



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
~~Legislative Secretary~~

MAY 12 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT	
Received By	<i>[Signature]</i>
Time	<u>10:50am</u>
Date	<u>5.13.99</u>

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 134 (COR), "AN ACT TO AMEND §56403 AND TO ADD §§56403.1 - 56403.17 TO ARTICLE 4, CHAPTER 56, PART 6, DIVISION 2 OF TITLE 18, AND TO ADD §§10107(l) - 10107(r) AND 10104(m) TO ARTICLE 1, CHAPTER 10 OF TITLE 12, ALL OF THE GUAM CODE ANNOTATED RELATIVE TO COMPULSORY PILOTAGE OF VESSELS WITHIN GUAM WATERS", which I have signed into law today as **Public Law No. 25-09**.

Federal law requires a vessel's master to remain fully responsible when bringing a vessel into a harbor. Our local law, in contrast, provided that a harbor pilot would be in charge of a vessel, instead of its master, when a harbor pilot boarded the vessel to bring it into port.

This legislation realigns our local laws to conform to federal practice in regard to the responsibility for a vessel when bringing it into port.

There may need to be some amendments made, however, because there are other deficiencies in Guam law which become apparent. For example, our law does not contain an adequate definition of "vessel", allowing anything that floats to be a vessel, and thereby subject to the compulsory pilotage provisions of this legislation.

Office of the Speaker
ANTONIO R. UNPINGCO
 Date: 5-12-99
 Time: 1450
 Rec'd by: [Signature]
 Print Name: Charles

00220

Although there are exemptions from the application of this compulsory pilotage provision, they may not be adequate to exempt the recreational boaters. For example, a couple guys going out fishing who occasionally sell their catch may be involved in trade or commerce, requiring them to hire a pilot to guide their boat back into the harbor. Although the exemptions cover such vessels as dinner cruise boats or those used in the tourism industry, recreational boaters are not specifically exempt.

Another consideration is the application of compulsory pilotage under all circumstances. Since Apra Harbor is fairly easy to navigate, perhaps large vessels should be allowed to enter and exit without compulsory pilotage during daylight hours.

A third consideration is that this legislation does not adequately define "within two (2) nautical miles of Apra Harbor", which is the location where compulsory pilotage is required. There is no reference point in the legislation, however, the maps and charts of Guam waters do show the buoy location at the entrance of the harbor which should be the reference point. Guam does not have such a buoy at this location, but the maps do mark where it is supposed to be. Perhaps this buoy location can be cited in determining the "two (2) nautical miles of Apra Harbor".

Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
 original attached for vetoed bill

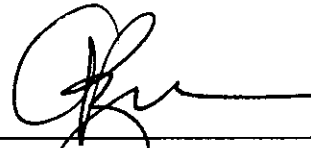
cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

00230

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session

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

This is to certify that Substitute Bill No. 134 (COR), "AN ACT TO *AMEND* §56403, AND TO *ADD* §§56403.1 - 56403.17 TO ARTICLE 4, CHAPTER 56, PART 6, DIVISION 2 OF TITLE 18, AND TO *ADD* §§10107(l) - 10107(r) AND 10104(m) TO ARTICLE 1, CHAPTER 10 OF TITLE 12, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO COMPULSORY PILOTAGE OF VESSELS WITHIN GUAM WATERS," was on the 28th day of April, 1999, duly and regularly passed.



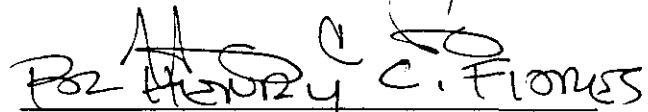
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 30th day of APRIL, 1999,
at 5:44 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: 5-12-99

Public Law No. 25-09

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 134 (COR)

As substituted and amended
on the Floor.

Introduced by:

C. A. Leon Guerrero

A.C. Lamorena V

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

Mark Forbes

L. F. Kasperbauer

K. S. Moylan

V. C. Pangelinan

J. C. Salas

S. A. Sanchez, II

A. R. Unpingco

**AN ACT TO AMEND §56403, AND TO ADD §§56403.1
- 56403.17 TO ARTICLE 4, CHAPTER 56, PART 6,
DIVISION 2 OF TITLE 18, AND TO ADD §§10107(l) -
10107(r) AND 10104(m) TO ARTICLE 1, CHAPTER 10
OF TITLE 12, ALL OF THE GUAM CODE
ANNOTATED, RELATIVE TO COMPULSORY
PILOTAGE OF VESSELS WITHIN GUAM WATERS.**

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

2 **Section 1. Short Title.** This Act may be cited as the "*Compulsory*

3 *Pilotage Act of 1999.*"

1 **Section 2. Legislative Intent.** *I Liheslaturan Guahan* finds that Civil
2 Code Section 2036 (18 GCA §56403) is in conflict with Federal Law in that the
3 former provides that a harbor pilot upon boarding a vessel is in full charge of the
4 vessel's navigation, whereas Federal Law requires the vessel's master to remain
5 fully responsible, with the harbor pilot serving in an advisory capacity only.
6 Further, existing Guam law does *not* clearly provide for compulsory pilotage, in
7 that under the above provision a pilot must be taken aboard a vessel only "if one
8 offers himself." Harbor regulations adopted by the Port Authority of Guam
9 ("PAG")-require the use of a harbor pilot by most vessels entering Guam waters
10 exceed a certain minimize size, *however*, these regulations are *not* consistent with
11 Civil Code Section 2036 (18 G.C.A. §56403) and therefore could potentially be
12 challenged. Finally, neither Guam's maritime laws nor the PAG's harbor rules
13 currently provide a means of regulating the conduct of harbor pilots or ensuring
14 safe navigation of vessels in Guam waters and as a result the United States Coast
15 Guard may be required to assume responsibility for regulating pilotage of vessels
16 in Guam waters, pursuant to the provisions of §§8501-8503 of Title 46, United
17 States Code, although pilotage is commonly "regulated only in conformity with
18 the laws of the States" (46 U.S.C. §8501(a)). Accordingly, Guam's antiquated
19 pilotage law should be updated to bring it into conformity with Federal Laws and
20 enable the Port Authority of Guam to more effectively exercise jurisdiction over
21 the pilotage of vessels in Guam waters, so that this important field may remain
22 a subject of local regulation and control.

23 **Section 3.** Section 56403 of Article 4, Chapter 56, Part 6, Division 2 of Title
24 18 of the Guam Code Annotated is hereby *amended* to read as follows:

25 **"Section 56403. Compulsory Pilotage.** On entering or

1 leaving, or operating a vessel within, a port or harbor, the master of a
2 vessel, *unless otherwise exempt* under the provisions of this Chapter or
3 pursuant to Federal Law, must take on a pilot duly licensed by the Port
4 Authority of Guam to provide pilotage services. While the pilot is on board
5 he shall advise the vessel's master as to its navigation. *However*, the master
6 of the vessel shall at all times remain in full charge and control of the vessel
7 and its navigation."

8 **Section 4.** Section 56403.1 is hereby *added* to Article 4, Chapter 56, Part 6,
9 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

10 **"Section 56403.1. Issuance of Harbor Pilot's Licenses.** The
11 Manager of the Port Authority of Guam shall have the power and duty to
12 issue pilot licenses pursuant to credentialing criteria established by rules
13 and regulations of the Authority for persons who seek to engage in the
14 profession of harbor pilot within Guam. Each such license shall be valid
15 for a period of five (5) years, or until the expiration of the applicant's U.S.
16 Coast Guard pilot's license, whichever first occurs."

17 **Section 5.** Section 56403.2 is hereby *added* to Article 4, Chapter 56, Part 6,
18 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

19 **"Section 56403.2. Licensing Regulations.** The Board of
20 Directors of the Port Authority of Guam shall adopt rules and regulations
21 establishing credentialing criteria for and governing the conduct of pilots.
22 In addition to credentialing criteria and standards of professional conduct,
23 such rules and regulations shall, at a minimum, set forth the procedures for
24 filing and processing license applications and for investigating and
25 resolving complaints against pilots, as well as the grounds for denial,

1 suspension or revocation of a pilot's license *not* inconsistent with the
2 provisions of this Chapter."

3 **Section 6.** Section 56403.3 is hereby *added* to Article 4, Chapter 56, Part 6,
4 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

5 **"Section 56403.3. Basis for Approving Applications for Harbor**
6 **Pilot's License.** The Manager of the Port Authority of Guam shall
7 determine the professional qualifications necessary to obtain a pilot's
8 license in accordance with the Authority's rules and regulations. As the
9 basis for approving applications, the Manager may by rule accept the
10 determinations of one or more trade or professional organizations, accept
11 a license or certification issued by an agency of the United States, or of a
12 state, territory or possession of the United States, require that an applicant
13 successfully complete an oral or written examination, or both, administered
14 by the Port Authority of Guam or appropriate professional organization,
15 or provide other evidence of competence satisfactory to the Manager. In
16 establishing credentialing criteria and in administering examinations, if
17 required, the Port Authority of Guam may enter into contracts for the
18 purchase, use, scoring or validation of professional examinations."

19 **Section 7.** Section 56403.4 is hereby *added* to Article 4, Chapter 56, Part 6,
20 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

21 **"Section 56403.4. License Fees.** The Board of Directors of
22 the Port Authority of Guam may adopt and from time to time adjust, in
23 accordance with the Administrative Adjudication Law, a schedule of fees
24 and charges for each application, examination, issuance, renewal or
25 replacement of a harbor pilot's license in order to recover the costs thereof."

1 **Section 8.** Section 56403.5 is hereby *added* to Article 4, Chapter 56, Part 6,
2 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

3 **"Section 56403.5. Grandfathering and Automatic License**
4 **Renewal.** No pilot who on the effective date of this enactment is
5 employed or operating a business as a pilot in Guam and who, further, is
6 duly licensed by the United States Coast Guard as a pilot shall be denied
7 a territorial harbor pilot's license or a renewal thereof. Nor shall any
8 application for renewal of a territorial harbor pilot's license be denied,
9 *except* as provided by this Chapter, as long as the applicant possesses the
10 *minimum* qualifications established by the Port Authority of Guam and
11 remains in active service as a pilot on Guam. *However,* nothing herein shall
12 prevent the suspension, revocation or denial of a pilot's license for good
13 cause, in accordance with the provisions of this Chapter and the rules and
14 regulations of the Port Authority of Guam."

15 **Section 9.** Section 56403.6 is hereby *added* to Article 4, Chapter 56, Part 6,
16 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

17 **"Section 56403.6. Grounds for Denial, Suspension or**
18 **Revocation.** *Except* as provided in §56403.5, the Manager may deny the
19 issuance of a license to any applicant and may suspend or revoke the
20 license of any pilot for any cause authorized by law or the Port Authority
21 of Guam's pilotage rules and regulations, including but not limited to the
22 following:

- 23 1. violation of this Chapter or any rule or regulation of the
24 Port Authority of Guam;
- 25 2. negligent pilotage;

- 1 3. habitual use of any substance rendering a harbor pilot
- 2 unfit to be entrusted with the safe navigation of a vessel;
- 3 4. inability to perform the duties of a harbor pilot;
- 4 5. failure to maintain active service as a pilot on Guam;
- 5 6. procurement of a license through fraudulent
- 6 misrepresentation or deceit;
- 7 7. violation of any law or regulation prohibiting unfair or
- 8 deceptive acts or practices;
- 9 8. violation of any law or regulation intended to promote
- 10 marine safety or protect navigable waters or the environment;
- 11 9. failure to report marine accidents in accordance with the
- 12 rules and regulations of the Port Authority of Guam; *or*
- 13 10. failure to maintain a current and valid Federal pilots'
- 14 license issued in accordance with Chapter 71 of Title 46 of the United
- 15 States Code."

16 **Section 10.** Section 56403.7 is hereby *added* to Article 4, Chapter 56,
17 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

18 **"Section 56403.7. Pilot License Advisory Committee.** The
19 Manager shall appoint a Pilot License Advisory Committee, consisting of
20 seven (7) members, including the Harbor Master, who shall serve as its
21 Chairperson; Assistant Harbor Master; three (3) licensed harbor pilots; and
22 two (2) members representing the shipping industry. No two (2) members
23 of the Committee shall be employed by the same company or by affiliated
24 companies. Each member except the Harbor Master and Assistant Harbor
25 Master shall serve for a term of two (2) years and until replaced, which

1 terms shall be staggered so that the terms of no more than four (4) members
2 will expire in a single year. The sole function of the Pilot License Advisory
3 Committee shall be to review and recommend appropriate disposition of
4 complaints and any proposed disciplinary action against a harbor pilot. No
5 pilot's license shall be suspended or revoked, or any other disciplinary
6 action taken, *unless* such action has been reviewed by a majority of the
7 membership of the Committee, or thirty (30) days have passed from
8 submittal of the matter to the Committee for such review. The Manager
9 and Board of Directors of the Port Authority of Guam shall seek the advice
10 and recommendations of the Committee on any other matters relating to
11 pilotage."

12 **Section 11.** Section 56403.8 is hereby *added* to Article 4, Chapter 56,
13 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

14 "Section 56403.8. **Appeal Procedure.** Any person may
15 request a review of the Manager's denial, suspension or revocation of a
16 pilot's license by the Board of Directors of the Port Authority, provided a
17 written notice of appeal is delivered to the Manager within thirty (30) days
18 of his final decision, which shall be in writing and delivered by registered
19 mail to the applicant and to the Pilot License Advisory Committee.
20 Thereafter, any denial, suspension or revocation of a license shall be subject
21 to administrative adjudication in accordance with Administrative
22 Adjudication Law. In the alternative, the Port Authority of Guam may
23 adopt rules of disciplinary procedure pursuant to the Administrative
24 Adjudication Law, in which event such rules shall govern the procedure for
25 any suspension or revocation of a harbor pilot's license."

