



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

Office of the People's Speaker
Vicente C. Pangelinan

DEC 22 2003

TIME: 3:41 () AM () PM
RECEIVED BY: *[Signature]*

DEC 22 2003

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheslaturan Guahån
Twenty-Seventh Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith is Bill No. 137 (COR), "AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 10 OF TITLE 12 OF THE GUAM CODE ANNOTATED, TO AUTHORIZE THE BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP CONTRACT, LEASE AGREEMENT, AND OPERATING PERMIT FOR TERMINAL OPERATIONS AND MAINTENANCE OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT," which was enacted into law without the signature of *I Maga'låhen Guåhan*. This legislation is now designated as Public Law No. 27-60.

This Administration has been aggressively pursuing better services for our people. As a part of this commitment, we seek to privatize the Port Authority of Guam. Most importantly, through privatization, we will see improved performance, increased autonomy, efficiency, and competitiveness placing Guam on par with other ports of this region and the world.

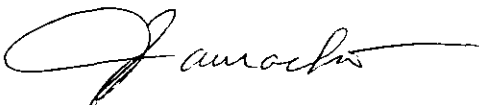
The Port is a vital component to the mainstay of our people. It is the entry point for the majority of Guam's imports. The importance of the Port was stressed with the recent December 2002 Mobil fire when access to the Guam Port paralyzed the entire island. Presently, the Port stands in dire straits. The current financial challenges at the Port have placed Guam in a precarious situation; limiting its ability to increase its performance and invest in upgrading the Gantry cranes used to offload the containers from the ships. Today, the Port has only one crane working while the other crane is expected to be out of service for one month. Although both are technically operable, they have far exceeded their life expectancy. These issues can be rectified with the right management and the right resources.

The Honorable Vicente C. Pangelinan
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Bill No. 137 is a step in that direction by authorizing the Port Authority's Board to enter into a public-private partnership contract, lease agreement, and operating permit for terminal operations and maintenance. However, Bill No. 137 has changed substantially from its original inception. Most alarming is the provision requiring legislative approval. Bill No. 137 contains a provision stating that the contract or lease agreement shall be deemed disapproved if not approved by statute sixty (60) days after submission to the Legislature. This section is an egregious violation of the doctrine of separation of powers. This section is a legislative veto by inaction. What is clearly an executive function – executing contracts – may be disapproved by the inaction of the Legislature.

I do not support legislative approval on clearly an executive function and cannot in good conscious sign this measure into law. However, because I support the privatization of the Port and refuse to allow the delay of its privatization, I have allowed Bill No. 137 to lapse into law without my signature.

Sincerely yours,



FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of P.L. 27-60

cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary

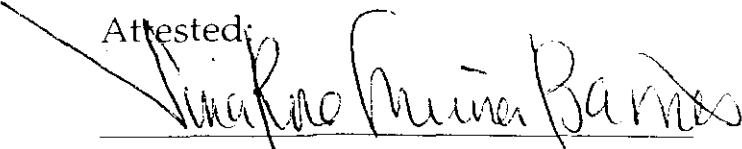
I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

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

This is to certify that Substitute Bill No. 137 (COR), "AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 10 OF TITLE 12 OF THE GUAM CODE ANNOTATED, TO AUTHORIZE THE BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP CONTRACT, LEASE AGREEMENT, AND OPERATING PERMIT FOR TERMINAL OPERATIONS AND MAINTENANCE OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT," was on the 6th day of December, 2003, duly and regularly passed.

vicente (ben) c. pangelinan
Speaker

Attested:



Tina Rose Muña Barnes
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 9 day of December, 2003, at 5:30
o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: December 21, 2003

Public Law No. 27-60

Became law without the signature
of *I Maga'lahaen Guåhan*,
the Governor of Guam.

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 137 (COR)

As substituted by the Committee on Judiciary
and Transportation, and further substituted
and amended on the Floor.

