



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Liheslaturan Guåhan • 32nd Guam Legislature

June 14, 2013

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

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

[Handwritten signature]
2013 JUN 17 AM 9:16

RE: Bill 86-32 (COR) As Substituted

An Act to Add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to Authorize the Jose D. Leon Guerrero Port Authority of Guam (Port) to Waive Sovereign Immunity to Satisfy a Prerequisite for Approval of a \$10,000,000.00 Commercial Loan

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on **Bill 86-32 (COR) As Substituted** which was referred to the Committee on Public Safety, Infrastructure and Maritime Transportation.

The voting record is as follows:

- 4 TO PASS
- _____ TO NOT PASS
- 2 TO REPORT OUT ONLY
- _____ TO ABSTAIN
- _____ TO PLACE IN INACTIVE FILE

Si Yu'os ma'åse',

[Handwritten signature of Thomas C. Ada]
Thomas C. Ada



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation

I Mina'trentai Dos Na Liheslaturan Guåhan • 32nd Guam Legislature

**COMMITTEE
REPORT
ON**

**Bill 86-32 (COR)
As Substituted**

An Act to Add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to Authorize the Jose D. Leon Guerrero Port Authority of Guam (Port) to Waive Sovereign Immunity to Satisfy a Prerequisite for Approval of a \$10,000,000.00 Commercial Loan




Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Libeslaturan Guåhan • 32nd Guam Legislature

June 14, 2013

MEMORANDUM

To: **All Members**
Committee on Public Safety, Infrastructure and Maritime Transportation

From: **Senator Thomas C. Ada** 
Committee Chairperson

Subject: **Committee Report on Bill 86-32 (COR) – As Substituted**
An Act to Add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to Authorize the Jose D. Leon Guerrero Port Authority of Guam (Port) to Waive Sovereign Immunity to Satisfy a Prerequisite for Approval of a \$10,000,000.00 Commercial Loan

Transmitted herewith for your consideration is the Committee Report on Bill 86-32 (COR) As Substituted.

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill 86-32 (COR) As Substituted
- Copy of Bill 86-32 (COR) As Introduced
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony and Supporting Documents
- Copy of COR Referral of Bill 86-32 (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'åse!



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Libeslaturan Guåhan • 32nd Guam Legislature

COMMITTEE VOTE SHEET

Bill 86-32 (COR) – As Substituted

An Act to Add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to Authorize the Jose D. Leon Guerrero Port Authority of Guam (Port) to Waive Sovereign Immunity to Satisfy a Prerequisite for Approval of a \$10,000,000.00 Commercial Loan

COMMITTEE MEMBERS	SIGNATURE	TO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson		✓ 6/14/13				
SENATOR RORY J. RESPICIO Vice Chairperson		6/14/13 				
VICE SPEAKER BENJAMIN J.F. CRUZ Member		6/14/13				
SENATOR FRANK B. AGUON, JR. Member		6/14/13				
SENATOR MICHAEL F.Q. SAN NICOLAS Member						
SENATOR ALINE A. YAMASHITA, PH.D. Minority Member				6/14/13 ✓		
SENATOR V. ANTHONY ADA Minority Member				6/14/13 ✓		
SENATOR BRANT McCREADIE Minority Member						



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COMMITTEE REPORT DIGEST

I. OVERVIEW

The Committee on Public Safety, Infrastructure and Maritime Transportation convened a public hearing on April 17, 2013 at 6:00 pm in *I Liheslatura's* Public Hearing Room. Among the items on the agenda was the consideration of Bill 86-32 (COR) whose referral history is as follows:

Bill 86-32 (COR) was introduced by Senator Thomas C. Ada on April 9, 2013, and was subsequently referred by the Committee on Rules to the Committee on Public Safety, Infrastructure and Maritime Transportation on April 9, 2013.

Public Notice Requirements

Notices were disseminated via email to all senators and all main media broadcasting outlets on Wednesday, April 10, 2013 (5-Day Notice), and again on Monday, April 15, 2013 (48-Hour Notice).

Senators Present

Senator Thomas C. Ada	Committee Chairperson
Vice Speaker Benjamin J.F. Cruz	Committee Member
Senator Frank B. Aguon, Jr.	Committee Member
Senator Brant McCreadie	Minority Member
Senator Aline Yamashita	Minority Member

II. SUMMARY OF TESTIMONY AND DISCUSSION

The public hearing was Called-to-Order at 6:00 pm.

Former Senator Joanne Brown

Provided oral and written testimony (See Attached)

Joanne Brown, General Manager of the Port Authority of Guam supports passage of Bill 86-32. She states the waiver is one of the requirements necessary for a \$10,000,000 commercial loan intended to fund the MSLE [*Marine Service Life Extension*], which includes critical wharf repairs (F-3, F-4, F-5 and F-6), the upgrading of the Port's financial management system, and the purchase of a top lifter to support container yard operations. According to Ms. Brown, all these items are critical to "the sustainability of Port Operations."



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Ms. Brown further states that the Port is evaluating how to service the loan in both the near and long term. She states that upon completion of the Ports master plan in the next 24 weeks, the PAG may re-evaluate its financial strategy and use the updated master plan as support for a tariff petition. She concludes by reiterating the importance of the items to be financed by the loan, and thanks the legislature for its consideration.

Question & Answer

Chairperson Ada opens the floor for questions.

Senator McCreadie states the top-lifter may be a revenue source, but asks if the deterioration of the wharves is causing the government to lose revenue?

Ms. Brown answers that it is not a questions of losing revenue, but a question of structural integrity if the repairs are not addressed, and comments that should a section of wharf collapse, a significant portion of the port's wharf will be out of use. She further states when cargo ships and passenger vessels are in port, this is valuable real estate for operation. She adds that F-5 requires the most critical repairs. She closes by stating without the repairs, the Port's insurance may be affected, which would leave the Port in a difficult situation if there were an earthquake or typhoon.

