



# COMMITTEE ON RULES

*I Mina'trentai Unu na Liheslaturan Guåhan* • The 31<sup>st</sup> Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

*March 19, 2012*

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

March 19, 2012

Senator  
Judith P. Guthertz  
VICE CHAIRPERSON  
ASST. MAJORITY LEADER

## MEMORANDUM

### MAJORITY MEMBERS:

Speaker  
Judith T. Won Pat

To: Patricia C. Santos  
*Clerk of the Legislature*

Vice Speaker  
Benjamin J. F. Cruz

From: Senator Rory J. Respicio 

Subject: Supplement to Committee Report  
Substitute Bill No. 435-31 (COR)

Senator  
Tina Rose Muña Barnes  
LEGISLATIVE SECRETARY  
MAJORITY WHIP

*Hafa Adai!*

Senator  
Dennis G. Rodriguez, Jr.  
ASST. MAJORITY WHIP

Transmitted herewith is a memo from Senator vicente (ben) c. pangelinan, Chairperson, Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land, forwarding additional testimony on Substitute Bill No. 435.

Senator  
Thomas C. Ada

Please include this memo and the attachment as a "Supplement" to the Committee Report on Substitute Bill No. 435-31 (COR).

Senator  
Adolpho B. Palacios, Sr.

Senator  
vicente c. pangelinan

Please make the appropriate indication in your records; and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators of *I Mina'trentai Unu na Liheslaturan Guåhan*.

### MINORITY MEMBERS:

Senator  
Aline A. Yamashita  
ASST. MINORITY LEADER

*Si Yu'os ma'åse'!*

Senator  
Christopher M. Duenas



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# Supplement to the Committee Report on Substitute Bill No. 435-31 (COR)

**"AN ACT TO AMEND SECTION 4302(c),  
ARTICLE 3, CHAPTER 4, TITLE 4 OF THE  
GUAM CODE ANNOTATED, RELATIVE TO  
NEGOTIATING AND PROCURING HEALTH  
INSURANCE SERVICES FOR THE  
GOVERNMENT OF GUAM."**

\*NOTE: The original Committee Report on  
Substitute Bill No. 435-31 (COR)  
was filed on March 16, 2012.



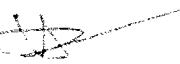
I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

March 19, 2012

Memorandum

To: Senator Rory Respicio  
Chairman, Committee on Rules

From: Senator Vicente (ben) Cabrera Pangelinan 

Re: Testimony

Chairman  
Committee on Appropriations,  
Taxation, Public Debt, Banking,  
Insurance, Retirement, and  
Land

Vice Chairman  
Committee on Education

Member  
Committee on Rules,  
Federal, Foreign &  
Micronesian Affairs and  
Human & Natural  
Resources

Member  
Committee on  
Municipal Affairs,  
Tourism, Housing, and  
Recreation

Member  
Committee on the Guam  
Military Buildup and  
Homeland Security

Member  
Committee on Health and  
Human Services, Senior  
Citizens, Economic  
Development, and Election  
Reform

Please find attached a testimony from Ms. Paula Blas, Director of the Government of Guam Retirement Fund (GGRF) on Bill No. 435-31. The letter was sent to our office on Friday, March 16, 2012.

Bill No 435-31 has been filed with COR and this memo is to request that the testimony from GGRF be included into the committee report.

*Si Yu'os Ma'ase.*



GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
STABILITY · SECURITY · REWARDS

**Eddie Baza Calvo**  
Governor

**Ray Tenorio**  
Lieutenant Governor

**Paula M. Blas**  
Director

*Trustees:*

**Joe T. San Agustin**  
Chairman

**Wilfred P. Leon Guerrero, Ed.D.**  
Vice-Chairman  
Investment Committee, Chairman

**Antolina S. Leon Guerrero**  
Secretary

**Gerard A. Cruz**  
Treasurer  
Audit & Operations Committee,  
Chairman

**George A. Santos**  
Members' & Benefits Committee,  
Chairman

**Katherine T.E. Taitano**  
Trustee

**Wilfred G. Aflague**  
Trustee

March 16, 2012

**GOVERNMENT OF GUAM RETIREMENT FUND**  
**COMMENTS ON BILL 435-31**

The Director of the Government of Guam Retirement Fund (the "Fund") hereby submits comments to Bill 435-31.

I. BILL 435-31 (COR)

The Legislative intent of Bill 435-31 is to amend Section 4302(c), of Title 4 to include an additional member to the Government of Guam Health Insurance Negotiating Team; and further to require the Negotiating Team to negotiate "with all Health Insurance Providers submitting a qualified proposal for health insurance coverage for qualified active employees and qualified retirees of the government of Guam."