1 **Section 12.** Section 56403.9 is hereby *added* to Article 4, Chapter 56,
2 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

3 **“Section 56403.9. Exhibition of License.** A pilot, on
4 boarding a vessel, and if required by the master thereof, shall exhibit the
5 pilot’s license or a photostatic copy thereof.”

6 **Section 13.** Section 56403.10 is hereby *added* to Article 4, Chapter 56,
7 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

8 **“Section 56403.10. Piloting Without a License.** It shall be
9 unlawful for any person *not* licensed as a pilot under this Chapter to pilot
10 or to offer to pilot a vessel *not* exempt from this Chapter. It shall be
11 unlawful for any person on board a tug or towboat to tow a vessel or barge
12 *not* exempt from this Chapter, *unless* the vessel or barge shall have on board
13 a pilot licensed under this Chapter. Violation of this Section shall be a
14 misdemeanor and in addition, shall be subject to assessment of any fines or
15 penalties authorized by the rules and regulations of the Port Authority of
16 Guam.”

17 **Section 14.** Section 56403.11 is hereby *added* to Article 4, Chapter 56,
18 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

19 **“Section 56403.11. Rates of Pilotage.** The Port Authority of
20 Guam shall *not* provide or warrant the availability of pilot services, which
21 shall be provided solely by the private sector. The terms of any contract for
22 pilotage, including rates or pilot fees, shall be negotiated and agreed upon
23 by the parties thereto, *except* as specifically provided herein.”

24 **Section 15.** Section 56403.12 is hereby *added* to Article 4, Chapter 56,
25 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

1 **“Section 56403.12. Lien for Pilotage Fees.** Every licensed
2 pilot shall have a lien for pilotage fees upon the whole of any vessel liable
3 to the pilot therefor.”

4 **Section 16.** Section 56403.13 is hereby *added* to Article 4, Chapter 56,
5 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

6 **“Section 56403.13. Description of Pilotage Waters.** Pilotage
7 waters as established under this Chapter shall consist of all waters of the
8 Guam within two (2) nautical miles of Apra Harbor and all waters within
9 Apra Harbor, exclusive of Federally restricted waters.”

10 **Section 17.** Section 56403.14 is hereby *added* to Article 4, Chapter 56,
11 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

12 **“Section 56403.14. Mandatory Use of Harbor Pilot.** Every
13 vessel involved in trade or commerce, other than an exempt vessel,
14 entering, departing from or traversing the waters of Apra Harbor shall
15 employ a harbor pilot. *However,* a vessel declared by the Harbor Master or
16 the Captain of the Port to be in immediate danger of destruction or which
17 poses an immediate hazard to public safety by its presence in any harbor
18 may be moved without a pilot when a pilot is not immediately available.”

19 **Section 18.** Section 56403.15 is hereby *added* to Article 4, Chapter 56,
20 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

21 **“Section 56403.15. Exempt Vessels.** A harbor pilot
22 is not required for:

- 23 1. vessels *not* involved in trade or commerce;
- 24 2. enrolled and other vessels that are exempt under the laws
25 of the United States of America, provided they are under the

1 direction and control of a Federally licensed pilot; *and*

2 3. vessels home-ported on Guam and involved in the
3 tourism trade, such as dinner-cruise boats, diving and fishing charter
4 boats, submersibles and rental craft.”

5 **Section 19.** Section 56403.16 is hereby *added* to Article 4, Chapter 56,
6 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

7 **“Section 56403.16. Exempt During Daylight Hours Only.** The
8 following vessels may enter, exit and be operated in Apra Harbor without
9 the assistance of a pilot, but only during daylight hours:

10 1. vessels under five hundred (500) gross tons; *provided*, the
11 master of the vessel has previously entered and exited Apra Harbor
12 while operating a vessel with the assistance of a licensed pilot and
13 provided, further, that adequate two-way communications between
14 the vessel and the Port Authority’s Harbor Master and U.S. Coast
15 Guard’s Captain of the Port are continuously maintained, either
16 directly or through the vessel’s agent, while the vessel is underway
17 in Guam waters; *and*

18 2. tugs and tows home-ported on Guam or the
19 Commonwealth of the Northern Mariana Islands; *provided*, the master
20 of the tug and tow has previously entered and exited Apra Harbor
21 while operating a vessel with the assistance of a licensed pilot.”

22 **Section 20.** Section 56403.17 is hereby *added* to Article 4, Chapter 56,
23 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

24 **“Section 56403.17. Exception for Safe Navigation.** This
25 Section is *not* intended to negate or limit the Port Authority of Guam’s

1 responsibility for the safe navigation of all vessels within Guam waters.
2 Accordingly, the Port Authority's Harbor Master may recommend or
3 require the assistance of a pilot for any vessel exempt by this provision *if*
4 the Harbor Master determines such is necessary to ensure safety in any port
5 or other waters of Guam."

6 **Section 21.** Section 10107(l) is hereby *added* to Article 1, Chapter 10 of
7 Title 12 of the Guam Code Annotated to read as follows:

8 "(l) Grant licenses to pilots pursuant to §56403 of Title 18 of the
9 Guam Code Annotated;"

10 **Section 22.** Section 10107(m) is hereby *added* to Article 1, Chapter 10
11 of Title 12 of the Guam Code Annotated to read as follows:

12 "(m) Develop appropriate standards and procedures for licensure of
13 harbor pilots, including such examinations and investigations to determine
14 whether persons applying for a pilot's license are qualified as the Manager
15 deems necessary or appropriate;"

16 **Section 23.** Section 10107(n) is hereby *added* to Article 1, Chapter 10
17 of Title 12 of the Guam Code Annotated to read as follows:

18 "(n) Enforce the provisions of §56403 of Title 18 of the Guam Code
19 Annotated and rules adopted pursuant thereto;"

20 **Section 24.** Section 10107(o) is hereby *added* to Article 1, Chapter 10
21 of Title 12 of the Guam Code Annotated to read as follows:

22 "(o) Suspend, revoke or deny the issuance of any pilot's license
23 for any cause prescribed by §56403 of Title 18 of the Guam Code
24 Annotated, or for any violation of the Port Authority of Guam's pilotage
25 rules and regulations;"

1 **Section 25.** Section 10107(p) is hereby *added* to Article 1, Chapter 10
2 of Title 12 of the Guam Code Annotated to read as follows:

3 “(p) Appoint members of the Pilot License Advisory Committee;”

4 **Section 26.** Section 10107(q) is hereby *added* to Article 1, Chapter 10
5 of Title 12 of the Guam Code Annotated to read as follows:

6 “(q) Investigate complaints and any violation of the provisions of
7 §56403 of Title 18 of the Guam Code Annotated or the Port of Authority of
8 Guam's rules and regulations; *and*”

9 **Section 27.** Section 10107(r) is hereby *added* to Article 1, Chapter 10
10 of Title 12 of the Guam Code Annotated to read as follows:

11 “(r) Do all things reasonable, necessary, and expedient to ensure
12 safe navigation and proper pilotage, and to facilitate the efficient
13 administration of §56403 of Title 18 of the Guam Code Annotated.”

14 **Section 28.** Section 10104(m) is hereby *added* to Article 1, Chapter 10
15 of Title 12 of the Guam Code Annotated to read as follows:

16 “(m) Adopt, amend and repeal pilotage rules and regulations in
17 accordance with the Administrative Adjudication Law and §56403 of Title
18 18 of the Guam Code Annotated, which rules and regulations shall provide
19 for safe and efficient navigation of all vessels entering, leaving and
20 operating within Guam waters that are required by §56403.13 to have a
21 licensed pilot on board; and to ensure an adequate supply of qualified
22 pilots in aid of commerce and navigation.”

23 **Section 29. Savings Clause.** Pending the promulgation or
24 amendment of rules and regulations governing mandatory pilot licensing by the
25 Port Authority of Guam pursuant to the Administrative Adjudication Law, the

1 Port Authority's existing harbor rules and regulations shall be construed as
2 requiring the use of a harbor pilot by all vessels within pilotage waters, *unless*
3 exempt pursuant to §56403.15, and for the supervision and investigation of
4 complaints against all pilots by the Manager of the Port Authority of Guam.

5 **Section 30. Severability.** In the event any portion of this Act is
6 found to be contrary to Federal Law, all portions of this Act not so found shall
7 remain valid and in full force and effect.

8 **Section 31. Effective Date.** The above provisions shall take effect
9 immediately upon enactment of this Act.



MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

April 30, 1999

The Honorable Carl T.C. Gutierrez
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Gutierrez:

Transmitted herewith are Substitute Bill Nos. 53 (COR) and 134 (COR) which were passed by *I Mina'Bente Singko Na Liheslaturan Guåhan* on April 28, 1999.

Sincerely,

JOANNE M.S. BROWN
Senator and Legislative Secretary

Enclosure (2)

REC: POZ HENRY C. FLORES
TIME: 5:46 pm DATE: 4/30/99

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session


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

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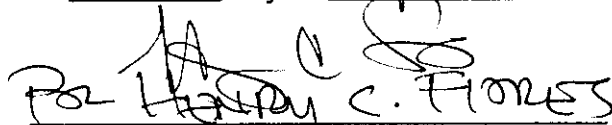
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 30TH day of April, 1999,
at 5:44 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: _____

Public Law No. _____

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 134 (COR)

As substituted and amended
on the Floor.

Introduced by:

C. A. Leon Guerrero
A.C. Lamorena V
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
J. M.S. Brown
E. B. Calvo
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S. A. Sanchez, II
A. R. Unpingco

**AN ACT TO AMEND §56403, AND TO ADD §§56403.1
- 56403.17 TO ARTICLE 4, CHAPTER 56, PART 6,
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4 vessel's navigation, whereas Federal Law requires the vessel's master to remain
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8 offers himself." Harbor regulations adopted by the Port Authority of Guam
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14 safe navigation of vessels in Guam waters and as a result the United States Coast
15 Guard may be required to assume responsibility for regulating pilotage of vessels
16 in Guam waters, pursuant to the provisions of §§8501-8503 of Title 46, United
17 States Code, although pilotage is commonly "regulated only in conformity with
18 the laws of the States" (46 U.S.C. §8501(a)). Accordingly, Guam's antiquated
19 pilotage law should be updated to bring it into conformity with Federal Laws and
20 enable the Port Authority of Guam to more effectively exercise jurisdiction over
21 the pilotage of vessels in Guam waters, so that this important field may remain
22 a subject of local regulation and control.

23 **Section 3.** Section 56403 of Article 4, Chapter 56, Part 6, Division 2 of Title
24 18 of the Guam Code Annotated is hereby *amended* to read as follows:

25 **"Section 56403. Compulsory Pilotage.** On entering or

1 leaving, or operating a vessel within, a port or harbor, the master of a
2 vessel, *unless otherwise exempt* under the provisions of this Chapter or
3 pursuant to Federal Law, must take on a pilot duly licensed by the Port
4 Authority of Guam to provide pilotage services. While the pilot is on board
5 he shall advise the vessel's master as to its navigation. *However*, the master
6 of the vessel shall at all times remain in full charge and control of the vessel
7 and its navigation."

8 **Section 4.** Section 56403.1 is hereby *added* to Article 4, Chapter 56, Part 6,
9 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

10 "Section 56403.1. **Issuance of Harbor Pilot's Licenses.** The
11 Manager of the Port Authority of Guam shall have the power and duty to
12 issue pilot licenses pursuant to credentialing criteria established by rules
13 and regulations of the Authority for persons who seek to engage in the
14 profession of harbor pilot within Guam. Each such license shall be valid
15 for a period of five (5) years, or until the expiration of the applicant's U.S.
16 Coast Guard pilot's license, whichever first occurs."

17 **Section 5.** Section 56403.2 is hereby *added* to Article 4, Chapter 56, Part 6,
18 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

19 "Section 56403.2. **Licensing Regulations.** The Board of
20 Directors of the Port Authority of Guam shall adopt rules and regulations
21 establishing credentialing criteria for and governing the conduct of pilots.
22 In addition to credentialing criteria and standards of professional conduct,
23 such rules and regulations shall, at a minimum, set forth the procedures for
24 filing and processing license applications and for investigating and
25 resolving complaints against pilots, as well as the grounds for denial,

1 suspension or revocation of a pilot's license *not* inconsistent with the
2 provisions of this Chapter."

3 **Section 6.** Section 56403.3 is hereby *added* to Article 4, Chapter 56, Part 6,
4 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

5 **"Section 56403.3. Basis for Approving Applications for Harbor**
6 **Pilot's License.** The Manager of the Port Authority of Guam shall
7 determine the professional qualifications necessary to obtain a pilot's
8 license in accordance with the Authority's rules and regulations. As the
9 basis for approving applications, the Manager may by rule accept the
10 determinations of one or more trade or professional organizations, accept
11 a license or certification issued by an agency of the United States, or of a
12 state, territory or possession of the United States, require that an applicant
13 successfully complete an oral or written examination, or both, administered
14 by the Port Authority of Guam or appropriate professional organization,
15 or provide other evidence of competence satisfactory to the Manager. In
16 establishing credentialing criteria and in administering examinations, if
17 required, the Port Authority of Guam may enter into contracts for the
18 purchase, use, scoring or validation of professional examinations."

