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CH. 10 PORT AUTHORITY OF GUAM**

**CHAPTER 10
PORT AUTHORITY OF GUAM**

NOTE: Except as noted, Articles 1 and 2 of this Chapter reenacted by P.L. 13-87.
Article 3 added by P.L. 27-60.

Article 1. Port Authority of Guam.

Article 2. Guam Port Authority Revenue Bonds.

**ARTICLE 1
PORT AUTHORITY OF GUAM**

- § 10101. Definitions.
- § 10102. Authority.
- § 10103. Board.
- § 10104. Same: Duties.
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- § 10106. Manager.
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- § 10111. Employment.
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- § 10113. Territorial Transportation and Communications Coordinating Council.
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§ 10101. Definitions.

As used herein, unless otherwise indicated:

(a) *Authority* means the Port Authority of Guam.

(b) *Board* means the Board of Directors of the Authority.

(c) *Port facilities* means channels, waterways, basins, seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities necessary for the development or operation of the Port of Guam and recreational boating facilities of Guam.

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(d) *Port* means the Civil Port, small boat marinas, and all related facilities of the territory of Guam located on Cabras Island, Apra Harbor, Agana Boat Basin, and all other Government of Guam small boat marinas.

(e) *Manager* means the General Manager of the Authority.

(f) *Director* means the Director of the Board.

SOURCE: § 14000 GC; Subsection (c) amended by P.L. 17-71; Subsection (d) amended by P.L. 17-71.

§ 10102. Authority.

(a) There is hereby established the Port Authority of Guam as a public corporation and autonomous instrumentality of the government of Guam, which shall provide for the needs of ocean commerce, shipping, recreational and commercial boating, and navigation of the territory of Guam. The Authority shall have perpetual succession unless sooner terminated by law and shall adopt a seal and sued in its own Corporate name.

SOURCE: § 14001 GC, amended by P.L. 17-71.

§ 10103. Board.

(a) The Authority shall be directed by the Board which shall consist of five (5) directors appointed by the Governor with the advice and consent of the Legislature. Directors shall be appointed and their names transmitted to the Legislature within thirty (30) days of the effective date of this Chapter. The five (5) directors first appointed shall classify themselves by lot so that their terms shall expire respectively as follows:

One (1) on December 31, 1976, Two (2) on June 30, 1977 and Two (2) on June 30, 1978. Their successors shall be appointed each for a term of three (3) years to commence on the date of their confirmation by the Legislature. Any director vacancy shall be filled by the Governor, with the advice and consent of the Legislature, for the unexpired term.

(b) Any director may be removed upon charges, and after hearing, by the Governor.

(c) Three (3) directors shall constitute a quorum of the Board and three (3) affirmative votes are required for the transaction of all business. The Board shall meet in regular session at least once each month and in

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special session as often as it may deem necessary. The Board shall keep a minute book wherein all its actions and proceedings shall be recorded. Minutes shall be signed by the Board Secretary and a copy thereof shall be forwarded to the Governor within forty-eight (48) hours following adjournment of each meeting.

(d) Directors shall be paid Fifty Dollars (\$50.00) per meeting but not to exceed One Hundred Dollars (\$100.00) a month and shall be reimbursed for actual travel, subsistence and out-of-pocket expenses incurred in the discharge of their responsibilities.

SOURCE: § 14002 GC.

§ 10104. Same: Duties.

The Board shall:

(a) Conduct their first meeting within thirty (30) days of their confirmation.

(b) Elect a Chairman, Vice-Chairman and Secretary from among its members.

(c) Appoint a Manager and fix his compensation within forty-five (45) days of their first meeting.

(d) Maintain constant review and evaluation of the planning, promotion, development, construction, alteration, maintenance and operation of the port facilities, any of which activities the Board may delegate to the Manager.

(e) Establish its internal organization and management and adopt regulations for the administration of its operations and the conduct of its affairs.