Introduced by:

F. R Cunliffe
J. M. Quinata
Toni Sanford
R. J. Respicio
T. R. Muña Barnes
F. B. Aguon, Jr.
J. M.S. Brown
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
v. c. pangelinan
Ray Tenorio

AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 10 OF
TITLE 12 OF THE GUAM CODE ANNOTATED, TO
AUTHORIZE THE BOARD OF DIRECTORS OF THE JOSE
D. LEON GUERRERO COMMERCIAL PORT TO ENTER
INTO A PUBLIC-PRIVATE PARTNERSHIP CONTRACT,
LEASE AGREEMENT, AND OPERATING PERMIT FOR
TERMINAL OPERATIONS AND MAINTENANCE OF THE
JOSE D. LEON GUERRERO COMMERCIAL PORT.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. A new Article 3 is *added* to Chapter 10 of Title 12 of the
3 Guam Code Annotated as follows:

4 "Article 3

1 Jose D. Leon Guerrero Commercial Port
2 Public-Private Partnership

- 3 §10301. Short Title.
- 4 §10302. Legislative Intent.
- 5 §10303. Public-Private Partnership Authorization.
- 6 §10304. Submission of Proposals.
- 7 §10305. Terminal Operator.
- 8 §10306. Port Employees.
- 9 §10307. Port Employment.
- 10 §10308. Temporary Casual Employment Authorized.
- 11 §10309. Revenue Sharing.
- 12 §10310. Capital Improvement Fund.
- 13 §10311. Tariffs.
- 14 §10312. Equipment.
- 15 §10313. Operational Area.
- 16 §10314. Indemnification.
- 17 §10315. Cargo Handling Operations.
- 18 §10316. Insurance.
- 19 §10317. Port Master Plan.
- 20 §10318. Legislative Approval.
- 21 §10319. Specific Disclosure Rules.
- 22 §10320. Conflicts of Interest.
- 23 §10321. Transitional Period.
- 24 §10322. Severability.

1 §10301. **Short Title.** This Article may be cited as the *Port*
2 *Public-Private Partnership Authorization Act of 2003.*

3 §10302. **Legislative Intent.** *I Liheslaturan Guåhan* finds that the
4 Jose D. Leon Guerrero Commercial Port ('Port') was established as an
5 autonomous agency of the government of Guam by Public Law 13-87
6 in 1975 to provide for the needs of ocean commerce, shipping and
7 navigation of the Guam. The current activities of the Port are divided
8 into six (6) main areas: (a) Office of the General Manager; (b) Finance
9 and Administration; (c) Harbor Control and Compliance; (d)
10 Commercial Division; (e) Operations Division; and (f) Maintenance
11 Division.

12 *I Liheslaturan Guåhan* finds that pursuing a Public-Private
13 Partnership Contract and Lease Agreement for terminal operations
14 and maintenance for the Jose D. Leon Guerrero Commercial Port is in
15 the best interests of its employees, the government and the people of
16 Guam. Guam's Port is the last government-run terminal operation in
17 all of the United States, placing it at a significant disadvantage with
18 regard to employee training and development, cost effective cargo
19 handling, expansion of services, marketing, and capital
20 improvement.

21 Passage of this Act shall authorize the Board of Directors of the
22 Port to enter into a Public-Private Partnership (PPP) Contract for
23 terminal operations and maintenance and the lease of the land
24 known as the Commercial Port Area, as well as existing buildings,

1 and operational machinery, vehicles, tools and equipment with the
2 permit to operate the same as a common user port.

3 **§10303. Public-Private Partnership Authorization.** The Board
4 of Directors of the Jose D. Leon Guerrero Commercial Port
5 (hereinafter referred to as the 'Board') shall enter into a Public-Private
6 Partnership (PPP) Contract, Lease Agreement, and Operating Permit
7 for terminal operations and maintenance of the Jose D. Leon
8 Guerrero Commercial Port with a Terminal Operator for a period not
9 less than five (5) years and not more than twenty (20) years, with
10 options to renew.

