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I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
THIRTY-FIRST GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

March 31, 2011

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Calvo:

Transmitted herewith is Substitute Bill No. 36-31(COR) which was overridden by *I Mina'Trentai Unu Na Liheslaturan Guåhan* on March 30, 2011, notwithstanding your veto.

Sincerely,

TINA ROSE MUÑA BARNES
Senator and Legislative Secretary

Enclosure (1)

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY
TIME 9:40 AM DATE 3-31-11

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 **Substitute Bill No. 36-31 (COR), "AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 50, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE "GOVERNMENT OF GUAM MITIGATION PROGRAM FOR BUSINESS INTERRUPTION,"** returned without approval of *I Maga'lahen Guåhan,* was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 30th day of March, 2011, to pass said bill notwithstanding the veto of *I Maga'lahen Guåhan* by a vote of fourteen (14) Members.

Judith T. Won Pat, Ed. D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 31st day of March, 2011, at 9:40 am o'clock A .M.

Julie Dela Rosa
Assistant Staff Officer
Maga'lahi's Office

Public Law No. _____

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

Bill No. 36-31 (COR)
As substituted by the Committee on Health & Human Services, Economic Development, and Election Reform, and amended on the Floor.

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

AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 50, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE "GOVERNMENT OF GUAM MITIGATION PROGRAM FOR BUSINESS INTERRUPTION."

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the expansion of the United States' military footprint will result in increased construction activity, particularly in the public infrastructure sector. At present, there has been an increase in road construction throughout the island of Guam,

both in volume and scope, to levels which are negatively impacting villages, its residents, and businesses. The expansion of the United States' military footprint on Guam imposes a tremendous strain on Guam's finite resources. With dozens of road construction projects covering hundreds of miles being undertaken at the same time, timely completion of the projects has been problematic, and harmonious, orderly, and beneficial improvements that sustain the current quality of life for village residents, commuters, and businesses are not achieved.

As such, *I Liheslaturan Guåhan* finds that appropriate mitigation programs need to be in place to ensure that the negative impact of road construction on residents and businesses is minimized.

Therefore, *I Liheslaturan Guåhan* intends to empower and authorize the Guam Economic Development Authority (GEDA) to develop, implement, and administer the ***"Government of Guam Mitigation Program for Business Interruption",*** known herein as "Program", with the purpose of providing financial relief to businesses adversely affected by government projects, including, but *not limited to* road construction. The following authority granted to GEDA coincides with its self-proclaimed mission to develop a sound and sustainable economy through innovative programs that preserve and promote local culture, economic opportunities, and quality of life.

As the following Program seeks to expand on the capability of GEDA, the funding source of the Program *shall* be derived from the resources generated by GEDA. Specifically, GEDA has the ability to generate revenues from various sources, such as proceeds from bond origination fees, which are sporadic but are of sizable amounts. As bond proceeds do *not* represent routine revenue sources, these funds will be available to fund nascent programs such as the Program. In Fiscal Year 2010, GEDA collected in excess of Five Hundred Thousand Dollars ($500,000) in bond fees associated with bond sales for the Guam Power Authority,

the Guam Waterworks Authority, and International Bridge Corporation. Bond fees earned by GEDA last fiscal year *shall* serve as the seed capital for the Program.

Likewise, GEDA's function of providing loans in pursuit of the economic development of Guam is *not* a new concept; rather, loans granted under the Program is nothing but a logical expansion of the scope of GEDA's role in the sustainability of economic development. Rather than create new industries, the Program seeks to preserve current industries and keep businesses in place.

The goal of the Program is to provide financial assistance through grants and loans to small and mid-size businesses adversely impacted by government projects, such as road construction, so as to ensure their continued existence and minimize interruption to local commerce.

The financial assistance provided by the Program does *not* intend to stifle free market competition, but rather to promote it. It seeks to promote free market competition by supporting small and mid-size businesses that have been operating successfully and keeping their doors open when faced with material changes in their physical environment caused by circumstances beyond their control. As the change in their physical environment was attributable to government projects, *I Liheslaturan Guåhan* intends to make whole the businesses impacted by supplanting their significant drop in revenues, thereby preserving the current competitors in the industry.