(f) In accordance with law, control, manage and have jurisdiction over all government of Guam lands within the boundaries of Cabras Island and Drydock Island and seaward therefrom to the limits of the Glass Breakwater and all areas designated as small boat basins or recreational boating facilities, including submerged lands except for the following:

(1) those facilities under the control and jurisdiction of departments or agencies of the United States government; and

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(2) all seashore properties and facilities which fall under the Territorial Parks System and boat launching ramps under the jurisdiction of the Department of Parks and Recreation.

(g) Employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such report shall be furnished to the Governor and to the Legislature.

(h) Report to the Governor concerning its administration of the Authority by annual report within one hundred twenty (120) days after the end of each fiscal year and, if requested by the Governor, shall present special reports within thirty (30) days after the end of each intervening quarter. The financial information presented in such reports shall be in accordance with the Uniform System of Accounts adopted by the Board.

(i) Require operators of water terminal properties and facilities to keep same in proper condition and repair and shall have the right to inspect such terminal facilities at reasonable times.

(j) Fix all rates, deckage, rentals, tolls, pilotage, wharfage and charges for the use and occupation of the public facilities or appliances of the Port, and for services rendered by the Authority and to provide for the collection thereof.

(k) Review the Manager's annual estimates and schedules and promptly adjust rates and charges prepared to recover the cost of each facility and service including interests, loan repayments, amortization of depreciable assets and a reasonable return on value of assets. Additional adjustments in rates may be made from time to time as warranted.

(l) Exercise its powers and perform its duties by resolution adopted by majority vote of the Board in public meeting for which notice of an agenda was published in a Guam newspaper of general circulation three (3) times within five (5) days of the meeting. Resolutions shall be signed by the Board Chairman and attested by its Secretary. The Board shall index all of its resolutions which shall be public record, provided, that the Board shall not, except as expressly provided herein, delegate its responsibility for the general operation of the Port.

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

SOURCE: § 14003 GC; Subsection (f) amended by P.L. 17-71. Subsection (m) added by P.L. 25-09:28.

NOTE: P.L. 25:03:29 states: Savings Clause. Pending the promulgation or amendment of rules and regulations governing mandatory pilot licensing by the Port Authority of Guam pursuant to the Administrative Adjudication Law, the Port Authority's existing harbor rules and regulations shall be construed as requiring the use of a harbor pilot by all vessels within pilotage waters, *unless* exempt pursuant to §56403.15, and for the supervision and investigation of complaints against all pilots by the Manager of the Port Authority of Guam.

§ 10105. Same: Powers.

The Board may:

(a) Enter into and perform such contracts, leases, cooperative agreements and other transactions with any agency or instrumentality of the United States, or with any state, territory or possession, or any political subdivision thereof, or with any person, firm, association or corporation, as may be deemed necessary for the execution of its responsibilities.

(b) In accordance with 5 GCA Chapter 5 (Procurement Law) and other laws, any property real, personal or mixed, tangible or intangible and hold, maintain, use, operate, encumber or dispose of same whenever deemed necessary in the execution of its responsibilities.

(c) Make any investigation deemed necessary to enable it to carry out its responsibilities, and for this purpose take and hear proofs and testimony and compel by subpoena the attendance of witnesses and the production of books, papers, records and documents, including public records.

(d) Enter into contracts for loans or grants with the government of Guam or with the United States.

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(e) At any time or from time to time, incur indebtedness.

(f) Employ, retain or contract for the services of qualified managers, specialists or experts as individuals or as organizations, for advice and assistance.

(g) Adopt, enforce, amend or repeal harbor and port regulations for the use and navigation of Apra Harbor and the facilities of the Port Authority of Guam, and to adopt, enforce, amend or repeal such other orders, regulations and practices that are necessary for the administration and discharge of its duties and powers.

