



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

April 2, 2013

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

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 4/3/13
Time 1:00 PM
Received by Falk
52-113-239

2013 APR - 3 PM 1:00

Dear Madame Speaker:

Transmitted herewith is Bill No. 47-32(LS), "AN ACT TO ADD A NEW SECTOIN 8103.1 TO ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED, TO COMPLY WITH THE INTERNAL REVENUE CODE REQUIREMENTS APPLICABLE TO THE GOVERNMENT OF GUAM RETIREMENT FUND," which I signed into law on April 2, 2013 as Public Law 32-008

Senseramente,

RAY TENORIO
Acting Governor of Guam

0239

Attachment: copy of Bill

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

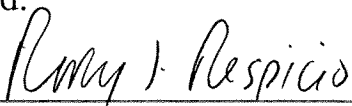
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 47-32 (LS)**, "AN ACT TO ADD A NEW §8103.1 TO ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED, TO COMPLY WITH INTERNAL REVENUE CODE REQUIREMENTS APPLICABLE TO THE GOVERNMENT OF GUAM RETIREMENT FUND", was on the 25th day of March, 2013, duly and regularly passed.



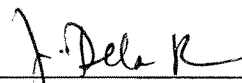
Judith T. Won Pat, Ed.D.
Speaker

Attested:



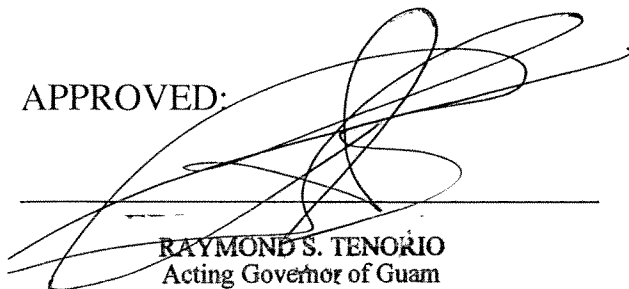
Rory J. Respicio
Acting Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 25th day of Mar.,
2013, at 4:35 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



RAYMOND S. TENORIO
Acting Governor of Guam

Date: 04/02/2013

Public Law No. 32-008

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

Bill No. 47-32 (LS)

Introduced by:

Vicente (ben) C. Pangelinan

T. C. Ada

V. Anthony Ada

Frank B. Aguon, Jr.

B. J.F. Cruz

Chris M. Dueñas

M. T. Limtiaco

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

M. F.Q. San Nicolas

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW §8103.1 TO ARTICLE 1,
CHAPTER 8, TITLE 4 OF THE GUAM CODE
ANNOTATED, TO COMPLY WITH INTERNAL
REVENUE CODE REQUIREMENTS APPLICABLE TO
THE GOVERNMENT OF GUAM RETIREMENT FUND.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Article 1, Chapter 8, Title 4 of the Guam Code Annotated must be amended to
4 comply with the requirements for tax-qualified governmental pension plans under
5 Section 401(a) of the United States Internal Revenue Code of 1986, as amended,
6 applicable to Guam under the mirror provisions of the Guam Territorial Income
7 Tax Code.

1 **Section 2.** A new §8103.1 of Article 1, Chapter 8, Title 4 of the Guam
2 Code Annotated is hereby *added* to read as follows:

3 **“§ 8103.1. Tax Qualification Requirements.**

4 (a) The Fund *shall* maintain its status as a tax-qualified
5 governmental pension plan under Section 401(a) of the Code. As used in
6 this Article, “Code” means the United States Internal Revenue Code of
7 1986, as amended, applicable to Guam under the mirror provisions of the
8 Guam Territorial Income Tax Code.

9 (b) The Fund *shall* be administered in accordance with the
10 requirements of Section 401(a)(1), (2), (7), (8), (9), (16), (17), (25), (31), and
11 (37) of the Code, as such provisions, as amended, apply to a governmental
12 pension plan sponsored by the government of Guam. Without limiting the
13 generality of the foregoing and notwithstanding any other provision of this
14 Article to the contrary:

15 (1) In accordance with Sections 401(a)(1) and 401(a)(2) of
16 the Code, the Board *shall* hold the corpus and income of the Fund in
17 trust, and at no time prior to the satisfaction of all liabilities with
18 respect to members and their beneficiaries shall any part of the corpus
19 or income of the Fund be used for, or diverted to, purposes other than
20 for the exclusive benefit of the members and their beneficiaries.

21 (2) In accordance with Section 401(a)(7) of the Code, in the
22 event of the termination of or complete discontinuance of
23 contributions to the Fund, the rights of all members to benefits
24 accrued as of the date of such termination or discontinuance, to the
25 extent then funded, *shall* be fully vested and nonforfeitable.