19 **Section 7.** Section 56403.4 is hereby *added* to Article 4, Chapter 56, Part 6,
20 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

21 **"Section 56403.4. License Fees.** The Board of Directors of
22 the Port Authority of Guam may adopt and from time to time adjust, in
23 accordance with the Administrative Adjudication Law, a schedule of fees
24 and charges for each application, examination, issuance, renewal or
25 replacement of a harbor pilot's license in order to recover the costs thereof."

1 **Section 8.** Section 56403.5 is hereby *added* to Article 4, Chapter 56, Part 6,
2 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

3 **“Section 56403.5. Grandfathering and Automatic License**
4 **Renewal.** No pilot who on the effective date of this enactment is
5 employed or operating a business as a pilot in Guam and who, further, is
6 duly licensed by the United States Coast Guard as a pilot shall be denied
7 a territorial harbor pilot’s license or a renewal thereof. Nor shall any
8 application for renewal of a territorial harbor pilot’s license be denied,
9 *except* as provided by this Chapter, as long as the applicant possesses the
10 minimum qualifications established by the Port Authority of Guam and
11 remains in active service as a pilot on Guam. *However*, nothing herein shall
12 prevent the suspension, revocation or denial of a pilot’s license for good
13 cause, in accordance with the provisions of this Chapter and the rules and
14 regulations of the Port Authority of Guam.”

15 **Section 9.** Section 56403.6 is hereby *added* to Article 4, Chapter 56, Part 6,
16 Division 2 of Title 18 of the Guam Code Annotated to read as follows:

17 **“Section 56403.6. Grounds for Denial, Suspension or**
18 **Revocation.** *Except* as provided in §56403.5, the Manager may deny the
19 issuance of a license to any applicant and may suspend or revoke the
20 license of any pilot for any cause authorized by law or the Port Authority
21 of Guam’s pilotage rules and regulations, including but not limited to the
22 following:

- 23 1. violation of this Chapter or any rule or regulation of the
24 Port Authority of Guam;
- 25 2. negligent pilotage;

- 1 3. habitual use of any substance rendering a harbor pilot
- 2 unfit to be entrusted with the safe navigation of a vessel;
- 3 4. inability to perform the duties of a harbor pilot;
- 4 5. failure to maintain active service as a pilot on Guam;
- 5 6. procurement of a license through fraudulent
- 6 misrepresentation or deceit;
- 7 7. violation of any law or regulation prohibiting unfair or
- 8 deceptive acts or practices;
- 9 8. violation of any law or regulation intended to promote
- 10 marine safety or protect navigable waters or the environment;
- 11 9. failure to report marine accidents in accordance with the
- 12 rules and regulations of the Port Authority of Guam; *or*
- 13 10. failure to maintain a current and valid Federal pilots'
- 14 license issued in accordance with Chapter 71 of Title 46 of the United
- 15 States Code."

16 **Section 10.** Section 56403.7 is hereby *added* to Article 4, Chapter 56,
17 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

18 **"Section 56403.7. Pilot License Advisory Committee.** The
19 Manager shall appoint a Pilot License Advisory Committee, consisting of
20 seven (7) members, including the Harbor Master, who shall serve as its
21 Chairperson; Assistant Harbor Master; three (3) licensed harbor pilots; and
22 two (2) members representing the shipping industry. No two (2) members
23 of the Committee shall be employed by the same company or by affiliated
24 companies. Each member except the Harbor Master and Assistant Harbor
25 Master shall serve for a term of two (2) years and until replaced, which

1 terms shall be staggered so that the terms of no more than four (4) members
2 will expire in a single year. The sole function of the Pilot License Advisory
3 Committee shall be to review and recommend appropriate disposition of
4 complaints and any proposed disciplinary action against a harbor pilot. No
5 pilot's license shall be suspended or revoked, or any other disciplinary
6 action taken, *unless* such action has been reviewed by a majority of the
7 membership of the Committee, or thirty (30) days have passed from
8 submittal of the matter to the Committee for such review. The Manager
9 and Board of Directors of the Port Authority of Guam shall seek the advice
10 and recommendations of the Committee on any other matters relating to
11 pilotage."

12 **Section 11.** Section 56403.8 is hereby *added* to Article 4, Chapter 56,
13 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

14 "Section 56403.8. **Appeal Procedure.** Any person may
15 request a review of the Manager's denial, suspension or revocation of a
16 pilot's license by the Board of Directors of the Port Authority, provided a
17 written notice of appeal is delivered to the Manager within thirty (30) days
18 of his final decision, which shall be in writing and delivered by registered
19 mail to the applicant and to the Pilot License Advisory Committee.
20 Thereafter, any denial, suspension or revocation of a license shall be subject
21 to administrative adjudication in accordance with Administrative
22 Adjudication Law. In the alternative, the Port Authority of Guam may
23 adopt rules of disciplinary procedure pursuant to the Administrative
24 Adjudication Law, in which event such rules shall govern the procedure for
25 any suspension or revocation of a harbor pilot's license."

1 **Section 12.** Section 56403.9 is hereby *added* to Article 4, Chapter 56,
2 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

3 **“Section 56403.9. Exhibition of License.** A pilot, on
4 boarding a vessel, and if required by the master thereof, shall exhibit the
5 pilot’s license or a photostatic copy thereof.”

6 **Section 13.** Section 56403.10 is hereby *added* to Article 4, Chapter 56,
7 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

8 **“Section 56403.10. Piloting Without a License.** It shall be
9 unlawful for any person *not* licensed as a pilot under this Chapter to pilot
10 or to offer to pilot a vessel *not* exempt from this Chapter. It shall be
11 unlawful for any person on board a tug or towboat to tow a vessel or barge
12 *not* exempt from this Chapter, *unless* the vessel or barge shall have on board
13 a pilot licensed under this Chapter. Violation of this Section shall be a
14 misdemeanor and in addition, shall be subject to assessment of any fines or
15 penalties authorized by the rules and regulations of the Port Authority of
16 Guam.”

17 **Section 14.** Section 56403.11 is hereby *added* to Article 4, Chapter 56,
18 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

19 **“Section 56403.11. Rates of Pilotage.** The Port Authority of
20 Guam shall *not* provide or warrant the availability of pilot services, which
21 shall be provided solely by the private sector. The terms of any contract for
22 pilotage, including rates or pilot fees, shall be negotiated and agreed upon
23 by the parties thereto, *except* as specifically provided herein.”

24 **Section 15.** Section 56403.12 is hereby *added* to Article 4, Chapter 56,
25 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

1 **“Section 56403.12. Lien for Pilotage Fees.** Every licensed
2 pilot shall have a lien for pilotage fees upon the whole of any vessel liable
3 to the pilot therefor.”

4 **Section 16.** Section 56403.13 is hereby *added* to Article 4, Chapter 56,
5 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

6 **“Section 56403.13. Description of Pilotage Waters.** Pilotage
7 waters as established under this Chapter shall consist of all waters of the
8 Guam within two (2) nautical miles of Apra Harbor and all waters within
9 Apra Harbor, exclusive of Federally restricted waters.”

10 **Section 17.** Section 56403.14 is hereby *added* to Article 4, Chapter 56,
11 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

12 **“Section 56403.14. Mandatory Use of Harbor Pilot.** Every
13 vessel involved in trade or commerce, other than an exempt vessel,
14 entering, departing from or traversing the waters of Apra Harbor shall
15 employ a harbor pilot. *However*, a vessel declared by the Harbor Master or
16 the Captain of the Port to be in immediate danger of destruction or which
17 poses an immediate hazard to public safety by its presence in any harbor
18 may be moved without a pilot when a pilot is not immediately available.”

19 **Section 18.** Section 56403.15 is hereby *added* to Article 4, Chapter 56,
20 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

21 **“Section 56403.15. Exempt Vessels.** A harbor pilot
22 is not required for:

- 23 1. vessels *not* involved in trade or commerce;
- 24 2. enrolled and other vessels that are exempt under the laws
25 of the United States of America, provided they are under the

1 direction and control of a Federally licensed pilot; *and*

2 3. vessels home-ported on Guam and involved in the
3 tourism trade, such as dinner-cruise boats, diving and fishing charter
4 boats, submersibles and rental craft.”

5 **Section 19.** Section 56403.16 is hereby *added* to Article 4, Chapter 56,
6 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

7 **“Section 56403.16. Exempt During Daylight Hours Only.** The
8 following vessels may enter, exit and be operated in Apra Harbor without
9 the assistance of a pilot, but only during daylight hours:

10 1. vessels under five hundred (500) gross tons; *provided*, the
11 master of the vessel has previously entered and exited Apra Harbor
12 while operating a vessel with the assistance of a licensed pilot and
13 provided, further, that adequate two-way communications between
14 the vessel and the Port Authority’s Harbor Master and U.S. Coast
15 Guard’s Captain of the Port are continuously maintained, either
16 directly or through the vessel’s agent, while the vessel is underway
17 in Guam waters; *and*

18 2. tugs and tows home-ported on Guam or the
19 Commonwealth of the Northern Mariana Islands; *provided*, the master
20 of the tug and tow has previously entered and exited Apra Harbor
21 while operating a vessel with the assistance of a licensed pilot.”

22 **Section 20.** Section 56403.17 is hereby *added* to Article 4, Chapter 56,
23 Part 6, Division 2 of Title 18 of the Guam Code Annotated to read as follows:

24 **“Section 56403.17. Exception for Safe Navigation.** This
25 Section is *not* intended to negate or limit the Port Authority of Guam’s

1 responsibility for the safe navigation of all vessels within Guam waters.
2 Accordingly, the Port Authority's Harbor Master may recommend or
3 require the assistance of a pilot for any vessel exempt by this provision *if*
4 the Harbor Master determines such is necessary to ensure safety in any port
5 or other waters of Guam."

6 **Section 21.** Section 10107(l) is hereby *added* to Article 1, Chapter 10 of
7 Title 12 of the Guam Code Annotated to read as follows:

8 "(l) Grant licenses to pilots pursuant to §56403 of Title 18 of the
9 Guam Code Annotated;"

10 **Section 22.** Section 10107(m) is hereby *added* to Article 1, Chapter 10
11 of Title 12 of the Guam Code Annotated to read as follows:

12 "(m) Develop appropriate standards and procedures for licensure of
13 harbor pilots, including such examinations and investigations to determine
14 whether persons applying for a pilot's license are qualified as the Manager
15 deems necessary or appropriate;"

16 **Section 23.** Section 10107(n) is hereby *added* to Article 1, Chapter 10
17 of Title 12 of the Guam Code Annotated to read as follows:

18 "(n) Enforce the provisions of §56403 of Title 18 of the Guam Code
19 Annotated and rules adopted pursuant thereto;"

20 **Section 24.** Section 10107(o) is hereby *added* to Article 1, Chapter 10
21 of Title 12 of the Guam Code Annotated to read as follows:

22 "(o) Suspend, revoke or deny the issuance of any pilot's license
23 for any cause prescribed by §56403 of Title 18 of the Guam Code
24 Annotated, or for any violation of the Port Authority of Guam's pilotage
25 rules and regulations;"

1 **Section 25.** Section 10107(p) is hereby *added* to Article 1, Chapter 10
2 of Title 12 of the Guam Code Annotated to read as follows:

3 “(p) Appoint members of the Pilot License Advisory Committee;”

4 **Section 26.** Section 10107(q) is hereby *added* to Article 1, Chapter 10
5 of Title 12 of the Guam Code Annotated to read as follows:

6 “(q) Investigate complaints and any violation of the provisions of
7 §56403 of Title 18 of the Guam Code Annotated or the Port of Authority of
8 Guam's rules and regulations; *and*”

9 **Section 27.** Section 10107(r) is hereby *added* to Article 1, Chapter 10
10 of Title 12 of the Guam Code Annotated to read as follows:

11 “(r) Do all things reasonable, necessary, and expedient to ensure
12 safe navigation and proper pilotage, and to facilitate the efficient
13 administration of §56403 of Title 18 of the Guam Code Annotated.”

14 **Section 28.** Section 10104(m) is hereby *added* to Article 1, Chapter 10
15 of Title 12 of the Guam Code Annotated to read as follows:

16 “(m) Adopt, amend and repeal pilotage rules and regulations in
17 accordance with the Administrative Adjudication Law and §56403 of Title
18 18 of the Guam Code Annotated, which rules and regulations shall provide
19 for safe and efficient navigation of all vessels entering, leaving and
20 operating within Guam waters that are required by §56403.13 to have a
21 licensed pilot on board; and to ensure an adequate supply of qualified
22 pilots in aid of commerce and navigation.”

23 **Section 29. Savings Clause.** Pending the promulgation or
24 amendment of rules and regulations governing mandatory pilot licensing by the
25 Port Authority of Guam pursuant to the Administrative Adjudication Law, the

1 Port Authority's existing harbor rules and regulations shall be construed as
2 requiring the use of a harbor pilot by all vessels within pilotage waters, *unless*
3 exempt pursuant to §56403.15, and for the supervision and investigation of
4 complaints against all pilots by the Manager of the Port Authority of Guam.

5 **Section 30. Severability.** In the event any portion of this Act is
6 found to be contrary to Federal Law, all portions of this Act not so found shall
7 remain valid and in full force and effect.

8 **Section 31. Effective Date.** The above provisions shall take effect
9 immediately upon enactment of this Act.