(h) Rules and regulations previously promulgated under the authority of the Department of Parks and Recreation concerning small boat basins and recreational boating facilities are to remain in effect unless or until the Board promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section. All references and rules and regulations pertaining to persons in or duties of the Department of Parks and Recreation in regard to small boat basins and recreational boating facilities shall be considered as pertaining to the General Manager or his designee and the duties of the Port Authority of Guam until or unless the Board amends or promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section.

(i) Notwithstanding any other provision of law, make, negotiate and enter into a commercial lease, or issue a permit or license for the use of its real property and other related facilities for a term not to exceed five years.

SOURCE: § 14004 GC, Subsection (b) as amended by P.L. 16-124; Subsection (g) amended by P.L. 17-58; Subsection (h) added by P.L. 17-71. Subsection (I) added by P.L. 26-28:2.

§ 10106. Manager.

(a) The Manager shall be the Authority's chief executive officer and who shall serve at the Board's pleasure. He shall be responsible for the maintenance, operation and development of the Port administration and for the Authority's business affairs.

SOURCE: § 14005 GC.

§ 10107. Same: Duties.

The Manager shall:

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- (a) Insure that the Board's rules and regulations are enforced;
- (b) Attend all board meetings;
- (c) Keep the Board advised as to the needs of the Authority;
- (d) Approve demands for the payment of obligations of the Authority within the purposes and amounts authorized by the Board;
- (e) Prepare or cause to be prepared all plans and specifications for the construction of the works of the Authority;
- (f) Select and appoint the employees of the Authority, except as otherwise provided by this Chapter, and plan, organize, coordinate and control the services of such employees;
- (g) Publish a financial report in a manner provided by the Board within one hundred twenty (120) days from the end of each fiscal year showing the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof;
- (h) Render a monthly accounting statement to the Board in such form as the Board directs;
- (i) Shall annually submit to the Board and the Governor programs and financial plans in accordance with the provisions of Chapter III, Title VI of the Government Code of Guam;
- (j) Chair the Territorial Transportation and Communications Coordinating Council;
- (k) Perform such other and additional duties as the Board may direct.
- (l) Grant licenses to pilots pursuant to 18 GCA §56403;
- (m) Develop appropriate standards and procedures for licensure of harbor pilots, including such examinations and investigations to determine whether persons applying for a pilot's license are qualified as the Manager deems necessary or appropriate;
- (n) Enforce the provisions of 18 GCA §56403 and rules adopted pursuant thereto;
- (o) Suspend, revoke or deny the issuance of any pilot's license for any cause prescribed by 18 GCA §56403, or for any violation of the Port Authority of Guam's pilotage rules and regulations;

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

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

(r) Do all things reasonable, necessary, and expedient to ensure safe navigation and proper pilotage, and to facilitate the efficient administration of 18 GCA §56403.

SOURCE: § 14006 GC. Subsection (j) added by P.L. 21-95:4; subsection (k) relettered by same law. Subsections (l) - (r) added by P.L. 25-09:21-27.

§ 10108. Claims.

(a) Cargo shortage and property damage claims shall be presented to the Manager within six (6) months of accrual for payment under this Act. Claims shall be in such form as the Manager shall direct.

(b) The Manager shall personally entertain cargo shortage or property damage claims in excess of Five Hundred Dollars (\$500.00). He may, however, delegate the review, settlement and payment of claims for cargo shortages or property damage up to One Hundred Dollars (\$100.00).

(c) Payments of claims for cargo shortage or property damage shall be charged to an account title "Shortage and Damage Claims," said account to be shown in the monthly accounting statement to the Board. A listing of each payment in excess of One Hundred Dollars (\$100.00) shall accompany the statement.

SOURCE: § 14007 GC.

§ 10109. Fiscal Authority.

(a) There is hereby established a fund to be known as the *Port Authority Fund* which shall be maintained by the Board separate and apart from other funds of the government of Guam. Independent records and accounts shall be maintained in connection therewith.

(b) All moneys received by the Authority from whatever source derived shall be deposited in the Port Authority Fund in eligible banks as defined in §6311, Government Code of Guam.

