

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

Bill No. 18-31 (cor)

Introduced by:

T.C. Ada
A.B. Palacios, Sr.
C. Duenas

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AN ACT TO REPEAL AND REENACT §67101.8 OF CHAPTER 67 OF TITLE 21, GUAM CODE ANNOTATED, TO FULFILL THE MANDATE OF P.L. 30-199 BY PROVIDING FOR THE ESTABLISHMENT OF THE GUAM BUILDING CODE COUNCIL.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslatura Guåhan* finds that
3 P.L. 30-199, which updated Guam's building and fire codes, also called for a Task Force
4 consisting of GovGuam and community stakeholders to spearhead the creation of a Guam
5 Building Code Council. This Council, once established, is mandated to review and
6 initiate the process for adoption of future updates to such codes. The Council will also
7 serve as an appeals board for disputes related to orders, decisions or determinations made
8 by Government of Guam entities relative to the application and interpretations of the
9 Guam Building Code.

10 *I Liheslaturan Guåhan* further finds that the Task Force met regularly since
11 passage of P.L. 30-199 on September 29, 2010, and included representation from the
12 Department of Public Works, the Guam Fire Department, Consolidated Utilities Services
13 (including direct representation from the Guam Waterworks Authority), Guam Board of
14 Registration for Professional Engineers Architects and Land Surveyors, Guam Chamber
15 of Commerce, Chinese Chamber of Commerce of Guam, Guam Contractors License

1 Board, Guam Contractors Association, Guam Society of Professional Land Surveyors,
2 Guam Society of Professional Engineers, Guam and Micronesia Chapters of the
3 American Institute of Architects, and the Guam Association of Realtors. The findings
4 and recommendations of the Task Force was provided to the Legislative Committee on
5 Transportation, Utilities, Public Works, and Veterans Affairs.

6 *I Liheslaturan Guåhan* finds that the Guam Building Code Council will serve a
7 crucial role in reconciling disputes in the interpretation and application of the building
8 and fire code, and protecting the public welfare through sound code development and
9 application.

10 *I Liheslaturan Guåhan* intends to use the findings and recommendations of the
11 Task Force as a foundation for establishing the Guam Building Code Council and the
12 process by which the Council shall develop its Rules and Regulations.

13 **Section 2.** § 67101.8 of Chapter 67 of Title 21, Guam Code Annotated, is hereby
14 *repealed and reenacted* to read:

15 **“§67101.8. Guam Building Code Council.**

16 (a) **Purpose.** In order to safeguard life, health, and property, and to promote the
17 public welfare, the Guam Building Code Council shall serve a dual role as a
18 Review Board for proposed updates and amendments to the Guam Building
19 Code, and as an Appeals Board for disputes related to orders, decisions or
20 determinations made by Government of Guam entities relative to the
21 application and interpretation of the Guam Building Code.

22 (b) **Definitions.** As used in this Chapter, unless otherwise indicated:

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1. *Appointed member* means a person who is appointed by *I Maga'lahañ* *Guåhan* to hold a position on the Council. *Ex-officio members* are not included in the definition of *appointed member*.
2. *Architect* means a person who is duly registered and licensed by the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors (PEALS) as an Architect.
3. *Council* means the Guam Building Code Council.
4. *Ex-officio member* means a person who holds a position on the Council reserved for the Director of the Department of Public Works or the Fire Chief of the Guam Fire Department.
5. *Guam Building Code* means the codes adopted within Chapter 67, as well as the International Fire Code, and any subsequent amending legislation.
6. *Licensed General Building Contractor* means a person who holds a current license as a General Building Contractor by the Contractors License Board, as per Chapter 70 of Title 21, and engages primarily in the construction of buildings and infrastructure.
7. *Licensed Real Estate Professional* means a real estate sales person, or broker, who is licensed in Guam.
8. *Model Code* means the codes, as published by their respective nationally recognized organizations, which form the basis of the Guam Building Code.

1 9. *Professional Engineer* means a person who has been duly registered
2 and licensed by the Guam Board of Registration for Professional
3 Engineers, Architects and Land Surveyors (PEALS) as a Professional
4 Engineer.

