

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
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Bill No. 9-32(COR)

Introduced by:

V.C. Pangelinan



AN ACT TO *ADD* NEW §§ 58148, 58148.1, 58148.2, 58148.3, AND 58149 TO CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, AND *AMEND* SECTIONS OF CHAPTER 58 OF TITLE 12 GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE QUALIFYING CERTIFICATE REVIEW BOARD, THE QUALIFYING CERTIFICATE ACCOUNTABILITY AND TRANSPARENCY WEBSITE, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Findings and Intent.** Pursuant to and in
2 conformance with the practice of the open government laws of Guam, this
3 Act is prescribed by *I Liheslaturan Guåhan* for the benefit of Guam resident
4 taxpayers and local businesses operating without the benefits of a Qualifying
5 Certificate, who bear the cost of tax revenues rebated and abated resulting
6 from the granting who bear the loss of tax revenues resulting from the
7 granting of Qualifying Certificates (QCs) by the Guam Economic
8 Development Authority (GEDA).

9 *I Liheslatura* finds that certain companies are granted amendments to
10 the terms and conditions of specific QC requirements without maximum
11 opportunity for internal government and public scrutiny proper scrutiny. The

1 reasons for such actions vary; the most common reason being the company's
2 inability to fulfill contractually binding obligations due to financial or
3 economic hardship.

4 *I Liheslaturan Guåhan* further finds that for whatever reason
5 amendments to the terms and conditions of the QCs are granted, there are
6 concerns about the government's due diligence during this process and
7 public disclosure and administrative transparency when granting these
8 amendments.

9 *I Liheslaturan Guåhan* further finds that the importance of fulfilling
10 QC obligations, which are binding contractual agreements between the
11 recipient and the people of Guam is paramount, however stricter
12 administrative and enforcement initiatives adopted and performed by the
13 GEDA, is necessary. Improvement of current monitoring and enforcement
14 practices while enhancing the government's ability to responsibly manage
15 QC entitlements, and to prevent any effort to minimize or circumvent the
16 full force and effect of the tax policies of Guam, are essential for maximum
17 positive impact of the QC program.

18 Therefore, it is the intent of *I Liheslaturan Guåhan* to establish a
19 Qualifying Certificate Review Board, to review all new applications for
20 Qualifying Certificates, all applications requesting to amend original or
21 amended QCs, and/or all extensions of QCs, and to ensure transparency in
22 the discussions, recommendations, and approval of those applications.
23 Furthermore, it is also the intent of *I Liheslaturan Guåhan* to create the
24 Qualifying Certificate Accountability and Transparency Website for the sole
25 purpose of increasing accountability and transparency within the Qualifying
26 Certificate Program.

1 **SECTION 2. Establishment of the Qualifying Certificate**
2 **Review Board.** New §§ 58148, 58148.1, 58148.2, and 58148.3 are hereby
3 *added* to Chapter 58 of Title 12, Guam Code Annotated, to read as follows:

4 “§ 58148. **The Qualifying Certificate Review Board.** The
5 Qualifying Certificate Review Board is hereby established, herein referred to
6 as “*Review Board*,” whose members *shall* consist of the Administrator of the
7 Guam Economic Development Authority (GEDA), the Director of Revenue
8 and Taxation, the Attorney General of Guam or his/her designee, the Chief
9 Economist of the Department of Labor, and the Chief Economist of the
10 Bureau of Statistics and Plans. The members *shall* convene and elect a
11 Chairperson, and thereafter when called upon by the Chairperson *shall*
12 review all new Qualifying Certificate applications, all applications to amend
13 original or amended Qualifying Certificates, and all applications for
14 extension of the term of all existing Qualifying Certificates’ terms and
15 conditions.

16 § 58148.1. **Applications for New Qualifying Certificates.** After
17 careful review and scrutiny of the applications for new Qualifying
18 Certificates, it *shall* be the duty of the Review Board to provide a detailed
19 report to include, but not be limited to, those specific findings as required in
20 § 58109, Chapter 58, Title 12 GCA, to the GEDA Board of Directors.

21 § 58148.2. **Applications Requesting Amendments or Extensions of**
22 **Existing Qualifying Certificates.**

23 (a) **Reporting Requirements.** After careful review and scrutiny of the
24 applications to amend original or amended Qualifying Certificates
25 and/or for the extension of the term of existing Qualifying
26 Certificates’ terms and conditions, it *shall* be the duty of the

1 Review Board to provide a detailed report to the GEDA Board of
2 Directors, to include:

- 3 (1). an analysis of the direct impact of the amendment on
4 additional or lost revenue to the government of Guam.
- 5 (2). an analysis of the direct impact of the amendment on Net
6 Profit Margin presented in gross dollars and a percentage
7 taken or calculated in the audit report required in Subsection
8 (c).
- 9 (3). the Net Profit Margin percentage used in Subsection (2)
10 *shall* be compared against a published reasonable industry
11 standard, such as Standard and Poors Key Industry Ratios.
- 12 (4). when amendments reduce requirement thresholds of the
13 recipient, the Review Board *shall* assume the maximum
14 impact.
- 15 (5). the Review Board *shall* submit its report with
16 recommendations and findings to *I Maga'låhen Guåhan, I*
17 *Liheslaturan Guåhan*, and the Board of Directors of the
18 GEDA.