(c) All expenditures including payments into sinking funds or other special accounts shall be made from the Port Authority Fund.

SOURCE: § 14008 GC.

§ 10110. Contracts and Purchases.

[Repealed by P.L. 16-124.]

§ 10111. Employment.

(a) Pursuant to the provisions of 4 GCA §§4104 and 4105, the Board shall establish, and may amend, rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Authority. Such rules and regulations shall be effective upon approval by the Civil Service Commission before implementation. Such rules and regulations shall be filed with the Legislative Secretary.

(b) Employees of the Authority, excluding the directors, shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA §8105 except that for the purposes of Subsection (a) of said Section, the employees of the Authority shall not be considered employees of a *public corporation* whereby their membership in the Fund is optional and membership therein must be specifically requested. The Authority shall contribute to the Government of Guam Retirement Fund on the basis of monthly billings as determined by the Board of Trustees of the Government of Guam Retirement Fund, for the benefit payments made from such Fund on account of the Authority's employees.

(c) Notwithstanding any other provisions of law, neither the manager, assistant manager, nor the manager's secretary, shall be within the classified service of the government of Guam but shall be hired, compensated and employed under terms and conditions fixed by, and at the pleasure of the Board.

(d) The Board shall establish, and may amend from time to time, the compensation rates and classification plan of the employees. Such rates and plan shall be effective upon approval by the Governor.

(e) The Authority shall contribute to the Worker's Compensation Fund, on the basis of annual billings or as determined by the Worker's Compensation Commission, for the benefit payments made from such Fund on account of the Authority's employees for injuries prior to July 1, 1985. The Authority shall obtain Worker's Compensation insurance coverage no later than July 1, 1985.

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SOURCE: § 14010 GC; Subsection (a) amended by P.L. 16-23 and 17-58; Subsection (b) amended by P.L. 17-58; Subsection (c) amended by P.L. 17-5, P.L. 17-11, and P.L. 17-12; Subsections (d) and (e) added by P.L. 17-58.

§ 10111.1. Port Authority Police.

(a) There is hereby established, under the direction of the Authority, a Port Authority Police which shall be responsible for the protection of persons and property at the Port Authority of Guam and all related facilities, and which shall coordinate its activities with the Guam Police Department, which shall have concurrent jurisdiction therewith. The Board, pursuant to the Administrative Adjudication Law, shall adopt reasonable rules and regulations regarding its personnel, which rules and regulations shall be consistent with the provisions of Title 4 of this Code.

(b) Members of the Port Authority Police, while on Port grounds and acting within their official capacity, shall have the powers of peace officers, including, but not limited to, the authority to arrest and enforce the Port Rules and Regulations, applicable federal security programs, and the Vehicle Code of Guam.

(c) Employees currently occupying positions in the Port Authority of Guam Security Force upon enactment of this section shall be reassigned to the new positions within the new Port Authority Police

SOURCE: Added by P.L. 20-130:1. Amended by P.L. 23-28:2 (6/27/95).

CROSS-REFERENCES: See 8 GCA §5.55 relating to “peace officers”.

§ 10111.2. Training of Officers.

All Port Security Force officers shall be required to complete training, with a minimum of one hundred twenty (120) hours, on the laws of arrest, searches and seizures, the Vehicle Code of Guam, the Criminal and Correctional Code, the use and handling of firearms, and such other training as required to effectively carry out their duties and responsibilities as peace officers. In addition, refresher training in the areas of search and seizure, arrest and the use of firearms shall be given to each officer annually for a minimum of ten (10) hours. All such training shall be conducted at a local institution applying the standards used in the training of the police officers for the Guam Police Department.

SOURCE: Added by P.L. 20-130:2.

§ 10112. Violation of Regulation: Penalty.

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Every person who violates, causes or permits to be violated, or fails or refuses to comply with any rule or regulation adopted pursuant to this Article, is guilty of a misdemeanor.

SOURCE: § 14011 GC, as amended by P.L. 13-187.