26 (3) In accordance with Section 401(a)(8) of the Code,
27 benefits forfeited by a member for any reason *shall not* be applied to

1 increase the benefits any other member or beneficiary would
2 otherwise receive under this Article.

3 (4) All benefit distributions *shall* be administered in
4 accordance with a reasonable good-faith interpretation of Section
5 401(a)(9) of the Code. The following describes the statutory
6 requirements of Section 401(a)(9) of the Code:

7 (A) The member's entire interest *shall* be distributed to
8 the member *no later than* the member's required beginning
9 date, or the member's entire interest must begin to be
10 distributed to the member *no later than* the member's required
11 beginning date and must be paid over the life of the member, or
12 the lives of the member and a designated beneficiary (or over a
13 period that *does not* extend beyond the life expectancy of the
14 member or the life expectancy of the member and a designated
15 beneficiary). The "required beginning date" is April 1 of the
16 calendar year following the later of (i) the calendar year in
17 which the member attains age 70½, or (ii) the calendar year in
18 which the member retires.

19 (B) If the distribution of the member's interest has
20 begun in accordance with Paragraph (A) and the member dies
21 before the member's entire interest has been distributed, the
22 remaining portion must be distributed at least as rapidly as
23 under the method of distribution being used to satisfy Paragraph
24 (A).

25 (C) If the member dies before distribution of the
26 member's interest has begun under Paragraph (A), the
27 member's entire interest *shall* be distributed, or begin to be

1 distributed, *no later than* as follows:

2 (i) If the member's surviving spouse is the
3 member's sole designated beneficiary, distributions to the
4 surviving spouse *shall* begin by December 31 of the
5 calendar year immediately following the calendar year in
6 which the member dies, or by December 31 of the
7 calendar year in which the member would have attained
8 age 70½, if later;

9 (ii) If the member's surviving spouse is *not* the
10 member's sole designated beneficiary, distributions to the
11 designated beneficiary *shall* begin by December 31 of the
12 calendar year immediately following the calendar year in
13 which the member died, and *shall* be paid over the life of
14 such designated beneficiary (or over a period *not*
15 extending beyond the life expectancy of such
16 beneficiary); or

17 (iii) If there is no designated beneficiary, the
18 member's entire interest *shall* be distributed by
19 December 31 of the calendar year containing the fifth
20 anniversary of the member's death.

21 (D) All death benefits *shall* be administered to comply
22 with the incidental death benefit requirement in Section
23 401(a)(9)(G) of the Code.

24 (5) In accordance with Section 401(a)(16), benefits paid
25 from, and mandatory employee contributions made to, the Fund *shall*
26 *not* exceed the maximum benefits and the maximum annual additions,
27 respectively, permissible under Section 415 of the Code with respect

1 to governmental plans.

2 (A) Specifically, the “annual benefit,” which is a
3 benefit payable in the form of a straight life annuity, *may not*
4 exceed the dollar limit described in Section 415(b)(1)(A) of the
5 Code, as automatically adjusted for increases in the cost of
6 living under Section 415(d) of the Code. For benefits payable
7 in the plan year ending September 30, 2010, the dollar limit is
8 \$195,000. The 12-month plan year ending each September 30
9 *shall* be the “limitation year” for purposes of applying the
10 limitations under Section 415 of the Code. Section 415 of the
11 Code and the Treasury Regulations thereunder require that
12 adjustments be made to the dollar limit for benefits that
13 commence prior to age 62, or after age 65, and for benefits
14 payable to members with *less than* ten years of membership.
15 The Code and Treasury Regulations require that any benefit
16 payable in a form other than a straight life annuity must be
17 converted to an actuarially equivalent straight life annuity in
18 applying the applicable limit to the “annual benefit”.

19 (B) The “annual benefit” *does not* include the portion
20 of the member’s benefit attributable to mandatory employee
21 contributions under Section 8136. Rather, mandatory employee
22 contributions are treated as contributions to a defined
23 contribution plan for purposes of Section 415 of the Code, and
24 are therefore subject to the limits on annual additions under
25 Section 415(c)(1) of the Code. The annual additions *may not*
26 exceed the lesser of the two limits. The first limit is the dollar
27 limit described in Section 415(c)(1)(A) of the Code, as

1 automatically adjusted for increases in cost of living under
2 Section 415(d) of the Code. For the limitation year ending
3 September 30, 2010, the dollar limit is \$49,000. The second
4 limit is the compensation limit described in Section
5 415(c)(1)(B) of the Code which provides that the annual
6 additions *may not* exceed 100% of the member's "Section 415
7 compensation" for the limitation year.