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

25 (c) The Administrator of the GEDA *shall* within seven (7) days of its
26 receipt forward to the Chairperson of the Review Board all
27 applications to amend or extend original or amended Qualifying

1 Certificates. The Review Board in processing all applications may
2 recommend amending, reconsidering, suspending and revising all
3 applications to amend original or amended Qualifying Certificate
4 or extension of Qualifying Certificates and *shall* be provided the
5 applicant's audited financial statement by an independent auditor
6 within eighteen (18) months of the date of the application, the
7 terms and conditions of the current Qualifying Certificate and
8 other documents necessary for the preparation of its report and
9 recommendation. The GEDA *shall* further provide the Review
10 Board with complete administrative data, information, record(s),
11 exhibits and correspondence of the applicant(s), which are
12 essential or relevant to the applicant's Qualifying Certificate
13 amendment request.

14 (d) The GEDA *shall* advise all Qualifying Certificate recipients of the
15 provisions contained in this Section and *shall* perform its
16 prescribed administrative obligations accordingly. The provisions
17 of this Section *shall* affect *only* those applicants whose application
18 for amendment, revision, or extension is received after April 30,
19 2013.

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

1 **§ 58148.3. Review Board Meetings.** The Review Board *shall* provide
2 public notification pursuant to the Open Government Law, Chapter 8, Title 5
3 GCA, of all meetings scheduled to review and discuss the applications
4 submitted. Review Board meetings *shall* include a public hearing component
5 pursuant to the Administration Adjudication Law and the Open Government
6 Law.

7 (a) For applications for new Qualifying Certificates, the Review Board
8 *shall* cause to be performed, all required publication of
9 applications and public notices to be at the expense of the
10 applicant, pursuant to Chapter 58, Title 12 GCA. The GEDA’s
11 staff *may* be utilized to perform the duties required in this
12 Subsection (a).

13 (b) The individual, corporation, business or entity requesting
14 amendments or extensions to a Qualifying Certificate *shall* pay for
15 the cost of the public notification and any audits, if necessary, at
16 such amounts as determined by the Review Board.”

17 **SECTION 3. Creation of the Qualifying Certificate**
18 **Accountability and Transparency Website.** A new § 58149 is hereby
19 *added* to Chapter 58 of Title 12, Guam Code Annotated, to read as follows:

20 **“§ 58149. The Qualifying Certificate Accountability and**
21 **Transparency Website.** The GEDA shall create, or cause to be created, the
22 Qualifying Certificate Accountability and Transparency Website (Q-CAT
23 Website) for the sole purpose of increasing accountability and transparency
24 in the Qualifying Certificate Program. Funding for the Q-CAT Website is
25 hereby continuously appropriated from the annual Qualifying Certificate
26 Program fees charged and collected by the GEDA. The Q-CAT Website
27 shall include, but not be limited to, the following:

- 1 (a) Electronic copies of all new applications for Qualifying
2 Certificates within fifteen (15) days of receipt of said
3 application(s).
- 4 (b) Electronic copies of all applications to amend original or amended
5 Qualifying Certificates and/or for the extension of the term of
6 existing Qualifying Certificates' terms and conditions within
7 fifteen (15) days of receipt of said application(s).
- 8 (c) Electronic copies of the monthly reports required to be submitted
9 pursuant to § 58123, Chapter 58, Title 12 GCA within fifteen (15)
10 days of receipt of said report.
- 11 (d) All notices of hearings required in § 58125, Chapter 58, Title 12
12 GCA.
- 13 (e) All recommendations made by the GEDA Board of Directors
14 pursuant to § 58126 to the Governor within five (5) days of making
15 such recommendation.

16 The GEDA is required to create, or cause to be created, the Q-CAT
17 Website within ninety (90) days of the enactment of this Act.”

18 **SECTION 4.** A § 58126 of Chapter 58 of Title 12, Guam Code
19 Annotated, is hereby *amended* to read as follows:

20 **“§ 58126. Recommendations.**

21 The GEDA Board of Directors shall not provide any
22 recommendations to the Governor of Guam without receipt and review of
23 the Review Board’s detailed report as required in §§ 58148.1 and 58148.2.

24 All recommendations of the Authority for issuance, modification, renovation
25 and suspension of Qualifying Certificates shall be forwarded to the
26 Governor of Guam, together with a memorandum of the Authority’s findings
27 in support of its recommendations. Any recommendation of the Authority

1 not approved by the Governor within sixty (60) calendar days from his
2 receipt thereof shall be deemed disapproved on the sixty-first (61st) day
3 following such receipt.”

4 **SECTION 5.** A § 58115(c) of Chapter 58 of Title 12, Guam
5 Code Annotated, is hereby *amended* to read as follows:

6 “(c) The Governor of Guam, the Lieutenant Governor of Guam, and
7 ~~their spouses;~~ and person or spouse of such person related by consanguinity
8 of the third degree, which for the purposes of this Section shall include
9 spouses, all children, parents, grandchildren, siblings, grandparents, great-
10 grandchildren, nieces, nephews, uncles, aunts, and great-grandparents, to the
11 Governor and the Lieutenant Governor of Guam;”

12 **SECTION 6. Severability.** *If* any provision of this Act or its
13 application to any person or circumstance is held invalid, the invalidity *shall*
14 *not* affect other provisions or applications of this Act which can be given
15 effect without the invalid provision or application and to this end the
16 provisions of this Act is severable.