rec. 1/17/96

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. B. NO. 10-48, HD1, SS1

FIRST REGULAR SESSION, 1996

AN ACT

To prohibit the issuance of entry permits and new foreign investment certificates for commercial farming and fishing, except hydroponic agriculture, aquaculture, and mariculture with a minimum investment of **\$2,000,000**; to require foreign investors to maintain a security deposit of **\$100,000** which may be withdrawn only upon dissolution of the business; to enact the current Department of Commerce rules and regulations concerning foreign investment as statutory law; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Findings and Purpose. The Legislature finds that it is vested with the
2 authority to control immigration into the Commonwealth pursuant to Article V, Section 503(a)
3 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political
4 Union with the United States of America. This same authority allows the Commonwealth to
5 regulate foreign investment within its borders. Additional authority for this Act may be found
6 in the general power to regulate commerce in the Commonwealth and the authority to control
7 and conserve natural resources. The purpose of this Act is to ensure that foreign investment in
8 the Commonwealth is in tune with local desires and that the benefits from such investment
9 embrace the widest possible segment of the population.

10 The Legislature recognizes that foreign investment is a fundamental component of the
11 economic development of the Commonwealth. Foreign investment is appropriate where heavy
12 capitalization or specialized technical skills are required for start-up and in economic ventures
13 characterized by high risk or a significant element of experimentation. Aquaculture,
14 mariculture, and hydroponic agriculture are examples of such ventures. However, foreign
15 investment certificates are being issued for certain business activities even though local firms
16 or individuals are capable of providing the services, and where local money is available for
17 funding the types of business ventures the foreign investors are engaged in.

1 Further, some aliens are arranging with locals to sharecrop the land for a percentage of
2 the proceeds. This practice is in violation of Public Law 9-5, in that the aliens are engaging in
3 a business venture without obtaining a certificate of foreign investment. Additionally, many
4 businesses are engaging in fishing and farming to feed their employees which comprise almost
5 20% of the total population of the Commonwealth. These practices are depleting the natural
6 resources of the Commonwealth and depriving local workers and capitalists of access to
7 commercial activities and investments.

8 The Commonwealth is currently experiencing an increase in illegal aliens posing as
9 foreign investors to gain entry into the Commonwealth under false pretenses. Illegal aliens
10 cost the Commonwealth in taxes, and take jobs and investment opportunities from lawful
11 residents of the Commonwealth, increases the cost of education and health care, and increase
12 the crime rate.

13 The purpose of this Act is to encourage and promote orderly economic development by
14 ~~directing the flow of foreign investment to those economic sectors most in need of such~~
15 stimulation. Additionally, it is the purpose of this Act to provide a more rigorous system for
16 insuring that local workers and capitalists will have access to commercial activities and
17 investments, thereby protecting local resources and economic opportunities, and enhancing the
18 internal stability of our society:

19 Section 2. Definitions. For purposes of this Act:

20 (a) "Business" means any individual, estate, firm, company, partnership, joint
21 venture, association, trust, receiver, club, syndicate, cooperative association,
22 corporation or any other entity required to be licensed under 4 CMC, Division 6,
23 Chapter 6.

24 (b) "Business License" means the permission granted by the Commonwealth,
25 under the authority of 4 CMC, Division 5, Chapter 6, conferring upon the licensee the
26 privilege to engage in business.

27 (c) "Farming" means the raising of crops, plants, trees, or animals or the
28 carrying on, conducting or managing of agricultural production including hydroponic
29 agriculture.

30 (d) "Fishing" means the raising, catching, or harvesting of fish or other marine
31 animals or the carrying on, conducting or managing of aquacultural, maricultural, or
32 other means of fish or marine animal acquisition.

