

EDDIE BAZA CALVO
Governor



2011 Nov 22 PM 8:58

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

November 21, 2011

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

31-11-1114
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 11/21/11
Time 4:49 PM
Received by [Signature]

Dear Madame Speaker:

Transmitted herewith is Bill No. 336-31 (COR) "AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON/HORIZON, INC. OR IT'S SUCCESSOR", which I signed into law on November 17, 2011 as Public Law 31-145.

Senseramente,

EDDIE BAZA CALVO

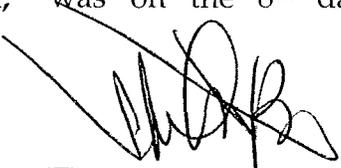
Attachment: copy of Bill

#1114

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

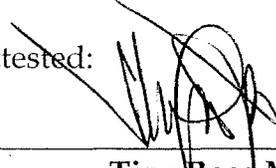
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 336-31 (COR), "AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON/HORIZON, INC. OR ITS SUCCESSOR," was on the 8th day of November, 2011, duly and regularly passed.



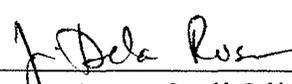
Tina Rose Muña Barnes
Acting Speaker

Attested:



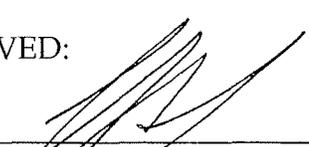
Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 14th day of Nov., 2011, at 3:45 o'clock P..M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: NOV 17 2011

Public Law No. 311-1145

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 336-31 (COR)

As substituted by the Committee on Youth,
Cultural Affairs, Procurement, General Government
Operations and Public Broadcasting; and amended on the Floor.

Introduced by:

T. C. Ada
R. J. Respicio
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
F. F. Blas, Jr.
M. Silva Taijeron
Chris M. Dueñas
Aline A. Yamashita, Ph.D.
V. Anthony Ada
B. J.F. Cruz
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
v. c. pangelinan
Judith T. Won Pat, Ed.D.

**AN ACT TO FURTHER *AMEND* SECTION 4 OF
PUBLIC LAW 30-57, RELATIVE TO AUTHORIZING
THE JOSE D. LEON GUERRERO COMMERCIAL
PORT TO ENTER INTO NEGOTIATIONS FOR THE
ACQUISITION OF THE "POLA" GANTRY CRANES
OWNED BY MATSON/ HORIZON, INC. OR ITS
SUCCESSOR.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Jose D. Leon Guerrero Commercial Port (Port), established by Public Law
4 13-87 as a public corporation and autonomous government entity, is charged with

1 providing continued support for the diversification of Guam's economy, seaborne
2 commerce and international trade. Furthermore, the Port is vested with the
3 responsibility of developing its assets and the implementation of policies and
4 strategies to enable the efficient loading and unloading of goods and materials
5 destined for retail operations in Guam and Micronesia, and to facilitate a smooth
6 transition to the military-induced expansion and anticipated population growth.

7 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted access to all
8 Gantry Cranes operating on its rails would improve operational efficiency and
9 reliability in the movement of cargo through the Port and for transshipment to the
10 neighboring islands in the region.

11 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on the
12 Port's commercial docks, and that through a license agreement executed in
13 December 2007 between the Port and Matson/ Horizon, Inc. or its successor (the
14 Carriers), three (3) of these cranes, referred to as POLA Cranes 15, 16 and 17,
15 were purchased and refurbished by the Carriers and placed on the Port's rails.
16 Additionally, the Port currently maintains and operates two (2) older and smaller
17 Gantry Cranes, referred to as Gantry 2 and Gantry 3, to service non-Matson/
18 Horizon, Inc. or its successor vessels, and that due to their age and material
19 condition are more expensive to maintain and provide less reliable service.
20 Retirement of these cranes is overdue.

21 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the Port to
22 acquire, either through purchase or lease-to-own, *at least* two (2) Gantry Cranes *no*
23 *later than* December 31, 2012, pursuant to the Guam Procurement Act, and "not
24 through the use of a Task Order attached to any existing contract". In 2006, the
25 U.S. Department of Agriculture (USDA) made available to the Port
26 direct/guaranteed loans to acquire *at least* two (2) new or refurbished Gantry

1 Cranes. The USDA loan for the acquisition of the cranes is still currently available
2 to the Port.

3 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes by the
4 Port has the potential to present a singularly unique opportunity and value to Guam
5 given their presence on the rails, record of operational reliability, and the
6 elimination of disruption to ongoing operations.

7 *I Liheslaturan Guåhan* finds that it would be prudent to explore acquisition
8 of the POLA cranes through direct purchase or lease-to-own, and that further to
9 this exploration, acquisition should be authorized, provided that this unique
10 opportunity and value can be realized through independent assessment of material
11 condition, and fair and reasonable value, and follow-on negotiation of acquisition
12 terms is uniquely and demonstrably favorable to Guam.

13 *I Liheslaturan Guåhan* further finds in consideration of the aforementioned
14 findings that certain provisions of existing public law should be amended.

15 **Section 2.** Section 4 of Public Law 30-57, as *amended* by Public Law 30-
16 100, is further *amended* to read as follows:

17 “**Section 4.** The Port Authority of Guam (PAG) *shall* immediately
18 initiate research to identify potential Federal grants and similar funding
19 sources, and *shall* initiate necessary discussions and communications to
20 secure funding as necessary for the modernization of the PAG. The PAG
21 *shall* report to the Speaker of *I Liheslaturan Guåhan* (the Legislature) *no*
22 *later than* June 2010, of (1) the status of its efforts to secure commitments
23 for grants and similar funding; and (2) its recommendation(s) in moving
24 forward with PAG’s modernization, which include, but are *not* limited to,
25 the scaling back of modernization plans that would address organic growth
26 capacity requirements and funded through debt that is within the PAG’s
27 ability to pay, estimated to be about Fifty-four Million Five Hundred

1 Thousand Dollars (\$54,500,000), and which *shall* include the acquisition,
2 either through purchase *or* lease to own, of *at least* two (2) Gantry Cranes.
3 Such cranes *shall* be acquired *no later than* December 31, 2012. *If* the PAG
4 secures a grant, and the USDA loan or other comparable loan, then Phase I-
5 A *shall* proceed along with the acquisition of *at least* two (2) Gantry Cranes.
6 Such cranes *shall* be acquired *no later than* December 31, 2012, either
7 through purchase or lease to own. No other loan or additional rate increase
8 may be requested for funding of the Master Plan by PAG without an
9 executed Capital Recovery Charge agreement as discussed in Part 3.3.3 of
10 the Revised August 3, 2009 Report, and specifically in the Financial Plan.
11 The Guam procurement laws prohibiting direct negotiation and acquisition,
12 or inconsistent with the succeeding authorities, are hereby waived.”

13 **Section 3.** A new Section 5 is *added* to Public Law 30-57, to read as
14 follows:

15 “**Section 5.** The Port Authority of Guam is hereby authorized to enter
16 into negotiations with the Carriers for the specific purpose of acquiring
17 through purchase or lease-to-own one (1) or more of the POLA Gantry
18 Cranes, *provided* that the following requirements are met:

19 (a) **Negotiating Team.** The Port Board of Directors *shall*
20 appoint a negotiation team that will be authorized to engage in the
21 negotiations with the Carriers.

22 (b) **Conflicts Prohibited.** No Covered Person, as such
23 person is defined below, shall be eligible to participate in the
24 negotiations for the acquisition of the POLA cranes, in whole or in
25 part. For the purpose of this Section, the term, “Covered Person” *shall*
26 mean any:

1 (1) elected officials of the government of Guam who
2 hold office at the time of the negotiation; or

3 (2) advisors, consultants, and employees who are or
4 had previously been employed with the Carriers prior to the
5 effective date of this Act; or

6 (3) any person who might stand to personally benefit
7 from the negotiated terms; and

8 (4) a person or spouse of such person related by
9 consanguinity of the third (3rd) degree, which for the purpose of
10 this Act *shall* include spouses, all children, parents,
11 grandchildren, siblings, grandparents, great-grandchildren,
12 nieces, nephews, uncles, aunts, and great-grandparents of a
13 person described in Items (1), (2), and (3) of this Subsection.

14 (c) **Assessment.** Prior to the initiation of negotiations, the
15 Port *shall* engage the service(s) of an independent crane expert to:

16 (1) provide an assessment of the material condition
17 and life expectancy of the POLA cranes to be acquired;

18 (2) provide an “as is” valuation assessment, starting
19 with estimated value in a fully operational condition and
20 identifying current retrofit requirements, if any, to place the
21 POLA cranes in that fully operational condition; and

22 (3) determine a range of fair and reasonable value of
23 the POLA cranes. The owners’ recouped investment in the
24 POLA gantry crane through the “crane surcharge” that was
25 implemented by the owners of the cranes at the start of
26 operations of the POLA gantry cranes at the Port, and the

1 container handling surcharge that continues to be implemented,
2 *shall* be factored and deducted from the value.

3 (d) **Reports.** A copy of the Assessment report(s) *shall* be
4 provided, within five (5) working days upon completion, to *I*
5 *Maga'lahaen Guåhan* and to the *Speaker of I Liheslaturan Guåhan*.

6 (e) **Lease.** If the outcome of negotiations is for lease-to-
7 own, such lease *shall* be based on commercially reasonable terms and
8 structured as a capital lease versus an operating lease.

9 (f) **Ratification.** The Port Board of Directors *shall* review
10 the acquisition terms, and by majority vote, ratify or not ratify the
11 terms.

12 (1) A majority vote "to not ratify" *shall* in effect
13 terminate the discussions and efforts to acquire the POLA
14 cranes through direct negotiation with the Carriers. The Port
15 *shall* then proceed to procure *at least* two (2) Gantry Cranes
16 pursuant to Guam procurement laws, and *not* through the use of
17 a Task Order to any existing contract.

18 (2) If the majority vote is to "ratify", the terms of the
19 acquisition *shall* be transmitted to the Public Utility
20 Commission (PUC) for review and disposition. The PUC *shall*
21 perform its review and disposition in a timely and expeditious
22 manner.

23 (g) **Public Disclosure.** Terms of the acquisition are to be
24 publicly disclosed and backed by a full disclosure of all relevant documents
25 after the negotiations and PUC review and disposition have been completed.

26 (h) **Maintenance.** In the event the Port acquires the POLA
27 Gantry Cranes, the Port *shall* contract, pursuant to the Guam Procurement

1 Act, the services of a Performance Management Contractor (PMC) to
2 manage the performance, operation and maintenance of the newly acquired
3 POLA Gantry Cranes, and other Gantry Cranes used in support of Port
4 operations. Said contractual services *shall* be crafted to ensure that
5 employees of the Port Equipment Maintenance Division will be utilized to
6 the maximum extent possible, and that *no* employee will be displaced *except*
7 for cause. The Port *shall not* obtain such services through the use of a Task
8 Order to any existing or subsequent contract, lease or agreement. During the
9 interim period that the Port is procuring the PMC contract, the previous
10 owners of the Cranes *shall* continue to provide maintenance of the cranes, on
11 account of the Port.”