11 **§10304. Submission of Proposals.** The Board shall direct the
12 issuance of an invitation to receive proposals from interested parties
13 (Proponents) who may be an existing company or a combination of
14 existing companies, to lease the Commercial Port Area for terminal
15 operations and maintenance within ninety (90) days upon enactment
16 of this Act with a draft completed within forty-five (45) days. The
17 proposal shall include, but is not limited to, the following
18 components, which shall be used in the evaluation of submitted
19 proposals by the Port. They are as follows:

20 (a) An Employee Arrangement Plan pursuant to §10306
21 of this Article;

22 (b) A Plan for primary cargo handling equipment
23 replacement and/or upgrade; and

24 (c) A Management and Financial Plan for the seaport to
25 increase efficiency resulting in the reduction of the port tariff

1 charges or the abatement of the port tariff charge increases and
2 increase customer satisfaction.

3 The successful proponent (Terminal Operator) shall enter into a
4 Contract and Lease Agreement subject to legislative approval
5 pursuant to 12 GCA §10318, for a period not less than five (5) years
6 and not more than twenty (20) years, with options to renew.

7 §10305. **Terminal Operator.** The Terminal Operator shall have
8 demonstrated experience in Port Management and Operations. The
9 Terminal Operator may be a Guam company, with or without foreign
10 partners, or a foreign company with or without a Guam partner. The
11 Terminal Operator may also be a special purpose entity to be formed
12 by Proponents in case of an award. The Port shall determine and
13 stipulate the minimum qualifications for Proponents within the
14 invitation to receive proposals as provided for in §10304 of this
15 Chapter.

16 §10306. **Port Employees.** The Terminal Operator shall submit
17 his proposed employment arrangement for the existing Port
18 employees to be assigned to the Terminal Operator, subject to the
19 following guidelines:

20 (a) Existing classified Port employees shall maintain
21 their civil service protections and shall be subject to the
22 Personnel Rules and Regulations of the Jose D. Leon Guerrero
23 Commercial Port while employed;

1 (b) Existing Port employees shall be given the
2 opportunity to continue their service with the Port or in other
3 areas of the government of Guam;

4 (c) Existing Port employees shall be consulted about
5 the proposed employment agreement;

6 (d) Existing Port employees shall have the right of first
7 refusal for employment with the Terminal Operator; and

8 (e) The Terminal Operator shall maintain an aggressive
9 training and apprenticeship program for all employees.

10 **§10307. Port Employment. (a) Employee Qualifications.** The
11 Port shall certify and make available, a schedule of employees to
12 include job titles and divisions and/or sections to be assigned, to the
13 Terminal Operator. All Port employees to be assigned to the
14 Terminal Operator by the Port shall be, at the time of their
15 assignment, and shall, at all times during their assignment, continue
16 to be Qualified Port employees. Before assigning an employee to the
17 Terminal Operator, the Port shall establish, to the Terminal Operator
18 that the employee is a Qualified Port employee.

19 (b) **Vacated Positions.** Any position vacated for any reason by
20 a Port employee assigned to the Terminal Operator, including, but
21 not limited to, retirement, termination, removal, layoff, discharge,
22 resignation, or otherwise shall cease to be a Port position. Any such
23 position vacated for whatever reason, including, but not limited to,
24 reassignment, transfer, promotion, demotion, Port adverse action or

1 otherwise shall cease to exist and shall *not* be filled by the Port or the
2 government of Guam.

3 **§10308. Temporary Casual Employment Authorized.** The
4 Port is hereby authorized to employ individuals as casual employees.
5 For the purposes of this Section, the term casual employment shall
6 mean short-term appointments made to fill temporary vacancies.
7 Appointments of this nature shall be restricted to waterfront and
8 support personnel of the Port, involved in the loading and unloading
9 of cargo. Employees on such short-term appointments shall not be
10 entitled to any employee benefits; any civil service protections
11 reserved for classified employees of the government of Guam; nor
12 any right to promotions. Employees on such appointments shall
13 work on an 'on-call' basis and may be terminated when their services
14 are no longer required for the operations prescribed in this Section.
15 This Section shall expire upon the commencement of the Public-
16 Private Partnership as authorized by §10303 of this Act and all casual
17 employment at the Port by Port employees shall cease.

