FILED

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

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

This is to certify that **Bill No. 80-31 (COR), "AN ACT TO *ADD* A NEW §58148 TO CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE QUALIFYING CERTIFICATE REVIEW BOARD"**, was on the 4th day of April, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 7th day of April, 2011, at 04:50 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 80-31 (COR)
As amended on the Floor.

Introduced by: v. c. pangelinan
Judith T. Won Pat, Ed.D.
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Duenas
Sam Mabini, Ph.D.
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
R. J. Respicio
M. Silva Taijeron
Aline A. Yamashita, Ph.D.

AN ACT TO *ADD* A NEW §58148 TO CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE QUALIFYING CERTIFICATE REVIEW BOARD.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Pursuant to and in conformance with the practice of the open government laws of Guam, this Act is prescribed by *I Liheslaturan Guåhan* for the benefit of Guam resident taxpayers who bear the loss of tax revenues resulting from the granting of Qualifying Certificates (QCs) by the Guam Economic Development Authority (Authority).

I Liheslatura finds that certain companies are granted amendments to the terms and conditions of specific QC requirements without proper scrutiny. The reasons for such actions vary; the most common reason being the company's inability to fulfill contractually binding obligations due to financial or economic hardship.

I Liheslaturan Guåhan further finds that for whatever reason amendments to the terms and conditions of the QCs are granted, and there are concerns about the government's due diligence in evaluating full public disclosure and administrative transparency when granting these amendments.

I Liheslaturan Guåhan further finds that the importance of fulfilling QC obligations, which are binding contractual agreements between the recipient and the people of Guam is paramount, however stricter administrative and enforcement initiatives adopted and performed by the Authority, in coordination with the Department of Revenue and Taxation and the Office of Public Accountability, is necessary. Improvement of current monitoring and enforcement practices while enhancing the government's ability to responsibly manage QC entitlements, and to prevent any effort to minimize or circumvent the full force and effect of the tax policies of Guam, are essential for maximum positive impact of the QC program.

Therefore, it is the intent of the *I Liheslaturan Guåhan* to establish a Qualifying Certificate Review Board to review all applications requesting to amend original or amended QCs, or extensions of QCs, and to ensure transparency in the discussions, recommendations and approval of those applications.

Section 2. Establishment of the Qualifying Certificate Review Board. A new §58148 is hereby *added* to Chapter 58 of Title 12, Guam Code Annotated, to read as follows:

"**§58148. The Qualifying Certificate Review Board.**

(a) The Qualifying Certificate Review Board is hereby established, herein referred to as *"Review Board"*, whose members *shall* consist of the Administrator of the Authority, the Director of Revenue and Taxation, the Attorney General of Guam or his/her designee, the Chief Economist of the Department of Labor, and the Chief Economist of the Bureau of Statistics and Plans. The members *shall* convene and elect a Chairperson, and thereafter when called upon by the Chairperson *shall* review all applications to amend original or amended Qualifying Certificates, or extension of the term of all Qualifying Certificates' terms and conditions.

(b) After careful review and scrutiny of the applications, it *shall* be the duty of the Review Board to provide a detailed report.

(1) The report *shall* include analysis of the direct impact of the amendment on additional or lost revenue to the government of Guam.

(2) The report *shall* include analysis of the direct impact of the amendment on Net Profit Margin presented in gross dollars and a percentage taken or calculated in the audit report required in Subsection (f).

(3) The Net Profit Margin percentage used in Subsection (2) *shall* be compared against a published reasonable industry standard, such as Standard and Poors Key Industry Ratios.

(4) When amendments reduce requirement thresholds of the recipient, the Review Board *shall* assume the maximum impact.

(5) The Review Board *shall* submit its report with recommendations and findings to *I Maga'lahen Guåhan*, *I Liheslaturan Guåhan,* and the Board of Directors of the Authority.

(c) The Review Board *shall* provide public notification pursuant to the Open Government Law, 5GCA Chapter 8, of all meetings scheduled to review and discuss the applications submitted, to include any and all amendments requested. Review Board meetings *shall* include a public hearing component pursuant to the Administration Adjudication Law and the Open Government Law. The individual, corporation, business or entity requesting amendments or extensions to a Qualifying Certificate *shall* pay for the cost of the public notification and any audits, if necessary.

(e) Upon receipt of an application to amend or extend original or amended Qualifying Certificate, the Chairperson of the Review Board *shall* represent the government of Guam in any subsequent discussion, meetings or any other administrative matter(s) or affair(s) that pertain specifically to the amendments or any binding obligation or agreements to an existing Qualifying Certificate.

(f) The Administrator of the Authority *shall* within ten (10) days of its receipt forward to the Chairperson of the Review Board all applications to amend or extend original or amended Qualifying Certificates. The Review Board in processing all applications may recommend amending, reconsidering, suspending and revising all applications to amend original or amended Qualifying Certificate or extension of Qualifying Certificates and *shall* be provided the applicant's audited financial statement by an independent auditor within eighteen (18) months of the date of the application, the terms and conditions of the current Qualifying Certificate and other documents necessary for the preparation of its report and recommendation. The Authority *shall* further provide the Review Board with complete administrative data, information, record(s),

exhibits and correspondence of the applicant(s), which are essential or relevant to the applicant's Qualifying Certificate amendment request."

(g) The Guam Economic Development Authority *shall* advise all Qualifying Certificate recipients of the provisions contained in this Section and *shall* perform its prescribed administrative obligations accordingly. The provisions of this Section *shall* affect *only* those applicants whose application for amendment, revision, or extension is received after April 30, 2011.

(h) Notwithstanding any other laws, procedures or rules and regulations of the government of Guam applicable to the Qualifying Certificate program established pursuant to Chapter 58 of Title 12 GCA, the provisions of this Section *shall* serve to lawfully augment the existing policies of Guam, which relate to the amendment of original and amended terms and conditions of Guam's Qualifying Certificate Program."

Section 3. Relocation of Function-Related Personnel and Assets. The Guam Economic Development Authority *shall* transfer personnel, office and computer equipment, materials, supplies and other assets used to directly perform Qualifying Certificate monitoring and compliance functions to the Office of Public Accountability. Personnel and assets affected by this Section *shall,* in accordance with government policy or procedures, be assigned under the charge of the Public Auditor. Funding to support this activity or unit in the current fiscal year effective on the date of transfer, is hereby continuously appropriated from the annual Qualifying Certificate Program fees charged and collected by the Guam Economic Development Authority.

Section 4. Severability. *If* any provision of this Law or its application to any person or circumstances is found to be invalid or contrary to law, such

invalidity shall *not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.