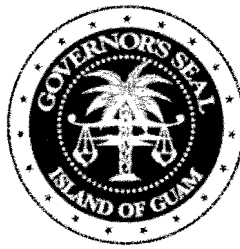


EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

March 6, 2013

Honorable Judith T. Won Pat, Ed.D  
Speaker  
*I Mina'trentai Unu Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

32-175  
Office of the Speaker  
Judith T. Won Pat, Ed. D.  
Date 3/6/13  
Time 3:55 PM  
Received by [Signature]  
MAR 14 56

Dear Madame Speaker:

Attached is Bill No. 9-32 (COR), entitled, ***“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,”*** which I have vetoed.

I am vetoing Bill 9-32 because it does nothing to improve the already exhaustive multi-step Qualifying Certificate (QC) application review process. It only introduces duplicative, redundant processes which could slow economic growth and very well spawn excessive regulatory litigation.

Under Bill 9-32, the Review Board is charged with scrutinizing QC applications, providing public notification of board meetings to review and discuss the applications, and holding a public hearing prior to decision on any application or extension. It even utilizes GEDA staff to carry out some of the Review Board's responsibilities. The Review Board then provides a report of its recommendations to GEDA.

This process is almost identical to the significant QC review procedures that are already undertaken by GEDA. Currently, and even after receipt of the Review Board's report under Bill 9032, there would be an application review by a GEDA underwriter, a public notice and public hearing, a review by GEDA's internal Credit Review Committee, GEDA's management and its Board of Directors, a review by the Attorney General, and finally, a review by the Governor of Guam. The Credit Review Committee, which is comprised of its executive management, division managers and two members of the GEDA Board, is already charged with analyzing and providing substantiated recommendations on all requests for GEDA programs, including the QC program; thus it already conducts the same economic analysis contemplated under Bill 9-32.

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In short, Bill 9-32 does little else besides adding an extra layer of bureaucracy, that potentially hampers economic growth through unnecessary delay and expense.

Bill 9-32 is also technically and legally flawed in that it requires GEDA to publically post on a website the monthly reports that are filed by a QC beneficiary, contrary to current law, namely 12 G.C.A. Section 58123, that explicitly requires that, "All such monthly reports shall be treated as confidential by [GEDA]."

Finally, Bill 9-32 fails to make any appropriation or identify the funding source for the new mandates being implanted by the bill.

If the Legislature feels that the current QC process lacks adequate public review or processes, my recommendation is to refine existing statutes to expand or contract the GEDA review process, not increase the layers of regulatory oversight and bureaucracy by adding another board, commission or agency to the process. The government needs to focus on outcomes that will attract investors who can provide critically needed jobs and economic growth and opportunities our island and its people. My Administration looks forward to working with *Liheslaturan Guåhan* in achieving these goals.

*Senseramente,*



EDDIE BAZA CALVO

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
2013 (FIRST) Regular Session

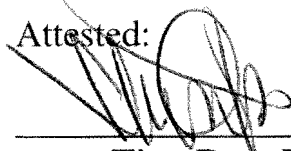
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Bill No. 9-32 (COR)**, "AN ACT TO ADD NEW §§ 58148, 58148.1, 58148.2, 58148.3 AND 58149; AND TO AMEND §§ 58126 AND 58115(c), ALL OF CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE QUALIFYING CERTIFICATE REVIEW BOARD, AND THE QUALIFYING CERTIFICATE ACCOUNTABILITY AND TRANSPARENCY WEBSITE; AND AMENDING CONFLICTS OF INTEREST PROVISIONS", was on the 22<sup>nd</sup> day of February, 2013, duly and regularly passed.



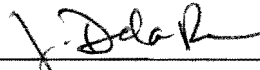
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



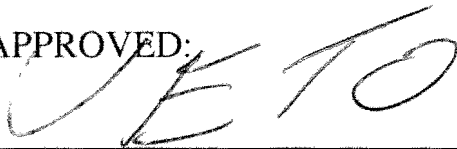
Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 22<sup>nd</sup> day of Feb., 2013,  
at 4:00 o'clock P.M.



Assistant Staff Officer  
*Maga'lahaen's Office*

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahaen Guåhan*

Date: MARCH 06, 2013

Public Law No. \_\_\_\_\_

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
**2013 (FIRST) Regular Session**

**Bill No. 9-32 (COR)**

As amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan

B. J.F. Cruz

Dennis G. Rodriguez, Jr.

T. C. Ada

V. Anthony Ada

Frank B. Aguon, Jr.

Chris M. Dueñas

M. T. Lintiaco

Brant T. McCreadie

Tommy Morrison

T. R. M. Barnes

R. J. Respicio

M. F.Q. San Nicolas

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO ADD NEW §§ 58148, 58148.1, 58148.2, 58148.3 AND 58149; AND TO AMEND §§ 58126 AND 58115(c), ALL OF CHAPTER 58 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE QUALIFYING CERTIFICATE REVIEW BOARD, AND THE QUALIFYING CERTIFICATE ACCOUNTABILITY AND TRANSPARENCY WEBSITE; AND AMENDING CONFLICTS OF INTEREST PROVISIONS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** Pursuant to and in  
3 conformance with the practice of the open government laws of Guam, this Act is

1 prescribed by *I Liheslaturan Guåhan* for the benefit of Guam resident taxpayers  
2 and local businesses operating without the benefits of a Qualifying Certificate, who  
3 bear the cost of tax revenues rebated and abated resulting from the granting who  
4 bear the loss of tax revenues resulting from the granting of Qualifying Certificates  
5 (QCs) by the Guam Economic Development Authority (GEDA).