12 **Section 4. Severability.** *If* any provision of this Law or its application to
13 any person or circumstance is found to be invalid or contrary to law, such
14 invalidity *shall not* affect other provisions or applications of this Law which can be
15 given effect without the invalid provisions or application, and to this end the
16 provisions of this Law are severable.

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 11/07/11⁸

VOTING SHEET

SBill No. 336-31 (COR)

Resolution No. _____

Question: _____

NAME	<u>YEAS</u>	<u>NAYS</u>	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.		✓			
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera		✓			
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana	✓				
WON PAT, Judith T.		✓			
YAMASHITA, Aline A.	✓				

TOTAL 12 3 _____

CERTIFIED TRUE AND CORRECT:



Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



October 24, 2011

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Unu Na Liheslaturan Guáhan
155 Hesler Place
Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

Rory J. Respicio

RE: Committee Report on Bill No. 336-31 (COR)- As Substituted

RECEIVED
OCT 27 PM 11:09
W

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 336-31 (COR) – “An act to further amend Section 4 of Public Law 30-57 to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the “POLA” gantry cranes owned by Matson Navigation Company and Horizon Lines, Inc.” – As Substituted by the Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting. This report is transmitted under my signature as Acting Chairman because I was duly appointed as such to conduct a public hearing on the bill; this report is the closure of the Committee action taken under my appointment.

Committee votes are as follows:

- 5 TO DO PASS
- TO NOT PASS
- 1 TO REPORT OUT ONLY
- TO ABSTAIN
- TO PLACE IN INACTIVE FILE

Si Yu'os ma'ase',

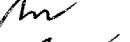
Thomas C. Ada
Acting Chairman

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

2011 OCT - 5
MAY 10: 19

Bill No. 336-31 (cov)

Introduced by:

T.C. Ada 
R.J. Respicio 
A.B. Palacios, Sr. 
D.G. Rodriguez, Jr. 
F.F. Blas Jr. 
M.S. Taijeron 
C.M. Duenas 
A.A. Yamashita, Ph.D. 

AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISTION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

3 finds that the Jose D. Leon Guerrero Commercial Port (the "Port"),
4 established by Public Law 13-87 as a public corporation and autonomous
5 government entity, is charged with providing continued support for the
6 diversification of Guam's economy, seaborne commerce and international
7 trade. Furthermore, the Port is vested with the responsibility of developing
8 its assets and the implementation of policies and strategies to enable the
9 efficient loading and unloading of goods and materials destined for retail
10 operations in Guam and Micronesia, and to facilitate a smooth transition to
11 the military-induced expansion and anticipated population growth.

1 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted
2 access to all Gantry Cranes operating on its rails would improve operational
3 efficiency and reliability in the movement of cargo through the Port and for
4 transshipment to the neighboring islands in the region.

5 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on
6 the Port’s commercial docks, and that through a license agreement executed
7 in December 2007 between the Port and Matson Navigation & Horizon
8 Lines (the “Carriers”), three (3) of these cranes, referred to as POLA Cranes
9 15, 16 and 17 were purchased and refurbished by the Carriers and placed on
10 the Port’s rails. Additionally, the Port currently maintains and operates two
11 older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to
12 service non-Matson/Horizon vessels, and that due to their age and material
13 condition are more expensive to maintain and provide less reliable service.
14 Retirement of these cranes is overdue.

15 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the
16 Port to acquire, either through purchase or lease-to-own, at least two (2)
17 Gantry Cranes no later than December 31, 2012, pursuant to the Guam
18 Procurement Act and “not through the use of a Task Order attached to any
19 existing contract”. In 2006, the U.S. Department of Agriculture (USDA)
20 made available to the Port direct/guaranteed loans to acquire at least two (2)
21 new or refurbished gantry cranes. The USDA loan for the acquisition of the
22 cranes is still currently available to the Port.

23 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes
24 by the Port has the potential to present a singularly unique opportunity and
25 value to the territory given their presence on the rails, record of operational
26 reliability, and the elimination of disruption to ongoing operations.

1 *I Liheslaturan Guåhan* finds that it would be prudent to explore
2 acquisition of the POLA cranes through direct purchase or lease-to-own, and
3 that further to this exploration, acquisition should be authorized provided
4 that this unique opportunity and value can be realized through independent
5 assessment of material condition and market value, and follow-on
6 negotiation of acquisition terms is uniquely and demonstrably favorable to
7 Guam.

8 *I Liheslaturan Guåhan* further finds in consideration of the
9 aforementioned findings that certain provisions of existing Public Law
10 should be amended.

11 **Section 2.** Section 4 of P.L. 30-57, as amended by P. L. 30-100, is
12 hereby further amended to read as follows:

13 “**Section 4.** The Port Authority of Guam (PAG) shall immediately initiate
14 research to identify potential Federal grants and similar funding sources and
15 shall initiate necessary discussions and communications to secure funding as
16 necessary for the modernization of the PAG. The PAG shall report to the
17 Speaker of the *I Liheslaturan Guåhan* (the Legislature) no later than June
18 2010, of (1) status of its efforts to secure commitments for grants and similar
19 funding; and (2) its recommendation(s) in moving forward with PAG’s
20 modernization which include, but are not limited to, the scaling back of
21 modernization plans that would address organic growth capacity
22 requirements and funded through debt that is within the PAG’s ability to
23 pay, estimated to be about Fifty-four Million Five Hundred Thousand
24 Dollars (\$54,500,000), and which *shall* include the acquisition, either
25 through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such
26 cranes *shall be* acquired *no later than* December 31, 2012. ~~, pursuant to the~~
27 ~~Guam Procurement Law and not through the use of a Task Order to any~~

1 ~~existing contract.~~ If the PAG secures a grant, and the USDA Loan or other
2 comparable loan, then Phase I-A shall proceed along with the acquisition of
3 at least two (2) Gantry Cranes. Such cranes shall be acquired no later than
4 December 31, 2012, either through purchase or lease to own, ~~pursuant to the~~
5 ~~Guam Procurement Law, and not through the use of a Task Order to any~~
6 ~~existing contract.~~ No other loan or additional rate increase may be
7 requested for funding of the Master Plan by PAG without an executed
8 Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised
9 August 3, 2009 Report, and specifically in the Financial Plan. The Guam
10 Procurement laws prohibiting direct negotiation and acquisition, or
11 inconsistent with the succeeding authorities, are hereby waived.”

12 **Section 3.** Add a new Section 5 to Public Law 30-57 as follows:

13 “**Section 5.** The Port Authority of Guam is hereby authorized
14 to enter into negotiations with the Carriers for the specific purpose of
15 acquiring through purchase or lease-to-own at least but not limited to, two
16 (2) of the POLA gantry cranes, provided that the following requirements are
17 met:

18 (a) **Negotiating Team.** The Port Board of Directors shall appoint a
19 negotiation team that will be authorized to engage in the negotiations
20 with the Carriers.

21 (b) **Conflicts Prohibited.** No Covered Person, as such person is defined
22 below, shall be eligible to participate in the negotiations for the
23 acquisition of the POLA cranes, in whole or in part. For the purpose
24 of this Section, the term, ‘Covered Person’ shall mean any:

- 25 i. elected officials of the government of Guam who hold office at
26 the time of the negotiation; or

- 1 ii. advisors, consultants, and employees who are or had previously
- 2 been employed with the Carriers prior to the effective date of
- 3 this Act; or
- 4 iii. any person who might stand to personally benefit from the
- 5 negotiated terms.
- 6 iv. a person or spouse of such person related by consanguinity of
- 7 the third degree, which for the purpose of this Act, shall include
- 8 spouses, all children, parents, grandchildren, siblings,
- 9 grandparents, great-grandchildren, nieces, nephews, uncles,
- 10 aunts, and great-grandparents of a person, to any person
- 11 described in Items a., b., and c. of this Section.

12 (c) Prior to the initiation of negotiations, the Port shall engage the
13 service(s) of an independent crane expert to:

- 14 i. Provide an assessment of the material condition and life
- 15 expectancy of the POLA cranes to be acquired,
- 16 ii. To provide an “as is” valuation assessment starting with
- 17 estimated value in a fully operational condition and identifying
- 18 current retrofit requirements, if any, to place the POLA cranes
- 19 in that fully operational condition, and
- 20 iii. Determine a range of fair book value of the POLA cranes.

21 (d) A copy of the reports shall be provided within five (5) working days
22 upon completion , to *I Maga'låhen Guahan* and to the *Speaker of I*
23 *Liheslaturan Guahan*.

24 (e) If the outcome of negotiations is for lease-to-own, such lease shall be
25 based on commercially reasonable terms and structured as a capital
26 lease versus an operating lease.

1 (f) The Port Board of Directors shall review the acquisition terms, and
2 by majority vote, ratify or not ratify the terms.

3 i. A majority vote “to not ratify” shall in effect terminate the
4 discussions and efforts to acquire the POLA cranes through
5 direct negotiation with the Carriers. The Port shall then proceed
6 to procure at least two (2) Gantry Cranes pursuant to Guam
7 Procurement laws, and not through the use of a Task Order to
8 any existing contract.

9 ii. If the majority vote is to “ratify”, the terms of acquisition shall
10 be transmitted to the Public Utility Commission (PUC) for
11 review and disposition.

12 (g) Terms of acquisition are publicly disclosed and backed by full
13 disclosure of all relevant documents, after the negotiations and PUC
14 have been completed.

15 **Section 4. Severability.** If any provision of this Law or its
16 application to any person or circumstance is found to be invalid or contrary
17 to law, such invalidity shall *not* affect other provisions or applications of this
18 Law which can be given effect without the invalid provisions or application,
19 and to this end the provisions of this Law are severable.



COMMITTEE

REPORT

ON

BILL NO. 336-31 (COR)

“AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE “POLA” GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.”

**As Substituted by the Committee on Youth, Cultural Affairs,
Procurement, General Government Operations and Public
Broadcasting**



October 24, 2011

MEMORANDUM

To: All Members
Committee on Youth, Cultural Affairs, Procurement, General Government
Operations and Public Broadcasting.

From: Senator Thomas C. Ada
Acting Committee Chairperson

Subject: **Committee Report on Bill No. 336-31 (COR) As Substituted**

Transmitted herewith for your consideration is the Committee Report on Substitute Bill No. 336-31 (COR) – “An act to further amend Section 4 of Public Law 30-57 to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the “POLA” gantry cranes owned by Matson Navigation Company and Horizon Lines, Inc.,” sponsored by Senator Thomas C. Ada.