6

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

1999 (FIRST) Regular Session

Date: 4/28/99

VOTING SHEET

5 Bill No. 134 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT ROLL CALL
AGUON, Frank B., Jr.	✓				
BLAZ, Anthony C.	✓				
BERMUDES, Eulogio C.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.					EA ✓

TOTAL

14

1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

April 26, 1999
(DATE)

Memorandum

FILE

To: Senator CARLOTTA A. LEON GUERRERO

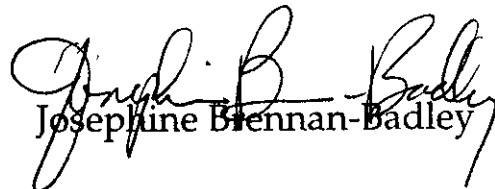
COPY

From: Clerk of the Legislature

Subject: Report on Bill No. 134 (COR)

Pursuant to §7.04 of Rule VII of the 25th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 134 (COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.


Josephine Brennan-Badley

Attachment

ACKNOWLEDGEMENT RECEIPT
Received By: [Signature]
Time: _____
Date: 11-26-99



April 26, 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina' Bente Singko Na Liheslaturan Guahan
155 Hesler Street
Hagatna, Guam 96910

Dear Mr. Speaker:

Hafa Adai. The Committee on Transportation, Telecommunications and Micronesian Affairs, to which was referred **Bill 134 (COR)**, "**An act to amend section 56403 of Article IV, Chapter 56, Title 18, Guam Code Annotated (former civil code section 2036) relating to compulsory pilotage of vessels within Guam waters.**", has had the same under consideration, and now wishes to report back the same with the recommendation **To Pass**.

The Committee votes are as follows:

To Pass	7
Not to Pass	0
Abstain	0
Inactive File	0

A copy of the Committee Report and all pertinent documents are attached for your information and file.

Sincerely,


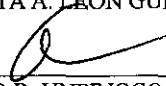
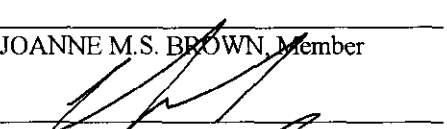
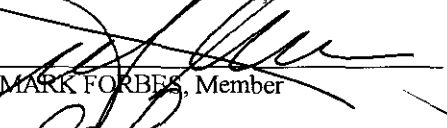

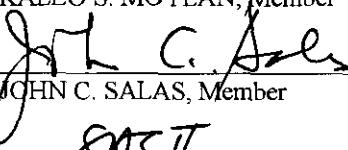

CARLOTTA A. LEON GUERRERO

attachments

Committee on Transportation, Telecommunications and Micronesia Affairs
I Mina' Bente Singko Na Liheslaturan Guahan

Voting Record

Bill 134 (COR): "An act to amend section 56403 of Article IV, Chapter 56, Title 18, Guam Code Annotated (former civil code section 2036) relating to compulsory pilotage of vessels within Guam waters."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 CARLOTTA A. LEON GUERRERO, Chair	✓			
 ANTONIO R. UNPINGCO, Ex-officio	✓			
ANTHONY C. BLAZ, Member				
JOANNE M.S. BROWN, Member				
 EDUARDO B. CALVO, Member	✓			
 MARK FORBES, Member	✓			
 ALBERTO A.C. LAMORENA V, Member	✓			
KALEO S. MOYLAN, Member				
 JOHN C. SALAS, Member	✓			
 SIMON A. SANCHEZ II, Member	✓			
VICENTE C. PANGELINAN, Member				

COMMITTEE REPORT

Committee on Transportation, Telecommunications and Micronesia Affairs
I Mina' Bente Singko Na Liheslaturan Guåhan

Public Hearing on

Bill 134 (COR): "An act to amend section 56403 of Article IV, Chapter 56, Title 18, Guam Code Annotated (former civil code section 2036) relating to compulsory pilotage of vessels within Guam waters."

Committee Members

Chairperson: Senator Carlotta A. Leon Guerrero

Ex-Officio Member: Speaker Antonio R. Unpingco

Senator Tony Blaz

Senator Joanne Brown

Senator Eddie Calvo

Senator Alberto Lamorena V

Senator Mark Forbes

Senator Kaleo Moylan

Senator Ben Pangelinan

Senator John Salas

Senator Simon Sanchez

Hearing Schedule

The Committee on Transportation, Telecommunications and Micronesia Affairs held a public hearing on Tuesday, April 6, 1999 at 9:00 a.m. in the Public Hearing Room of the Guam Legislature Temporary Building on Bill 134: "An act to amend section 56403 of Article IV, Chapter 56, Title 18, Guam Code Annotated (former civil code section 2036) relating to compulsory pilotage of vessels within Guam waters."

Committee members present: Senator Carlotta A. Leon Guerrero, Chairperson
Senator Joanne Brown
Senator Ben Pangelinan

SUMMARY

Senator Carlotta Leon Guerrero, by way of a review, brought those in attendance up to speed on the process which led to her authoring of Bill 134. She stated that she had wanted to have all the work completed at the Port level. In this regard, she thanked the Port for their diligence in conducting the many working sessions between Port personnel, Port users (primarily pilots) and the U.S. Coast Guard in working toward this goal.

Present to provide testimony were key participants of the review committee including Frank Santos, PAG Harbormaster, Joe Cruz (Cabras Marine), Juergen Hunterberg (Guam Oceans) and Captain Scott Glover (U.S. Coast Guard). Also present to introduce the

Harbormaster and to answer any port related questions was the newly appointed Deputy General Manager and former senator Frank Camacho.

Several good suggestions were brought up by Juergen Hunterberg (Guam Oceaneers) and addressed safety as his primary concern. He intimated that the harbormaster's office should exercise more control in the monitoring and scheduling of inbound and outbound vessels. He also believes that the 3-way form of communication between the harbormaster's office and the vessel via the agent translating instructions was sufficient for the smaller fishing boats. And finally, he recommended that piloting standards be set by the professionals of the industry instead of by the PAG board who may or may not be qualified to make these determinations.

Captain Scott Glover, U.S. Coast Guard, clarified Senator Brown's concern about the qualifications of those people tasked with certifying or setting the standards of qualifications for a pilot's license to operate in Guam's waters. He cited that in the United States, it is the state who controls pilotage in its waters, not the Federal government. Federal law accepts a Coast Guard license as acceptable; however, it is good to have local laws include the flexibility for requirements to be area specific. U.S. Coast Guard licenses are harbor or area specific. A Master's license encompasses much more area knowledge and responsibility and, as such, a master maintains control of his vessel at all times.

Captain Glover cited that there were three key reasons why he assisted in engineering this local pilotage legislation: (1) Current Guam law conflicts with Federal regulations wherein Guam law states that the pilot is responsible for a vessel's navigation from the moment he boards. Federal law, on the other hand, states that the master of a vessel maintains full control at all times, with a harbor pilot serving in an advisory capacity only; (2) There is no licensing program on Guam, therefore, unless local legislation identifies its areas of jurisdiction relative to pilotage regulations, the federal law would take precedence. With the passage of this pilotage legislation, federal law takes a secondary role; and finally (3) Pilotage is not mandatory in current laws. The passage of this legislation will give teeth to the newly revised Harbor Rules & Regulations. These rules are currently going through the "Triple A" process with the Port Authority of Guam and marks a concerted effort between the Port, its users and the U.S. Coast Guard to ensure safety and efficiency in port and vessel operations at the Port and its surrounding harbor.

COMMITTEE FINDINGS

The Committee finds that Bill 134 allows for Guam to exert its authority over pilotage in Guam waters by making pilotage mandatory and eliminate the need for the federal government to take the primary role in pilotage issues. Further, it allows for Guam to exert its authority in the discipline of pilots and maintain jurisdiction for pilots serving on a foreign flag vessel. The committee agrees that this pilotage legislation will be beneficial to ensure the safe navigation of vessels in Guam's waters, however, submits that minor changes are necessary to the language of Bill 134 to relax the laws regarding the

requirements of when a pilot must be on board a vessel as well as the requirement on how to deal with non-English speaking vessels.

COMMITTEE RECOMMENDATION

The Committee on Transportation, Telecommunications and Micronesian Affairs supports the intent of Bill 134: "An act to amend section 56403 of Article IV, Chapter 56, Title 18, Guam Code Annotated (former civil code section 2036) relating to compulsory pilotage of vessels within Guam waters," and recommends **TO PASS AS SUBSTITUTED BY THE COMMITTEE.**

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 134 (COR)

As substituted on the floor

Introduced by:

C. A. Leon Guerrero *CLEJ*
A.C. Lamorena V *af*

**AN ACT TO AMEND SECTION 56403 OF ARTICLE
IV, CHAPTER 56, TITLE 18, GUAM CODE
ANNOTATED (FORMER CIVIL CODE SECTION
2036) RELATING TO COMPULSORY PILOTAGE
OF VESSELS WITHIN GUAM WATERS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act may be cited as the "Compulsory Pilotage Act of 1999".

Section 2. Legislative Intent. *I Liheslatura finds that Civil Code Section 2036 (18 GCA 56403) is in conflict with Federal Law in that the former provides that a harbor pilot upon boarding a vessel is in full charge of the vessel's navigation, whereas Federal Law requires the vessel's master to remain fully responsible, with the harbor pilot serving in an advisory capacity only. Further, existing Guam law does not expressly clearly provide for compulsory pilotage, in that under the above provision a pilot must be taken aboard a vessel only "if one offers himself", and as a result the United States Coast Guard may be required to assume responsibility for regulating pilotage of vessels in Guam waters, pursuant to the provisions of Sections 8501-8503 of Title 46, United States Code, although pilotage is commonly "regulated only in conformity with the laws of the States" (46 U.S.C. 8501(a)). Harbor regulations adopted by the Port Authority of Guam ("PAG") contain several provisions that appear to require the use of a harbor pilot on all by most vessels entering Guam waters exceeding a certain minimize size, entering*

1 ~~Guam waters~~, however, these regulations are not consistent with Civil Code Section 2036
2 (18 G.C.A. '56403) and ~~may therefore~~ could potentially be challenged. ~~, leading to a~~
3 ~~federal take over of this regulatory authority~~ Finally, ~~neither Guam's maritime laws nor~~
4 ~~the PAG's harbor rules currently provide a means of regulating the conduct of harbor~~
5 ~~pilots or ensuring safe navigation of vessels in Guam waters and as a result the United~~
6 ~~States Coast Guard may be required to assume responsibility for regulating pilotage of~~
7 ~~vessels in Guam waters, pursuant to the provisions of Sections 8501-8503 of Title 46,~~
8 ~~United States Code, although pilotage is commonly "regulated only in conformity with~~
9 ~~the laws of the States" (46 U.S.C. '8501(a)).~~ Accordingly, Guam's antiquated pilotage
10 law should be updated to bring it into conformity with Federal Laws and enable the Port
11 Authority of Guam to ~~continue more effectively exercising~~ exercise jurisdiction over the
12 pilotage of vessels in Guam waters, so that this important field may remain a subject of
13 local regulation and control.

14 **Section 3.** Amendment of 18 G.C.A. '56403. Section 56403 of Title 18, Guam
15 Code Annotated, is amended to read:

16 **"56403. Compulsory Pilotage.** On entering or leaving, or operating a
17 vessel within, a port or harbor, the master of a vessel, unless otherwise exempt under the
18 provisions of this Chapter or pursuant to Federal Law, must take on a pilot duly licensed
19 by the Port Authority of Guam to provide pilotage services. While the pilot is on board
20 he shall advise the vessel's master as to its navigation. However, the master of the vessel
21 shall at all times remain in full charge and control of the vessel and its navigation.

22 **56403.1 Issuance of Harbor Pilot's Licenses.** The Manager of the Port
23 Authority of Guam shall have the power and duty to issue pilot licenses pursuant to
24 credentialing criteria established by rules and regulations of the Authority for persons
25 who seek to engage in the profession of harbor pilot within the territory of Guam. Each
26 such license shall be valid for a period of five (5) years or until the expiration of the

1 applicant's U.S. Coast Guard pilot's license, whichever first occurs.

2 **56403.2 Licensing Regulations.** The Board of Directors of the Port
3 Authority of Guam shall adopt rules and regulations establishing credentialing criteria for
4 and governing the conduct of pilots. In addition to credentialing criteria and standards
5 of professional conduct, such rules and regulations shall, at a minimum, set forth the
6 procedures for filing and processing license applications and for investigating and
7 resolving complaints against pilots, as well as the grounds for denial, suspension or
8 revocation of a pilot's license not inconsistent with the provisions of this Chapter.

9 **56403.3 Basis for Approving Applications for a Harbor Pilot's License.**
10 The Manager of the Port Authority of Guam shall determine the professional
11 qualifications necessary to obtain a pilot's license in accordance with the Authority's rules
12 and regulations. As the basis for approving applications, he may by rule accept the
13 determinations of one or more trade or professional organizations, accept a license or
14 certification issued by an agency of the United States, or of a state, territory or possession
15 of the United States, require that an applicant successfully complete an oral or written
16 examination, or both, administered by the Port Authority of Guam or appropriate
17 professional organization, or provide other evidence of competence satisfactory to the
18 Manager. In establishing credentialing criteria and in administering examinations, if
19 required, the Port Authority of Guam may enter into contracts for the purchase, use,
20 scoring or validation of professional examinations. ~~The denial of a pilot's license shall~~
21 ~~be subject to an appeal to the Board of Directors of the Port Authority and thereafter to~~
22 ~~administrative adjudication in accordance with Administrative Adjudication Law.~~

23 **56403.4 License Fees.** The Board of Directors of the Port Authority of
24 Guam may adopt and from time to time adjust, in accordance with the Administrative
25 Adjudication Law, a schedule of fees and charges for each application, examination,
26 issuance, renewal or replacement of a harbor pilot's license in order to recover the costs

1 thereof.