Senator McCreadie asks what funding source is going to pay the remainder of the 10 million dollars?

Ms. Brown answers that is the reason the Port is looking to approach the PUC. She states that there are a lot of major infrastructure and equipment issues that have not been addressed at the PAG, and now, the Port has to accommodate at least organic growth by addressing the infrastructure and equipment issues. She states again that the needs to be financed are critical.

Vice-Speaker Cruz asks if the ANZ loan for the Port required a waiver of sovereign immunity?

Ms. Brown answers that the bank did not require legislative concurrence. States there was an effort to use language approved through a similar process, but in the case of the Bank of Guam, they requested this language be added into law.

Chairperson Ada asks for clarification of whether or not the ANZ loan was backed by the USDA?

Ms. Brown answers that to her knowledge, this particular loan is not backed by USDA.



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Vice-Speaker Cruz clarifies that he is very supportive of the Marine Service Life Extension, but he is concerned about this requirement for waiving sovereign immunity. Asks Director Brown if the Port's Legal Counsel has given an opinion on how broad this waiver is?

Ms. Brown state that the Legal Counsel reviewed the issue, and the Port understands the implications with the issue, but states that ultimately this is language the bank is requiring if the Port is to move forward with their proposal.

Vice-Speaker Cruz asks what General Manager Brown understands of the issue?

Ms. Brown states she understands that if the Port does not address its obligations, the Port will be subject to in legal actions that may result in the loss of government assets.

Vice-Speaker Cruz asks what would that be?

Ms. Brown states that it would be interesting if they [*the bank*] tried to acquire Port assets or Port property as a result of this.

Vice-Speaker Cruz states "that's my concern."

Ms. Brown states that it is a legitimate concern.

Vice-Speaker Cruz asks if there is any protection against that?

Ms. Brown states she is very confident that the port will be able to address the payments. She further states it is no different than the hundreds of millions of debt service the Government of Guam takes out and pays for at the beginning of every year.

Vice-Speaker Cruz states that in this case of the port, his concern is that they may try to get port property.

Ms. Brown states that is a possibility, but states that if the port does not address the financing to address these critical repairs, there may be no property to hold onto.

Vice Speaker Cruz states he understands, but is very concerned with the demand for the waiver. Further states he has been contemplating an amendment to the effect of,

"Notwithstanding this Section, any claim for relief brought against the Port Authority of Guam shall be brought under and in accordance with Title 5 GCA of the Government Claims Act, such claims shall be subject to the provisions of monetary relief only and under no circumstances in the event of default on any and all of the PAG financial



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engagements subsequent to foreclosure on said security interests may any lienholder seek to maintain a cause of action for relief other than monetary obligation paying for security

interest agreements between the lienholder and the port. The limitations thereby preclude any foreclosure on real property that encompasses the Port of Guam.”

States he does not want to be in the situation where a foreclosure proceeding starts and the Port is sold. Also states that any other loans in the future may jeopardize port assets because we've waived sovereign immunity. Continues by stating that he would like to limit recovery to monetary assets without the possibility of foreclosure or sale. Closes by stating that he does not want this to be the “catalyst” to put the Port up for sale.

Asks General Manager Brown if she remembers any other time where the Government has waived sovereign immunity for any loan?

Ms. Brown responds that off the top of her head, she cannot answer because the financing she dealt with while at the legislature was for bonds in the hundreds of millions of dollars.

Vice-Speaker Cruz states those bonds are Section-thirty (30) guaranteed.

Ms. Brown states Section-thirty (30) are almost always used for that purpose.

Vice-Speaker Cruz reiterates his concern is the possibility of foreclosure because the language is so broad.

Ms. Brown states the port will take all the necessary steps to ensure that the debts are paid. Also adds that there is the possibility that they may pursue a bond or refinance in the future and pay the debt off sooner. States they are bringing forth the legislation only because the lending institution requested it. She closes by stating the senator is welcome to discuss the bill and his proposed language with his colleagues and the bank and PAG will leave that to the legislature.

Vice-Speaker Cruz Follows up on Senator McCreadie's question about the debt service for this loan and refers to an attachment from Port's 5-year Tariff Projection and Financial Plan stating, total fees without the surcharge per container are currently \$565.00. Further states that if we go through the scenarios in the proposal that the Port references as the source of debt service for the loan, with the initial 3.95% increase and the annual compounding increases, within 10 years, the can fees will be \$832.00 per can, and by the 20th year, the per can fee will be \$1226.00. Closes by asking for clarification regarding the projection of container fees and increases, and adds if it increases by 6.95%, the community will be paying in excess of \$1400.00 per container.

Ms. Brown answers, nobody likes rate increases, but the reality is, if the upgrades are not addressed, the Port cannot operate. She further states it cannot sustain organic growth, and if there is an earthquake there will be major consequences. States the most responsible thing to do



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is address the repairs, so the valuable real estate remains operational. Further states that down the road, there are other financing options that can be spread over a longer period of time, but for now, this financing is essential for repairs that are needed to sustain port operations.

Vice-Speaker Cruz asks if there is any discussion with MARAD about getting the \$10 Million from the existing forty two million dollars (\$42,000,000) that remains in the Port Enterprise Fund account.

Ms. Brown answers that amount of money is already dedicated to other upgrades at the Port, that also must be done. States it would be wonderful if the federal government could pay for this, but that's not where we're at right now.

Vice-Speaker Cruz responds if everyone agrees that the priority is the MSLE, can we not discuss the possibility with MARAD, especially considering the potential 200% increase per container.

Ms. Brown states that they are not arguing with the figures, but this is the cold hard reality, and this may be the case.

Vice-Speaker Cruz wants the community to be aware two things: the possibility of foreclosure, and that in order to pay for it, they have to be ready to go from \$565.00 to \$1464.00 per container.