18 **§10309. Revenue Sharing.** The Terminal Operator shall
19 propose to the Port a Revenue Share from its gross revenue generated
20 from its terminal operations and a guaranteed Minimum Annual
21 Guaranteed ('MAG') Lease Payment. Compensation to be paid to the
22 Port as consideration for the Port to enter into a Public-Private
23 Partnership Contract and Lease Agreement shall be either the
24 Revenue Share or the MAG, whichever is greater.

1 **§10310. Capital Improvement Fund.** A Capital Improvement
2 Fund (CIF) shall be established and capitalized through revenue
3 sharing with the Port and the Terminal Operator. The Terminal
4 Operator, in addition to the compensation mentioned in §10309 of
5 this Act, shall offer a contribution to the CIF of a percentage of its
6 gross revenue, which shall be remitted quarterly. Expenditures from
7 the CIF shall be mutually agreed upon by the Terminal Operator and
8 the Port.

9 **§10311. Tariffs.** The Terminal Operator shall enforce and
10 collect as its revenue the Terminal Tariff, as approved by the Port
11 Board, and filed with the Maritime Transportation Authority,
12 schedule of charges, rules and regulations covering cargo handling
13 operations and related services, the Harbor Rules and Regulations
14 and all other provisions of local and federal law relating to the
15 terminal. Changes to any charges, including, but not limited to, the
16 Terminal Tariff, shall require the approval of the Port Board of
17 Directors.

18 **§10312. Equipment.** Equipment such as container gantry
19 cranes and yard handling equipment shall be the responsibility of the
20 Terminal Operator. Port owned cargo-handling equipment shall be
21 made available to the Terminal Operator who shall have the
22 opportunity to buy or lease the same. The Terminal Operator shall
23 have the option to take over any existing equipment leases necessary
24 for Port Operations. Maintenance and repair costs of Port equipment
25 sold or leased to the Terminal Operator and equipment it acquires

1 pursuant to the Equipment Acquisition Program shall be for the
2 account of the Terminal Operator.

3 The Terminal Operator shall make a firm commitment to
4 upgrade the container handling capability of the Terminal and must
5 schedule its equipment acquisition program to coincide with the
6 existing and projected cargo traffic volume within the term of its
7 Lease Agreement. All equipment purchased by the Terminal
8 Operator shall remain the property of the Terminal Operator.
9 However, the Port shall have the right of first refusal to purchase or
10 lease any such equipment from the Terminal Operator upon the
11 expiration or termination of the Public-Private Partnership Contract
12 and Lease Agreement.

13 **§10313. Operational Area.** The Port shall be responsible for
14 providing expanded or additional operational area as may be
15 requested by the Terminal Operator. Any request for the expansion
16 of the operational area or for additional operational area shall be
17 subject to the approval of the Port. Responsibility for costs of
18 maintenance for the leased premises shall be clearly delineated in the
19 proposal submitted by the Terminal Operator.

20 **§10314. Indemnification.** The Port shall indemnify the
21 Terminal Operator for all pre-existing conditions such as
22 environmental violations and hazardous waste materials in or on the
23 facilities. Such pre-existing conditions shall be identified and
24 concurred by the Port and the Terminal Operator.

1 **§10315. Cargo Handling Operations.** The Terminal Operator
2 shall act as a partner with the Port in the management of cargo
3 handling operations at the Port. A Senior Representative of the
4 Terminal Operator shall meet frequently with the Port General
5 Manager and Board of Directors to keep them informed of status,
6 problems, solutions, and projections. Written reports of activity and
7 income shall be provided by the Terminal Operator no less than
8 quarterly to ensure that accurate statistics of Port operations are
9 maintained.

10 **§10316. Insurance.** The Board of Directors of the Port shall
11 ensure that adequate insurance is provided for all assets of the Port
12 including insurance for natural disasters such as earthquakes,
13 typhoons, windstorms, fire, and other natural disasters. The Board
14 shall ensure that the Terminal Operator provides adequate insurance
15 for those assets purchased, placed, or used, by the Terminal Operator
16 for terminal operations and maintenance at the Jose D. Leon Guerrero
17 Commercial Port.