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 336-31 (COR)
- Copy of Substitute Bill No. 336-31 (COR)
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- Copy of COR Referral of Bill No. 336-31 (COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Si Yu'os ma'ase'!

A handwritten signature in black ink, appearing to read "T. C. Ada".

Thomas C. Ada



COMMITTEE VOTING SHEET

Bill 336-31 (COR) - "An act to further amend Section 4 of Public Law 30-57 to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the "POLA" gantry cranes owned by Matson Navigation Company and Horizon Lines, Inc."- As Substituted by the Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPO-RT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
ADA, THOMAS C. Acting Chairperson		✓ 10/24/11				
MUÑA BARNES, TINA ROSE Vice-Chairperson						
WON PAT, JUDITH T. Speaker and Ex-Officio Member						
Benjamin J.F.Cruz Chairman						
GUTHERTZ, JUDITH P. Member		✓ 10/25/11				
RESPICIO, RORY J. Member		✓ 10/25/11 Respicio				
RODRIGUEZ, DENNIS G. JR. Member		✓ 10/25/11				
ADA, V. ANTHONY Member				10/25/11		
DUENAS, CHRISTOPHER Member		✓ 10/25/11				
MABINI, SAM Member						
YAMASHITA, ALINE Member						



COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill 336-31 (COR) was introduced on October 5, 2011 by Senator Tom Ada, and was subsequently referred by the Committee on Rules to the Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting on October 5, 2011.

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting convened a public hearing on Wednesday, October 12, 2011 at 3:00PM in *Lihe slatura's* Public Hearing Room. There was only one item on the agenda i.e., the consideration of Bill No. 336-31 (COR) – “An act to further amend Section 4 of Public Law 30-57 to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the “POLA” gantry cranes owned by Matson Navigation Company and Horizon Lines, Inc.,” sponsored by Senator Thomas C. Ada.

Public Notice Requirements

Notices were disseminated via email to all senators and all media on October 5, 2011 (5-Day Notice) and again on October 10, 2011 (48-Hour Notice).

Senators Present

Senator Thomas C. Ada	Committee Acting Chairperson
Senator Adolpho B. Palacios, Sr.	Committee Member
Senator V. Anthony Ada	Committee Member
Senator Mana Silva Taijeron	Committee Member
Senator Aline A. Yamashita, Ph.D.	Committee Member
Senator Vicente C. Pangelinan	Committee Member

II. SUMMARY OF TESTIMONY AND DISCUSSION

The public hearing was Called-to-Order at 3:00 pm.

Daniel J. Tydingco

Provided oral and written testimony on behalf of the Port Authority of Guam Board of Directors.

Mr. Tydingco states, “The Port Authority of Guam is in full support of this legislation (Bill No. 336-31), as we believe it expands procurement options for the Port and community to optimally maximize the limited financial resources available for the mandated procurement of cranes”. He further details the steps taken by the Port to secure fourteen million dollars



(\$14,000,000) in federal loans for the specific purpose of purchasing gantry cranes. He states, that in August of 2007, the Port issued a multi-step bid for two (2) new gantry cranes, which resulted in one (1) submittal proposing two (2) cranes for nineteen million dollars (\$19,000,000). Said bid was subsequently canceled and protested.

Mr. Tydingco states, that in 2009, Matson and Horizon (“Carriers”) purchased and refurbished cranes from the Port of Los Angeles (“POLA”) to be used on the Port’s rails, in order to exclusively service vessels belonging to the Carriers. Mr. Tydingco states, purchase of the POLA cranes will result in a reduction in fee per container, and a reasonable repayment period. He states, based on data and figures available, procurement of the cranes could result in a reduction to the one hundred and twenty five dollar (\$125) surcharge per container. Additionally, the Port could reduce maintenance costs averaging two million, and six hundred thousand dollars (\$2,600,000) over the past two (2) years. Lastly, he states, “reliable and consistent functioning of this equipment is essential; the cranes are the lifeline of Guam’s economy. Unreliable and inoperative equipment translates into lower productivity and a heightened loss of revenue to the Port”.

John Thos. Brown

Provided written testimony submitted on October 11, 2011

Mr. Brown states that an “acquisition price based on “book value” in Section 3, Section 5(c)(3): “*Determine a range of fair **book** value of the POLA cranes*”. He recommends that the Committee reconsider the use of book valuation as it “replaces consideration of what is “reasonable” for the buyer, the government, with what is convenient for the seller”. He further states, “Unlike the standard of “fair and reasonable”, which connotes both market forces and buyer’s needs, the “book” value signifies only the seller unique valuation derived solely for certain accounting purposes, and is heavily influenced by the seller’s account choices and needs.

John A. Limtiaco

Provided written testimony dated October 18, 2011, on behalf of Far East Equipment Company.

Mr. Limtiaco states, “Although our company agrees with parts of the legislature’s findings, our company is opposed to this bill’s intent to bypass the procurement regulations and the intent of Public Law 30-100.” He further states that the Port has failed in past attempts to procure gantry cranes because of “Political objectives,” not protests. He further details that Far East Equipment Company has participated in several of the previous gantry crane procurements, and despite the company’s representation of the “largest manufacturer of gantry cranes in the world,” the Port claimed the manufacture to be “unqualified”.

He further details that the Port entered into an Agreement with Matson and Horizon, in order to increase revenues by renting the gantry crane rails. He states, “When the refurbished



cranes finally arrived on Guam we all found out that this was not the truth when Matson and Horizon jointly announced that they will be charging an additional \$125.00 per container surcharge to utilize their cranes on top of the port tariff that is charged for the same service prior to the gantry cranes arrival.” He also makes the assumption that Matson and Horizon are exempted from paying GRT and “use tax fees,” pursuant to the Agreement, but does not provide substantiated evidence.

He asserts, “The only reason that Matson and Horizon are willing to sell these cranes now to the government is that there is only 3 years left on their lease and the military buildup has not progressed in the volume that they had hopped [*sic*] for in the five year lease period.”

Lastly, Mr. Limtiaco states, “I urge all senators to vote NO on this bill proposing to bypass the procurement process and not to purchase these antique cranes.” He details that the POLA cranes are 31 years old, and states, “their structures are near their end of the life cycle.” He compares the purchase of the POLA cranes, which according to his estimate, would result in a debt service of \$700,000 per year for 20 years (estimated lifespan); the purchase of 2 new cranes, which according to his estimate, would result in a debt service of \$360,000 per year for 50 years (estimated lifespan).

Question and Answer

Senator Tony Ada: Currently, how old are the POLA Cranes?

Ernie Candeleta (Port): Gantry 3 is 28 years old. Gantry 2 is 33 years old. POLA cranes are 28 years old.

Senator Tom Ada: Were the POLA cranes fully refurbished?

Ernie Candeleta: I recall the only items refurbished were the drives and electrical, which is now diesel driven.

Senator Tony Ada: What is the life span of standard cranes?

Ernie Candeleta: 25 years.

John Santos: Normally 20 years is the typical life span, but cranes can be utilized up to 40 years if properly upgraded and maintained.

Senator Tony Ada: If we purchase these cranes will it result in high maintenance costs?

John Santos: The 3 POLAs have been upgraded. Whenever you upgrade the cranes, you extend the life of the equipment. An ongoing assessment will determine the life span.

Senator Tony Ada: How long have we been using the POLA cranes?

John Santos: Since May 2009.



Senator Tony Ada: By the time we purchase the gantry cranes, it will be 6 years, right?

Dan Tydingco: The current maintenance and repair costs for Gantry 2 and Gantry 3 is \$2.6 million. According to the data we have available, it will cost the Port \$500,000 per gantry crane, with an annual increase of 10%, to maintain the POLA cranes. This will result in a significant reduction in costs to the Port.

Senator Tony Ada: Wouldn't it make more sense to buy new cranes?

Dan Tydingco: The assessment will determine the life expectancy of the cranes.

Senator Tom Ada: The bill requires an assessment of the life expectancy, "as is" valuation, and current condition, and a "fair and reasonable" value of the cranes.

Dan Tydingco: We only have \$14 million available to purchase the cranes.

Senator Tony Ada: Who will be completing the assessment? Will it be the Port's responsibility to initiate the assessment? How much did the assessment cost?

Pedro Leon Guerrero: The Port has already initiated a \$195,000 task order to complete the assessment. The assessment will be available by December 16, 2011.

Senator Pangelinan: Wouldn't it be in the interest of the Port to purchase "modern cranes" (Panamax vs Post Panamax) in order to service the new ships planning to trade here? How does this play into the decision to issue a \$195,000 assessment for the POLA gantry cranes here? Did you acquire the assessment through the procurement process?

Vivian Leon: For your information, the task order is funded by DOI and OEA.

Dan Tydingco: The money is for the purpose of ensuring the equipment at the Port is efficient.

Senator Pangelinan: What is the position of the Port regarding cranes? Do we acquire cranes that meet current or future standards?

John Santos: You can retrofit the cranes to meet the standards of specific vessels. F7 will be built to meet future demands, which will involve dredging and additional capital improvements.

Senator Pangelinan: How much would it be for a new Panamax crane?

Dan Tydingco: \$12,000,000. If you look back at previous procurement attempts, it was \$19,000,000 for 2 cranes. We only have \$14,000,000. Also, USDA requires the \$195,000 assessment in order to consider using funds to purchase either used and new cranes.

Senator Duenas: What are we paying per lift of container?



Dan Tydingco: The Carriers charge \$125 per container. We will seek to reduce this charge if we purchase the POLA cranes.

Senator Tom Ada: We all know that if you don't properly maintain equipment, it will not last. I am not convinced that because the crane is 28 years old we should scrap it. Are we using Panamax cranes? What is a post-Panamax?

John Santos: We are currently using Panamax cranes. Post-Panamax cranes will require dredging.

Senator Tom Ada: What is the cost to prepare for the Post-Panamax? What is the timeframe to complete the associated environmental assessment?

Matthew Smith: We will be required to increase the dredge depth. This is why we recommend a new berth to be built (F7) in order to serve Post-Panamax vessels. It requires a deeper depth, a new wharf and rails. In 2007, this project would cost \$150,000,000, which is not inclusive of cranes.

Senator Tom Ada: How long does it take to evaluate the POLA cranes?

Dan Tydingco: The assessment will be completed by December 16, 2011.

Senator Tom Ada: How long did it take to commission the POLAs when they arrived?

John Santos: 3 months.

Senator Tom Ada: Who is this "crane expert"?

Matthew Smith: We selected Casper Phillips and Associates, and they are one of the world's leading crane designers.

Senator Tom Ada: How do you plan to reduce the fee per container currently charged by the Carriers?

Dan Tydingco: We plan to recover the total costs of the crane over a 5 year or 10 year repayment period.

Senator Pangelinan: Who provides maintenance?