2 **56403.5 Grandfathering and Automatic License Renewal.** No pilot who
3 on the effective date of this enactment is employed or operating a business as a pilot in
4 Guam and who, further, is duly licensed by the United States Coast Guard as a pilot shall
5 be denied a territorial harbor pilot's license or a renewal thereof. Nor shall any
6 application for renewal of a territorial harbor pilot's license be denied, except as provided
7 by this Chapter, as long as the applicant possesses the minimum qualifications established
8 by the Port Authority of Guam and remains in active service as a pilot in the territory.
9 However, nothing herein shall prevent the suspension, revocation or denial of a pilot's
10 license for good cause, in accordance with the provisions of this Chapter and the rules
11 and regulations of the Port Authority of Guam.

12 **56403.6 Grounds for Denial, Suspension or Revocation.** ~~In addition to~~
13 ~~any other actions authorized by law~~ Except as provided in Section 56403.5, the Manager
14 may deny the issuance of a license to any applicant and may suspend or revoke the
15 license of any pilot for any cause authorized by law; ~~or regulation~~ the Port Authority of
16 Guam=s pilotage rules and regulations, including but not limited to the following:

- 17 1. Violation of this Chapter or any rule or regulation of the Port
18 Authority of Guam;
- 19 2. Negligent pilotage;
- 20 3. Habitual use of any substance rendering a harbor pilot unfit to
21 be entrusted with the safe navigation of a vessel;
- 22 4. Inability to perform the duties of a harbor pilot;
- 23 5. Failure to maintain active service as a pilot in the territory;
- 24 6. Procurement of a license through fraudulent misrepresentation
25 or deceit;
- 26 7. Violation of any law or regulation prohibiting unfair or

1 deceptive acts or practices;

2 8. Violation of any law or regulation intended to promote marine
3 safety or protect navigable waters or the environment;

4 9. Failure to report marine accidents in accordance with the rules
5 and regulations of the Port Authority of Guam; or

6 10. Failure to maintain a current and valid federal pilots' license
7 issued in accordance with Title 46, United States Code, Chapter 71.

8 ~~56403.7 Pilot License Review Board. The Manager shall appoint a Pilot
9 License Review Board, consisting of the Harbor Master, who shall serve as its
10 Chairperson, Assistant Harbor Master, three licensed harbor pilots and two members
11 representing the shipping industry. No two members of the Board shall be employed by
12 the same company or affiliated company. Each member except the Harbor Master and
13 Assistant Harbor Master shall serve for a term of two years and until replaced. The sole
14 function of the Pilot License Review Board shall be to review and recommend
15 appropriate disposition of complaints and other proposed disciplinary action against a
16 harbor pilot. No pilot's license shall be suspended or revoked, or any other disciplinary
17 action taken, unless such action has been reviewed by a majority of the membership of
18 the Pilot License Review Board, or thirty days have passed from submittal of the matter
19 for such review. The Manager and Board of Directors of the Port Authority of Guam
20 shall consider but not be required to adhere to the recommendations of the Pilot License
21 Review Board. Pilot License Advisory Committee. The Manager shall appoint a Pilot
22 License Advisory Committee, consisting of seven members, including the Harbor Master,
23 who shall serve as its Chairperson, Assistant Harbor Master, three licensed harbor pilots
24 and two members representing the shipping industry. No two members of the Committee
25 shall be employed by the same company or by affiliated companies. Each member except
26 the Harbor Master and Assistant Harbor Master shall serve for a term of two years and~~

1 until replaced, which terms shall be staggered so that the terms of no more than four
2 members will expire in a single year. The sole function of the Pilot License Advisory
3 Committee shall be to review and recommend appropriate disposition of complaints and
4 any proposed disciplinary action against a harbor pilot. No pilot=s license shall be
5 suspended or revoked, or any other disciplinary action taken, unless such action has been
6 reviewed by a majority of the membership of the Committee, or thirty days have passed
7 from submittal of the matter to the Committee for such review. The Manager and Board
8 of Directors of the Port Authority of Guam may seek the advice and recommendations
9 of the Committee on any other matters relating to pilotage.

10 **56403.8 Appeal Procedure.** Any person may request a review of the
11 Manager=s denial, suspension or revocation of a pilot's license by the Board of Directors
12 of the Port Authority, provided a written notice of appeal is delivered to the Manager
13 within thirty days of his final decision, which shall be in writing and delivered by
14 registered mail to the applicant and to the Pilot License Advisory Committee. Thereafter,
15 any denial, suspension or revocation of a license shall be subject to administrative
16 adjudication in accordance with Administrative Adjudication Law. In the alternative, the
17 Port Authority of Guam may adopt rules of disciplinary procedure pursuant to the
18 Administrative Adjudication Law, in which event such rules shall govern the procedure
19 for any suspension or revocation of a harbor pilot=s license.

20 **56403.89 Exhibition of License.** A pilot, on boarding a vessel, and if
21 required by the master thereof, shall exhibit the pilot's license or a photostatic copy
22 thereof.

23 **56403.910 Piloting Without a License.** It shall be unlawful for any person
24 not licensed as a pilot under this Chapter to pilot or to offer to pilot a vessel not exempt
25 from this Chapter. It shall be unlawful for any person on board a tug or towboat to tow
26 a vessel or barge not exempt from this Chapter, unless the vessel or barge shall have on

1 board a pilot licensed under this Chapter. Violation of this section shall be a
2 misdemeanor and in addition, shall be subject to assessment of any fines or penalties
3 authorized by the rules and regulations of the Port Authority of Guam.

4 **56403.1011 Rates of Pilotage.** The Port Authority of Guam shall not
5 provide or warrant the availability of pilot services, which shall be provided solely by the
6 private sector. The terms of any contract for pilotage, including rates or pilot fees, shall
7 be negotiated and agreed upon by the parties thereto, except as specifically provided
8 herein.

9 **56403.1112 Lien for Pilotage Fees.** Every licensed pilot shall have a lien
10 for pilotage fees upon the whole of any vessel liable to the pilot therefor.

11 **56403.1213 Description of Pilotage Waters.** Pilotage waters as
12 established under this Chapter shall consist of all waters of the territory within two
13 nautical miles of Apra Harbor and all waters within Apra Harbor, exclusive of federally
14 restricted waters.

15 **56403.1314 Mandatory Use of Harbor Pilot.** Every vessel involved in
16 trade or commerce, other than an exempt vessel, entering, departing from or traversing
17 the waters of Apra Harbor shall employ a harbor pilot. However, a vessel declared by
18 the Harbor Master or the Captain of the Port to be in immediate danger of destruction or
19 which poses an immediate hazard to public safety by its presence in any harbor may be
20 moved without a pilot when a pilot is not immediately available.

21 **56403.1415 Exempt Vessels.** A harbor pilot is not required for:

- 22 1. Vessels not involved in trade or commerce;
- 23 2. Enrolled and other vessels that are exempt under the laws of
24 the United States of America, provided they are under the direction and control of a
25 federally licensed pilot; and
- 26 3. Vessels homeported in Guam and involved in the tourism trade,

1 such as dinner-cruise boats, diving and fishing charter boats, submersibles and rental
2 craft.

3 **56403.1516 Exempt During Daylight Hours Only.** The following vessels
4 may enter, exit and be operated in Apra Harbor without the assistance of a pilot, but only
5 during daylight hours:

6 1. Vessels under five hundred (500) gross tons provided the
7 master of the vessel has previously entered and exited Apra Harbor while operating a
8 vessel with the assistance of a licensed pilot and provided, further, that ~~the master or mate~~
9 ~~on board the vessel is able to communicate in the English language with the~~adequate two-
10 way communications between the vessel and the Port Authority's Harbor Master and the
11 U.S. Coast Guard's Captain of the Port; and are continuously maintained, either directly
12 or through the vessel's agent, while the vessel is underway in Guam waters.

13 2. Tugs and tows homeported in Guam or the Commonwealth of
14 the Northern Mariana Islands, provided the master of the tug and tow has previously
15 entered and exited Apra Harbor while operating a vessel with the assistance of a licensed
16 pilot.

17 **56403.1617 Exception for Safe Navigation.** This section is not intended
18 to negate or limit the Port Authority of Guam's responsibility for the safe navigation of
19 all vessels within Guam waters. Accordingly, the Port Authority's Harbor Master may
20 recommend or require the assistance of a pilot for any vessel exempt by this provision if
21 the Harbor Master determines such is necessary to ensure safety in any port or other
22 waters of the territory.”

23 **Section 4. Amendment of Port Authority Statute.** Section 10107 of Title 12,
24 Guam Code Annotated, setting forth the duties of the Manager of the Port Authority of
25 Guam, is hereby amended to include the following additional subsections:

26 “(l). Grant licenses to pilots pursuant to Title 18, Section 56403 of the

1 Guam Code Annotated;

2 (m). Develop appropriate standards and procedures for licensure of harbor
3 pilots, including such examinations and investigations to determine whether persons
4 applying for a pilot's license are qualified as the Manager deems necessary or
5 appropriate;

6 (n). Enforce the provisions of Title 18, Section 56403 of the Guam Code
7 Annotated and rules adopted pursuant thereto;

8 (o) Suspend, revoke or deny the issuance of any pilot's license
9 for any cause prescribed by Title 18, Section 56403 of the Guam Code Annotated, or for
10 any violation of the Port Authority of Guam's pilotage rules and regulations;

11 (p) Appoint members of the Pilot License ~~Review Board~~ Advisory
12 Committee;

13 (q) Investigate complaints and any violation of the provisions of Title 18,
14 Section 56403 of the Guam Code Annotated or the Port of Authority of Guam's rules and
15 regulations; and

16 (r) Do all things reasonable, necessary, and expedient to ensure safe
17 navigation and proper pilotage, and to facilitate the efficient administration of Title 18,
18 Section 56403 of the Guam Code Annotated.

19 **Section 6.** Section 10104 of Title 12, Guam Code Annotated, concerning the
20 powers and duties of the Board of Directors of the Port of Authority of Guam, is hereby
21 amended to include the following subsection:

22 “(m). Adopt, amend and repeal pilotage rules and regulations in accordance with
23 the Administrative Adjudication Law and Title 18, Section 56403, Guam Code
24 Annotated, which rules and regulations shall provide for safe and efficient navigation of
25 all vessels entering, leaving and operating within territorial waters that are required by
26 Section 56403.13 to have a licensed pilot on board; and to ensure an adequate supply of

1 qualified pilots in aid of commerce and navigation.”

2 **Section 7. Savings Clause.** Pending the promulgation or amendment of rules and
3 regulations governing mandatory pilot licensing by the Port Authority of Guam pursuant
4 to the Administrative Adjudication Law, the Port Authority's existing harbor rules and
5 regulations shall be construed as requiring the use of a harbor pilot by all vessels within
6 pilotage waters unless exempt pursuant to Section 56403.14~~5~~, and for the supervision and
7 investigation of complaints against all pilots by the Manager of the Port Authority of
8 Guam.

9 **Section 8. Severability.** In the event any portion of this Act is found to be
10 contrary to Federal Law, all portions of this Act not so found shall remain valid and in full
11 force and effect.

12 **Section 9. Effective Date.** The above provisions shall take effect immediately
13 upon enactment of this Act.




MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
Kumitean Areklamento, Refotman Gubetnamento Siha, Inetnon di Nuebu, yan Asunton Fidirat

*Senadot Mark Forbes, Gehilu
Kabisiyon Mayuråt*

MAR 3 0 1999

MEMORANDUM

TO: Chairperson
Committee on Transportation, Telecommunications, and
Micronesian Affairs

FROM: Chairman 
Committee on Rules, Government Reform, Reorganization
and Federal Affairs

SUBJECT: Principal Referral – Bill No. 134

The above bill is referred to your Committee as the Principal Committee. In accordance with Section 6.04.05. of the Standing Rules, your Committee "shall be the Committee to perform the public hearing and have the authority to amend or substitute the bill, as well as report the bill out to the Body." It is recommended that you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

MARK FORBES

Attachment

3/30/99 Dmc

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number: 134(COR)
 Amendatory Bill: Yes
 Department/Agency Affected: Port Authority of Guam
 Department/Agency Head: JO Cruz, General Manager
 Total FY Appropriation to Date: \$ 38,861,699

Date Received: 03/10/99
 Date Reviewed: 03/23/99

Bill Title (preamble):

An act to amend section 56403 of article IV, chapter 58, Title 18, Guam Code Annotated (former Civil Code Section 2038) relating to compulsory pilotage of vessels within Guam waters.

Change in Law: Yes

Bill's Impact on Present Program Funding:

Increase x Decrease _____ Reallocation _____ No Change _____

Bill is for:

Operations x Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
<i>Autonomous</i>			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL						
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? _____ -- IF NO, ADD'L AMOUNT REQUIRED \$ _____

AGENCY/PERSON/DATE CONTACTED: _____

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER						
TOTAL	//					

ANALYST Christine D.F. Quichocho
 Christine D.F. Quichocho

DATE 3/24/99

DIRECTOR Joseph E. Rivers, Acting
 Joseph E. Rivers, Acting

DATE MAR 24 1999

FOOTNOTE: See Attachment

Bill No. 134(COR) proposes to make compulsory the pilotage of vessels within Guam waters. Bill No. 134 (COR) will not impact the general fund however this proposed legislation will positively impact the operational budget of the Port through the collection of fees for the application, examination, issuance, renewal or replacement of a harbor pilot's license.