HQUSE BILL NO. 10-48, HD1, SSI

1 Section 3. Foreign Investor Entry Permits. 3 CMC §4331(e) is hereby amended to
2 read:

3 "(e) No entry permit for non-immigrants applying for nonresident worker or
4 foreign investor classifications shall be issued until such classification has been
5 certified by the Department of Commerce pursuant to law. No entry permit shall be
6 issued or renewed which would allow the applicant to operate a business within the
7 Commonwealth unless the applicant possesses a valid CNMI business license. No
8 entry permit shall be issued for any foreign investor classification which allows a non-
9 immigrant alien to engage in commercial farming or commercial fishing in the
10 Commonwealth, other than the carrying on, conducting, or managing of aquaculture,
11 mariculture, or hydroponic agriculture activities in which the non-immigrant alien as
12 \$2,000,000 or more in investment capital or assets in the commonwealth.

13 For purposes of this Section:

14 (1) 'Commercial Farming' means the raising of crops, plants, trees, or animals,
15 or the carrying on, conducting or managing of agricultural production or hydroponic
16 agriculture, including sharecropping (farmers working another's land in return for a
17 share of the crop), for the purpose of selling the produce, fruits, flowers, live animals,
18 meat, other animal products, or other end results of farming, or for the purpose of
19 feeding one's employees who are not members of one's household.

20 (2) 'Commercial Fishing' means the raising, catching, or harvesting of fish or
21 other marine animals or the carrying on, conducting or managing of aquacultural,
22 maricultural fishing, or other means of fish or marine animal acquisition, for the
23 purpose of selling the whole or processed fish or marine animal or other fish or marine
24 animal products, or for the purpose of feeding one's employees who are not members of
25 one's household."

26 Section 4. Business Licenses Restricted. 1 CMC §2453(d), as amended by Public Law
27 10-9, is hereby amended to read:

28 "(d) To license and regulate businesses engaged in the construction trade and to
29 license businesses which are not otherwise licensed or regulated by any other
30 department, agency, instrumentality, or law of the Commonwealth. Except as
31 otherwise provided by law, the Department of Commerce shall not issue or cause to be
32 issued any business license for the purpose of garment manufacturing or for
33 commercial farming or fishing as defined in 3 CMC §4331(e) and no such business
34 license shall be issued for the purpose of feedings one's employees who. are not

1 members of one's own household; Provided, that licenses may issue for aquaculture,
2 mariculture, and hydroponic agriculture activities in which the business has \$2,000,000
3 or more in business capital or assets in the Commonwealth. Renewal of any valid
4 business license existing on September 15, 1996 is not affected by this amendment.

5 Section 5. Business Licenses Authorized. Licenses for commercial farming and
6 **fishing** as defined in 3 CMC §4331(e) are authorized for any business which is at least 75
7 percent owned and controlled by persons lawfully residing in the Commonwealth or the United
8 States of America without restrictions as to business ownership. For determining compliance
9 with this requirement, ownership in a business which engages in commercial farming or
10 fishing, by an individual, estate, firm company, partnership, joint venture, association, trust,
11 receiver, club, syndicate, cooperative association, corporation or any other entity shall be
12 traced to the person actually owning or exercising operational control over the business, and if
13 a corporation, the person voting the shares whether through nominees, trusts or any form
14 which purposely or for any other reason disguises the true owner. In the case of non-corporeal
15 persons, such persons shall be deemed fractional persons to the extent they are owned and
16 **controlled by persons lawfully residing in the Commonwealth of the United States.**

17 Section 6. Production for Feeding Own Employees Prohibited. No business
18 employing more than ten persons shall engage in farming or fishing for the purpose of feeding
19 employees of the business or the employees of any other business unless duly licensed to do
20 so. Any person who violates this section, shall, upon conviction, be guilty of a misdemeanor
21 and punished by imprisonment for not more than 6 months or a fine not to exceed \$2,000, or
22 both, for the first such offense, and imprisonment for not more than one year or a fine not to
23 exceed \$5,000, or both for each succeeding offense. The Secretary of the Department of
24 Commerce may bring a civil action in the Superior Court to enjoin any business from
25 violations of this section.