Ms. Brown states she will not argue that point, but wants to address the vice-speaker's question about the current modernization with MARAD, and states that the design and work are planned to be completed by 2015. She states the Port feels they are on track, and though the wharfs are critical, so are the other projects. She closes by stating there may be more federal funds available.

Chairperson Ada states that the Guam Water Works Authority took out a loan previously and did waive its sovereign immunity. Also states that using funds from the DOD grant for the Wharf repairs was discussed, but that option was found to be unfavorable. MARAD initially wanted to put the entire \$50M grant into the waterfront and not the uplands, but the Governor, Congresswoman and Legislature spoke against it. States the Port ultimately decided to finance the repairs.

Asks General Manager Brown to elaborate on the "in-time borrowing conditions" mentioned in her testimony, and asks when the Port will submit its petition for an increase to the PUC. Lastly, he asks, how is this debt service to be satisfied?



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General Manager Brown states that the Port is still evaluating the data to present the case to the Board and PUC, as it is more than likely they will need a rate increase. Further states the Port's

hope is to appear before the PUC in the next few months. Yields to Alma Javier (Procurement Manager) for the financing portion of the chairperson's questions.

Ms. Javier states if the bill is passed, the Port will begin the loan document process with the Bank of Guam. States this should take approximately 30-days, and then the PAG will transmit to the PUC a petition in June or July. Upon PUC approval, they hope to begin solicitation for the SLE project.

Chairperson Ada asks "this August?"

Ms. Javier answers yes because the technical scope of work is completed.

Chairperson Ada states the PUC will most likely not return within 30-days, and they will be asking the same questions. If not, then the Port can do an in detail study or file for an interim rate increase with the debt service outlined in the terms as justification. States that this would start the process sooner.

Ms. Brown states Port has discussed the interim tariff. She further states that the Port has no desire to delay the process because they know how critical it is for the project to move forward. States the target is early next year for the repairs to be done.

Chairperson Ada states given the concerns of the Vice-Speaker, the PAG will seek concurrence of the amended language by GEDA and the bank before reporting Bill 86-32 (COR) out for consideration by the Legislature.

Ms. Brown states she appreciates that, as facilitating this process will be one less hurdle out of the way.

Chairperson Ada states that on the floor, other senators will be asking the same question, how are they going to pay for the loan?

Ms. Brown adds that if they do not have the ability to pay for the loan, then the legislation will not be needed. Also states that the repairs need to be done and are critical to the port.

Chairperson Ada thanks the panel and adjourns the public hearing at 6:45pm.

III. FINDINGS AND RECOMMENDATIONS

The Committee on Public Safety, Infrastructure and Maritime Transportation has substituted Bill 35-32 (COR) with the following significant changes:



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation

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- In Sections 2 the following language was added to address concerns that the Port Authority of Guam could pledge assets other than revenues by waiving sovereign immunity:

Should any suit or action arise or be initiated to enforce any of the terms of any agreement, indenture, or pledge of revenues, concerning the indebtedness authorized under this Article, any judgment therein shall be paid solely from the revenues of the Authority and at no time shall any other property be subject to foreclosure or recourse to satisfy any suit or action authorized by this Article or judgment therein.


- The Committee on Public Safety, Infrastructure and Maritime Transportation notes that the language was reviewed and agreed upon by the Port Authority of Guam, Guam Economic Development Authority, Bank of Guam and Vice Speaker Benjamin J.F. Cruz.

The Committee on Public Safety, Infrastructure and Maritime Transportation hereby reports out Bill 86-32 (COR) As Substituted by the Committee, with the recommendation TO PASS.

I MINA'TRENTAI DOS LIHESLATURAN GUÁHAN
2013 (First) Regular Session

Bill No. 26-32 (WR)

Introduced by:

T.C. Ada 

**AN ACT TO ADD §10238 TO ARTICLE 2, CHAPTER 10 OF
TITLE 12 GUAM CODE ANNOTATED TO AUTHORIZE THE
JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM
(PORT) TO WAIVE SOVEREIGN IMMUNITY TO SATISFY A
PREREQUISITE FOR APPROVAL OF A \$10,000,000
COMMERCIAL LOAN.**

2013 APR -9 PM 4:46 

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds that on
3 June 28, 2012, the Port Board of Directors approved the issuance of RFP No. 12-014,
4 soliciting the services of a commercial lending institution for the financing of the Port's
5 service life extension (SLE) repairs on the Port's wharf, and procurement of a financial
6 management system and a container top lifter with the total amount, not to exceed Ten
7 Million Dollars (\$10,000,000)

8 *I Liheslatura further finds that* on September 14, 2012 GEDA issued RFP No.
9 12-014 and received three responses to the proposal. The Bank of Guam was given the
10 highest rating amongst the bidders. On October 26, 2012, the Negotiation Team initially
11 met with Bank of Guam for the negotiation of terms and conditions. On November 6,
12 2012, GEDA awarded the Bank of Guam as the financial institution to provide the
13 services.

14 *I Liheslatura further finds that* on January 22, 2013, the Bank of Guam informed
15 the Port that a prerequisite for the closing of the loan was for the Port to waive its

1 immunity from any suit or action in contract on any indebtedness authorized by Article 2
2 of Chapter 10, Title 12 of the Guam Code Annotated.

3 *I Liheslatura finds* that the Port’s Board of Directors approved Resolution No.
4 2013-02 to waive the Port’s immunity as a condition to of the SLE loan, and accepted the
5 commitment terms by Bank of Guam, dated February 15, 2013.

6 *I Liheslatura finds* that the Port’s General Manager transmitted a memorandum to
7 the Chairperson of the Committee on Public Safety, Infrastructure and Maritime
8 Transportation, requesting consideration for proposed legislation as found in Section 2 of
9 this Act, relative to waiving sovereign immunity as a condition of the SLE Loan, dated
10 April 5, 2013.