18 **§10317. Port Master Plan.** The Terminal Operator shall
19 provide the Port with information, technical assistance, and
20 recommendations for revising and updating the Port Master Plan.
21 The Port Master Plan shall include, but not be limited to, provisions
22 for development and redevelopment of existing port facilities, land
23 use, infrastructure hardening, capital improvement projects, and
24 expansion of port activity through transshipment and other means.

1 §10318. Legislative Approval. The contract or lease agreement
2 shall be deemed disapproved sixty (60) days after submission to the
3 Legislative Secretary of *I Liheslaturan Guåhan* if not approved by
4 statute.

5 §10319. Specific Disclosure Rules. The following rules shall
6 govern the public disclosure of information received by the Port in
7 connection with the privatization process.

8 (a) Initial Disclosure. At the time of proposal
9 submission, an offeror must submit to the Port a certified
10 disclosure statement containing the following information:

11 (i) full legal name and identity of offeror, including
12 address;

13 (ii) for companies whose securities are *not* traded on a
14 national market in the U.S., or comparable market
15 exchange outside of the U.S., the names of persons
16 owning or controlling any percentage of the
17 outstanding beneficial interest and/or voting
18 securities in the offeror;

19 (iii) all conflict of interest information, including, but *not*
20 limited to, information that indicates any material
21 relationship (family, financial or otherwise)
22 between the owners, management, subentities or
23 affiliates of the offeror and officials of the
24 government of Guam, the Jose D. Leon Guerrero
25 Commercial Port, members of *I Liheslaturan Guåhan*,

1 or any consultants or advisors retained by the Port
2 in connection with the privatization process; and

3 (iv) any current strategic relationships with the Port
4 such as joint ventures, alliances and partnerships.

5 The information supplied in this disclosure statement
6 shall be made available for *immediate* public disclosure upon
7 receipt by the Port. An offeror who fails to make a complete
8 and accurate disclosure of the information set forth above shall
9 be ineligible to acquire the assets of the Port and may be
10 punished for perjury.

11 (b) Post Privatization. After *I Liheslaturan Guåhan's*
12 approval of the privatization transaction, information relating
13 to the evaluation of proposals, including prices offered for the
14 Port and the Evaluation Summaries, will be subject to the
15 disclosure requirements of the Sunshine Act. Trade secret
16 information, *however*, will remain protected and exempted from
17 the disclosure requirements of the Sunshine Act. All
18 information required to be initially disclosed pursuant to
19 Subsection (a) of this Section shall be subject to renewed
20 disclosure at the time of privatization and for five (5) years
21 thereafter, and shall additionally include, relative to the Port
22 project, information on subcontractors of a successful offeror
23 and their relationship with the government of Guam, the Port,
24 members of *I Liheslaturan Guåhan*, or any consultants or

1 advisors retained by the Port in connection with the
2 privatization process.

3 §10320. **Conflicts of Interest.** The successful offeror shall *not*
4 employ any person described as 'official of the government of Guam'
5 for the period prior to and two (2) years after the date of approval of
6 the Privatization Agreements, nor shall any subcontract or business
7 arrangement be entered into between the successful offeror and any
8 firm in which an 'official of the government of Guam' has any
9 financial interest, for the period prior to and two (2) years after the
10 date of approval of the Privatization Agreements.

11 For the purpose of this Section, the term 'official of the
12 government of Guam' means a member of the Port Board or any
13 employee or official involved with decision making authority in the
14 review and approval of the Terminal Operator Contract or Lease
15 Agreement.

16 Violation of this Section shall be cause for termination of the
17 contract by the Port Board.

18 §10321. **Transition Period.** A phase-in/transition period shall
19 begin within thirty (30) days of the effective date of the Public-Private
20 Partnership Lease Agreement, and the Terminal Operator, shall
21 assume full operation responsibility within one hundred eighty (180)
22 days, after the Lease Agreement has been signed by *I Maga'lahaen*
23 *Guåhan*.

24 §10322. **Severability.** *If* any provisions of this Law or its
25 application to any person or circumstance is found to be invalid or

1 contrary to law, such invalidity shall *not* affect other provisions or
2 applications of this Law, which can be given effect without the
3 invalid provisions or application, and to this end the provisions of
4 this Law are severable.”