II. COMMENTS

The Fund hereby submits its comments as an interested party to Bill 435-31 by virtue of the fact that the Director of the Fund is mandated by law to sit as a member of the negotiating team representing the interests of the retirees of the government of Guam.

- A. Inclusion of an additional member of the general public, appointed by the *Maga'låhen Guahån* who is not an employee of the government of Guam or an appointee by the *Maga'låhen Guahån* to any government agency, board or commission.

The Fund believes that further review is required prior to passage to further clarify the qualification and or limitations on the appointment of the member of the general public to the Guam Negotiating Health Insurance Negotiating Team. For instance, Bill 435-31 does not define the term "member of the general public" which is a broad term that has the potential to create a conflict of interest in the procurement of the health insurance contract. Specifically, Bill 435-31 does not provide for any limitations or qualifications for the member of the general public.

Unlike the current members of the Negotiating Team, the question is whether the "member of the general public" is subject to the same ethical standards as the government employees as codified in Chapter 15, of Title 4 of the Guam Code Annotated, also known as the Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of the Government of Guam.

424 Route 8  
Maite, Guam 96910  
Tel: 671.475.8900  
Fax: 671.475.8922

[www.ggrf.com](http://www.ggrf.com)

For example, while employees of the government of Guam are subject to 4 G.C.A. § 15205, which states that no employee shall take any official action directly affecting: (1) business or other undertaking in which the employee has a financial interest; or (2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity; the legislation is silent on whether a member of the general public is also precluded from taking any official action of contracting with health insurance providers.

Additionally, the statute states, that "no employee shall disclose information which is considered a private document by existing law, and which the employee acquires in the course of official duties, or use the information for personal gain or for the benefit of someone else." 4 G.C.A. § 15203. There is no doubt that during the negotiation process, confidential information will be readily available to the members of the negotiating team. The issue is whether the member general public will also be held to this standard; again, Bill 435-31 is silent.

Without further clarification, the Negotiating Team may include a member of the public that is held to a different standard than the other members of the Negotiating Team, and may quite possibly present an opportunity for a potential challenge to the contract.

- B. Notwithstanding any other provision of law, each Fiscal Year, the Negotiating Team shall enter into negotiations with all Health Insurance Providers submitting a qualified proposal for health insurance coverage for qualified active employees and qualified retirees.

Again, the Fund believes that further clarification is required prior to the passage of Bill 435-31 to clarify any issues that may be in conflict with the Guam Procurement Act and Guam Administrative Rules and Regulations as codified in Chapter 5, of Title 5 of the Guam Code Annotated and Title 2 Chapter 3 of the Guam Administrative Rules and Regulations, respectively.

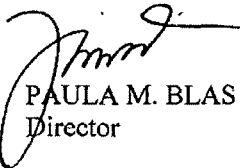
First, this amendment is contrary to Guam Procurement Act and the relevant Guam Administrative Rules and Regulations. The current statute requires the use of the "Request for Proposal" method of selection for the health insurance contract. Under 2 G.A.R. §3114(j), it mandates the head of the procuring agency rank the qualified offerors based on the offerors' qualification ranking. The "best" offeror must then submit its cost or pricing data prior to negotiations. 2 G.A.R. § 3114(k). The agency must then only negotiate with the "best" offeror and only upon a failure to negotiate with the "best" offeror will the agency be able to negotiate with the next best offeror. Bill 435-31 proposes to disregard the Procurement Act and the Guam Administrative Rules and Regulations.

Second, 4 G.C.A. § 4302(c)(1), mandates the Director of Administration to plan and implement, "an expanded competitive Request for Proposal" process. The statute and the rules and regulations do not define the term "expanded competitive RFP." As a result, the members of the negotiating team do not have the proper guidance as to how to proceed. At this point, the only guidance exists in the procurement statute and the relevant rules and regulations.

Without further clarification, the conflict between the statutes may quite possibly open the gates to multiple protests and delays in the procurement of the Government of Guam Health Insurance Contract.

III. SUMMARY OF DIRECTOR COMMENTS ON BILL 435-31.

At this time the Fund does not take an official position to Bill 435-31; rather, provides comments that it believes requires further discussion and or review by the Guam Legislature prior to acting on the Bill. As a member of the Guam Health Insurance Contract Negotiating Team, the Fund takes its responsibility in representing the government of Guam employees and retirees seriously, and as such takes the stance that any proposed legislation affecting the health insurance benefits for government of Guam retirees should be made in a clear and concise manner.



PAULA M. BLAS  
Director