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN

RECEIVED

Bill No. 134 (COR)

Introduced by: C. A. Leon Guerrero
A. Amoroso *CRG*

AN ACT TO AMEND SECTION 56403 OF ARTICLE IV,
CHAPTER 56, TITLE 18, GUAM CODE ANNOTATED
(FORMER CIVIL CODE SECTION 2036) RELATING
TO COMPULSORY PILOTAGE OF VESSELS WITHIN
GUAM WATERS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act may be cited as the "Compulsory Pilotage Act of 1999". In the event any portion of this Act is found to be contrary to Federal Law, all portions of this Act not so found shall remain valid and in full force and effect.

Section 2. Legislative Intent. The Legislature finds that Civil Code Section 2036 (18 G.C.A. §56403) is in conflict with Federal Law in that the former provides that a harbor pilot upon boarding a vessel is in full charge of the vessel's navigation, whereas Federal Law requires the vessel's master to remain fully responsible, with the harbor pilot serving in an advisory capacity only. Further, existing Guam law does not expressly provide for compulsory pilotage, in that under the above provision a pilot must be taken aboard a vessel only "if one offers himself" and as a result the United States Coast Guard may be required to assume responsibility for regulating pilotage of vessels in Guam waters, pursuant to the provisions of Sections 8501-8503 of Title 46, United States Code, although pilotage is commonly "regulated only in conformity with the laws of the States" (46 U.S.C. §8501(a)). Harbor regulations adopted by the Port Authority of Guam contain several provisions that appear to

1 require the use of a harbor pilot on all vessels exceeding a certain minimize size
2 entering Guam waters, however, these regulations are not consistent with Civil Code
3 Section 2036 (18 G.C.A. §56403) and may therefore be challenged, leading to a
4 federal take over of this regulatory authority. Accordingly, Guam's pilotage law
5 should be updated to bring it into conformity with Federal Laws and enable the Port
6 Authority of Guam to continue exercising jurisdiction over pilotage so that this
7 important field may remain a subject of local regulation and control.

8 **Section 3.** Amendment of 18 G.C.A. §56403. Section 56403 of Title 18,
9 Guam Code Annotated, is amended to read:

10 **56403.** Compulsory Pilotage. On entering or leaving, or operating a
11 vessel within, a port or harbor, the master of a vessel, unless otherwise exempt under
12 the provisions of this Chapter or pursuant to Federal Law, must take on a pilot duly
13 licensed by the Port Authority of Guam to provide pilotage services. While the pilot
14 is on board he shall advise the vessel's master as to its navigation. However, the
15 master of the vessel shall at all times remain in full charge and control of the vessel
16 and its navigation.

17 **56403.1** Issuance of Pilot's License. The Manager of the Port Authority
18 of Guam shall have the power and duty to issue pilot licenses pursuant to
19 credentialing criteria established by rules and regulations of the Authority for persons
20 who seek to engage in the profession of harbor pilot within the territory of Guam.
21 Each such license shall be valid for a period of five (5) years or until the expiration
22 of the applicant's U.S. Coast Guard pilot's license, whichever first occurs.

23 **56403.2** Licensing Regulations. The Board of Directors of the Port
24 Authority of Guam shall adopt rules and regulations establishing credentialing
25 criteria for and governing the conduct of pilots. In addition to credentialing criteria
26 and standards of professional conduct, such rules and regulations shall, at a
27 minimum, set forth the procedures for filing and processing license applications and

1 for investigating and resolving complaints against pilots, as well as the grounds for
2 denial, suspension or revocation of a pilot's license not inconsistent with the
3 provisions of this Chapter.

4 **56403.3 Basis for Approving Applications for a Harbor Pilot's License.**

5 The Manager of the Port Authority of Guam shall determine the professional
6 qualifications necessary to obtain a pilot's license in accordance with rules and
7 regulations. As the basis for approving applications, he may by rule accept the
8 determinations of one or more trade or professional organizations, accept a license or
9 certification issued by an agency of the United States, or of a state, territory or
10 possession of the United States, require that an applicant successfully complete an
11 oral or written examination, or both, administered by the Port Authority of Guam or
12 appropriate professional organization, or provide other evidence of competence
13 satisfactory to the Manager. In establishing credentialing criteria and in
14 administering examinations, if required, the Port Authority of Guam may enter into
15 contracts for the purchase, use, scoring or validation of professional examinations.
16 The denial of a pilot's license shall be subject to an appeal to the Board of Directors
17 of the Port Authority and thereafter to administrative adjudication in accordance with
18 Administrative Adjudication Law.

19 **56403.4 License Fees.** The Board of Directors of the Port Authority of

20 Guam may adopt and from time to time adjust, in accordance with the
21 Administrative Adjudication Law, a schedule of fees and charges for each
22 application, examination, issuance, renewal or replacement of a harbor pilot's license
23 in order to recover the costs thereof.

24 **56403.5 Grandfather and Automatic License Renewal.** No pilot who

25 on the effective date of this enactment is employed or operating a business as a pilot
26 in Guam and who, further, is duly licensed by the United States Coast Guard as a
27 pilot shall be denied a territorial harbor pilot's license or a renewal thereof. Nor shall

1 any application for renewal of a territorial harbor pilot's license be denied, except as
2 provided by this Chapter, as long as the applicant possesses the minimum
3 qualifications established by the Port Authority of Guam and remains in active
4 service as a pilot in the territory. However, nothing herein shall prevent the
5 suspension, revocation or denial of a pilot's license for good cause, in accordance
6 with the provisions of this Chapter and the rules and regulations of the Port Authority
7 of Guam.

8 **56403.6 Denial, Suspension or Revocation.** In addition to any other
9 actions authorized by law, the Manager may deny the issuance of a license to any
10 applicant and may suspend or revoke the license of any pilot for any cause
11 authorized by law, or regulation, including but not limited to the following:

- 12 1. Violation of this Chapter or any rule or regulation of the
13 Port Authority of Guam;
- 14 2. Negligent pilotage;
- 15 3. Habitual use of any substance rendering a harbor pilot unfit
16 to be entrusted with the safe navigation of a vessel;
- 17 4. Inability to perform the duties of a harbor pilot;
- 18 5. Failure to maintain active service as a pilot in the territory;
- 19 6. Procurement of a license through fraudulent
20 misrepresentation or deceit;
- 21 7. Violation of any law or regulation prohibiting unfair or
22 deceptive acts or practices;
- 23 8. Violation of any law or regulation intended to promote
24 marine safety or protect navigable waters or the environment;
- 25 9. Failure to report marine accidents in accordance with the
26 rules and regulations of the Port Authority of Guam; or

1 10. Failure to maintain a current and valid federal pilots'
2 license issued in accordance with Title 46, United States Code, Chapter 71.

3 **56403.7** Pilot License Review Board. The Manager shall appoint a
4 Pilot License Review Board, consisting of the Harbor Master, who shall serve as its
5 Chairperson, Assistant Harbor Master, three licensed harbor pilots and two members
6 representing the shipping industry. No two members of the Board shall be employed
7 by the same company or affiliated company. Each member except the Harbor
8 Master and Assistant Harbor Master shall serve for a term of two years and until
9 replaced. The sole function of the Pilot License Review Board shall be to review and
10 recommend appropriate disposition of complaints and other proposed disciplinary
11 action against a harbor pilot. No pilot's license shall be suspended or revoked, or any
12 other disciplinary action taken, unless such action has been reviewed by a majority of
13 the membership of the Pilot License Review Board, or thirty days have passed from
14 submittal of the matter for such review. The Manager and Board of Directors of the
15 Port Authority of Guam shall consider but not be required to adhere to the
16 recommendations of the Pilot License Review Board.

17 **56403.8** Exhibition of License. A pilot, on boarding a vessel, and if
18 required by the master thereof, shall exhibit the pilot's license or a photostatic copy
19 thereof.

20 **56403.9** Piloting Without a License. It shall be unlawful for any person
21 not licensed as a pilot under this Chapter to pilot or to offer to pilot a vessel not
22 exempt from this Chapter. It shall be unlawful for any person on board a tug or
23 towboat to tow a vessel or barge not exempt from this Chapter, unless the vessel or
24 barge shall have on board a pilot licensed under this Chapter. Violation of this
25 section shall be a misdemeanor and in addition, shall be subject to assessment of any
26 fines or penalties authorized by the rules and regulations of the Port Authority of
27 Guam.

1 **56403.10** Rates of Pilotage. The Port Authority of Guam shall not
2 provide or warrant the availability of pilot services, which shall be provided solely
3 by the private sector. The terms of any contract for pilotage, including rates or pilot
4 fees, shall be negotiated and agreed upon by the parties thereto, except as specifically
5 provided herein.

6 **56403.11** Lien for Pilotage Fees. Every licensed pilot shall have a lien
7 for pilotage fees upon the whole of any vessel liable to the pilot therefor.

8 **56403.12** Description of Pilotage Waters. Pilotage waters as
9 established under this Chapter shall consist of all waters of the territory within two
10 nautical miles of Apra Harbor and all waters within Apra Harbor, exclusive of
11 federally restricted waters.

12 **56403.13** Mandatory Use of Harbor Pilot. Every vessel involved in
13 trade or commerce, other than an exempt vessel, entering, departing from or
14 traversing the waters of Apra Harbor shall employ a harbor pilot. However, a vessel
15 declared by the Harbor Master or the Captain of the Port to be in immediate danger
16 of destruction or which poses an immediate hazard to public safety by its presence in
17 any harbor may be moved without a pilot when a pilot is not immediately available.

18 **56403.14** Exempt Vessels. A harbor pilot is not required for:

- 19 1. Vessels not involved in trade or commerce;
- 20 2. Enrolled and other vessels that are exempt under the laws
21 of the United States of America, provided they are under the direction and control of
22 a federally licensed pilot; and
- 23 3. Vessels homeported in Guam and involved in the tourism
24 trade, such as dinner-cruise boats, diving and fishing charter boats, submersibles and
25 rental craft.

1 **56403.15** Exempt During Daylight Hours Only. The following vessels
2 may enter, exit and be operated in Apra Harbor without the assistance of a pilot, but
3 only during daylight hours:

4 1. Vessels under 500 gross tons provided the master of the
5 vessel has previously entered and exited Apra Harbor while operating a vessel with
6 the assistance of a licensed pilot and provided, further, that the master or mate on
7 board the vessel is able to communicate in the English language with the Harbor
8 Master and the Captain of the Port; and

9 2. Tug and tows homeported in Guam or the Commonwealth
10 of the Northern Mariana Islands provided the master of the tug and tow has
11 previously entered and exited Apra Harbor while operating a vessel with the
12 assistance of a licensed pilot.

13 **56403.16** Exception for Safe Navigation. This section is not intended
14 to negate or limit the Port Authority of Guam's responsibility for the safe navigation
15 of all vessels within Guam waters. Accordingly, the Port Authority's Harbor Master
16 may recommend or require the assistance of a pilot for any vessel exempt by this
17 provision if the Harbor Master determines such is necessary to ensure safety in any
18 port or other waters of the territory.

19 **Section 4.** Amendment of Port Authority Statute. Section 10107 of Title 12,
20 Guam Code Annotated, setting forth the duties of the Manager of the Port Authority
21 of Guam, is hereby amended to include the following additional subsections:

22 (l) Grant licenses to pilots pursuant to Section 56403 of Title
23 18, Guam Code Annotated;

24 (m) Develop appropriate standards and procedures for licensure of
25 harbor pilots, including such examinations and investigation to
26 determine whether persons applying for a pilot's license are qualified
27 as the Manager deems necessary or appropriate;

1 (n) Enforce the provisions of Title 18, Section 56403 of the
2 Guam Code Annotated and rules adopted pursuant thereto;

3 (o) Suspend, revoke or deny the issuance of any pilot's license
4 for any cause prescribed by Title 18, Section 56403, Guam Code Annotated, or for
5 any violation of the Port Authority of Guam's pilotage rules and regulations;

6 (p) Appoint members of the Pilot License Review Board;

7 (q) Investigate complaints and any violation of the provisions of Title
8 18, Section 56403, Guam Code Annotated or the Port of Authority of Guam's rules
9 and regulations; and

10 (r) Do all things reasonable, necessary, and expedient to ensure safe
11 navigation and proper pilotage, and to facilitate the efficient administration of Title
12 18, Section 56403 of the Guam Code Annotated.

13 **Section 6.** Amendment of 12 G.C.A. Section 10104. Section 10104 of Title
14 12, Guam Code Annotated, concerning the powers and duties of the Board of
15 Directors of the Port of Authority of Guam, is hereby amended to include the
16 following subsection:

17 (m) Adopt, amend and repeal pilotage rules and regulations in
18 accordance with the Administrative Adjudication Law and Title 18, Section 56403,
19 Guam Code Annotated, which rules and regulations shall provide for safe and
20 efficient navigation of all vessels entering, leaving and operating within territorial
21 waters that are required by Section 56403.13 to have a licensed pilot on board; and to
22 ensure an adequate supply of qualified pilots in aid of commerce and navigation.

23 **Section 7.** Savings Clause. Pending the promulgation or amendment of rules
24 and regulations governing mandatory pilot licensing by the Port Authority of Guam
25 pursuant to the Administrative Adjudication Law, the Port Authority's existing
26 harbor rules and regulations shall be construed as requiring the use of a harbor pilot
27 by all vessels within pilotage waters unless exempt pursuant to Section 56403.14,

1 and for the supervision and investigation of complaints against all pilots by the
2 Manager of the Port Authority of Guam.

3 **Section 8. Effective Date.** The above provisions shall take effect immediately
4 upon enactment.

