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

Bill No. 79 - 31 (COR)

Introduced by:

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T.C. Ada R.J. Respicie J.P. Guthertz, DPA

V.A. Ada T.R. Muña Barnes

AN ACT TO REPREAL ARTICLE 3, CHAPTER 10, TITLE 12 **GUAM CODE** ANNOTATED RELATIVE THE AUTHORIZING THE BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT ("THE PORT") TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP CONTRACT, LEASE AND OPERATING AGREEMENT, **PERMIT FOR TERMINAL OPERATIONS** AND MAINTENANCE OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT; AND TO ADD A NEW ARTICLE 3, CHAPTER 10, TITLE 12 OF THE GUAM CODE ANNOTATED RELATIVE TO THE **PROHIBITION** Of THE PRIVATIZATION, SALE OR LEASE OF THE PORT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

- 2 Section 1. Legislative Findings and Intent. I Liheslaturan Guåhan finds
- that the enactment of P.L. 27-60 and then the subsequent enactment of P.L. 29-23 3
- created an ideological conflict requiring *I Liheslaturan Guåhan* to take immediate 4
- legislative action delineated herein. 5
- P.L. 27-60, enacted on December 21, 2003, authorizes the Board of 6
- Directors for the Jose D. Leon Guerrero Commercial Port ("Port") to enter into a 7
- Public-Private Partnership, Contract, Lease Agreement, and Operating Permit for 8
- its terminal operations and maintenance. Meanwhile, P.L. 29-23, enacted on 9

October 24, 2007 authorizes this same Board of Directors to enter into a Public-Private Partnership through a Performance Management Contract for the management, operation, and maintenance of the Port Cargo Handling Equipment or facilities associated with such equipment or other aspects of the Port's

Operations.

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I Liheslaturan Guåhan asserts that while P.L. 27-60 was well intentioned by mandating that the manner of privatization was to take the form of a Public Private Partnership ("PPP"), allowing for an infusion of private capital while ensuring decisions are left to the Port's management and staff. This course ensures that the full control of all assets and total ownership of the Port remain with the people of Guam. However, I Liheslaturan Guåhan believes that there have been attempts, albeit unsuccessful, to move forward with the full privatization of the Port beyond a PPP arrangement. This led to the subsequent enactment of P.L. 29-23 mandating a Performance Management Contract ("PMC") whereby the Port employees provide the labor component of the business, and the new private partner provides the capital, technical expertise, and supply chain to strengthen the cargo handling component of Port operations thereby ensuring operational reliability and the timely discharge and loading of vessels. Although there is a contract on the performance of cargo handling equipment and yard operations, the Port's management and staff are not supplanted and control remains with the Port's Board of Directors, and ultimately remains in the hands of the people of Guam.

Therefore, *I Liheslaturan Guåhan* believes that it is in the best interest of the people of Guam, even more so during this Military Buildup period, to repeal all of Article 3, Chapter 10 of the Title 12 of the Guam Code Annotated, in order to prevent the Port from being privatized, leased, or sold.

- Section 2. Repeal. Article 3, Chapter 10 of Title 12 of the Guam Code
 Annotated is hereby repealed in its entirety.
- Section 3. Prohibition on the sale or leasing of the Port. A new Article 3,

 Chapter 10, Title 12 of the Guam Code Annotated is hereby enacted to read:

5 "Article 3.

Prohibition on Privatization of Jose D. Leon Guerrero Commercial Port

"§ 10301. Unless otherwise explicitly authorized by statute, the Board of Directors of the Jose D. Leon Guerrero Commercial Port is hereby prohibited from expending anything of value, either through cash or in-kind, directly or indirectly, or executing any solicitations through the Request for Proposal or Request for Information, or invitation to bid consistent with Title 5 of the Guam Code Annotated, or to commission the development of a master plan, either through its employees, partners, or agents, exploring the sale or lease of the Port. Let it be known, therefore, to anyone contemplating this notion that the Port is not to be privatized, leased or sold."