Section 2. Establishment of the Government of Guam Mitigation Program for Business Interruption. A new Article 3 is added to Chapter 50, Title 12, Guam Code Annotated, to read:

"ARTICLE 3

GUAM ROAD CONSTRUCTION MITIGATION

GRANT AND LOAN GUARANTEE PROGRAM

§50301. Establishment.

§50302. Definitions.

§50303. Administration.

§50304. Eligibility.

§50305. Applications.

§50306. Application for Program Grants.

§50307. Application for Program Loans.

§50308. Appeal.

§50309. Funding.

§50310. Fund Distribution.

§50301. Establishment. The Guam Economic Development Authority (GEDA) *shall* develop, implement, and administer the Government of Guam Mitigation Program for Business Interruption to make grants, loans, or a combination of both to small and mid-size businesses to mitigate the impacts of government projects.

§50302. Definitions. For purposes of this Section, *except* as otherwise specifically provided, the following words and phrases, together with all of the common derivatives thereof (i.e. verbs, plurals, feminine, gender, etc.) *shall* have the meaning ascribed to them in this Section.

(a) a*pplicant* means a small or midsize business;

(b) *Administrator* means the Administrator of the Guam Economic Development Authority;

(c) *eligible government project* means a project that will affect one or more small or mid-size businesses as a result of construction work because the construction is anticipated to impair access for a minimum period of one month;

(d) *project* means any improvement or alteration to real property, including demolition work to clear a site;

(e) *government* means the government of Guam or its instrumentality;

(f) *small business* means a business that generates gross profit less than or equal to Two Hundred Thousand Dollars ($200,000) on an annual basis, and is located in an area that is adjacent to an eligible government project;

(g) *mid-size business* means a business that generates gross profit less than or equal to One Million Dollars ($1,000,000) and gross sales less than or equal to Two Million Dollars ($2,000,000) on an annual basis, and is located in an area that is adjacent to an eligible government project; and

(h) *Program* means the Government of Guam Mitigation Program for Business Interruption.

§50303. Administration. The following provisions *shall* govern the administration of this entire Chapter.

(a) Administrator. The Administrator of the Guam Economic Development Authority of the Government of Guam (herein known as the Administrator) *shall* have the following duties, powers, and authority:

(1) Establish procedures for receiving, responding to, and approval of applications to the Program, which *shall* be submitted to the Speaker of *I Liheslaturan Guåhan* within thirty (30) days of enactment. The Administrator *shall* notify each applicant, in writing, of the outcome of the application *no later than* fifteen (15) days after a completed application package is received. *If* an applicant to the Program is denied, the Administrator *shall* provide *no later than* three (3) days after

the decision, a written explanation on the basis of the denial. An applicant denied by the Administrator may appeal the decision pursuant to §50308 of this Article.

(2) Establish procedures for the periodic assessment of the Program which *shall* be transmitted to the Speaker of *I Liheslaturan Guåhan* sixty (60) days after the close of the fiscal year. The assessment, at a minimum, *shall* include the number of applicants to the Program, the names of Program recipients, funds distributed for the year, the current balance of the Program, and Program analysis on its legislative intent.

(3) Publish on the Guam Economic Development Authority website, sixty (60) days after the close of the fiscal year, the number of applicants to the Program, the names of Program recipients, the number of Program recipients, funds distributed for the year, the current balance of the Program and Program analysis on its legislative intent.

(4) Establish criteria for the review and approval of Program applications consistent with this Article and its intent.

(5) Promote and publish on the Guam Economic Development Authority website information regarding the Program, its requirements, and benefits to small and mid-size business owners.