I Mina' Bente Sing'ko Na Liheslaturan Guåhan

Senator Carlotta A. Leon Guerrero

Chairperson

Committee on Transportation, Telecommunications & Micronesian Affairs

Public Hearing

Guam Legislature Temporary Building

Public Hearing Room

Tuesday, April 6, 1999

9:00 a.m.

Bill 134 (COR)

"An act to amend section 56403 of Article IV, Chapter 56, Title 18 Guam Code Annotated (Former Civil Code section 2036) relating to compulsory pilotage of vessels within Guam waters."

1. FRANK SAINTEOS DAG
2. Joseph L Cruz Cadras Marine
3. Jürges Hübnerberg Guam Oceans
4. Capt Scott J Glover Coast Guard
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

**Testimony of Frank G. Santos, Harbor Master
Port Authority of Guam
On Bill 134 (COR)**

**"An Act to Amend Section 56403 of Article Iv, Chapter 56, Title
18 Guam Code Annotated Relating to Compulsory Pilotage of
Vessels Within Guam Waters.**

April 6, 1999 11:00 a.m.

AS HARBOR MASTER OF THE PORT AUTHORITY OF GUAM, I FULLY SUPPORT BILL 134. THIS PROPOSED LEGISLATION WAS PREPARED BY PAG'S LEGAL COUNSEL AFTER SEVERAL MONTHS OF COLLABORATIVE WORK WITH THE PORT AUTHORITY, HARBOR PILOTS AND THE U.S. COAST GUARD. THIS MEASURE WOULD CORRECT CURRENT INADEQUACIES IN EXISTING LOCAL LEGISLATION, AS EXPLAINED IN THE ATTACHED LETTER FROM THE CAPTAIN OF THE PORT, CAPT. S.J. GLOVER, U.S. COAST GUARD, DATED MARCH 9, 1999 TO THE CHAIRPERSON OF THE PAG BOARD OF DIRECTORS.

IN ADDITION TO MAINTENANCE OF LOCAL PILOTAGE JURISDICTION AND A LICENSING REGIME TO ENSURE EFFECTIVE ENFORCEMENT OF SAFE PILOTAGE RULES AND REGULATIONS, BILL 134 WOULD CORRECT AN ANOMALY IN GUAM'S MARITIME LAW WITH REGARD TO THE RESPONSIBILITY FOR A VESSEL'S NAVIGATION. WHEREAS GUAM'S CIVIL CODE §56403 PROVIDES THAT THE HARBOR PILOT UPON BOARDING A VESSEL IS IN CHARGE, FEDERAL LAW REQUIRES THAT THE MASTER OF THE VESSEL REMAIN AT ALL TIMES IN FULL CHARGE AND CONTROL WITH THE HARBOR PILOT ONLY ADVISING THE MASTER AS TO ITS COURSE AND SPEED WHILE ENTERING, EXITING OR NAVIGATING WITHIN THE HARBOR. BILL 134 WOULD CONFORM GUAM'S LAW WITH THE ABOVE-REFERENCED FEDERAL REQUIREMENT.

I BELIEVE YOU WILL FIND THAT MOST IF NOT ALL HARBOR PILOTS AND OTHER PORT USERS SUPPORT THIS LEGISLATION. THE PORT AUTHORITY'S HARBOR RULES AND REGULATIONS HAS UNDERGONE EXTENSIVE REVISIONS AFTER TWO PUBLIC HEARINGS AND NUMEROUS ROUND-TABLE MEETINGS TO CONFORM WITH THE PROPOSED PILOTAGE LEGISLATION AND WILL BE ADOPTED BY THE PAG BOARD OF DIRECTORS UPON ENACTMENT OF BILL 134 INTO LAW, SUBJECT OF COURSE TO THE LEGISLATURE'S APPROVAL OF THE PROPOSED RULE AMENDMENT.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY THIS MORNING AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS AND PROVIDE ANY ADDITIONAL INFORMATION YOU MAY DESIRE.



16600

03/09/99

Ms. Arlene Bordallo
Chairperson
Board of Directors
Port Authority of Guam

Dear Sir or Madam:

During the Rules and Regulations Public Hearing of March 3, 1999, I offered to submit a paper explaining State and Federal government jurisdiction in pilotage matters and why Guam needs to develop legislation addressing pilotage for the waters of Guam. The following paragraphs outline the dual control of pilotage by the federal and state governments, the federal government's authority to exert authority if a state government fails to, and which government entity has the authority to discipline pilots.

Pilotage in the United States is a complex and highly variable service, which manifests itself differently in nearly every port. In broadest terms, an individual who navigates a ship, in, out or through a port, river or channel, is a pilot. Federal Statutes, and over 200 years of case law, clearly indicate that the licensing and regulation of pilots is primarily a matter of the states.

Pilotage laws predate the Constitution. By the time the United States Constitution was adopted, many of the thirteen Colony- States already had regulations for pilotage in place. One of the first acts of Congress, Act of Congress of August 7, 1789, recognized this reality and continued State regulation for the time being. The Act provided: "That all pilots ... shall continue to be regulated in conformity with the existing laws of the States...until further legislative provision shall be made by Congress. Additional legislation was passed which defined the dual control of pilotage by both the Federal government and the States. Today, both State and Federal regulations control pilotage in the United States

The present statutes, which govern pilotage in the United States, are contained in 46 USC 8501-8503. The first section of 46 USC 8501 states "Except as otherwise provided in this subtitle, pilots ... shall be regulated only in conformity with the laws of the states." Consequently, except in those few instances where the federal government has decided to preempt, the individual states control the oversight and regulation of pilotage within the United States. Federal preemption is described in 46 USC 8502 & 8503:

- a. 46 USC 8502 - Federal pilotage is compulsory and the pilot must hold a U.S. Coast Guard license for U.S. vessels engaged in domestic "coastwise" trade, and
- b. 46 USC 8503 - The federal government may decide to exercise its preemptive authority when pilotage is voluntary under state law.

Guam needs to pass mandatory pilotage legislation to exert its authority over pilotage in Guam waters. As discussed above, in the absence of a mandatory state pilotage program, the federal government has the authority to exert federal control of pilotage in Guam waters. Existing Guam law, Civil Code Section 2036 (18 G.C.A. 56403) requires a pilot to be taken aboard a vessel only "if one offers himself". The draft pilotage legislation will make pilotage mandatory and eliminate the need for the U.S. Coast Guard to exert federal authority over all pilotage.

Another issue discussed during the Public Hearing was which government entity controls the discipline of pilots. The draft pilotage legislation requires an applicant for a Guam Pilot license to hold a valid Coast Guard license. Therefore, Guam pilots will hold both a Guam pilot license and an U.S. Coast Guard pilot license. Based on concepts developed through case law, discipline of pilots is reserved to the governmental entity, which exercises pilotage jurisdiction. The federal government will have jurisdiction when a pilot is serving on a U.S. vessel engaged on a domestic route while Guam will have jurisdiction when a pilot is serving on a foreign flag vessel or a vessel on a foreign voyage. The U.S. Coast Guard will investigate all casualties involving a Coast Guard licensed pilot but will take action against the pilot's license only if he/she was piloting a U.S. flag vessel on a domestic route.


S.J. Glover



CABRAS MARINE CORPORATION

COMMERCIAL PORT, APRA HARBOR, GUAM, M.I.
Mailing Address: Suite 111, 1026 Cabras Highway, Piti, Guam 96925
Telephones: 477-7345 • 472-1723 • Telefax: (671) 477-6206

TESTIMONY ON BILL 134

AN ACT TO AMEND SECTION 56403 OF ARTICLE IV, CHAPTER 56, TITLE 18, GUAM CODE ANNOTATED (FORMER CIVIL CODE SECTION 2036) RELATING TO COMPULSORY PILOTAGE OF VESSELS WITHIN GUAM WATERS.

April 6, 1999

Good Morning Madam Chairperson and members of the Committee on Transportation, Telecommunications and Micronesian Affairs.

Thank you for the opportunity to participate in this morning's Public Hearing regarding Bill 134. For clarification purposes due to my dual roles, I am testifying this morning as President of CABRAS MARINE CORPORATION and not as the Chairman of the Maritime Affairs Committee, which has not formalized a position on this subject. I understand the Chamber will formally submit a position after tabling this issue with its appropriate members.

Regarding Bill 134, CABRAS MARINE CORPORATION is in support of its intent. During recent working sessions on certain revisions of the Rules and Regulations of the Port Authority of Guam, the U.S. Coast Guard indicated a need for this policy to be adopted by local legislation. The members of the pilot community attending the discussion agreed that this matter needs to be managed locally. If not, Federal policy will govern.

The policies being mandated herein will provide standards necessary for this activity to continue in a regulated manner. The structure for reviewing pilot licensing is sound provided that the membership composition continues to require a certain member of the Review Board from every company in the pilot business. This will ensure that impartiality in review of various applications remains intact.

CABRAS MARINE CORPORATION has been in business on Guam for nearly 20 years. We appreciate the steps being taken today to preserve safety at the Port. After all, the Port of Guam is our major lifeline to the outside world.

Thank you again for accepting this testimony.

Testimony submitted by Joseph L. Cruz, President of CABRAS MARINE CORPORATION.

LAW OFFICES OF

CARBULLIDO BORDALLO & BROOKS LLP

CGA PROFESSIONAL BUILDING, SUITE 101
251 MARTYR STREET
AGANA, GUAM 96910

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PHILIP CARBULLIDO
OLIVER W. BORDALLO
THERENCE M. BROOKS

CYNTHIA V. ECHE
SANDRA D. VINCE
PHILIP J. TYDINGCO
JONATHAN R. QUAN

TELECOPIER COVER PAGE

TO: MS. CHRIS LIZAMA
Office of Senator Carlotta Leon Guerrero

DATE: March 5, 1999
TELECOPIER: (671) 477 1323

FROM: OLIVER W. BORDALLO, ESQ.

RE: Revisions to §56403.7 of the Pilotage Legislation

REMARKS:

Per our discussion, please see attached.

We are transmitting 2 pages including this cover sheet.
If you do not receive all the pages, please call Mark Hampton as soon as possible at (671) 472-6848.

* * * * *

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

56403.7 Pilot License ~~Review Board~~ Advisory Committee. The Manager shall appoint a Pilot License Advisory Committee, consisting of seven members, including the Harbor Master, who shall serve as its Chairperson, Assistant Harbor Master, three licensed harbor pilots and two members representing the shipping industry. No two members of the ~~Board~~ Committee shall be employed by the same company or by affiliated companies. Each member except the Harbor Master and Assistant Harbor Master shall serve for a term of two years and until replaced, which terms shall be staggered so that the terms of no more than four members will expire in a single year. The sole function of the Pilot License ~~Board~~ Advisory Committee shall be to review and recommend appropriate disposition of complaints and ~~other~~ any proposed disciplinary action against a harbor pilot. No pilot's license shall be suspended or revoked, or any other disciplinary action taken, unless such action has been reviewed by a majority of the membership of the ~~Pilot License Review Board~~ Committee, or thirty days have passed from submittal of the matter to the Committee for such review. The Manager and Board of Directors of the Port Authority of Guam shall ~~consider but not be required to adhere to~~ may seek the advice and the recommendations of the ~~Pilot License Review Board~~ Committee on any other matters relating to pilotage.

F. PHILIP CARBULLIDO
OLIVER W. BORDALLO
TERRENCE M. BROOKS

PHILIP J. TYDINGCO
CYNTHIA V. ECUBE
SANDRA D. LYNCH
JONATHAN R. QUAN

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April 23, 1999

Via Hand Delivery

Senator Carlotta A. Leon Guerrero
Committee on Transportation
Telecommunications and
Micronesia Affairs
Mina' Bente Singko Na
Liheslaturan Guåhan
194 Hernan Cortez Avenue
Union Bank Building, Suite 312
Hagåtña, Guam 96910

Re: *Bill 134 COR; Fishing Vessel Exemptions*

Hafa Adai Senator Leon Guerrero!

As you know, I drafted Bill 134 at the request of the Port Authority of Guam (PAG). However, this legislation was prompted at the U.S. Coast Guard's instance for the reasons explained in this letter. Regrettably, I was not able to attend the legislative hearing on Bill 134 due to an illness and therefore request inclusion of this letter to the public record, if possible.

Pacific Daily News coverage (PDN 4/8/99) of the public hearing failed to accurately report the intent of Bill 134 or the current state of Guam law. Bill 134 would clarify that Guam's pilotage laws are compulsory (as they are elsewhere). However, it does not by any means follow that the use of a harbor pilot presently is optional. On the contrary, since at least 1953 Guam's Civil Code has mandated that: "On entering or leaving a port, harbor or river, the master of a ship must take a pilot if one offers himself, and while the pilot is on board the navigation of the ship devolves on him." (Guam Civ.Cd. 2036; 18 GCA 56403).

Harbor pilots, who guide ocean-going vessels safely through the narrow entrance into, and around navigation hazards and federally restricted waters within, Apra Harbor are available round the clock and in all manner of weather conditions. As a practical matter, therefore, pilotage is already mandatory under existing Guam law for all vessels save those exempted by the PAG's Harbor Rules and Regulations.

April 22, 1999

Although the Guam Civil Code requires most commercial vessels to use a harbor pilot, it does not provide the PAG with any means of ensuring safe pilotage. This is accomplished in other states and territories through the adoption of a local pilot licensing law and implementing regulations. The U.S. Coast Guard currently provides a vessel master's license endorsement for harbor piloting. However, this federal agency has limited authority to regulate pilotage because federal law presumes that Guam, like other coastal states and territories, will exercise its own prerogative to do so. More specifically, the Coast Guard has jurisdiction to regulate the piloting of enrolled vessels (i.e., vessels sailing from one U.S. port to another). Pilotage of vessels sailing under U.S. registry to or from a foreign port and of foreign flag vessels, on the other hand, is not subject to Coast Guard regulation. Unless Guam fills this regulatory void, by adopting a local harbor pilot licensure law and regulations, the U.S. Coast Guard has indicated it will in that event be adopting Guam-specific federal piloting rules applicable to all vessels.

