

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN  
2011 (FIRST) REGULAR SESSION

Bill No. 80-31 (COR)

Introduced by:

v.c. pangelinan



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

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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 open government laws of the territory of  
3 Guam, this Act is prescribed by *I' Liheslaturan Guahan* for the benefit of  
4 Guam resident taxpayers who bear the loss of tax revenues resulting from  
5 the granting of Qualifying Certificates (QCs) by the Guam Economic  
6 Development Authority (Authority).

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

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

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

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

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

24            **“§58148. The Qualifying Certificate Review Board.**

25            (a) The Qualifying Certificate Review Board is hereby established,  
26 herein referred to as “*Review Board*” whose members shall consist of the  
27 Administrator of the Authority, Director of Revenue and Taxation, the

1 Attorney General of Guam or his/her designee, the Chief Economist of the  
2 Department of Labor and the Chief Economist of the Bureau of Statistics  
3 and Plans. The members shall convene and elect a Chairperson and  
4 thereafter when called upon by the Chairperson shall review all applications  
5 to amend original or amended Qualifying Certificates or extension of the  
6 term of all Qualifying Certificates' terms and conditions. After careful  
7 review and scrutiny of the applications, it shall be the duty of the Review  
8 Board to provide a detailed report with their recommendations and findings  
9 to *I' Maga'lahaen Guahan, I' Liheslaturan Guahan* and the Board of  
10 Directors of the Authority.

11 The Review Board shall provide public notification pursuant to the  
12 Open Government Law, 5GCA, Chapter 8 of all meetings scheduled to  
13 review and discuss the applications submitted, to include any and all  
14 amendments requested. The individual, corporation, business or entity  
15 requesting amendments or extensions to their Qualifying Certificate shall  
16 pay for the cost of the public notification and any audits, if necessary.

17 The Chairperson shall represent the government of Guam in any  
18 subsequent discussion, meetings or any other administrative matter(s) or  
19 affair(s) that pertain specifically to the amendments or any binding  
20 obligation or agreements to an existing Qualifying Certificate.

21 (b) The Administrator of the Authority shall within ten (10) days of  
22 its receipt forward to the Chairperson of the Review Board all applications  
23 to amend or extend original or amended Qualifying Certificates. The Review  
24 Board in processing all applications may amend, reconsider, suspend and or  
25 revise all applications to amend original or amended Qualifying Certificate  
26 or extension of Qualifying Certificates and shall be provided the applicant's  
27 audited financial statement by an independent auditor within eighteen (18)

1 months of the date of the application, the terms and conditions of the current  
2 Qualifying Certificate and other documents necessary for the preparation of  
3 its report and recommendation. The Authority shall further provide the  
4 Review Board with complete administrative data, information, record(s),  
5 exhibits and correspondence of the applicant(s), which are essential or  
6 relevant to the applicant's Qualifying Certificate amendment request.”

7 **Section 3. Effective Date.** The Guam Economic Development  
8 Authority shall advise all Qualifying Certificate recipients of the provisions  
9 contained in this Act and shall perform its prescribed administrative  
10 obligations accordingly. Provisions of this Act *shall affect only those*  
11 *applicants whose application for amendment or revision is received after*  
12 *April 30, 2011.*

13 **Section 4. Relocation of Function Related Personnel and Assets.**  
14 For the purposes and intent directly and indirectly provided in this  
15 Act, the Guam Economic Development Authority shall transfer personnel,  
16 office and computer equipment, materials, supplies and other assets used to  
17 perform Qualifying Certificate monitoring and compliance functions to the  
18 Office of the Public Accountability. Personnel and assets affected by this  
19 section shall in accordance with government policy or procedures, be  
20 assigned under the charge of the Public Auditor. Funding to support this  
21 activity or unit in the current fiscal year effective on the date of transfer, is  
22 hereby continuously appropriated from the annual Qualifying Certificate  
23 Program fees charged and collected by the Guam Economic Development  
24 and Authority.

25 **Section 5.** Notwithstanding any other laws, procedures or rules and  
26 regulations of the government of Guam applicable to the Qualifying  
27 Certificate program established pursuant to Chapter 58 of Title 12 GCA, the

1 provisions of this Act shall serve to lawfully augment the existing policies of  
2 the territory of Guam, which relate to the amendment of original and  
3 amended terms and conditions of the Guam's Qualifying Certificate  
4 Program.

5 **Section 6. Severability.** If any provision of this Law or its  
6 application to any person or circumstances is found to be invalid or contrary  
7 to law, such invalidity shall not affect other provisions or applications of this  
8 Law which can be given effect without the invalid provisions or application,  
9 and to this end the provisions of this Law are severable.