Ernie Candeleta: Port employees maintain Gantry 2 and Gantry 3. Matson and Horizon utilize other employees to maintain the POLA cranes, unless a special request is made to the Port.

The public hearing was adjourned at 4:25 pm.



III. FINDINGS AND RECOMMENDATIONS

The Committee on Youth, Cultural Affairs, Procurement, General Operation and Public Broadcasting has substituted Bill 336-31 (COR) to reflect the following changes:

- “Fair book value” has been removed and replaced with “fair and reasonable” as recommended by testimony summarized above;
- Additional requirement to procure the services of a Performance Management Contractor to manage the performance, operation and maintenance of all Port-owned gantry cranes; and
- Non-substantive, grammatical changes.

The Committee on Youth, Cultural Affairs, Procurement, General Operations and Public Broadcasting hereby reports out Bill 336-31 (COR), with the recommendation To Report
Out Only

1 operations in Guam and Micronesia, and to facilitate a smooth transition to
2 the military-induced expansion and anticipated population growth.

3 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted
4 access to all Gantry Cranes operating on its rails would improve operational
5 efficiency and reliability in the movement of cargo through the Port and for
6 transshipment to the neighboring islands in the region.

7 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on
8 the Port's commercial docks, and that through a license agreement executed
9 in December 2007 between the Port and Matson Navigation & Horizon
10 Lines (the "Carriers"), three (3) of these cranes, referred to as POLA Cranes
11 15, 16 and 17 were purchased and refurbished by the Carriers and placed on
12 the Port's rails. Additionally, the Port currently maintains and operates two
13 older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to
14 service non-Matson/Horizon vessels, and that due to their age and material
15 condition are more expensive to maintain and provide less reliable service.
16 Retirement of these cranes is overdue.

17 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the
18 Port to acquire, either through purchase or lease-to-own, at least two (2)
19 Gantry Cranes no later than December 31, 2012, pursuant to the Guam
20 Procurement Act and "not through the use of a Task Order attached to any
21 existing contract". In 2006, the U.S. Department of Agriculture (USDA)
22 made available to the Port direct/guaranteed loans to acquire at least two (2)
23 new or refurbished gantry cranes. The USDA loan for the acquisition of the
24 cranes is still currently available to the Port.

25 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes
26 by the Port has the potential to present a singularly unique opportunity and

1 value to the territory given their presence on the rails, record of operational
2 reliability, and the elimination of disruption to ongoing operations.

3 *I Liheslaturan Guåhan* finds that it would be prudent to explore
4 acquisition of the POLA cranes through direct purchase or lease-to-own, and
5 that further to this exploration, acquisition should be authorized provided
6 that this unique opportunity and value can be realized through independent
7 assessment of material condition and fair and reasonable value, and follow-
8 on negotiation of acquisition terms is uniquely and demonstrably favorable
9 to Guam.

10 *I Liheslaturan Guåhan* further finds in consideration of the
11 aforementioned findings that certain provisions of existing Public Law
12 should be amended.

13 **Section 2.** Section 4 of P.L. 30-57, as amended by P. L. 30-100, is
14 hereby further amended to read as follows:

15 “**Section 4.** The Port Authority of Guam (PAG) shall immediately initiate
16 research to identify potential Federal grants and similar funding sources and
17 shall initiate necessary discussions and communications to secure funding as
18 necessary for the modernization of the PAG. The PAG shall report to the
19 Speaker of the *I Liheslaturan Guåhan* (the Legislature) no later than June
20 2010, of (1) status of its efforts to secure commitments for grants and similar
21 funding; and (2) its recommendation(s) in moving forward with PAG’s
22 modernization which include, but are not limited to, the scaling back of
23 modernization plans that would address organic growth capacity
24 requirements and funded through debt that is within the PAG’s ability to
25 pay, estimated to be about Fifty-four Million Five Hundred Thousand
26 Dollars (\$54,500,000), and which *shall* include the acquisition, either
27 through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such

1 cranes *shall be* acquired *no later than* December 31, 2012. ~~, pursuant to the~~
2 ~~Guam Procurement Law and not through the use of a Task Order to any~~
3 ~~existing contract.~~ *If* the PAG secures a grant, and the USDA Loan or other
4 comparable loan, then Phase I-A *shall* proceed along with the acquisition of
5 *at least* two (2) Gantry Cranes. Such cranes shall be acquired no later than
6 December 31, 2012, either through purchase or lease to own., ~~pursuant to the~~
7 ~~Guam Procurement Law, and not through the use of a Task Order to any~~
8 ~~existing contract.~~ No other loan or additional rate increase may be
9 requested for funding of the Master Plan by PAG without an executed
10 Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised
11 August 3, 2009 Report, and specifically in the Financial Plan. The Guam
12 Procurement laws prohibiting direct negotiation and acquisition, or
13 inconsistent with the succeeding authorities, are hereby waived.”

14 **Section 3.** Add a new Section 5 to Public Law 30-57 as follows:

15 “**Section 5.** The Port Authority of Guam is hereby authorized
16 to enter into negotiations with the Carriers for the specific purpose of
17 acquiring through purchase or lease-to-own at least but not limited to, two
18 (2) of the POLA gantry cranes, provided that the following requirements are
19 met:

20 (a) **Negotiating Team.** The Port Board of Directors shall appoint a
21 negotiation team that will be authorized to engage in the negotiations
22 with the Carriers.

23 (b) **Conflicts Prohibited.** No Covered Person, as such person is defined
24 below, shall be eligible to participate in the negotiations for the
25 acquisition of the POLA cranes, in whole or in part. For the purpose
26 of this Section, the term, ‘Covered Person’ shall mean any:

- 1 i. elected officials of the government of Guam who hold office at
2 the time of the negotiation; or
- 3 ii. advisors, consultants, and employees who are or had previously
4 been employed with the Carriers prior to the effective date of
5 this Act; or
- 6 iii. any person who might stand to personally benefit from the
7 negotiated terms.
- 8 iv. a person or spouse of such person related by consanguinity of
9 the third degree, which for the purpose of this Act, shall include
10 spouses, all children, parents, grandchildren, siblings,
11 grandparents, great-grandchildren, nieces, nephews, uncles,
12 aunts, and great-grandparents of a person, to any person
13 described in Items a., b., and c. of this Section.

14 (c) **Assessment.** Prior to the initiation of negotiations, the Port shall
15 engage the service(s) of an independent crane expert to:

- 16 i. Provide an assessment of the material condition and life
17 expectancy of the POLA cranes to be acquired,
- 18 ii. To provide an “as is” valuation assessment starting with
19 estimated value in a fully operational condition and identifying
20 current retrofit requirements, if any, to place the POLA cranes
21 in that fully operational condition, and
- 22 iii. Determine a range of fair and reasonable value of the POLA
23 cranes.

24 (d) **Reports.** A copy of the Assessment report(s) shall be provided
25 within five (5) working days upon completion, to *I Maga'låhen*
26 *Guahan* and to the *Speaker of I Liheslaturan Guahan*.

1 (e) **Lease.** If the outcome of negotiations is for lease-to-own, such lease
2 shall be based on commercially reasonable terms and structured as a
3 capital lease versus an operating lease.

4 (f) **Ratification.** The Port Board of Directors shall review the
5 acquisition terms, and by majority vote, ratify or not ratify the terms.

6 i. A majority vote “to not ratify” shall in effect terminate the
7 discussions and efforts to acquire the POLA cranes through
8 direct negotiation with the Carriers. The Port shall then proceed
9 to procure at least two (2) Gantry Cranes pursuant to Guam
10 Procurement laws, and not through the use of a Task Order to
11 any existing contract.

12 ii. If the majority vote is to “ratify”, the terms of acquisition shall
13 be transmitted to the Public Utility Commission (PUC) for
14 review and disposition. The PUC shall perform its review and
15 disposition in a timely and expeditious manner.

16 (g) **Public Disclosure.** Terms of acquisition are publicly disclosed and
17 backed by full disclosure of all relevant documents, after the
18 negotiations and PUC have been completed.

19 (h) **Maintenance.** In the event the Port acquires the POLA gantry cranes,
20 the Port *shall* contract, pursuant to the Guam Procurement Act, the
21 services of a Performance Management Contractor (PMC) to manage
22 the performance, operation and maintenance of the newly acquired
23 POLA gantry cranes and other gantry cranes used in support of Port
24 operations. Said contractual services shall be crafted to ensure that
25 employees of the Port Equipment Maintenance Division will be
26 utilized to the maximum extent possible, and that no employee will be
27 displaced except for cause. The Port *shall not* obtain such services

1 through the use of a Task Order to any existing or subsequent
2 contract, lease or agreement.

3 **Section 4. Severability.** If any provision of this Law or its
4 application to any person or circumstance is found to be invalid or contrary
5 to law, such invalidity shall *not* affect other provisions or applications of this
6 Law which can be given effect without the invalid provisions or application,
7 and to this end the provisions of this Law are severable.

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

2011 OCT - 5
MID-19

Bill No. 336-31 (cov)

Introduced by:

T.C. Ada
R.J. Respicio
A.B. Palacios, Sr.
D.G. Rodriguez, Jr.
F.F. Blas Jr.
M.S. Taijeron
C.M. Duenas
A.A. Yamashita, Ph.D.

AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Jose D. Leon Guerrero Commercial Port (the "Port"),
4 established by Public Law 13-87 as a public corporation and autonomous
5 government entity, is charged with providing continued support for the
6 diversification of Guam's economy, seaborne commerce and international
7 trade. Furthermore, the Port is vested with the responsibility of developing
8 its assets and the implementation of policies and strategies to enable the
9 efficient loading and unloading of goods and materials destined for retail
10 operations in Guam and Micronesia, and to facilitate a smooth transition to
11 the military-induced expansion and anticipated population growth.

1 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted
2 access to all Gantry Cranes operating on its rails would improve operational
3 efficiency and reliability in the movement of cargo through the Port and for
4 transshipment to the neighboring islands in the region.

5 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on
6 the Port's commercial docks, and that through a license agreement executed
7 in December 2007 between the Port and Matson Navigation & Horizon
8 Lines (the "Carriers"), three (3) of these cranes, referred to as POLA Cranes
9 15, 16 and 17 were purchased and refurbished by the Carriers and placed on
10 the Port's rails. Additionally, the Port currently maintains and operates two
11 older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to
12 service non-Matson/Horizon vessels, and that due to their age and material
13 condition are more expensive to maintain and provide less reliable service.
14 Retirement of these cranes is overdue.

15 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the
16 Port to acquire, either through purchase or lease-to-own, at least two (2)
17 Gantry Cranes no later than December 31, 2012, pursuant to the Guam
18 Procurement Act and "not through the use of a Task Order attached to any
19 existing contract". In 2006, the U.S. Department of Agriculture (USDA)
20 made available to the Port direct/guaranteed loans to acquire at least two (2)
21 new or refurbished gantry cranes. The USDA loan for the acquisition of the
22 cranes is still currently available to the Port.