§ 10113. Territorial Transportation and Communications Coordinating Council.

(a) There is hereby created a Territorial Transportation and Communications Coordinating Council (the *Council*), which Council shall meet on a regular basis as determined by its membership but not less than once each calendar quarter to exchange views and information on transportation, communications and related matters.

(b) The Manager shall be the chairperson of the Council. The Authority shall provide staff support for all Council meetings.

(c) The Council shall be composed of eighteen (18) members: ten (10) members from the government, including the Manager of the Jose D. Leon Guerrero Commercial Port of Guam; the Executive Manager of the A. B. Won Pat International Airport Authority Guam; the General Managers of the Guam Visitors Bureau and the Guam Mass Transit Authority; the Directors of the Department of Public Works, the Guam Economic Development and Commerce Authority, the Department of Revenue and Taxation, the Bureau of Planning; the President of the Mayors Council; a representative from the Guam Public Utilities Commission involved with regulating the New Guam Telephone Authority; and eight (8) appointed by I Maga'lahi (the Governor) with the advice and consent of I Liheslatura (the Legislature) from among the Guam business community as follows: one (1) representing the shipping industry; one (1) representing the airline/cargo industry; one (1) representing the telecommunications industry; one (1) representing the trucking industry; one (1) representing the construction industry; one (1) representing the wholesalers/retailers; one (1) representing the Chamber of Commerce; and one (1) representing the disabled community. Appointed members shall serve four (4) year terms, and every effort shall be made to appoint a representative number of women members. Each member appointed as a representative of the business community must have background or experience within the respective industry.

(d) Nine (9) members shall constitute a quorum.

SOURCE: Added by P.L. 21-95:2. Subsection (c) amended by P.L. 27-110:7.

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§ 10113.1. Duties.

The Council shall focus its discussions on international, regional and local transportation and communications issues to enhance and assist in the long-range planning efforts for the island, including:

(a) The exchange of views, plans, contacts and information among members and with national and international organizations on transportation, communications and related matters;

(b) The coordination of activities with appropriate local and Federal and international entities including but not limited to the Guam Economic Development Authority, the Guam Environmental Protection Agency, the Aviation Task Force, the Guam Civil Defense, the Guam Educational Telecommunications Corporation, the Territorial Land Use Commission (TLUC), the U.S. Department of Transportation, the Federal Aviation Administration, the Federal Communications Commission, the U.S. Department of Commerce, and the United Nations;

(c) The implementation and monitoring of the progress of transportation and communications recommendations made by the TLUC;

(d) The formation of recommendations concerning the planning and development of transportation and communications infrastructure for Guam and the monitoring of progress of infrastructure projects to facilitate better coordination of private sector responses for expansion programs. The Council shall have sixty (60) days after preparing the same to submit its recommendations to the appropriate agencies;

(e) The report of its findings and recommendations to the TLUC, the Governor and the Legislature for appropriate action; and

(f) The submission of an annual report to the Governor and the Legislature.

SOURCE: Added by P.L. 21-95:3.

**ARTICLE 2
GUAM PORT AUTHORITY REVENUE BONDS**

§ 10201. Short Title.

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- § 10202. Definitions.
- § 10203. Powers of the Board; Incurring Indebtedness and Issuing Bonds; Special Obligations; Pledge; Lien; Priority and Trust Fund.
- § 10204. Rates and Charges.
- § 10205. Bonds: Maximum Amount; Purpose and Term of.
- § 10206. Same: Form of; Recitals.
- § 10207. Same: Indenture Providing Terms and Conditions.
- § 10208. Issues, Series and Divisions of Bonds.
- § 10209. Same: Interest.
- § 10210. Same: Issuance and Interchange.
- § 10211. Same: Redemption Prior to Maturity.
- § 10212. Same: Places and Manner of Payment.
- § 10213. Same: Covenants and Agreements.
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- § 10215. Trustee: Federal Reserve Member Bank.
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- § 10217. Guam Port Authority Development Fund.
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- § 10221. Same: Sale of.
- § 10222. Same: Payment From Other Than Revenues.
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- § 10224. Same: Temporary.
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- § 10226. Same: Tax Exemptions.
- § 10227. Same: Bonds as Legal Investments and Security.
- § 10228. Same: Refund.
- § 10229. Same: Same: Principal Amount.
- § 10230. Title in Authority Subject to Trusts in Favor of Bondholders.
- § 10231. Use of Other Funds.
- § 10232. Insurance.
- § 10233. Right of Bondholders to Bring Action.
- § 10234. Appropriation of Money in Funds.
- § 10235. Validity of Bonds, Recital or Issuance Pursuant to Article.
- § 10236. Public of Notice of Adoption of Resolution; Statute of Limitations on Action Involving Bonds.
- § 10237. Short Term Borrowing.