11 **Section 2.** A new §10238 is *added* to Article 2 of Chapter 10, Title 12 of the
12 Guam Code Annotated to read as follows:

13 “Notwithstanding any substantive or procedural provision of Chapter 6 of
14 Title 5, Guam Code Annotated, the Authority shall not be entitled to immunity
15 from any suit or action in contract on any indebtedness authorized by this Article.
16 For the purposes of this Article only, immunity is waived as to the award of
17 attorney fees in connection with any suit brought to enforce any right or
18 obligation given under this Article or in connection with the enforcement of the
19 terms of any agreement or indenture that arises directly from the issuance of
20 bonds or indebtedness authorized under this Article.”

21 **Section 3. Severability.** If any of the provisions of this law or its application to
22 any person or circumstance is found to be invalid or contrary to law, such invalidity shall
23 not affect other provisions or applications of this law which can be given effect without

1 the invalid provisions or application, and to this end the provisions of this law are
2 severable.

3 **Section 4. Effective Date.** This Act shall become effective upon its enactment.

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

Bill No. 86-32(COR)

Introduced by:

T.C. Ada

Amended by the Committee on Public Safety,
Infrastructure and Maritime Transportation

**AN ACT TO ADD §10238 TO ARTICLE 2, CHAPTER 10 OF
TITLE 12 GUAM CODE ANNOTATED TO AUTHORIZE THE
JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM
(PORT) TO WAIVE SOVEREIGN IMMUNITY TO SATISFY A
PREREQUISITE FOR APPROVAL OF A \$10,000,000
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5 service life extension (SLE) repairs on the Port's wharf, and procurement of a financial
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10 highest rating amongst the bidders. On October 26, 2012, the Negotiation Team initially
11 met with Bank of Guam for the negotiation of terms and conditions. On November 6,
12 2012, GEDA awarded the Bank of Guam as the financial institution to provide the
13 services.

14 *I Liheslatura further finds* that on January 22, 2013, the Bank of Guam informed
15 the Port that a prerequisite for the closing of the loan was for the Port to waive its

1 immunity from any suit or action in contract on any indebtedness authorized by Article 2
2 of Chapter 10, Title 12 of the Guam Code Annotated.

3 *I Liheslatura finds* that the Port's Board of Directors approved Resolution No.
4 2013-02 to waive the Port's immunity as a condition to of the SLE loan, and accepted the
5 commitment terms by Bank of Guam, dated February 15, 2013.

6 *I Liheslatura finds* that the Port's General Manager transmitted a memorandum to
7 the Chairperson of the Committee on Public Safety, Infrastructure and Maritime
8 Transportation, requesting consideration for proposed legislation as found in Section 2 of
9 this Act, relative to waiving sovereign immunity as a condition of the SLE Loan, dated
10 April 5, 2013.

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14 Title 5, Guam Code Annotated, the Authority shall not be entitled to immunity
15 from any suit or action in contract on any indebtedness authorized by this Article.
16 For the purposes of this Article only, immunity is waived as to the award of
17 attorney fees in connection with any suit brought to enforce any right or
18 obligation given under this Article or in connection with the enforcement of the
19 terms of any agreement or indenture that arises directly from the issuance of
20 bonds or indebtedness authorized under this Article.

21 Should any suit or action arise or be initiated to enforce any of the
22 terms of any agreement, indenture, or pledge of revenues, concerning the
23 indebtedness authorized under this Article, any judgment therein shall be

1 paid solely from the revenues of the Authority and at no time shall any other
2 property be subject to foreclosure or recourse to satisfy any suit or action
3 authorized by this Article or judgment therein.

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

9 **Section 4. Effective Date.** This Act shall become effective upon its enactment.



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

April 17, 2013

The Honorable Thomas C. Ada

Senator, 32nd Guam Legislature

Chairman, Committee on Public Safety,

Infrastructure & Maritime Transportation

Ada Plaza Center, Suite 207

173 Aspinall Avenue

Hagåtña, Guam 96910

Dear Senator Ada,

The Port Authority of Guam (PAG) submits this testimony in support of the passage of Bill 86-32 (COR), entitled, ***“An act to add § 10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to authorize the Jose D. Leon Guerrero Port Authority of Guam to waive sovereign immunity to satisfy a prerequisite for approval of a \$10,000,000 commercial loan.”***

The PAG is requesting this waiver as it is needed to comply with lender requirements in order to obtain a \$10M loan. The loan is intended to fund: (1) Marine Service Life Extension (MSLE) project for much needed repairs and to prevent further structural deterioration of the F3, F4, F5 and F6 Wharfs; (2) upgrade the Financial Management System (FMS) due to the current system becoming obsolete; (3) additional Top Lifter to support the ongoing operations of cargo movement between the vessel, yard, and gate. All of these outlined needs are critical to the sustainability of Port operations.

In December of 2010, the PAG became aware of the defects and significant deterioration of the F5 Wharf after underwater inspections were conducted on all six wharves. In addition to the concerns with F5, it was determined that cathodic protection is also needed on F3, F4, and F6 wharfs. Moreover, if these repairs are not addressed, the Port's wharves may not be insurable. As a result of these concerns, PAG commissioned its consultants to develop the technical scope of work to address the identified defects and mitigate further deterioration. Further, considerable discussion on the funding options for any work to be undertaken for this matter took place between the PAG and federal partners, given that cost estimates were unclear at that time and funding alternatives were limited. In March 2012, the Port Board of Directors provided authorization to Port Management to pursue financing options to fund repairs to the Port facilities. It was also during this time that the Port's Board of Directors determined the need to address the upgrade of the FMS and to acquire an additional top-lifter to maintain and support Port operations. In June of 2012, the design work for the MSLE project was completed. In September 2012, through the assistance of the Guam Economic Development Authority, the solicitation process for financing, as required under

procurement laws, rules and regulations, was initiated and resulted in the selection of Bank of Guam as the awarded financing institution. Subsequently, negotiations between the PAG and Bank of Guam took place over the course of the end of the fourth quarter in 2012.