23 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes
24 by the Port has the potential to present a singularly unique opportunity and
25 value to the territory given their presence on the rails, record of operational
26 reliability, and the elimination of disruption to ongoing operations.

1 *I Liheslaturan Guåhan* finds that it would be prudent to explore
2 acquisition of the POLA cranes through direct purchase or lease-to-own, and
3 that further to this exploration, acquisition should be authorized provided
4 that this unique opportunity and value can be realized through independent
5 assessment of material condition and market value, and follow-on
6 negotiation of acquisition terms is uniquely and demonstrably favorable to
7 Guam.

8 *I Liheslaturan Guåhan* further finds in consideration of the
9 aforementioned findings that certain provisions of existing Public Law
10 should be amended.

11 **Section 2.** Section 4 of P.L. 30-57, as amended by P. L. 30-100, is
12 hereby further amended to read as follows:

13 “**Section 4.** The Port Authority of Guam (PAG) shall immediately initiate
14 research to identify potential Federal grants and similar funding sources and
15 shall initiate necessary discussions and communications to secure funding as
16 necessary for the modernization of the PAG. The PAG shall report to the
17 Speaker of the *I Liheslaturan Guåhan* (the Legislature) no later than June
18 2010, of (1) status of its efforts to secure commitments for grants and similar
19 funding; and (2) its recommendation(s) in moving forward with PAG’s
20 modernization which include, but are not limited to, the scaling back of
21 modernization plans that would address organic growth capacity
22 requirements and funded through debt that is within the PAG’s ability to
23 pay, estimated to be about Fifty-four Million Five Hundred Thousand
24 Dollars (\$54,500,000), and which *shall* include the acquisition, either
25 through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such
26 cranes *shall be* acquired *no later than* December 31, 2012. ~~—pursuant to the~~
27 ~~Guam Procurement Law and not through the use of a Task Order to any~~

1 ~~existing contract.~~ If the PAG secures a grant, and the USDA Loan or other
2 comparable loan, then Phase I-A shall proceed along with the acquisition of
3 at least two (2) Gantry Cranes. Such cranes shall be acquired no later than
4 December 31, 2012, either through purchase or lease to own., ~~pursuant to the~~
5 ~~Guam Procurement Law, and not through the use of a Task Order to any~~
6 ~~existing contract.~~ No other loan or additional rate increase may be
7 requested for funding of the Master Plan by PAG without an executed
8 Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised
9 August 3, 2009 Report, and specifically in the Financial Plan. The Guam
10 Procurement laws prohibiting direct negotiation and acquisition, or
11 inconsistent with the succeeding authorities, are hereby waived.”

12 **Section 3.** Add a new Section 5 to Public Law 30-57 as follows:

13 “**Section 5.** The Port Authority of Guam is hereby authorized
14 to enter into negotiations with the Carriers for the specific purpose of
15 acquiring through purchase or lease-to-own at least but not limited to, two
16 (2) of the POLA gantry cranes, provided that the following requirements are
17 met:

18 (a) **Negotiating Team.** The Port Board of Directors shall appoint a
19 negotiation team that will be authorized to engage in the negotiations
20 with the Carriers.

21 (b) **Conflicts Prohibited.** No Covered Person, as such person is defined
22 below, shall be eligible to participate in the negotiations for the
23 acquisition of the POLA cranes, in whole or in part. For the purpose
24 of this Section, the term, ‘Covered Person’ shall mean any:

- 25 i. elected officials of the government of Guam who hold office at
26 the time of the negotiation; or

- 1 ii. advisors, consultants, and employees who are or had previously
- 2 been employed with the Carriers prior to the effective date of
- 3 this Act; or
- 4 iii. any person who might stand to personally benefit from the
- 5 negotiated terms.
- 6 iv. a person or spouse of such person related by consanguinity of
- 7 the third degree, which for the purpose of this Act, shall include
- 8 spouses, all children, parents, grandchildren, siblings,
- 9 grandparents, great-grandchildren, nieces, nephews, uncles,
- 10 aunts, and great-grandparents of a person, to any person
- 11 described in Items a., b., and c. of this Section.

12 (c) Prior to the initiation of negotiations, the Port shall engage the
13 service(s) of an independent crane expert to:

- 14 i. Provide an assessment of the material condition and life
- 15 expectancy of the POLA cranes to be acquired,
- 16 ii. To provide an “as is” valuation assessment starting with
- 17 estimated value in a fully operational condition and identifying
- 18 current retrofit requirements, if any, to place the POLA cranes
- 19 in that fully operational condition, and
- 20 iii. Determine a range of fair book value of the POLA cranes.

21 (d) A copy of the reports shall be provided within five (5) working days
22 upon completion , to *I Maga 'låhen Guahan* and to the *Speaker of I*
23 *Liheslaturan Guahan*.

24 (e) If the outcome of negotiations is for lease-to-own, such lease shall be
25 based on commercially reasonable terms and structured as a capital
26 lease versus an operating lease.

1 (f) The Port Board of Directors shall review the acquisition terms, and
2 by majority vote, ratify or not ratify the terms.

3 i. A majority vote “to not ratify” shall in effect terminate the
4 discussions and efforts to acquire the POLA cranes through
5 direct negotiation with the Carriers. The Port shall then proceed
6 to procure at least two (2) Gantry Cranes pursuant to Guam
7 Procurement laws, and not through the use of a Task Order to
8 any existing contract.

9 ii. If the majority vote is to “ratify”, the terms of acquisition shall
10 be transmitted to the Public Utility Commission (PUC) for
11 review and disposition.

12 (g) Terms of acquisition are publicly disclosed and backed by full
13 disclosure of all relevant documents, after the negotiations and PUC
14 have been completed.

15 **Section 4. Severability.** If any provision of this Law or its
16 application to any person or circumstance is found to be invalid or contrary
17 to law, such invalidity shall *not* affect other provisions or applications of this
18 Law which can be given effect without the invalid provisions or application,
19 and to this end the provisions of this Law are severable.

JOHN THOS. BROWN
ATTORNEY AT LAW *

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)
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POSTAL: GPO Box 7, Hagåtña, Guam 96932

11 October, 2011

Hon. Thomas C. Ada, Chair
Committee on Utilities, Transportation, Public Works
and Veterans Affairs

Via eMail: office@senatorada.org

RE: Bill 336-31

Dear Senator Ada,

I am off-island and unable to attend the hearing on the referenced bill, so I hope you will, on behalf of your committee, accept these written comments.

I do not vociferously complain about the basic proposition of the bill. I do not understand, however, why the bill introduces the concept of an acquisition price based on “book value” in Section 3, Section 5(c)(3): “Determine a range of fair **book** value of the POLA cranes.”

I think the Committee should seriously re-consider the use of the book valuation introduced in this bill. It replaces the consideration of what is “reasonable” for the buyer, the government, with what is convenient for the seller. In some cases, book value may end up being “fair and reasonable”, but it is bad policy to start with that assumption. Nothing stated in the Findings suggests any compelling need for such an unusual need.

The Procurement Act uniformly looks to a “fair and reasonable” purchase price:

5 GCA § 5216(f). Proposals under an RFP can only be negotiated if the compensation is “fair and reasonable”.

2 GAR § 3102(c)(1). An award should not generally be made when there is only one responsive bid unless there is a specific

* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]*

[†] Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

determination that the price is “fair and reasonable”.

2 GAR § 3119(d)(2). Firm fixed priced contracts should not be made unless “prices which are fair and reasonable to the territory can be established at the outset”.

2 GAR § 3111(c)(2). Before a small purchase award for professional services is made, “the Procurement Officer shall contact the most qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price”.

See also 2 GAR § 3115(d)(2)(A)(v), which authorizes the rejection of all bids, after bid opening, if all acceptable bids are at “clearly unreasonable” prices.

Unlike the standard of “fair and reasonable”, which connotes both market forces and buyer’s needs, the “book” value signifies only the seller’s unique valuation derived solely for certain accounting purposes, and is heavily influenced by the seller’s accounting choices and needs. I don’t think it is sound policy to base government purchasing on the whims and peculiarities of the seller’s reflected historic costs as adjusted by the seller’s peculiar accounting circumstances.

Thank you for your consideration.

With respect,

/s/

John Thos. Brown



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Eddie Baza Calvo
Governor of Guam
Ray Tenorio
Lieutenant Governor

TESTIMONY BY
Daniel J. Tydingco
Chairman, Board of Directors
on
Bill No. 336-31

Committee on Youth, Cultural Affairs, Procurement, General Government
Operations and Public Broadcasting
31st Guam Legislature
Hagatna, Guam
Wednesday, October 12, 2011

Hafa Adai Mr. Chairman and Members of the Committee:

I want to thank you for this opportunity to provide testimony on behalf of the Jose D. Leon Guerrero Commercial Port regarding Bill No. 336-31(COR) – An act to further amend Section 4 of Public Law 30-57 and to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the “POLA” gantry cranes owned by Matson Navigation Company and Horizon Lines, Inc.

The Port Authority of Guam is in full support of this legislation, as we believe it expands procurement options for the Port and community to optimally maximize the limited financial resources available for the mandated procurement of cranes. With this additional procurement option, we will be able to determine if this will end up being the best value for us without disruption to service to all vessels that come across our docks.

The purchase of these cranes presently owned by Matson and Horizon would be made utilizing \$14 Million in federal loans available to the Port Authority of Guam. PAG initially applied for a direct loan with USDA Rural Development in 2005 for the purchase of a gantry crane in the amount of \$7 million. In May of 2006, PAG received a direct loan approval of \$2 million from USDA and for the Port to apply for the remaining \$5 million from a commercial lender under the USDA Guaranteed Loan Program. In June of 2007 the Port requested USDA for an extension on both the direct loan and guaranteed loan until October 2007, so that the Port can put out a Request for Proposal (RFP) for loan services due to an initial protest on the loan solicitation. It was during that period that the news of a military build-up will occur by 2014. The Port had to put out a RFP for Loan Services in July 2007 for a \$5 million loan for a gantry crane, a \$7 million loan for another gantry crane and a \$3.5 million loan for other cargo handling equipment. ANZ ranked number 1 in all loan proposals and was subsequently chosen as the commercial lender for the 3 USDA Guaranteed Loans.

In August of 2007, the Port put out a Multi-step bid for two brand new gantry cranes. There was only one company that submitted a bid for the two cranes. The bid amount for the two cranes was \$19 million and it was higher by almost \$5 million compared to the Port’s budget of \$14 million. The Port ended up cancelling the crane bid and this was protested by the bidding vendor. USDA allowed the Port for an extension until September 2009 because of the existing issues with the procurement of the crane and the work being done on the Port’s Master Plan Update. The Port eventually sought and received extended extensions on the loan from USDA.