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

11 *I Liheslaturan Guåhan* further finds that for whatever reason amendments to  
12 the terms and conditions of the QCs are granted, and there are concerns about the  
13 government's due diligence during this process, and public disclosure and  
14 administrative transparency is needed when granting these amendments.

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

23 Therefore, it is the intent of *I Liheslaturan Guåhan* to establish a Qualifying  
24 Certificate Review Board, to review all new applications for Qualifying  
25 Certificates, all applications requesting to amend original or amended QCs, and/or  
26 all extensions of QCs, and to ensure transparency in the discussions,  
27 recommendations, and approval of those applications. Furthermore, it is also the

1 intent of *I Liheslaturan Guåhan* to create the Qualifying Certificate Accountability  
2 and Transparency Website for the sole purpose of increasing accountability and  
3 transparency within the Qualifying Certificate Program.

4 **Section 2. Establishment of the Qualifying Certificate Review Board.**

5 New §§ 58148, 58148.1, 58148.2, and 58148.3 are hereby *added* to Chapter 58 of  
6 Title 12, Guam Code Annotated, to read as follows:

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

18 **§58148.1. Applications for New Qualifying Certificates.** After  
19 careful review and scrutiny of the applications for new Qualifying  
20 Certificates, it *shall* be the duty of the Review Board to provide a detailed  
21 report to include, but *not* be limited to, those specific findings as required in  
22 § 58109, Chapter 58, Title 12 GCA, to the GEDA Board of Directors.

23 **§58148.2. Applications Requesting Amendments or Extensions**  
24 **of Existing Qualifying Certificates.**

25 (a) **Reporting Requirements.** After careful review and scrutiny of  
26 an application or notification to amend an original or amended Qualifying  
27 Certificate, or for the extension of the term of an existing Qualifying

1 Certificate or any of its terms and conditions, it *shall* be the duty of the  
2 Review Board to provide a detailed report prior to the GEDA Board's  
3 disposition of any application or prior to an extension. This report *shall* be  
4 provided to the GEDA Board of Directors, and *shall* include:

5 (1) an analysis of the direct impact of the amendment on  
6 additional or lost revenue to the government of Guam.

7 (2) an analysis of the direct impact of the amendment on Net  
8 Profit Margin presented in gross dollars and a percentage taken or  
9 calculated in the audit report required in Subsection (c).

10 (3) the Net Profit Margin percentage used in Subsection a(2)  
11 *shall* be compared against a published reasonable industry standard,  
12 such as Standard and Poors Key Industry Ratios.

13 (4) when amendments reduce requirement thresholds of the  
14 recipient, the Review Board *shall* assume the maximum impact.

15 (5) recommendations on the disposition of the application or  
16 notification.

17 (6) the Review Board *shall* submit its report with  
18 recommendations and findings to *I Maga'låhen Guåhan, I*  
19 *Liheslaturan Guåhan*, and the Board of Directors of the GEDA.

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

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

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

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

26 **§ 58148.3. Review Board Meetings.** The Review Board *shall* provide  
27 public notification pursuant to the Open Government Law, Chapter 8, Title 5 GCA,



1 of all meetings scheduled to review and discuss the applications submitted. Review  
2 Board meetings *shall* include a public hearing component prior to decision on any  
3 application or extension pursuant to the Administration Adjudication Law and the  
4 Open Government Law.

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

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

14 **Section 3. Creation of the Qualifying Certificate Accountability and**  
15 **Transparency Website.** A new § 58149 is hereby *added* to Chapter 58 of Title  
16 12, Guam Code Annotated, to read as follows:

17 “§58149. **The Qualifying Certificate Accountability and**  
18 **Transparency Website.** The GEDA *shall* create, or cause to be created, the  
19 Qualifying Certificate Accountability and Transparency Website (Q-CAT Website)  
20 for the sole purpose of increasing accountability and transparency in the Qualifying  
21 Certificate Program. Funding for the Q-CAT Website is hereby continuously  
22 appropriated from the annual Qualifying Certificate Program fees charged and  
23 collected by the GEDA. The Q-CAT Website *shall* include, but *not* be limited to,  
24 the following:

25 (a) Electronic copies of all new applications for Qualifying  
26 Certificates within fifteen (15) days of receipt of said application(s).

1 (b) Electronic copies of all applications to amend original or  
2 amended Qualifying Certificates and/or for the extension of the term of  
3 existing Qualifying Certificates' terms and conditions within fifteen (15)  
4 days of receipt of said application(s).

5 (c) Electronic copies of the monthly reports required to be  
6 submitted pursuant to § 58123, Chapter 58, Title 12 GCA within fifteen (15)  
7 days of receipt of said report.

8 (d) All notices of hearings required in § 58125, Chapter 58, Title  
9 12 GCA.

10 (e) All recommendations made by the GEDA Board of Directors to  
11 the Governor, pursuant to § 58126, within five (5) days of making such  
12 recommendation.

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

15 **Section 4.** § 58126 of Chapter 58 of Title 12, Guam Code Annotated, is  
16 hereby *amended* to read as follows:

17 **“§58126. Recommendations.**

18 The GEDA Board of Directors *shall not* provide any recommendations to  
19 the Governor of Guam without receipt and review of the Review Board’s detailed  
20 report as required in §§ 58148.1 and 58148.2. All recommendations of the  
21 Authority for the issuance, modification, renovation and suspension of Qualifying  
22 Certificates *shall* be forwarded to the Governor of Guam, together with a  
23 memorandum of the Authority’s findings in support of its recommendations. Any  
24 recommendation of the Authority *not* approved by the Governor within sixty (60)  
25 calendar days from his receipt thereof *shall* be deemed disapproved on the sixty-  
26 first (61<sup>st</sup>) day following such receipt.”

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

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

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