

I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN  
2008 (SECOND) Regular Session

2008 APR 28 AM 11:35

Bill No. 283 (EC)

Introduced by:

J.T. Won Pat, Ed.D.  
E.J.B. CALVO

AN ACT TO ADD A NEW SECTION 8158.1 TO ARTICLE 1,  
CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED  
RELATIVE TO AUTHORIZING THE BOARD OF TRUSTEES  
TO INVEST RETIREMENT FUND ASSETS AT COST IN  
EXCHANGE TRADED FUNDS

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 SECTION 1. **Legislative Findings and Intent.** *I Liheslaturan Guahan*

3 finds that prior to the enactment of Public Law No. 28-135, the statutory  
4 restrictions governing investment of funds held in trust for the benefit of  
5 Defined Benefit Plan members and beneficiaries had effectively excluded  
6 investments in certain common trust funds and commingled funds that often  
7 have lower costs than investments in mutual fund vehicles, with lower or  
8 little added risk. The intention of Public Law No. 28-135, which authorized  
9 the investments in common trust funds and commingled funds, was to  
10 provide the opportunity to improve the overall return of the investment  
11 portfolio for the benefit of the Retirement Fund as a whole.

1 To expand the opportunity to improve the overall return of the  
2 investment portfolio and to better facilitate the implementation of the  
3 portfolio's asset allocation in a more economical and effective manner, I  
4 Liheslaturan Guahan further intends to authorize investments in certain open  
5 end investment management companies and unit investment trusts that are  
6 registered with the Securities and Exchange Commission under the  
7 Investment Company Act of 1940, as amended, but are not the investment  
8 funds described in Section 8158 of Title 4, Chapter 8, Article 1 of the Guam  
9 Code Annotated. The investments are known as exchange traded funds and  
10 they trade on the American Stock Exchange, the New York Stock Exchange  
11 and the NASDAQ.

12 *I Liheslaturan Guahan* finds that institutional investments in exchange  
13 traded funds may in some cases have lower costs than investments in mutual  
14 fund vehicles, with comparable levels of risk. *I Liheslaturan Guahan* therefore  
15 intends to authorize the Trustees of the Defined Benefit Plan to consider the  
16 circumstances under which investments in exchange traded funds may be  
17 appropriate for the Defined Benefit Plan and to exercise their discretion to  
18 invest Retirement Fund assets in exchange traded funds, thus expanding the  
19 opportunity to improve the overall risk/return of the investment portfolio for  
20 the benefit of the Retirement Fund as a whole.

21 *I Liheslaturan Guahan* further intends that Section 8158.1 shall be  
22 applicable only to investment in exchange traded funds, and shall not affect,  
23 or be affected by, other sections of the Defined Benefit Plan statute pertaining  
24 to investments in specific asset classes such as common or capital stock,

1 preferred stock, bonds, or to other investment vehicles such as the investment  
2 funds described in Section 8158. For example, none of the quantitative  
3 limitations (e.g., maximum percentage investments) or qualitative  
4 requirements (e.g., dividend payout or net asset value requirements)  
5 expressly applicable to (1) direct investments in common or capital stock,  
6 preferred stock, or bonds; or (2) indirect investments in investment funds, are  
7 intended to apply to, or impose further limits on, the investments made in  
8 exchange traded funds described in Section 8158.1.

9 **SECTION 2. Add a new Section 8158.1 of Article 1, Chapter 8, Title 4**  
10 **of the Guam Code Annotated is hereby added to read:**

11 “§ 8158.1. Exchange Traded Funds. (a) Units or shares of any  
12 exchange traded fund “ETF” established as an open-end investment  
13 management company or a unit investment trust registered with the  
14 Securities and Exchange Commission under the Investment Company Act of  
15 1940, as from time to time amended. Although ETFs may trade at prices  
16 established throughout the trading day, like any other listed equity security  
17 trading in the secondary market on an exchange, the units or shares described  
18 in this subsection shall not be subject to the provisions of § 8157. Although  
19 ETFs are unit investment trusts, the units or shares described in this  
20 subsection shall not be subject to the provisions of § 8158. The investment in  
21 units or shares of any one exchange traded fund shall not exceed twenty  
22 percent (20%) of the Fund at cost.”

23 **SECTION 3. Effective Date.** This Act shall become effective upon  
24 enactment.