5 10. *Registered Professional* means any person holding a current
6 registration as a Professional Structural Engineer, Professional
7 Mechanical Engineer, Professional Electrical Engineer, Professional
8 Fire Protection Engineer, or Registered Architect.

9 (c) **Membership.** The Council shall be comprised of the following members
10 whose duty *shall* be to administer the provisions of this Chapter.

11 1. **Composition.** The Council shall consist of seven (7) appointed
12 members and two ex-officio members, for a total of nine (9) members.
13 These nine (9) members shall consist of the following:

- 14 i. One (1) Architect;
- 15 ii. One (1) Licensed General Building Contractor;
- 16 iii. One (1) Licensed Real Estate Professional;
- 17 iv. Two (2) members of the general public who are not Registered
18 Professionals, Licensed General Building Contractors, or
19 Licensed Realtors, at least one of whom shall be familiar with
20 barrier free architecture and aware of, and sensitive to, the
21 requirements necessary to ensure public buildings are
22 accessible to, and usable by, persons with disabilities;

- 1 v. One (1) professional engineer, licensed on Guam, specializing
- 2 in structural engineering;
- 3 vi. One (1) professional engineer, licensed on Guam, specializing
- 4 in either mechanical, electrical, or fire protection engineering;
- 5 vii. The Director of the Department of Public Works, to serve in an
- 6 ex-officio capacity;
- 7 a. The Director of the Department of Public Works
- 8 may designate one of the Department’s Chief
- 9 Engineers, Chief Building Inspector, or Building
- 10 Permit Administrators to serve on the Council in
- 11 place of him or herself.
- 12 viii. The Chief of the Guam Fire Department, to serve in an ex-
- 13 officio capacity.
- 14 a. The Chief of the Guam Fire Department may
- 15 designate a Senior Fire Prevention Officer to serve
- 16 on the Council in place of him or herself.
- 17 2. **Appointment, Confirmation, and Term Length.** Except for the
- 18 representatives of the Guam Department of Public Works and the
- 19 Guam Fire Department, each member of the Council shall be
- 20 appointed by *I Maga’lahen Guåhan* and confirmed by *I Liheslaturan*
- 21 *Guåhan* for a term of five (5) years, save for the length of terms
- 22 associated with the initial creation of the council as outlined in
- 23 §67101.8(c)(2)(i).

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i. **Initial Term Lengths.** For initial appointments to the Council, membership term lengths shall be as such: of the two (2) appointed members representing the public, one (1) shall serve a term of one (1) year, and the other shall serve a term of three (3) years; the appointed Licensed General Building Contractor shall serve a term of three (3) years; the appointed Real Estate Professional shall serve a term of three (3) years; and of the three (3) appointed Registered Professionals, one (1) shall serve a term of one (1) year, and the remaining two (2) shall serve terms of five (5) years. Thereafter, all terms for appointed members shall be five (5) years in length. When appointing initial members to the Council, *I Maga'lahañ Guåhan* shall specify the length of term for each individual appointment, with such term lengths being in accordance with the manner stipulated in this subsection.

3. **Appointee Categories.** Registered professionals and Licensed General Building Contractors shall be appointed from a list as submitted by the local chapter of the American Institute of Architects (for Architects), the Guam Society of Professional Engineers (for Professional Engineers), or the Guam Contractors Association (for Licensed General Building Contractors). The Council position for a Real Estate Professional shall be appointed from a list as submitted by the local chapter of the Guam Association of Realtors. Such submitted

1 lists shall consist of at least two (2) names for the respective vacancy
2 on the Council. *I Maga'lahaen Guåhan* may, for any reason, request
3 the submittal of a new list of names.

4 i. **Failure to Provide List.** Failure of the professional
5 organization to provide a list of names within thirty (30) days
6 of that associated members vacancy, or within thirty (30) days
7 following receipt of written request from *I Maga'lahaen*
8 *Guåhan* for the submittal of a new list of names, the
9 requirement to select from a submitted list shall be waived and
10 *I Maga'lahaen Guåhan* may nominate an individual who meets
11 all other respective requirements set forth in this section.