8 (C) "Section 415 compensation" means the member's
9 Box 1, W-2 earnings for the year, modified to include any pre-
10 tax elective deferrals pursuant to Sections 403(b), 457(b), 125,
11 or 132(f)(4) of the Code. Generally, Section 415 compensation
12 *does not* include amounts paid after severance from
13 employment. However, Section 415 compensation does
14 include amounts paid by the later of 2½ months after the
15 member's severance from employment or the end of the
16 limitation year that includes the date of the member's severance
17 from employment if the payment is regular compensation for
18 services during the member's regular working hours, or
19 compensation for services outside the member's regular
20 working hours (such as overtime or shift differential),
21 commissions, bonuses, or similar payments, and, absent the
22 severance from employment, the payments would have been
23 paid to the member while the member continued in employment
24 with the government. Section 415 compensation also includes
25 any payments to or for the benefit of a member who *does not*
26 currently perform services for the government by reason of
27 qualified military service, as defined in Subsection (9) of this

1 Section, to the extent those payments *do not* exceed the
2 amounts the member would have received if the member had
3 continued to perform services for the government, rather than
4 entering qualified military service. Section 415 compensation
5 also includes "differential wage payments" within the meaning
6 of Section 3401(h)(2) of the Code with respect to the period
7 during which the member is on active duty in Qualified
8 Military Service. Finally, Section 415 compensation includes
9 payments awarded by an administrative agency, or court, or
10 pursuant to a bona fide agreement by the government to
11 compensate a member for lost wages. Such payments for back
12 pay are treated as Section 415 compensation for the limitation
13 year to which the back pay relates to the extent the back pay
14 represents wages and compensation that would otherwise be
15 included as Section 415 compensation under this Subsection.

16 (6) In accordance with Section 401(a)(17) of the Code, for
17 purposes of calculating contributions payable to the Fund and benefits
18 payable from the Fund, "salary," "annual salary," and "average annual
19 salary" *shall* be subject to the annual limit on compensation under
20 Section 401(a)(17) of the Code, which limit is adjusted automatically
21 for increases in the cost of living under Sections 401(a)(17)(B) and
22 415(d) of the Code. For the plan year ending September 30, 2010, the
23 limit is \$245,000.

24 (7) In accordance with Section 401(a)(25) of the Code, in the
25 case that the amount of the member's benefit payable by the Fund is to
26 be determined on the basis of actuarial assumptions, such assumptions
27 *shall* be specified under Fund documents.

1 (8) In accordance with Section 401(a)(31) of the Code, a
2 “distributee” who is entitled to a distribution may elect, at the time
3 and in the manner determined by the Board, to have any portion of an
4 “eligible rollover distribution” that is equal to at least \$500 (or such
5 other minimum amount required under the Code or Treasury
6 Regulations) paid directly in a “direct rollover” to an “eligible
7 retirement plan.” For purposes of these rules, the following
8 definitions apply:

9 (A) *eligible rollover distribution* means any
10 distribution of all or any portion of a member’s vested benefit,
11 *except* that an eligible rollover distribution *shall not* include:

12 (i) any distribution that is one of a series of
13 substantially equal periodic payments made no less
14 frequently than annually for the life (or life expectancy)
15 of the distributee or the joint lives (or joint life
16 expectancies) of the distributee and the distributee’s
17 beneficiary, or for a specified period of ten years or
18 more;

19 (ii) any distribution to the extent such
20 distribution is required under Section 401(a)(9) of the
21 Code; and

22 (iii) the portion of any distribution that is *not*
23 includible in gross income.

24 Notwithstanding the foregoing, a distribution *shall*
25 *not* fail to be an eligible rollover distribution merely
26 because the distribution consists of after-tax employee
27 contributions that are *not* includible in gross income.

1 However, such portion may be transferred *only* to an
2 individual retirement account described in Section 408(a)
3 of the Code or an individual retirement annuity described
4 in Section 408(b) of the Code (other than an endowment
5 contract), or to a qualified retirement plan (defined
6 contribution or defined benefit) described in Section
7 401(a) of the Code, or an annuity contract described in
8 Section 403(b) of the Code, provided that the qualified
9 trust or annuity contract agrees to separately account for
10 amounts so transferred (and the earnings thereon),
11 including separately accounting for the portion of such
12 distribution which is includible in gross income and the
13 portion which is *not* so includible.