26 Section 7. Regulations Enacted as Statute.

27 (a) Except as provided by subsections (b), (c), and (d), the Department of
28 Commerce's rules and regulations governing foreign investments in the
29 Commonwealth, adopted January 13, 1995, in the Commonwealth Register, Volume
30 17, Number 1, beginning at page 5, as amended in the Commonwealth Register,
31 Volume 18, Number 8, are hereby incorporated by reference and enacted as statutory
32 law. The Commonwealth Law Revision Commission shall codify these rules and
33 regulations in the appropriate Commonwealth Code statutory format.

1 (b) Section 1001, B., **3.**, a., entitled Evaluation Factors - New Enterprises, and
2 Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not
3 incorporated by reference and are rescinded and reenacted to read:

4 "3. a. The amount of capital invested or to be invested by the Alien
5 Investor, shall not be less than \$150,000."

6 "4. a. The amount of capital invested or to be invested by the Alien
7 Investor, shall be not less than \$150,000 in a public organization or not less than
8 \$250,000, in a private investment."

9 (c) Section 1001, A., 1., **is** not incorporated by reference and **is** rescinded **and**
10 reenacted to read:

11 "1. A holder of a long term business certificate entitles the Alien
12 Investor to lawfully engage in business in the Commonwealth for a period of
13 two (2) years; Provided, however, that the Alien Investor shall provide a
14 security deposit in the **sum** of \$100,000 on deposit in a banking or trust
15 institution approved by the Secretary **of** the Department of Finance. Exclusive
16 authorized signature authority for the security deposit shall be the Secretary of
17 the Department of Commerce. The security deposit may be withdrawn only
18 upon dissolution of the business. Any funds remaining on deposit, after all
19 applicable taxes are fully satisfied, shall be used to pay for any and all unpaid
20 accounts with creditors in the Commonwealth. Any funds remaining in the
21 account after taxes and creditors' claims have been satisfied shall be returned to
22 the certificate holder."

23 (d) Section 1101, A., 1., **is** not incorporated by reference and is rescinded and
24 reenacted to read:

25 "1. A certificate of Foreign Investment is a certificate issued to an alien
26 who has met all the standards and conditions enumerated in this Part as proof of
27 the holder's participation as **an** alien investor in an approved investment in the
28 Commonwealth. The holder shall have the right to lawfully engage in business
29 in the Commonwealth as long **as** the Alien Investor complies with the terms
30 upon which the certificate was issued; Provided, however, that the Alien
31 Investor shall provide a security deposit in the sum of \$100,000 on deposit in a
32 banking or trust institution approved by the Secretary of the Department of
33 Finance. Exclusive authorized signature authority for the security deposit shall
34 be the Secretary of the Department of Commerce. The security deposit may be

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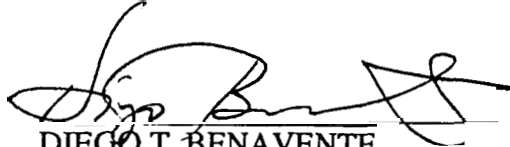
withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors' claims have been satisfied shall be returned to the certificate holder."

Section 8. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.


Section 9. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 10. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

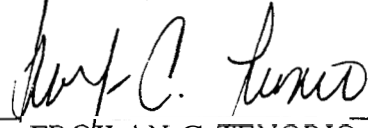
CERTIFIED BY:


DIEGO T. BENAVENTE
Speaker
House of Representatives

ATTESTED BY:


EVELYN C. FLEMING
House Clerk

Vetoed this 9th day of December, 1996

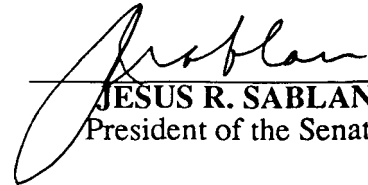

FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands

Overridden by the House of Representatives on February 4, 1997 and the Senate on February 6, 1997 with the affirmative vote of two-thirds of the members in each house.

CERTIFIED BY:



DIEGO T. BENAVENTE
Speaker of the House



JESUS R. SABLAN
President of the Senate

Overriden by the House on = 2/4/97
Overriden by the Senate on = 2/6/97
Became Public Law No. 10-44 on = 2/7/97