In late January 2013, the PAG was advised of Bank of Guam's additional condition to close the loan which required PAG to waive its sovereign immunity through legislative assistance. The PAG Board of Directors, consequently passed Board Resolution 2013-02 on February 15, 2013 requesting legislative assistance to introduce the legislation which we submit this testimony for this evening. Bill No. 86-32, as proposed, is needed to comply with Bank of Guam's requirements to close the commercial loan being sought by PAG.

In parallel with the request for the introduction and hopeful passage of Bill No. 86-32, the Port is also evaluating how it will finance the MSLE loan in both the near-term and long-term. In October of 2012, the Port submitted a 5-year Tariff Projection and a 20-year Port Modernization Financial Plan to its Board and the PUC. Since that submission, the Port has embarked on an effort to update its 2007 Master Plan. It is anticipated that the Plan will be completed over the next 24 weeks that will trigger the process of a revised Master Plan for approval. The completion and approval of the revised Master Plan will provide the support for an updated 5-Year Tariff Petition to the PUC based on the projects and funding necessary to secure Port Modernization, long-term sustainability, and long term financial sufficiency for a 20-year horizon.

It is worthy to note that the construction project for the MSLE project is expected to begin upon completion of the solicitation and contracting process of approximately 6-months, thereby, the actual construction work is anticipated to begin in 2014. As part of the mutually agreed terms and conditions of this loan with Bank of Guam, it is expected that the monthly payments due for the first two years during the construction period will only be for interest payments. Therefore, the annual debt service requirement for the first two (2) years will correspond to the in-time borrowing conditions of the loan. To fulfill the loan requirements, the PAG is prepared to maintain a reserve account to cover three-months of payments for the loan.

The Port is currently working on finalizing its financial strategy to present its petition to the PUC after the Port and its consultants have evaluated the 2012 cargo volumes, addressed adjustments to its financial model and reviewed any potential reprogramming possibilities. Regardless of the outcome of the Port's financial strategy, Legislative approval of the Waiver of Sovereign Immunity is a necessary step to moving forward on this critical Service Life Extension project and acquiring much needed equipment.

We thank you for your introduction of this measure and respectfully request favorable consideration for its expeditious passage by you and your colleagues.

Sincerely,



JOANNE M.S. BROWN
General Manager



April 19th, 2013

Sent Via Electronic Transmission

Senator, Thomas C. Ada,
Committee on Public Safety,
Infrastructure & Maritime Transportation
Ste. 207 Ada Plaza Ctr.
173 Aspinall Ave.
e-mail: office@senatorada.org

Re: Proposed Amendments to Bill 86-32 (COR)

Dear Chairman Ada:

As I noted to you and the members of your Committee during the April 17th Public Hearing of Bill 86-32 (COR), relative to authorizing the Port Authority of Guam to waive sovereign immunity as a prerequisite for approval of a \$10,000,000 commercial loan, I am greatly concerned by the overbroad and sweeping nature of the waiver as proposed.

As presently drafted, the language contained within Bill 86-32 (COR) would:

- 1) Waive the Port's sovereign immunity for *all* prospective financial obligations authorized by the Port's enabling legislation (Title 12, Chapter 10). Though a blanket waiver may not have been intended, the consequences of this language may be horrendous.
- 2) Absent a clear statutory reference to the Government Claims Act or expressed language accomplishing the same result, relief arising by default of any obligation under Article 2 of Title 12 could result in the foreclosure or assignment of Port real property or assets.

In addition to my reading of the measure as drafted, I would note that the Port's General Manger acknowledged the legitimacy of my concerns at the same hearing. My fears are compounded by the fact that the Port does not yet have a plan to meet the debt service required by this obligation.

At your invitation, I respectfully submit the attached ammended version of Bill 86-32 (COR). In addition to the language required by the Authority's lending institution, the following protections have been added:

- 1) Claims on indebtedness are limited to monetary relief, as mandated by the Government Claims Act.
- 2) The Government of Guam, must in the event of any default by the Authority, have the right to assume such indebtedness or obligation (this is to ensure that GovGuam can

protect the Port's real property assets and at the same time provide relief to any claimant.)

Though the amendments I have attached are a working start, I hope that you will allow me the opportunity to submit revised language upon greater research and reflection.

While I am certain that other legal minds may differ on the best way to address my concerns, the purpose of these amendments is to unambiguously assert that the Port is a public asset which must always remain in the public trust.

I thank you in advance for your kind consideration of this matter.

A handwritten signature in black ink, appearing to read "B. Cruz". The signature is fluid and cursive, with a large loop at the end.

Benjamin J.F. Cruz



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

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CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

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Member

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Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

May 6, 2013

Memorandum

To: Rennae Meno
Clerk of the Legislature

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Subject: Fiscal Notes

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.

FISCAL NOTES:

Bill Nos.: 86-32(COR), 88-32(COR), 92-32(COR)

WAIVERS:

Bill No. 82-32(COR)

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

Si Yu'os ma'åse'!

2013 MAY - 6 PM 4:00
MA

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

MAY 06 2013

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 is Fiscal Note on the following Bill Nos.: 86-32(COR), 88-32(COR), 92-32(COR), and Fiscal Note Waiver on the following Bill Nos.: 82-32(COR).

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

JOHN A. RIOS
Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 86-32 (COR)**

AN ACT TO ADD §10238 TO ARTICLE 2, CHAPTER 10 OF TITLE 12 GUAM CODE ANNOTATED TO AUTHORIZE THE JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM (PORT) TO WAIVE SOVEREIGN IMMUNITY TO SATISFY A PREREQUISITE FOR APPROVAL OF A \$10,000,000 COMMERCIAL LOAN.