In the meantime, in 2009 Matson and Horizon purchased and refurbished the POLA cranes which were placed on our docks via a licensing agreement. Unfortunately, these POLA cranes operate exclusively on Matson and Horizon ships. That agreement was inked in December 2007 and started in February 2009 when their cranes were delivered. It expires in February 2014.

The POLA cranes are used to off load about 500 containers per week, but these are only Matson and Horizon containers. All other ships have to be serviced by our two older cranes and they lift about 200 containers per week on the older, less reliable cranes. If we purchase the POLA cranes then we can utilize them for all lifts which will negate the need for Gantry Crane #2 and Gantry Crane #3. Also, if we purchase the POLA cranes then we can reduce the fee per container and determine a reasonable, achievable repayment period. Further, in the end, we will have a tangible owned by the people of Guam.

Based on data and figures we presently have, if we were enabled to procure those cranes for the Port and community, we believe we could render significant benefit for the community and consumers through a reduction in the surcharge of \$125 per container. Savings, we assume would also be passed on to consumers by those who bring in containers of goods and supplies. Additionally, we would significantly reduce the extreme and costly maintenance and repair operational expense for Gantry 2 and Gantry 3. For the past two years, the Port has spent an average of \$2.6 million dollars in the repair and maintenance for the non-POLA gantry cranes. Without the reliable and consistent functioning of this equipment, the lifeline of Guam and its retail industry would be crippled. Unreliable and downed equipment translate into lower productivity and a heightened loss of revenue to the Port.

We would proffer that the reduced surcharge would serve as the basis for the debt service and the less costly maintenance and repair operational expense for the POLA cranes. Further, we would seek to establish a sinking fund to properly plan for replacement cranes down the line: something that has obviously been lacking for the Port. Of course, all of this would have to be reviewed and approved by the Public Utilities Commission.

On March 11, 2010, the Guam Legislature enacted Public Law 30-100. Section 2 of this law amended Section 4 of Public Law 30-57, which requires the PAG to report to the Guam Legislature by June 2010, its recommendations in moving forward with the Port's modernization plans. The modernization plans include at a minimum, but are not limited to, addressing organic growth requirements that include the acquisition, either through purchase or through lease to own, of at least two gantry cranes, by December 31, 2012.

In closing, the Port supports this legislation to help facilitate the procurement of the gantry cranes, while being mindful of our financial limitations, procurement processes and the need to comply with statutory obligations. The intent of this legislation is to allow the Port to procure with deliberate haste, as well as to avert potential delays caused by protests and challenges which may jeopardize funding and the ability to meet statutory deadlines. This legislation is an ideal solution to the crane problem which has plagued our people for years. This expanded option for procurement of this critical equipment may render itself as the best route for all concerned. With me today are PAG management and staff who are supportive of this measure and the opportunity for us to move forward on the procurement of cranes for them and the community.

On behalf of the Port Authority of Guam, Si Yu'us Ma'ase.

DANIEL J. TYDINGCO
Chairman, Board of Directors

TESTIMONY BY

John A. Limtiaco

Vice President, Far East Equipment Company, LLC

on

Bill No. 336-31

Committee on Youth Affairs, Procurement, General Government

Operations and Public Broadcasting

31st Guam Legislature

Hagatna, Guam

Tuesday, October 18, 2011

Hafa Adai Mr. Chairman and Members of the Committee:

I was off island during the Public hearing on the referenced bill and would like to submit my written testimony on this Bill.

Although our company agrees with parts of the legislature's findings our company is opposed to this bill's intent to bypass the procurement regulations and the intent of Public Law 30-100. Public Law 30-100 was written to ensure the Port Authority would not try and bypass the procurement law when it attempted to purchase gantry cranes. The Guam Procurement Act, specifically 5 GCA § 5219 governs how any Unsolicited Offers should be handled. The unsolicited offer by Matson and Horizon Line should not be provided any special consideration by the government. When does this end? Today a Gantry crane, tomorrow ambulances, the next time Fire Trucks! It time we kept Politics out of Procurement. Our government should not be writing laws to bypass other laws to the benefit of specific companies.

I would also like to remind the Committee members that the Port Authority's failed attempts to purchase Gantry Cranes over the last 20+ years have little to do with Protest filed by prospective bidders and has everything to do with Political objectives at the time. Our company has participated in several of the previous gantry crane procurements, we have followed the procurement rules and have spent thousands of dollars preparing our bids and procuring bid bonds and performance bonds as well as litigating illegal procurement practices. The last two gantry crane solicitations had over 30+ bidders from around the world picking up procurement packages, but at the end of the day our company, Far East Equipment, was the only company to submit a bid. Despite our company's representation of the largest manufacturer of gantry cranes in the world which controls 85% of the global gantry crane market and being the only bidder to submit a bid in the past 2 solicitations the Port Authority of Guam claimed this manufacture to be unqualified.

APR 10/18/11
RECEIVED by the
Office of Senator
Thomas A. Aida
3:10 pm

PAG then proceeded to enter into a disastrous Agreement with Matson and Horizon lines claiming they were generating additional revenues for the port by renting the gantry rails and misleading all in our community that both Matson and Horizon Lines were doing the community a favor and that there would be no increase in cost to the community. When the refurbished cranes finally arrived on Guam we all found out that this was not the truth when Matson and Horizon Line jointly announced that they will be charging an additional \$ 125.00 per container surcharge to utilize their cranes on top of the port tariff that charged for this same service prior to the gantry crane arrival.

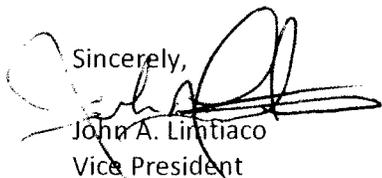
As you all know when a company imports equipment for their own use they are subject to use tax fees. When this equipment generates revenues they are also subject to GRT for all the revenues they generate on Guam. I am fairly confident if you review the agreement for the importation of these cranes that you will find that the use tax was waived and that any revenues generated by these cranes are probably exempt from GRT. What makes these companies any different from the rest of us tax payers who are subject to these taxes?

The only reason that Matson and Horizon are willing to sell these cranes now to the government is that there is only 3 years left on their lease and the military buildup has not progressed in the volume that they had hoped for in the five year lease period.

It would be to the benefit of the Government to procure new cranes not the vintage 1980 refurbished crane Matson and Horizon are trying to propose. It does not matter how much refurbishment they have done to these cranes they are still 31 years old and their structures are near their end of life cycle. Senators, crunch the numbers. If they are claiming that these 31 year old cranes will last another 20 years, this means a new crane should last a minimum of 50 years. \$ 14,000,000.00 for 3 used cranes over 20 years is still \$ 700,000.00 per year. The approximate cost of 2 brand new cranes is \$ 18,000,000.00 over 50 years is only \$ 360,000.00 per year. The total life cycle cost of the new cranes will be half of what we will be paying for these antique cranes. If the government purchases new cranes now, when the gantry rail lease end in 3 years, the government will be able to pick up these old unit for pennies on the dollar as no other port would invest in these antiques and the cost to transport them off Guam would be cost prohibitive.

The Port Authority has made poor decisions in the past by purchasing old refurbished equipment like the purchasing of a used mobile harbor crane at a cost of over \$ 3,000,000.00. This unit has had consistent breakdown and has cost the port more in maintenance, repair, and equipment cost than it has generated in revenue the entire time since it was purchased. I urge all senators to vote NO on this bill proposing to bypass the procurement process and not to purchase these antique cranes. Think for the long term and invest in new equipment that will provide the full life cycle of the equipment for the Port Authority employees.

Sincerely,



John A. Lintiac
Vice President

CC: Senators of the 31st Guam Legislature



COMMITTEE ON RULES

I Mina'trentai Unu na Libeslaturan Guåhan • The 31ST Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

2011 OCT 20 PM 1:36

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

October 20, 2011

Memorandum

Senator
Judith P. Guthertz
VICE CHAIRPERSON
ASST. MAJORITY LEADER

To: Pat C. Santos
Clerk of the Legislature

MAJORITY MEMBERS:

Speaker
Judith T. Won Pat

From: Senator Rory J. Respicio

Vice Speaker
Benjamin J. F. Cruz

Subject: Fiscal Notes

Senator
Tina Rose Muña Barnes
LEGISLATIVE SECRETARY
MAJORITY WHIP

Hafa Adai!

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

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

- Bill Nos.: 311-31 (COR)
- 320-31 (COR)
- 325-31 (COR)
- 336-31 (COR)
- 339-31 (COR)

Senator
Thomas C. Ada

Senator
Adolpho B. Palacios, Sr.

Senator
vicente c. pangelinan

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

MINORITY MEMBERS:

Senator
Aline A. Yamashita
ASST. MINORITY LEADER

Si Yu'os ma'åse'!

Senator
Christopher M. Duenas

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932EDDIE BAZA CALVO
GOVERNORJOHN A. RIOS
ACTING DIRECTORRAY TENORIO
LIEUTENANT GOVERNOR

OCT 20 2011

STEPHEN J. GUERRERO
DEPUTY DIRECTOR

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith are Fiscal Notes on the following Bill Nos.: 336-31(COR), and 339-31(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.


JOHN A. RIOS
Acting Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

Bureau of Budget & Management Research
Fiscal Note of Bill No. 336-31

AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.

Department/Agency Appropriation Information	
Dept./Agency Affected: Port Authority of Guam	Dept./Agency Head: Pedro A. Leon Guerrero, Jr.
Department's General Fund (GF) appropriation(s) to date:	N/A
Department's Other Fund (Specify) appropriation(s) to date:	N/A
Total Department/Agency Appropriation(s) to date:	N/A

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2010 Unreserved Fund Balance ¹		\$0	\$0
FY 2011 Adopted Revenues	\$0	\$0	\$0
FY 2011 Appro. (P.L. 30-196)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2011 (if applicable)	FY 2012	FY 2013	FY 2014	FY 2015
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

- Does the bill contain "revenue generating" provisions? / / Yes /X/ No
 If Yes, see attachment
- Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No
 If no, what is the additional amount required? \$ _____ /X/ N/A
- Does the Bill establish a new program/agency? / / Yes /X/ No
 If yes, will the program duplicate existing programs/agencies? / / N/A / / Yes /X/ No
 Is there a federal mandate to establish the program/agency? / / Yes /X/ No
- Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No*
 / / Requested agency comments not received by due date / / Other: _____

*Insufficient time to coordinate with the affected Agency due to overdue deadline.

Analyst: Dina P. Rivera Date: 10/19/11 Director: John A. Rios, Acting Director Date: 10/19/11

Footnotes:
 The Bill has a potential for additional funding impact. However, in its present form, that impact cannot be determined at this time.