Bill 134 would not impose additional hardships on foreign fishing vessels, as some have claimed. Under the PAG's existing harbor regulations, all large craft navigating Apra Harbor waters after dark (except tugs, dinner cruise and local charter boats) must take aboard a licensed pilot. Most state pilotage rules generally exempt U.S. flag and permitted foreign fishing vessels. Bill 134 and PAG's proposed new pilotage rules, on the other hand, would not require fishing permits or draw any other distinctions between domestic and foreign fishing vessels. A Guam licensed harbor pilot would be required on such vessels only (1) if their master has not previously navigated Apra Harbor with the aid of a pilot, (2) during night time operations, or (3) if language barriers prevent two-way communications from being maintained with the PAG's Harbor Master or the Coast Guard's Captain of the Port. This qualified exemption, applicable to both U.S. and foreign flag fishing vessels, compares favorably with the pilotage rules applicable to foreign flag vessels at other U.S. ports while, at the same time, protecting public safety, security, law enforcement, navigation and port operational interests.

The significance of the Coast Guard's and Harbor Master's input in developing Bill 134's pilot licensing and exemption provisions and value of their concurrence with any final harbor pilot rules should be emphasized. To avoid a federal takeover, Guam's antiquated pilotage laws must not only be updated to conform with federal law. They must also meet certain minimum standards ensuring that federal and local maritime laws and regulations can be effectively enforced. A blanket exemption of all fishing vessels, regardless of size and without any safety or security conditions, might not meet these standards. In previous cases the U.S. District Court of Guam has expressly recognized the vital importance of maintaining safe, unobstructed navigation into and within "Guam's lifeline to the world":

April 22, 1999

A closure of Apra Harbor due to a marine obstruction of its narrow mouth could catastrophically affect Guam's economy where the only alternative method of securing goods would be by plane, and cost prohibitive.

Triton Container International, et al. v. Compania Anonima Venezolana de Navigacion, et al., District Court Civil Case No. 94-0005 (Order October 4, 1994). We understand that unsafe navigation of commercial fishing vessels near the entrance to Apra Harbor have occurred in the past (i.e., the two recent groundings in Apra Harbor) and could potentially cause a blockage as when they attempt to overtake larger vessels on their way into or out of the Commercial Port. Nonetheless, Bill 134 and PAG's amended rules do not propose new or additional restrictions on pilotless navigation of these craft.

The record should also reflect that Bill 134 and companion amendments to the PAG's harbor regulations were discussed and debated at numerous round table meetings attended by various affected parties, including harbor pilots and representatives from the PAG's Harbor Master's office, the U.S. Coast Guard, Chamber of Commerce and your staff. In addition, Bill 134 and the proposed rule amendments were widely circulated throughout the port community, published on the internet and were the subjects of two public hearings conducted by PAG, the last being on March 3, 1999.

In summary, Guam harbor pilots are presently licensed by one agency (Coast Guard) but subject to regulation by another (PAG) in most instances because federal law presumes that Guam will enact comprehensive legislation ensuring safe navigation in Guam waters. The proposed statutory and rule amendments, as applied to fishing vessels, will be 'impact neutral' because these vessels are already required to take on pilots when sailing after dark, if their masters are unfamiliar with Apra Harbor waters or if ship-to-shore communications are not possible. (PAG's Harbor Master has agreed to allow communications via the vessels' Guam agent and Bill 134 COR was revised accordingly; we understand this additional accommodation will satisfy the concern of several fishing industry representatives who testified in opposition to Bill 134).

On a personal level, I believe the fundamental issue raised by Bill 134 is whether Guam should relinquish a sovereign right to manage, and corresponding duty to protect, navigation in territorial waters. Only those with little faith in Guam's ability to govern itself or its resources can honestly question the need for this legislation. It was quite evident at previous meetings and public hearings that Bill 134 and the amended harbor regulations enjoy nearly a unanimous support among port users. This is so because they believe, as I do, that federal authorities are not likely to have as much concern for, or make as diligent an effort to protect, local economic development interests (such as by accommodating foreign fishing vessels) as you and PAG's Board of Directors and management have.

CARBULLIDO BORDALLO & BROOKS LLP

Page 4

Senator Carlotta A. Leon Guerrero

Re: **Bill 134 COR; Fishing Vessel Exemptions**

April 22, 1999

In closing, on behalf of PAG's legal counsel I would like to extend our humble si yu'os maase and appreciation for your assistance, understanding and invaluable support.

Sincerely yours,

CARBULLIDO BORDALLO & BROOKS LLP



OLIVER W. BORDALLO
Counsel for the Port Authority of Guam

owb\mach

cc: All Senators
PAG Board of Directors
PAG General Manager
PAG Harbor Master
Captain of the Port, U.S. Coast Guard

owb\pag\leonguerrero.004



Polar International

PO Box 11498 Tamuning, Guam 96931 Tel (671)477-4061 Fax(671)477-8882
email: polar@kuentos.guam.net

March 11, 1999

Senator Carlotta Leon Guerrero

Fax: 477-1323

Regarding: Bill No. 134 – "Compulsory Pilotage Act of 1999"

Dear Senator,

During the Maritime Affairs Committee meeting held at the Chamber of Commerce office on March 10, a member of your staff presented Bill No. 134 as drafted by your office. On page seven, section 56403.15, part 1, there is a new provision requiring that all vessels must use a pilot if the master is not able to communicate in English. This particular point was discussed in numerous hearings regarding the proposed Harbor Rules and Regulations. It was pointed out in all of these hearings that such a proposal was unacceptable to the foreign longline vessels. It seems, however, that PAG and your office has accepted the position of the pilots.

The cost of a pilot on every vessel move for just Polar International would be enormous. In a bad year such as 1998, Polar had 290 port calls. The present charge for a pilot into the harbor is \$150.00, which means a cost of \$300.00 to enter and exit. This would result in an additional cost of \$87,000, and in a good year such as 1996, when Polar had 729 port calls, the cost would be over \$200,000.

It was stated by your staff member that the proposed regulations mirror those in the US. However, as you well know, there is no port in the US that has a foreign flag based fishing fleet. This appears to be nothing more than a blatant attempt by certain pilots to receive a windfall profit. It should be noted, though, that there would likely be a massive relocation of the entire foreign fleet, as this cost is unsustainable. It is not surprising that the Harbormaster's office is partial to certain interests at the expense of others. It is surprising that your office has drafted a bill with a provision that is contrary to the stated positions you have taken regarding support for the fishing industry.

Please kindly advise if this is your position, or if it is no more than an oversight. We appreciate your efforts to help the industry and can only hope that you have not reversed your position.

Sincerely,

Douglas Stock
Director

**WAW ENTERPRISES, INC.
110 OCEAN SUMMIT DRIVE
PITI, GUAM 96925
TEL(671)477-0556 FAX:(671)477-9692**

MARCH 11, 1999

SENATOR CARLOTTA LEON GUERRERO
25TH GUAM LEGISLATURE

DEAR SENATOR,

I HAVE RECEIVED A COPY, OF A DRAFT, OF BILL 134 THAT WAS WRITTEN BY YOUR OFFICE CONCERNING THE HARBOR RULES AND REGULATIONS. ON PAGE SEVEN, SECTION 56403.15, PART 1 THERE IS A NEW PROVISION THAT ALL VESSELS MUST USE A HARBOR PILOT IF THE MASTER OR MATE IS NOT FLUENT IN THE ENGLISH LANGUAGE FOR COMMUNICATIONS.

IF THIS BILL IS PASSED INTO LAW IT WOULD BE THE "BEGINNING OF THE END" FOR OUR FOREIGN LONG LINE FLEET THAT IS HOME PORTED IN GUAM. PROBABLE ADDITIONAL EXPENSE WOULD BE \$500.00 / PORT CALL, WHICH WOULD INCLUDE SHIFTING FOR BUNKERS / WATER AND IN - OUT.

THIS ACTUALLY APPEARS TO BE SOME TYPE OF FAVOR FROM THE HARBOR MASTER'S OFFICE OR MANAGEMENT OF PAG TO BENEFIT CERTAIN PRIVATE INTEREST.

YOU HAVE BEEN CAMPAIGNING TO "HELP THE FLEET" BUT THIS IS CLEARLY CONTRADICTORY TO YOUR GOAL. THERE IS A POSSIBILITY THAT THIS IS AN OVERSIGHT ON YOUR PART AND THIS MATTER WILL BE CORRECTED

IF THE FLEET LEAVES GUAM BECAUSE OF THIS, SEVERAL HUNDREDS OF JOBS WOULD BE LOST AND MILLIONS OF DOLLARS OF REVENUE WOULD DISAPPEAR FROM THE ALREADY STRAPPED COFFERS OF THE GOVERNMENT OF GUAM.

PLEASE ADVISE IF THIS MATTER WILL BE CORRECTED OR IT WILL CONTINUE ON COURSE AS IS.

SINCERELY,



BILL WEINER, PRESIDENT



KOUEKI PACIFIC CORPORATION

790N MARINE DR. STE 705. TUMON GUAM 96911.
TEL : 4778979. 4776753 FAX : 4773891

March 18, 1999

Senator Carlotta Leon Guerrero
25th Legislature of Guam

Re : Bill NO.#134

Dear Senator,

During the Maritime Affairs Committee meeting held at the Chamber of Commerce office on March 10, a member of your staff presented Bill NO.#134 as drafted by your office. There is a new provision in section #56403.15 that requiring all vessels must use pilot service any time while calling/departing Guam port if the vessel master is not able to speak English.

As one of the agent for Taiwanese longlining fishing vessel that basing Guam, We like to take this opportunity to express our concern about this bill. Due to the lack of close fishing ground and expensive local supplies, Guam is losing its competition compare to others fishing base such as Davou in Philippine and Bali in Indonesia as well as ports locate in other ocean. Especially last year, under the stress of Asian/Japan economic turmoil, Guam had the lowest number of longliner in the history and We assume this has been impacting Guam's economy. If the above mentioned bill NO.#134 takes effect, we strongly believe that the additional pilot cost and the inconvenience caused by this new procedure will deter the entire fishing fleet from coming to Guam. As to the English communication hinderance, we don't think it will be a problem because we always have English interpreter who are able to do the translation through SSB radio contact for the F/V master.

We respect and appreciate your intention for the safety and the passage control of Guam port, but we also request your consideration from all aspects. At the end of this letter we sincerely propose a meeting between you and all the F/V agents so that opinions and concerns could be widely gathered.

Sincerely,



Frank Cheng

Managing Director



Koyoo Pacific Fisheries, Inc
P.O. Box 9112 Tamuning, Guam 96931 U.S.A.

Phone: (671) 477-3072
477-3073
Fax: (671) 477-3122

March 16, 1999

Senator Carlotta Leon Guerrero
Fax: 477-1323

Subject: Small Vessel Pilotage Act

Dear Senator,

We are an agent of fleets of longliner commercial fishing vessels operated by Japanese (non-english speaking) Captains. As we understand the subject act and if passed into law, our small vessel longline fleets would add on another cost to the vessels which are now operating on very low to break-even margins.

With Asian competitor ports currency, labor, and government regulation so low, the fleets will move away from Guam if we do not handle the situation carefully. This has already happened to some degree as the drop in port of call numbers is obvious to all in this industry.

We thank you for your help and interaction in Guam fisheries issues and trust you will protect our fragile condition.

Best Regards,


Jacob S. Dou
Gen. Manager

PUBLIC HEARING NOTICE



The Legislative Committee on Transportation, Telecommunications and Micronesia Affairs will conduct a Public Hearing at **9 a.m. Tuesday, April 6, 1999**, in the Public Hearing Room of I Mina'Bente Singko na Liheslaturan Guahan Temporary Building in Hagatna. The agenda is as follows:

Confirmation hearing for:

Napoleon Carino, as acting member, Guam Mass Transit Authority Board of Directors, whose term will expire on March 18, 2002.

Reynald Del Carmen as acting member, A.B. Won Pat Guam International Airport Authority Board of Directors, whose term will expire on March 18, 2002.

Ralph W. Gutierrez, as acting member, A.B. Won Pat Guam International Airport Authority Board of Directors, whose term will expire on February 10, 2002.

Public hearing on:

Bill 134: "An act to amend Section 56403 of Article IV, Chapter 56, Title 18 Guam Code Annotated (Former Civil Code section 2036) relating to compulsory pilotage of vessels within Guam waters."

Bill 136: "An act to amend Section 71110, Chapter 71, Division 2 of Title 21 Guam Code Annotated relative to underground utility damage, and to add a new Section 70116 (a) (19), Chapter 70, Division 2 of Title 21 GCA relative to the revocation, suspension and renewal of licenses, and to amend Section 53105, Chapter 53, Division 5 of Title 5 GCA relative to bonding requirements.

Bill 170: "An act to authorize the Public Utilities Commission to establish a surcharge on local exchange telephone service and commercial mobile radio service to fund an island-wide enhanced "911" emergency telephone system.

ADA Coordinator: Betty Ann Guerrero. The public is welcome to attend. For additional information please call the Office of Senator Carlotta A. Leon Guerrero at 472-3416. You may fax your testimony to 477-1323.