12 ii. **Membership to Recommending Organization Not**
13 **Required.** Individuals named on the list of potential
14 nominees, as per this subsection, need not be members of the
15 respective recommending organization.

16 4. **Eligibility Requirements For Members.** Each appointed member of
17 the Council shall be a resident of Guam for the most recent two (2)
18 years, or a resident of Guam for a cumulative total of five years over
19 the most recent ten (10) years. Council members who are Registered
20 Professionals shall have been in responsible control in the lawful
21 practice of engineering or architecture for at least ten (10) years, and
22 with no record of disciplinary action from any jurisdiction. Council
23 members who are Licensed General Building Contractors shall have

1 been licensed for at least five (5) years, with no record of disciplinary
2 action from any jurisdiction. Council members who are Licensed Real
3 Estate Professional shall have been licensed for at least five (5) years,
4 with no record of disciplinary action from any jurisdiction.

5 Additionally, each licensed members' practice shall be principally
6 located in Guam.

7 5. **Status of License.** Members of the Council required to be licensed in
8 their respective fields, as per this §67101.8(c)(1), must maintain good
9 standing of their licenses with their respective licensing entity. Should
10 a member fail to maintain good standing, the member will not be
11 permitted to participate on the Council until such license is restored to
12 good standing. A member shall be deemed disqualified to retain a seat
13 on the Council in the event that the subject license is not restored to
14 good standing within ninety (90) days, and shall be removed from the
15 Council, thus creating a vacancy to be filled in accordance with
16 §67101.8(9).

17 6. **Removal of Members.** *I Maga'lahaen Guåhan* may remove any
18 sitting member on the Council for due cause, such as malfeasance in
19 office, incapacity, or neglect of duty. The vacancy created by said
20 removal shall then be filled in accordance with § 67101.8(9).

21 7. **No Courtesy Resignations.** When there is a change of administration
22 of the government of Guam after a gubernatorial election, no courtesy

1 resignation shall be requested by the new administration nor offered by
2 any appointed member of the Council.

3 **8. Reappointments.** On the expiration of the term of the appointed
4 member, *I Maga'lahen Guåhan* shall appoint a successor as provided
5 in this Chapter. An appointed member may be reappointed to the
6 Council for not more than two (2) consecutive five (5) year terms.
7 Each such member may hold office until the expiration of the term for
8 which appointed or until a successor has been duly appointed and
9 qualified.

10 **9. Vacancies.** Vacancies in the membership of the Council shall be filled
11 by appointment by *I Maga'lahen Guåhan* in the same manner as initial
12 appointments, as provided in §67101.8(c) of this Chapter. The
13 composition of the Council, i.e. membership categories, shall be
14 maintained. Persons filling a vacancy must undergo the Legislative
15 confirmation process, and shall serve for the unexpired portion of the
16 term.

17 i. **Failure to Appoint.** If *I Maga'lahen Guåhan* does not make
18 an appointment within ninety (90) days after a Council vacancy
19 occurs, the Council may appoint, by majority vote, a
20 provisional member to serve in the interim until *I Maga'lahen*
21 *Guåhan* makes an appointment and the nominee is confirmed
22 by *I Liheslatura Guåhan*. Such provisional member shall have
23 all the powers and responsibilities of the position to which they

1 are appointed by the Council, and shall not require
2 confirmation by *I Liheslaturan Guåhan*.

3 **10. Ex-Officio members.** The Director of the Department of Public
4 Works and the Fire Chief of the Guam Fire Department, or their
5 respective designees, shall be members of the Council by virtue of
6 their position. Additionally, such ex-officio members shall have all
7 the same powers and duties as appointed members to the Council,
8 including voting powers as described in this Chapter. Ex-officio
9 members do not require confirmation by *I Liheslatura* to serve on the
10 Council.

11 **11. Oath.** Each confirmed member of the Council, inclusive of ex-officio
12 members, shall be sworn into the Council and take an oath for the
13 faithful discharge of the duties of the position.