Handwritten initials/signature



COMMITTEE ON RULES

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2011 OCT -5
M.M.
M.II: 16

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Judith P. Guthertz
VICE CHAIRPERSON
ASST. MAJORITY LEADER

MAJORITY MEMBERS:

Speaker
Judith T. Won Pat

Vice Speaker
Benjamin J. F. Cruz

Senator
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LEGISLATIVE SECRETARY
MAJORITY WHIP

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

Senator
Thomas C. Ada

Senator
Adolpho B. Palacios, Sr.

Senator
vicente c. pangelinan

MINORITY MEMBERS:

Senator
Aline A. Yamashita
ASST. MINORITY LEADER

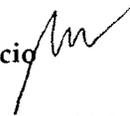
Senator
Christopher M. Duenas

October 5, 2011

MEMORANDUM

To: Pat Santos
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio 

Subject: Referral of Bill Nos. 326-31(COR) through 336-31 (COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of Bill Nos. 326-31 (COR) through 336-31 (COR).

Please ensure that the subject bills are referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Unu na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

(6) Attachment

I Mina'Trentai Unu Na Liheslaturan Guåhan

Bill Log Sheet

October 05, 2011

Page 1 of 1

Bill No.	Sponsor(s)	Title	Date Introduced	Date Referred	120 Day Deadline	Committee Referred	Public Hearing Date	Date Committee Report Filed	Status (Date) Passed? Failed? Vetoed? Overridden? Public Law?
336-31 (COR)	T.C. Ada, R.J. Respicio, A.B. Palacios, Sr., D.G. Rodriguez, Jr., F.F. Blas Jr., M.S. Taijeron, C.M. Duenas, A.A. Yamashita, Ph.D.,	AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.	10/05/11 10:19 a.m.	10/5/11		Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.			



Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

First Notice of Public Hearing – October 12, 2011 3 p.m.

14 messages

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Wed, Oct 5, 2011 at 12:05 PM

To: speaker@judiwonpat.com, tom@senatorada.org, senator@senatorpalacios.com, senatortonyada@guamlegislature.org, senator@tinamunabarnes.com, frank.blasjr@gmail.com, senator@senatorbjcruz.com, duenasenator@gmail.com, judiguthertz@gmail.com, senatorsam@senatormabini.com, senbenp@guam.net, cor@guamlegislature.org, senatordrodriguez@gmail.com, senatormana@gmail.com, Aline4families@gmail.com
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MEMORANDUM

TO: All Members/All Senators

FROM: Vice Speaker Benjamin J.F. Cruz

RE: First Notice of Public Hearing – October 12, 2011

Hafa Adai! Please be advised that the Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting will conduct an Oversight Hearing on Wednesday, October 12, 2011, beginning at 3:00 P.M. in *I Liheslaturan's* Public Hearing Room with the following agenda:

Bill No. 336-31(COR) - AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.

Please provide written testimonies at least one day prior to the hearing to the Office of the Vice Speaker Benjamin J.F Cruz, 155 Hesler Place, Hagatna Guam 96910. They may be sent via facsimile to 477-2522, or via email to chris.carillo@senatorbjcruz.com. We comply with Title II of the Americans with Disabilities Act (ADA). Should you require assistance or special accommodations, please contact Chris Carillo at the Office of the Vice Speaker Benjamin J.F Cruz at 477-2521 or via email at chris.carillo@senatorbjcruz.com.

Carlos B. Pangelinan, MSF

Fiscal Analyst

Office of Vice Speaker Benjamin J.F. Cruz

Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting

31st Guam Legislature

155 Hesler Place

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 **B336-31.pdf**
427K

Adam Bearce <adam@guamlegislature.org> **Wed, Oct 5, 2011 at 12:44 PM**
To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

Hi. This is now posted. Public Hearing, Public Hearing room, Wednesday October 12th 2011, 3:00 pm
[Quoted text hidden]

Tom Ada <tom@senatorada.org> **Wed, Oct 5, 2011 at 1:13 PM**
To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Carlos,

Thank you for expediting.

Tom Ada

On Wed, Oct 5, 2011 at 12:05 PM, Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com> wrote:
[Quoted text hidden]

Jimmy Camacho <jcamacho@senatorada.org> **Wed, Oct 5, 2011 at 1:45 PM**
To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Hafa adai Carlos,

FYI- there are some references to the hearing as an Oversight. We may want to clarify or correct the reference for 2-day notices.

On Wed, Oct 5, 2011 at 12:05 PM, Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com> wrote:
[Quoted text hidden]

--
Jimmy Taitano Camacho
Policy Analyst
Office of Senator Thomas C. Ada
I Mina' Trentai Unu Na Liheslaturan Guåhan - 31st Guam Legislature
(Office) 473 - 3301 (Cell) 486 - 9494

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com> **Wed, Oct 5, 2011 at 1:47 PM**
To: Jimmy Camacho <jcamacho@senatorada.org>

Noted will send out again

Sent from my iPhone

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Wed, Oct 5, 2011 at 1:52 PM

To: Adam Bearce <adam@guamlegislature.org>

Adam can you correct to say "public hearing" not "oversight hearing" ? Thanks, please confirm.

Sent from my iPhone

[Quoted text hidden]

Adam Bearce <adam@guamlegislature.org>

Wed, Oct 5, 2011 at 1:56 PM

To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

Hi. switched now to oversight hearing.

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Wed, Oct 5, 2011 at 1:59 PM

To: Adam Bearce <adam@guamlegislature.org>

I meant it should say "public hearing"

Sent from my iPhone

[Quoted text hidden]

Adam Bearce <adam@guamlegislature.org>

Wed, Oct 5, 2011 at 2:01 PM

To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

it did before i got your last email. switching it back to public hearing now.

[Quoted text hidden]

Adam Bearce <adam@guamlegislature.org>

Wed, Oct 5, 2011 at 2:02 PM

To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

It now say public hearing.

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Wed, Oct 5, 2011 at 2:02 PM

To: Adam Bearce <adam@guamlegislature.org>

Sorry my memo to u was the one that had the error

Sent from my iPhone

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Wed, Oct 5, 2011 at 2:04 PM

To: Adam Bearce <adam@guamlegislature.org>

Thanks sorry for the confusion

Sent from my iPhone

[Quoted text hidden]

Adam Bearce <adam@guamlegislature.org>

Wed, Oct 5, 2011 at 2:05 PM

To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

np. sorry for the bad grammar lol. i saw the last message i sent.

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Mon, Oct 10, 2011 at 9:11 AM

Draft To: speaker@judiwonpat.com, tom@senatorada.org, senator@senatorpalacios.com, senatortonyada@guamlegislature.org, senator@tinamunabarnes.com, frank.blasjr@gmail.com, senator@senatorbjcruz.com, duenasenator@gmail.com, judiguthertz@gmail.com, senatorsam@senatormabini.com, senbenp@guam.net, cor@guamlegislature.org, senatordrodriguez@gmail.com, senatormana@gmail.com, Aline4families@gmail.com
Cc: phnotice@guamlegislature.org, mindy@kuam.com, sabrina@kuam.com, jason@kuam.com, bmkelman@guampdn.com, egthompson@guampdn.com, dcrisostomo@guampdn.com, travis.coffman@gmail.com, kevin@spbguam.com, clynt@spbguam.com, therese.hart.writer@gmail.com, janela@mvguam.com, krystal@kuam.com, rgibson@k57.com, parroyo@k57.com, joshua.tenorio@senatorbjcruz.com, chris.carillo@senatorbjcruz.com

[Quoted text hidden]



Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Second Notice of Public Hearing – October 12, 2011 3 p.m.

4 messages

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Mon, Oct 10, 2011 at 9:14 AM

To: speaker@judiwonpat.com, tom@senatorada.org, senator@senatorpalacios.com, senatortonyada@guamlegislature.org, senator@tinamunabarnes.com, frank.blasjr@gmail.com, senator@senatorbjcruz.com, duenasenator@gmail.com, judiguthertz@gmail.com, senatorsam@senatormabini.com, senbenp@guam.net, cor@guamlegislature.org, senatordrodriguez@gmail.com, senatormana@gmail.com, Aline4families@gmail.com
 Cc: phnotice@guamlegislature.org, mindy@kuam.com, sabrina@kuam.com, jason@kuam.com, bmkelman@guampdn.com, egthompson@guampdn.com, dcristosotomo@guampdn.com, travis.coffman@gmail.com, kevin@spbg Guam.com, clynt@spbg Guam.com, therese.hart.writer@gmail.com, janela@mvguam.com, krystal@kuam.com, rgibson@k57.com, parroyo@k57.com, joshua.tenorio@senatorbjcruz.com, chris.carillo@senatorbjcruz.com

MEMORANDUM

TO: All Members/All Senators

FROM: Vice Speaker Benjamin J.F. Cruz

RE: Second Notice of Public Hearing – October 12, 2011

Hafa Adai! Please be advised that the Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting will conduct a **Public Hearing on Wednesday, October 12, 2011, beginning at 3:00 P.M. in / Liheslaturan's Public Hearing** Room with the following agenda:

Bill No. 336-31(COR) - An act to further amend Section 4 of Public Law 30-57 and to authorize the Jose D. Leon Guerrero Commercial Port of Guam to enter into negotiations for the acquisition of the "POLA" Gantry Cranes Owned by Matson Navigation Company and Horizon Lines, Inc.

Please provide written testimonies at least one day prior to the hearing to the Office of the Vice Speaker Benjamin J.F Cruz, 155 Hesler Place, Hagatna Guam 96910. They may be sent via facsimile to 477-2522, or via email to chris.carillo@senatorbjcruz.com. We comply with Title II of the Americans with Disabilities Act (ADA). Should you require assistance or special accommodations, please contact Chris Carillo at the Office of the Vice Speaker Benjamin J.F Cruz at 477-2521 or via email at chris.carillo@senatorbjcruz.com.

--

Carlos B. Pangelinan, MSF

Fiscal Analyst

Office of Vice Speaker Benjamin J.F. Cruz

Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting

31st Guam Legislature

155 Hesler Place

Hagatna, Guam 96910

Tel. (671) 477-2520

Fax. (671) 477-2522

Email: carlos.pangelinan@senatorbjcruz.com

Adam Bearce <adam@guamlegislature.org>

Mon, Oct 10, 2011 at 9:15 AM

To: Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>

Hi. Posting confirmed.

[Quoted text hidden]

Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>

Mon, Oct 10, 2011 at 9:24 AM

To: Adam Bearce <adam@guamlegislature.org>

Thank you.