14 (B) *eligible retirement plan shall* mean any of the
15 following accounts or plans to the extent it accepts the
16 distributee's eligible rollover distribution:

17 (i) a qualified retirement plan described in
18 Section 401(a) of the Code;

19 (ii) an individual retirement account described
20 in Section 408(a) of the Code;

21 (iii) an individual retirement annuity described in
22 Section 408(b) of the Code (other than an endowment
23 contract);

24 (iv) an annuity plan described in Section 403(a)
25 of the Code;

26 (v) an annuity contract described in Section
27 403(b) of the Code, or

1 (vi) an eligible deferred compensation plan
2 described in Section 457(b) of the Code that is
3 maintained by an eligible governmental employer
4 described in Section 457(e)(1)(A) of the Code, and that
5 agrees to separately account for amounts transferred into
6 such plan from this plan.

7 (C) A distributee includes a member, the surviving
8 spouse of a deceased member, and the current or former spouse
9 of a member who is an alternate payee under a qualified
10 domestic relations order that has been approved by the Board.

11 (D) A direct rollover is a direct payment by the Fund to
12 the eligible retirement plan specified by the distributee.

13 (E) A non-spouse beneficiary may elect a direct
14 rollover to an individual retirement account or individual
15 retirement annuity described in Paragraph (B)(ii) or (iii)
16 established for the purpose of receiving the distribution on
17 behalf of the non-spouse beneficiary.

18 (F) A distributee may elect a direct rollover to a Roth
19 IRA, as described in Section 408A of the Code, *if* the
20 distributee meets the requirements that apply to rollovers from a
21 traditional IRA to a Roth IRA (i.e., for tax years prior to
22 January 1, 2010, the distributee's modified adjusted gross
23 income *cannot* exceed \$100,000, and the distributee *must not* be
24 married filing a separate return).

25 (G) In prescribing the manner of making elections with
26 respect to eligible rollover distributions, as described above, the
27 Board may provide for the uniform application of any

1 restrictions permitted under applicable sections of the Code and
2 Treasury Regulations, including a requirement that a distributee
3 may *not* elect to make a direct rollover from a single eligible
4 rollover distribution to more than one eligible retirement plan.
5 The Board may require a recipient plan to provide a written
6 statement that it will accept the rollover and separately account
7 for the amount rolled over, where appropriate.

8 (H) Prior to making an eligible rollover distribution,
9 the Board *shall* provide the distributee a notice describing the
10 distributee's right to make a direct rollover to an eligible
11 retirement plan (the "402(f) Notice"). The Board *shall* issue the
12 402(f) Notice *at least* 30 days, but *no more than* 180 days, prior
13 to the date a distribution is made. However, such eligible
14 rollover distribution may commence *less than* 30 days after the
15 notice is given, provided that the 402(f) Notice clearly informs
16 the distributee that the distributee has the right to a period of *at*
17 *least* 30 days after receiving the notice to consider the decision
18 of whether or not to elect a direct rollover, and the distributee,
19 after receiving the notice, affirmatively elects a distribution.

20 (9) In accordance with Section 401(a)(37) of the Code, the
21 Uniformed Services Employment and Reemployment Rights Act of
22 1994 (USERRA), as amended, provides certain pension benefit rights
23 to employees who return to employment with their employer
24 following a leave of absence for "qualified military service" as
25 defined hereunder. §8137.2 of this Chapter also provides certain
26 rights to employees who are on leave without pay and on active duty
27 with the Guam National Guard or the reserve components of any of

1 the Armed Services of the United States. Any member who returns to
2 employment with the government following qualified military service
3 *shall* be entitled to the greater of the rights the member is entitled to
4 under §8137.2 of this Chapter, or the reemployment pension rights in
5 Section 414(u) of the Code. In the case of a member who dies while
6 performing qualified military service, the survivors of the member are
7 entitled to any additional benefits (other than benefit accruals relating
8 to the period of qualified military service) provided under the Fund
9 had the member resumed and then terminated employment on account
10 of death. This would include the death benefits provided under
11 §§8131 and 8134 of this Chapter. For purposes of this Section and
12 applying the requirements of the USERRA, *qualified military service*
13 means such term as defined in Section 414(u)(5) of the Code (any
14 service in the U.S. Armed Forces - Army, Air Force, Navy, Marines,
15 or Coast Guard; the Army National Guard and the Air National
16 Guard, when engaged in active duty for training, inactive duty
17 training, or full-time National Guard duty; the commissioned corps of
18 the Public Health Service; and any other category of persons
19 designated by the President in time of war or national emergency).”

20 **Section 5. Severability.** If any of the provisions of this law or its
21 application to any person or circumstance is found to be invalid or contrary to law,
22 such invalidity shall not affect other provisions or applications of this law which
23 can be given effect without the invalid provisions or application, and to this end the
24 provisions of this law are severable.