§ 10201. Short Title.

This Article may be cited as the *Guam Port Authority Revenue Bond Act of 1975*.

SOURCE: § 14050 GC.

§ 10202. Definitions.

The following terms, wherever used or referred to in this Article or in any indenture entered into pursuant hereto, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Authority* means the Guam Port Authority, provided for in the Port Authority of Guam Act of 1975.

(b) *Board* means the Board of Directors of the Authority.

(c) *Bonds* or *revenue bonds* means the written evidence of any obligation issued pursuant to the provisions of this Article.

(d) *Bondholder* or *holder of bonds* or any similar terms means (i) the bearer of any outstanding bond registered to bearer or not registered or (ii) registered owner of any outstanding bond.

(e) *Governmental instrumentality* means the United States, the territory of Guam or any public corporation, political subdivision, state, county, city, district or any instrumentality of either the United States or this Territory.

(f) *Governor* means the Governor of Guam.

(g) *Gross revenues* means all of the revenues prior to deducting operational and maintenance costs.

(h) *Indenture* means an ordinance adopted or an agreement entered into and approved or adopted by a majority of all members of the Board and approved by Governor, providing for the issuance of bonds.

(i) *Net revenues* means the gross revenues after having deducted therefrom the operation and maintenance costs.

(j) *Operation and maintenance costs* means (i) the reasonable costs of administering, operating and maintaining the Port of Guam together with the stevedoring and terminal operations performed, including reasonable repairs, renewals, replacements, insurance

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costs including retirement benefits, but (notwithstanding any system of accounts maintained by the Authority) without any allowance for depreciation; (ii) the costs of administering lands and waterways under the Authority's jurisdiction; (iii) all revenues required by any indenture to be deposited in any one or more revenue funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or account of the Authority.

(k) *Organic Act* means the Organic Act of Guam as amended and in effect on the effective date of this Article. (64 Stat. 384, Title 48, § 1421 et seq., U.S. Code.)

(l) *Person* includes any individual, firm, corporation, association, co-partnership, trust, receiver, trustee or conservator for any thereof, and also includes the United States, the territory of Guam, a public corporation, political subdivision, city, county, state, district or any instrumentality of the United States or of the Territory.

(m) *Revenue* means and includes:

(i) All income, receipts and receivables derived by the Authority from port, stevedore and terminal operations;

(ii) All income, receipts and receivables derived by the Authority from contracts, space rentals and land leases;

(iii) All moneys in redemption, sinking and reserve funds or other funds created to secure the bonds and to provide for the payment of the principal of and the interest and premiums thereon.

(iv) All contributions and appropriations made to the Authority, to the extent not limited in the making thereof; and

(v) All earnings on any invested funds of the Authority, excepting as limited in contributions and appropriations.

(n) *Territory* means the territory of Guam.

(o) *Trustee* means the trust department of any Federal Reserve member bank.

(p) *United States* means the United States of America.

SOURCE: § 14051 GC.

§ 10203. Powers of the Board; Incurring Indebtedness and Issuing Bonds; Special Obligations; Pledge; Lien; Priority and Trust Fund.