§50304. Eligibility. To be eligible for Program benefits an applicant must meet the eligibility criteria as stipulated below. Program applicants *shall*:

(a) be bona fide residents of Guam and a United States citizen, or a permanent resident alien;

(b) *not* have any outstanding taxes due to the Department of Revenue and Taxation and/or any outstanding debts at the Guam Memorial Hospital Authority which are *not* subject to an approved and current payment plan prior to the commencement of the eligible project as defined in §50302 (c);

(c) possess a valid business license;

(d) be current with all reporting of taxes to the Department of Revenue and Taxation; and

(e) *not* be required to submit two (2) bank denials to qualify for programs stipulated in §§ 50306 and 50307.

§50305. Applications. An applicant *shall* prepare and submit to the Administrator a written proposal detailing strategies on how the applicant will implement the funds received to ensure the viability of the business. Specific requirements for §§ 50304 and 50305 are enumerated in §§ 50306 and 50307 of this Article. Applicants receiving funds through §§ 50306 and 50307 of this Article *shall* be required to seek technical assistance through the University of Guam Small Business Development Center (SBDC), *or* other similar organizations approved by the Guam Economic Development Authority.

§50306. Application for Program Grants. Applicants who are owners of small businesses *shall* be eligible for a Twelve Thousand Dollar ($12,000) grant from the Guam Economic Development Authority. The grant *shall* have the following limitations:

(a) the grant *shall* be used to subsidize general operating expenses and provide working capital to small businesses, including, but *not* limited to, the payment of rent, employee salaries and benefits, supplies, and utilities;

(b) the grant is non-renewable; and

(c) the grant will be distributed in three (3) equal payments on the 10th of each month over three (3) months.

Upon expiration of the grant, the grant recipients have the option of applying for a loan pursuant to §50307. *No* additional documents need to be submitted by grant recipients to receive the Program loans.

§50307. Application for Program Loans. Applicants who are owners of mid-size businesses *shall* be eligible for a loan of up to One Hundred Thousand Dollars ($100,000) from the Guam Economic Development Authority. The loan *shall* have the following limitations:

(a) the loan *shall* be used to subsidize general operating expenses, including, but *not* limited to, the payment of rent, employee salaries and benefits, supplies, utilities and other necessary expenses for implementation of business recovery plan, such as relocation expenses and diversification of products and services;

(b) the loan *shall* be payable in a period *not to exceed* ten (10) years;

(c) the interest rate on the loan *shall* be based on the U.S. Treasury Index Rate plus *up to* four percent (4%);

(d) interest only payments *shall* be allowed for the duration of the construction period and six (6) months after the completion of the project; and

(e) the loan is non-renewable.

§50308. Appeal. An applicant may appeal a denial within thirty (30) days of receipt of the written denial notice. The applicant *shall* submit to the Guam Economic Development Authority Board appropriate

documentation disputing the basis of the denial. The Board *shall* render a decision within five (5) days after receipt of an appeal. The decision of the Board *shall* be final.

§50309. Funding. The funding sources of the Program *shall* come from the following sources:

(a) The Guam Economic Development Authority may obtain business interruption insurance policy coverage of up to Two Million Dollars ($2,000,000) for the purpose of distributing grant benefits pursuant to §50306. Payment of the annual insurance premiums for the policy coverage *shall* be taken from the bond origination fees generated by GEDA;

(b) The Guam Economic Development Authority *shall* make available from the Guam Economic Development Fund Act (GEDFA) *no less than* Five Hundred Thousand Dollars ($500,000) and *up to* One Million Dollars ($1,000,000), which *shall* provide the funding source for the loans granted pursuant to §50307; and

(c) The sum of Four Hundred Thousand Dollars ($400,000) is appropriated from the operating fund balance of the Guam Economic Development Authority for the grant program pursuant to 12 G.C.A. §50306.

(d) DPW *shall* provide as part of its planning and procurement of road construction, funding for economic mitigation and business interruption.

§50310. Fund Distribution. In distributing funds, the Administrator *shall* consider the types of businesses affected by the eligible government project and *shall* balance funding between the number of eligible applicants and the funds available in this Article.

§50311. The Board *shall* have the authority to accept applications and award grants and loans for businesses affected by ongoing projects prior to the submission and adoption of the requirements of 12 G.C.A. §50303 (a) (1) and (4)."

Section 3. 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.