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:	-
Department's Other Fund (Specify) appropriation(s) to date: Healthy Futures Fund & Environmental Health Fund	-
Total Department/Agency Appropriation(s) to date:	\$0

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2012 Unreserved Fund Balance ¹		\$0	\$0
FY 2013 Adopted Revenues	\$0	\$0	\$0
FY 2013 Appro. (P.L. 31-233)	\$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 2013 (if applicable)	FY 2014	FY 2015	FY 2016	FY 2017
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? /x/ N/A / / Yes / / 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 as of the due date */x/ Other:
* Due to impending deadline and other budgetary priorities.

Analyst: Dina P. Rivera Date: 5/1/13 Director: John A. Rios, Director Date: 5/2/13

Footnotes:
See attached Comments.

COMMENTS TO BILL 86-32(COR)

BILL NO. 86-32 IS AN ACT TO ADD §10238 TO ARTICLE 2, CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED RELATIVE TO AUTHORIZE THE JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM (PORT) TO WAIVE SOVEREIGN IMMUNITY TO SATISFY A PREREQUISITE FOR APPROVAL OF A \$10,000,000 COMMERCIAL LOAN.

Based on this proposal, the Port would be obligated to pay for any attorney fees in connection with “any suit brought to enforce any right or obligation given under this Article or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds or indebtedness authorized under this Article.”



COMMITTEE ON RULES

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Senator
Michael F.Q. San Nicolas
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Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

April 9, 2013

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio**
Majority Leader & Rules Chair

Subject: **Referral of Bill No. 86-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my re referral of Bill No. **86-32(COR)**.

Please ensure that the subject bill is 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 Dos na Liheslaturan Guåhan*.

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

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
86-32 (COR)	T.C. Ada	AN ACT TO ADD §10238 TO ARTICLE 2, CHAPTER 10 OF TITLE 12 GUAM CODE ANNOTATED TO AUTHORIZETHE JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM (PORT) TO WAIVE SOVEREIGN IMMUNITY TO SATISFY A PREREQUISITE FOR APPROVAL OF A \$10,000,000 COMMERCIAL LOAN	4/9/13 4:46 p.m.	4/9/2013	Committee on Public Safety, Infrastructure, & Maritime Transportation			



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Libeslaturan Guåhan • 32nd Guam Legislature

April 10, 2013

MEMORANDUM

To: All Senators, Media and Stakeholders
Fr: Senator Thomas C. Ada
Subject: **Public Hearing Notice: April 17, 2013**

Please be advised that the Committee on Public Safety, Infrastructure and Maritime Transportation is holding a public hearing on **April 17, 2013**. This meeting will take place in the Public Hearing Room of *I Liheslatura*, and broadcast on MCV channel 13 and GTA channel 21. The agenda is as follows:

6:00 pm

Bill 86-32 (COR): T.C. Ada

An act to add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to authorize the Jose D. Leon Guerrero Port Authority of Guam to waive sovereign immunity to satisfy a prerequisite for approval of a \$10,000,000 commercial loan.

Testimonies on Bill 86-32 (COR) should be addressed to Senator Thomas C. Ada, and will be accepted via hand delivery to our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until **April 18, 2013, 12:00 pm**. Individuals requiring special accommodations, auxiliary aids or services should submit their request to William Brennan at 473-3301. Please feel free to contact our office at 473-3301 should you have any questions.

Si Yu'os Ma'ase.

Thomas C. Ada



Senator Tom Ada

1st Notice of Public Hearing April 17, 2013

William Brennan <will@senatorada.org>

Wed, Apr 10, 2013 at 4:36 PM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org

Bcc: William Brennan <will@senatorada.org>

Hafa Adai,

Attached, please find the first Notice of Public Hearing for April 17, 2013. If you have trouble viewing the attachment or if you have any questions, please contact the office of Senator Tom Ada at 473-3301.

Respectfully,

—

William Bucky Brennan
Policy Analyst
Office of Senator Thomas C. Ada
I Mina' Trentai Dos Na Liheslaturan Guåhan - 32nd Guam Legislature
Office (671) 473 - 3301 / Cell (671) 797-9221

 **PH-1st Notice-April 17, 2013.pdf**
512K



Office of
Senator Tom Ada

PH-2nd Notice-April 17, 2013.pdf 512K

2nd Notice of Public Hearing: April 17, 2013

William Brennan <will@senatorada.org>

Mon, Apr 15, 2013 at 4:38 PM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org


Hafa Adai,

Please see the attached Notice of Public Hearing for 6:00pm Wednesday, April 17, 2013. If you have trouble viewing the attachment, please contact the office of Senator Tom Ada.

Respectfully,

--

William Bucky Brennan
Policy Analyst
Office of Senator Thomas C. Ada
I Mina' Trentai Dos Na Liheslaturan Guåhan - 32nd Guam Legislature
Office (671) 473 - 3301 / Cell (671) 797-9221

 **PH-2nd Notice-April 17, 2013.pdf**
512K



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Libeslaturan Guåhan • 32nd Guam Legislature

April 15, 2013

MEMORANDUM

To: All Senators, Media and Stakeholders
Fr: Senator Thomas C. Ada
Subject: **Public Hearing Notice: April 17, 2013**

Please be advised that the Committee on Public Safety, Infrastructure and Maritime Transportation is holding a public hearing on **April 17, 2013**. This meeting will take place in the Public Hearing Room of *I Liheslatura*, and broadcast on MCV channel 13 and GTA channel 21. The agenda is as follows:

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Si Yu'os Ma'ase.