14 **(d) Annual Budget Request.** The Guam Building Code Council shall transmit its
15 annual operating budget requirements to the Guam Contractors License Board
16 for inclusion in the latter's annual budget request. The Council's budget shall
17 be primarily funded by the *Contractors License Board Fund*, Title 21, Chapter
18 70, §70119.

19 1. **Compensation.** Council members may be compensated Fifty Dollars
20 (\$50.00) per official Council meeting, not to exceed One Hundred
21 Dollars (\$100.00) in any month, provided funds are available.

22 2. **Initial Logistical Support.** The Guam Contractors License Board
23 shall provide the Council logistical support, to include

1 telecommunications, copiers, and administrative workspace. This
2 subsection (2) shall be in effect until the Council has sufficiently
3 established its administrative support base.

4 3. **Independence of Council and Board.** Although the Guam Building
5 Code Council and the Contractors License Board are funded from the
6 same revenue source, the Council and the Board shall preserve their
7 respective independence from one another.

8 (e) **Organization and Meetings.** The Council shall meet a minimum of once
9 every three (3) months. A quorum for the Council to meet shall consist of five
10 (5) members, one (1) of whom shall be an appointed Registered Professional
11 under the provisions of this Chapter. Decisions shall carry with a majority
12 vote of members present; however, decisions made in the Appeals Process
13 shall carry in accordance with the voting requirements outlined in the
14 Council's Rules and Regulation.

15 1. **Election of Leadership.** The Chairperson, Vice-Chairperson, and
16 Secretary shall be elected annually by majority vote of the Council
17 members at the first regular meeting of the Council after January 1.

18 2. **Duties of Chairperson.** The Chairperson shall call meetings of the
19 Council, arrange meetings with interested members of the public who
20 may seek assistance from the Council, assign duties to Council
21 members, and provide leadership to the Council. In the absence, or at
22 the request of, the Chairperson, any or all of these duties shall be
23 performed by the Vice-Chairperson.

1 3. **Duties of Secretary.** The Secretary shall keep charge of permanent
2 records and proceedings of every meeting of the Council, and shall
3 ensure that Minutes of meetings are made available for review at
4 subsequent meetings. The Secretary shall serve as correspondent of
5 the Council and as Treasurer of any funds in the custody of the
6 Council.

7 (f) **Powers.** The Council shall have the power to:

- 8 1. Review, as deemed appropriate, proposed revisions, deletions,
9 additions, or other modifications to the Guam Building Code, and
10 forward its recommendations for such modifications to *I Liheslatura*
11 for adoption; and,
- 12 2. Serve as a Board of Appeals for disputes related to orders, decisions or
13 determinations made by the Building Official, Code Official or Fire
14 Code Official relative to the application and interpretations of the
15 Guam Building Code; and,
- 16 3. Formulate, adopt and amend all Rules and Regulations governing the
17 conduct of the Council's affairs, inclusive of the powers set forth in (a)
18 and (b) of this subsection, (f)(Powers). The adoption and amendment
19 of such Rules and Regulations shall be in accordance with the
20 provisions of the Administrative Adjudication Law; and,
- 21 4. Contract for the services of legal council when deemed necessary. The
22 Guam Attorney General may also provide legal counsel to the Council
23 to provide members with general legal advice concerning matters

1 before them for consideration. The Council shall retain and exercise
2 all administrative and civil rights and remedies commonly available to
3 agencies in the jurisdiction. No action or other legal proceedings for
4 damages shall be instituted against the Council, or against any Council
5 Member or employee or agent of the Council, for any act done in good
6 faith and in the intended performance of any power granted under this
7 Chapter, or for any neglect or default in the performance or exercise in
8 good faith of any such duty or power.

9 (g) **Development of Rules and Regulations.** The Council shall develop its Rules
10 and Regulations to guide it in fulfilling its purpose as stated in §67101.8(a).”

11 **Section 4. Severability.** If any of the provisions of this law or its application to
12 any person or circumstance is found to be invalid or contrary to law, such invalidity shall
13 not affect other provisions or applications of this law which can be given effect without
14 the invalid provisions or application, and to this end the provisions of this law are
15 severable.

16 **Section 5. Effective Date.** This Act shall become effective upon enactment.