[Quoted text hidden]

Jimmy Camacho <jcamacho@senatorada.org>

Mon, Oct 10, 2011 at 3:42 PM

To: CHARLIE ONEDERA <staff03@guamchamber.com.gu>, chairman@guamchamber.com.gu, morrico@morricoequipment.com, dleddy@guamchamber.com.gu, guamchinese@teleguam.net, jlimtiaco@fleetservicesguam.com, Carlos Pangelinan <carlos.pangelinan@senatorbjcruz.com>, Tom Ada <tom@senatorada.org>

FYI

[Quoted text hidden]

--

Jimmy Taitano Camacho

Policy Analyst

Office of Senator Thomas C. Ada

I Mina' Trentai Unu Na Liheslaturan Guåhan - 31st Guam Legislature

(Office) 473 - 3301 (Cell) 486 - 9494

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 336-31(COR)

As Substituted by the Committee on Youth,
Cultural Affairs, Procurement, General Government
Operations and Public Broadcasting

Introduced by:

T.C. Ada
R.J. Respicio
A.B. Palacios, Sr.
D.G. Rodriguez, Jr.
F.F. Blas Jr.
M.S. Taijeron
C.M. Duenas
A.A. Yamashita, Ph.D.

**AN ACT TO FURTHER AMEND SECTION 4 OF
PUBLIC LAW 30-57 TO AUTHORIZE THE JOSE D.
LEON GUERRERO COMMERCIAL PORT OF
GUAM TO ENTER INTO NEGOTIATIONS FOR THE
ACQUISTION OF THE "POLA" GANTRY CRANES
OWNED BY MATSON NAVIGATION COMPANY
AND HORIZON LINES, INC.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Jose D. Leon Guerrero Commercial Port (the "Port"),
4 established by Public Law 13-87 as a public corporation and autonomous
5 government entity, is charged with providing continued support for the
6 diversification of Guam's economy, seaborne commerce and international
7 trade. Furthermore, the Port is vested with the responsibility of developing
8 its assets and the implementation of policies and strategies to enable the
9 efficient loading and unloading of goods and materials destined for retail



**Committee on Youth, Cultural Affairs, Procurement,
General Government Operations, and Public Broadcasting**

Public Hearing Agenda

October 12, 2011

Public Hearing Notices were sent via Email to all Senators
and Media on October 5, 2011 and October 10, 2011

3 p.m. - Public Hearing Room

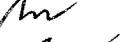
- **Bill No. 336-31(COR)** - AN ACT TO FURTHER AMEND SECTION 4 OF PUBLIC LAW 30-57 AND TO AUTHORIZE THE JOSE D. LEON GUERRERO COMMERCIAL PORT OF GUAM TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON NAVIGATION COMPANY AND HORIZON LINES, INC.

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

2011 OCT - 5
M 10:19

Bill No. 336-31 (cov)

Introduced by:

T.C. Ada 
R.J. Respicio 
A.B. Palacios, Sr. 
D.G. Rodriguez, Jr. 
F.F. Blas Jr. 
M.S. Taijeron 
C.M. Duenas 
A.A. Yamashita, Ph.D. 

**AN ACT TO FURTHER AMEND SECTION 4 OF
PUBLIC LAW 30-57 AND TO AUTHORIZE THE
JOSE D. LEON GUERRERO COMMERCIAL PORT
OF GUAM TO ENTER INTO NEGOTIATIONS FOR
THE ACQUISTION OF THE "POLA" GANTRY
CRANES OWNED BY MATSON NAVIGATION
COMPANY AND HORIZON LINES, INC.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

3 finds that the Jose D. Leon Guerrero Commercial Port (the "Port"),
4 established by Public Law 13-87 as a public corporation and autonomous
5 government entity, is charged with providing continued support for the
6 diversification of Guam's economy, seaborne commerce and international
7 trade. Furthermore, the Port is vested with the responsibility of developing
8 its assets and the implementation of policies and strategies to enable the
9 efficient loading and unloading of goods and materials destined for retail
10 operations in Guam and Micronesia, and to facilitate a smooth transition to
11 the military-induced expansion and anticipated population growth.

1 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted
2 access to all Gantry Cranes operating on its rails would improve operational
3 efficiency and reliability in the movement of cargo through the Port and for
4 transshipment to the neighboring islands in the region.

5 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on
6 the Port’s commercial docks, and that through a license agreement executed
7 in December 2007 between the Port and Matson Navigation & Horizon
8 Lines (the “Carriers”), three (3) of these cranes, referred to as POLA Cranes
9 15, 16 and 17 were purchased and refurbished by the Carriers and placed on
10 the Port’s rails. Additionally, the Port currently maintains and operates two
11 older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to
12 service non-Matson/Horizon vessels, and that due to their age and material
13 condition are more expensive to maintain and provide less reliable service.
14 Retirement of these cranes is overdue.

15 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the
16 Port to acquire, either through purchase or lease-to-own, at least two (2)
17 Gantry Cranes no later than December 31, 2012, pursuant to the Guam
18 Procurement Act and “not through the use of a Task Order attached to any
19 existing contract”. In 2006, the U.S. Department of Agriculture (USDA)
20 made available to the Port direct/guaranteed loans to acquire at least two (2)
21 new or refurbished gantry cranes. The USDA loan for the acquisition of the
22 cranes is still currently available to the Port.

23 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes
24 by the Port has the potential to present a singularly unique opportunity and
25 value to the territory given their presence on the rails, record of operational
26 reliability, and the elimination of disruption to ongoing operations.

1 *I Liheslaturan Guåhan* finds that it would be prudent to explore
2 acquisition of the POLA cranes through direct purchase or lease-to-own, and
3 that further to this exploration, acquisition should be authorized provided
4 that this unique opportunity and value can be realized through independent
5 assessment of material condition and market value, and follow-on
6 negotiation of acquisition terms is uniquely and demonstrably favorable to
7 Guam.

8 *I Liheslaturan Guåhan* further finds in consideration of the
9 aforementioned findings that certain provisions of existing Public Law
10 should be amended.

11 **Section 2.** Section 4 of P.L. 30-57, as amended by P. L. 30-100, is
12 hereby further amended to read as follows:

13 “**Section 4.** The Port Authority of Guam (PAG) shall immediately initiate
14 research to identify potential Federal grants and similar funding sources and
15 shall initiate necessary discussions and communications to secure funding as
16 necessary for the modernization of the PAG. The PAG shall report to the
17 Speaker of the *I Liheslaturan Guåhan* (the Legislature) no later than June
18 2010, of (1) status of its efforts to secure commitments for grants and similar
19 funding; and (2) its recommendation(s) in moving forward with PAG’s
20 modernization which include, but are not limited to, the scaling back of
21 modernization plans that would address organic growth capacity
22 requirements and funded through debt that is within the PAG’s ability to
23 pay, estimated to be about Fifty-four Million Five Hundred Thousand
24 Dollars (\$54,500,000), and which *shall* include the acquisition, either
25 through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such
26 cranes *shall be* acquired *no later than* December 31, 2012. ~~, pursuant to the~~
27 ~~Guam Procurement Law and not through the use of a Task Order to any~~

1 ~~existing contract.~~ If the PAG secures a grant, and the USDA Loan or other
2 comparable loan, then Phase I-A shall proceed along with the acquisition of
3 at least two (2) Gantry Cranes. Such cranes shall be acquired no later than
4 December 31, 2012, either through purchase or lease to own, ~~pursuant to the~~
5 ~~Guam Procurement Law, and not through the use of a Task Order to any~~
6 ~~existing contract.~~ No other loan or additional rate increase may be
7 requested for funding of the Master Plan by PAG without an executed
8 Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised
9 August 3, 2009 Report, and specifically in the Financial Plan. The Guam
10 Procurement laws prohibiting direct negotiation and acquisition, or
11 inconsistent with the succeeding authorities, are hereby waived.”

12 **Section 3.** Add a new Section 5 to Public Law 30-57 as follows:

13 “**Section 5.** The Port Authority of Guam is hereby authorized
14 to enter into negotiations with the Carriers for the specific purpose of
15 acquiring through purchase or lease-to-own at least but not limited to, two
16 (2) of the POLA gantry cranes, provided that the following requirements are
17 met:

18 (a) **Negotiating Team.** The Port Board of Directors shall appoint a
19 negotiation team that will be authorized to engage in the negotiations
20 with the Carriers.

21 (b) **Conflicts Prohibited.** No Covered Person, as such person is defined
22 below, shall be eligible to participate in the negotiations for the
23 acquisition of the POLA cranes, in whole or in part. For the purpose
24 of this Section, the term, ‘Covered Person’ shall mean any:

- 25 i. elected officials of the government of Guam who hold office at
26 the time of the negotiation; or

- 1 ii. advisors, consultants, and employees who are or had previously
- 2 been employed with the Carriers prior to the effective date of
- 3 this Act; or
- 4 iii. any person who might stand to personally benefit from the
- 5 negotiated terms.
- 6 iv. a person or spouse of such person related by consanguinity of
- 7 the third degree, which for the purpose of this Act, shall include
- 8 spouses, all children, parents, grandchildren, siblings,
- 9 grandparents, great-grandchildren, nieces, nephews, uncles,
- 10 aunts, and great-grandparents of a person, to any person
- 11 described in Items a., b., and c. of this Section.

12 (c) Prior to the initiation of negotiations, the Port shall engage the
13 service(s) of an independent crane expert to:

- 14 i. Provide an assessment of the material condition and life
- 15 expectancy of the POLA cranes to be acquired,
- 16 ii. To provide an “as is” valuation assessment starting with
- 17 estimated value in a fully operational condition and identifying
- 18 current retrofit requirements, if any, to place the POLA cranes
- 19 in that fully operational condition, and
- 20 iii. Determine a range of fair book value of the POLA cranes.

21 (d) A copy of the reports shall be provided within five (5) working days
22 upon completion , to *I Maga’låhen Guahan* and to the *Speaker of I*
23 *Lihselaturan Guahan*.

24 (e) If the outcome of negotiations is for lease-to-own, such lease shall be
25 based on commercially reasonable terms and structured as a capital
26 lease versus an operating lease.

1 (f) The Port Board of Directors shall review the acquisition terms, and
2 by majority vote, ratify or not ratify the terms.

3 i. A majority vote “to not ratify” shall in effect terminate the
4 discussions and efforts to acquire the POLA cranes through
5 direct negotiation with the Carriers. The Port shall then proceed
6 to procure at least two (2) Gantry Cranes pursuant to Guam
7 Procurement laws, and not through the use of a Task Order to
8 any existing contract.

9 ii. If the majority vote is to “ratify”, the terms of acquisition shall
10 be transmitted to the Public Utility Commission (PUC) for
11 review and disposition.

12 (g) Terms of acquisition are publicly disclosed and backed by full
13 disclosure of all relevant documents, after the negotiations and PUC
14 have been completed.

15 **Section 4. Severability.** If any provision of this Law or its
16 application to any person or circumstance is found to be invalid or contrary
17 to law, such invalidity shall *not* affect other provisions or applications of this
18 Law which can be given effect without the invalid provisions or application,
19 and to this end the provisions of this Law are severable.