Thomas C. Ada

Listserv: phnotice@guamlegislature.org
As of April 23, 2013

aalladi@guampdn.com
action@weareguahan.com
admin@frankaguonjr.com
admin@guamrealtors.com
admin@leapguam.com
admin@weareguahan.com
aguon4guam@gmail.com
ahernandez@guamlegislature.org
ajuan@kijifm104.com
alerta.jermaine@gmail.com
aline4families@gmail.com
am800guam@gmail.com
amanda@toduguam.com
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ang.duenas@gmail.com
angela.lgrios@gmail.com
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bruce.lloyd.media@gmail.com
carlos.pangelinan@senatorbjcruz.com
carlsonc@pstripes.osd.mil
ccastro@guamchamber.com.gu
charissatenorio@gmail.com
chechsantos@gmail.com
cheerfulcatunao@yahoo.com
cherbert.senatordrodriguez@gmail.com
chris.budasi@guamlegislature.org
chris.carillo@senatorbjcruz.com
cipo@guamlegislature.org
clerks@guamlegislature.org
clifton@toduguam.com
clynt@spbguam.com
colleenw@guamlegislature.org
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communications@guam.gov
conedera@mikelimtiaco.com
cor@guamlegislature.org
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cyrus@senatorada.org
dcrisost@guam.gannett.com
desori623@hotmail.com
dleddy@guamchamber.com.gu
dmgeorge@guampdn.com
dtamondong@guampdn.com
duenasenator@gmail.com

ed@tonyada.com
edelynn1130@hotmail.com
editor@mvguam.com
editor@saipantribune.com
edpocaigne@judiwonpat.com
elaine@tinamunabarnes.com
emqcho@gmail.com
ewinstoni@yahoo.com
eo@guamrealtors.com
etajalle@guamlegislature.org
evelyn4families@gmail.com
faith@judiwonpat.com
fbtorres@judiwonpat.com
floterlaje@gmail.com
frank@judiwonpat.com
frank@mvguam.com
gdumat-ol@guampdn.com
gerry@mvguam.com
gerrypartido@gmail.com
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gktv23@hotmail.com
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hana@guam-shinbun.com
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info@chinesetimesguam.com
janela@mvguam.com
jason@judiwonpat.com
jason@kuam.com
jblas@tinamunabarnes.com
jamacho@senatorada.org
jean@tinamunabarnes.com
jennifer.lj.dulla@gmail.com
jennifer@mvguam.com
jimespaldon@yahoo.com
jmesngon.senatordrodriguez@gmail.com
joan@kuam.com
joe@toduguam.com
john.calvo@noaa.gov
john@kuam.com
jpmanuel@gmail.com
jtenorio@guamcourts.org
jtyquiengco@spbguam.com
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kai@spbguam.com
kcn.kelly@gmail.com
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kevin@spbguam.com
khmg@hbcguam.net
koreannews@guam.net
koreatv@kuentos.guam.net
kstokish@gmail.com
kstonews@ite.net

Listserv: phnotice@guamlegislature.org
As of April 23, 2013

life@guampdn.com
llmatthews@guampdn.com
lou4families@gmail.com
louella@mvguam.com
louise@tonyada.com
m.salaila@yahoo.com
mabuhaynews@yahoo.com
mahoquinene@guam.net
malainse@gmail.com
maria.pangelinan@gec.guam.gov
maryfejeran@gmail.com
marymaravilla19@gmail.com
mcarlson@guamlegislature.org
mcpherson.kathryn@abc.net.au
menchu@toduguam.com
mike.lidia@senatorbjcruz.com
mike@mikelimtiaco.com
mindy@kuam.com
mis@guamlegislature.org
miseke@mcvguam.com
mlwheeler2000@yahoo.com
mmafnas@guamlegislature.org
monty.mcdowell@amiguam.com
mspeps4873@gmail.com
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mwatanabe@guampdn.com
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nick@kuam.com
nicole@toduguam.com
norman.aguilar@guamcc.edu
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office@senatorada.org
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rgibson@k57.com

richdevera@gmail.com
ricknauta@hitradio100.com
rlimtiaco@guampdn.com
rob@judiwonpat.com
rolly@ktkb.com
roryforguam@gmail.com
ryanjames@senatormorrison.com
santos.duenas@gmail.com
senator@senatorbjcruz.com
senator@tinamunabarnes.com
senatordrodriguez@gmail.com
senatorsannicolas@gmail.com
senatorTonyada@guamlegislature.org
senbenp@guam.net
sgfiores@tinamunabarnes.com
sgtarms@guamlegislature.org
sitarose2@yahoo.com
slimtiaco@guampdn.com
sonedera-salas@guamlegislature.org
speaker@judiwonpat.com
steve@judiwonpat.com
tanya4families@gmail.com
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thebigshow@k57.com
therese.hart.writer@gmail.com
therese@judiwonpat.com
tinamunabarnes@gmail.com
tjtaitano@cs.com
tom@senatorada.org
tommy@senatormorrison.com
tony@tonyada.com
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troy.torres@guam.gov
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<input type="checkbox"/>	amier@mvguam.com	amier@mvguam.com	Member
<input type="checkbox"/>	bmkelman@guampdn.com	bmkelman@guampdn.com	Member
<input type="checkbox"/>	breakfastshowk57@gmail.com	breakfastshowk57@gmail.com	Member
<input type="checkbox"/>	clynt@spbg Guam.com	clynt@spbg Guam.com	Member
<input type="checkbox"/>	contact@guambcc.org	contact@guambcc.org	Owner
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<input type="checkbox"/>	dmgeorge@guampdn.com	dmgeorge@guampdn.com	Member
<input type="checkbox"/>	dtamondong@guampdn.com	dtamondong@guampdn.com	Member
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<input type="checkbox"/>	life@guampdn.com	life@guampdn.com	Member
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<input type="checkbox"/>	news@spbg Guam.com	news@spbg Guam.com	Member
<input type="checkbox"/>	nick.deigado@kuam.com	nick.deigado@kuam.com	Member
<input type="checkbox"/>	odngirairiki@guampdn.com	odngirairiki@guampdn.com	Member
<input type="checkbox"/>	officemanager@hitradio100.com	officemanager@hitradio100.com	Member
<input type="checkbox"/>	rgibson@k57.com	rgibson@k57.com	Member
<input type="checkbox"/>	ricknauta@hitradio100.com	ricknauta@hitradio100.com	Member
<input type="checkbox"/>	rlimtiaco@guampdn.com	rlimtiaco@guampdn.com	Member
<input type="checkbox"/>	sabrina@kuam.com	sabrina@kuam.com	Member
<input type="checkbox"/>	slimtiaco@guampdn.com	slimtiaco@guampdn.com	Member
<input type="checkbox"/>	telo.taitague@guam.gov	telo.taitague@guam.gov	Member
<input type="checkbox"/>	thebigshow@spbg Guam.com	thebigshow@spbg Guam.com	Member
<input type="checkbox"/>	zita@mvguam.com	zita@mvguam.com	Member



Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation
I Mina'trentai Dos Na Liheslaturan Guåhan • 32nd Guam Legislature

AGENDA

PUBLIC HEARING

Wednesday, April 17, 2013

Public Hearing Room, *I Liheslaturan Guåhan*

The agenda is as follows:

6:00pm

Bill 86-32 (COR): T.C. Ada

An Act to add §10238 to Article 2, Chapter 10 of Title 12 Guam Code Annotated to Authorize the Jose D. Leon Guerrero Port Authority of Guam to waive sovereign immunity to satisfy a prerequisite for approval of a \$10,000,000.00 commercial loan.

Testimonies for the Public Hearing should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until April 18, 2013, 12:00 pm. Individuals requiring special accommodations, auxiliary aids, or services should submit their request to William Brennan at 473-3301. Please feel free to contact our office should you have any questions or concerns.



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

April 5, 2013

4/05/13 2:39 PM
ATTORNEY TO REPRESENT
RECEIVED by the
Office of Senator
Thomas C. Ada

The Honorable Thomas C. Ada
Senator, 32nd Guam Legislature
Chairman, Committee on Public Safety,
Infrastructure & Maritime Transportation
Ada Plaza Center, Ste. 207
173 Aspinall Avenue
Hagatna, Guam 96910

Subject: Marine Service Life Extension (MSLE) Loan


Hafa Adai Senator Ada:

Transmitted herewith for your review and consideration is the original copy of the Port Authority of Guam (PAG) Board of Directors Resolution No. 2013-02 relative to waiving sovereign immunity as a condition of the MSLE Loan and the draft bill submitted by Bank of Guam.

Also, provided is a copy of letter dated April 5, 2013 from Mr. Henry J. Taitano, Acting Administrator for Guam Economic Development Authority confirming its desire relative to the propose bill. Please note that Mr. Keven Camacho of Bank of Guam has concurred, through email correspondence, that the only outstanding issue regarding the PAG's MSLE Loan is the legislation relative to the Waiver of Sovereign Immunity.

We seek your assistance in introducing legislation relative to the attached proposal. Should you need to further discuss any of the above matter, please feel free to contact me.

Sincerely,


JOANNE M. S. BROWN
General Manager

cc: Board of Directors
Mr. Keven Camacho, BOG
Mr. Henry J. Taitano, GEDA

BOARD OF DIRECTORS

*Daniel J. Tydingco, Chairman
Christine Won Pat Baleto, Vice Chairperson
Mary Michelle Gibson, Secretary
Michael T. Benito, Member
Eduardo R. Ilao, Member*



Resolution No. 2013-02

**RELATIVE TO WAIVING SOVEREIGN IMMUNITY
AS A CONDITION OF BANK OF GUAM LOAN**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on March 30, 2012, the Board of Directors authorized the Port Authority of Guam (PAG) to initiate the procurement process with the Guam Economic Development Agency (GEDA) to solicit financial assistance in an amount up to \$15M to fund the service life extension repairs for the wharfs; and

WHEREAS, after some developments, the Board of Directors at its June 28, 2012 regular board meeting concurred with the issuance of the Request for Proposal (RFP) No. 12-014 for a commercial lending institution for the proposed financing of the Port's service life extension repairs on the Port's wharf; financial management system and top lifter with the total amount not to exceed Ten Million Dollars (\$10,000,000.00); and

WHEREAS, GEDA issued the RFP on September 14, 2012 and received three responses to the proposal. Two of the responses were deemed acceptable and the third withdrew its interest; and

WHEREAS, after a thorough analysis, the Evaluation Team scored and ranked the offerors based on their response to the request for proposal; and

WHEREAS, on October 26, 2012, the Negotiation Team met with Bank of Guam and was able to successfully negotiate the terms and conditions; and

WHEREAS, on January 22, 2013, it was made known to the Port Authority of Guam that Bank of Guam through review by their legal counsel, had expressed that the condition on closing the loan was for the Port Authority of Guam to waive its sovereign immunity; now therefore be it

RESOLVED, that the Port Authority of Guam Board of Directors approves to waive the Port Authority of Guam's sovereign immunity as a condition to close the loan and as well agrees to the commitment terms by Bank of Guam; and be it further

RESOLVED, that this resolution be transmitted to the Chairman, Committee on Public Safety, Infrastructure & Maritime Transportation of the 32nd Guam Legislature to introduce legislation with respect to sovereign immunity as stated herein; and be it further

RESOLVED, the Chairman certify to and the Secretary attest the adoption hereof and that a copy of this resolution be transmitted to the Chairman, Committee on Public Safety, Infrastructure & Maritime Transportation of the 32nd Guam Legislature.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 15th DAY OF FEBRUARY, 2013.**

**DANIEL J. TYDINGCO
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

**MARY MICHELLE GIBSON
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