(a) The Board may incur indebtedness and issue bonds to represent same for the purposes of and within the limitations provided in this Article.

(b) All indebtedness incurred and bonds issued by the Board are special obligations of the Authority, and are secured by a pledge of and charged upon, and shall be payable, as to the principal thereof, interest thereon and any premiums upon the redemption of any thereof, solely from and secured by a lien upon the revenues and such other funds as are described in the indenture.

(c) The indenture may provide that the bonds are secured by a pledge upon the net revenues, for the making of other funds available therefor, and for the priority of the bonds. Nothing herein or in an indenture shall prevent the issuance of bonds subordinate to the lien of other bonds specified in an indenture.

(d) The revenues and other funds provided in the indenture shall constitute a trust fund for the security and payment of the bonds and the interest and premiums thereon.

SOURCE: § 14052 GC.

§ 10204. Rates and Charges.

Rates and charges shall be fixed to yield annual revenues not less than the aggregate of the annual payments to the bond, sinking, reserve and other funds provided in an indenture for the bonds, and operation and maintenance costs.

SOURCE: § 14053 GC.

§ 10205. Bonds: Maximum Amount; Purpose and Term of.

Before issuing any bond or bonds, the Board shall, by indenture approved by the Governor, declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for such purpose, and their maximum term. Bonds shall not be issued or sold for such purpose in any amount or for a term exceeding that specified.

SOURCE: § 14054 GC.

§ 10206. Same: Form of; Recitals.

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(a) All bonds shall be issued in the name of the Agency.

(b) The Board shall determine the time, form and manner of issuance of bonds.

(c) Every bond shall recite that it is not a general indebtedness of Authority or of the territory of Guam, but rather is a special obligation of the Authority payable solely from the revenues specified in the indenture providing for its issuance.

(d) Every bond shall recite that it is issued pursuant to an indenture of the Board, describing it by title and date. By such recital, all of the provisions of the indenture and this Article are incorporated into the bonds and coupons.

(e) Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

SOURCE: § 14055 GC.

§ 10207. Same: Indenture Providing Terms and Conditions.

The indentures shall provide for the date or dates, maturities, interest rates, denominations, form, registration, transfer and interchange of any bonds and coupons to be issued, and the terms and conditions on which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded.

SOURCE: § 14056 GC.

§ 10208. Issues, Series and Divisions of Bonds.

Any indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the Board, with the approval of the Governor, at or prior to the issue thereof.

SOURCE: § 14057 GC.

§ 10209. Same: Interest.

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(a) Bonds shall bear interest at a rate of not to exceed nine percent (9%) per annum, payable annually or semi-annually or in part annually and in part semi-annually, except that the first coupon on any bonds may be payable twelve (12) months or any number of months less than twelve (12) after the date of such bond.

(b) If, upon presentation at maturity, or if redeemable and duly called for redemption, payment of the bonds or any interest coupon thereof is not made in accordance with the indenture of issuance, said bonds or coupons, or both, shall continue to bear; interest at the rate started in the bond until fully paid.

SOURCE: § 14058 GC.

§ 10210. Same: Issuance and Interchange.

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for the registered bonds and registered bonds for coupon bonds, and may provide that bonds shall be registered as to principal only, or as to both principal and interest, or otherwise as the Board may determine.

SOURCE: § 14059 GC.

§ 10211. Same: Redemption Prior to Maturity.

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon payment of such premium as may be fixed by the indenture. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

SOURCE: § 14060 GC.

§ 10212. Same: Places and Manner of Payment.

An indenture may provide for the payment of the principal and interest of bonds at a Federal Reserve member trustee bank in one or more places in the Territory or in the United States and in any specified coin or currency of the United States.

SOURCE: § 14061 GC.

§ 10213. Same: Covenants and Agreements.

An indenture may include any and all such covenants and agreements on the part of Authority as are authorized by this Article or as

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the Board deems necessary or advisable for the better security of the bonds issued thereunder, including without limiting the generality of the foregoing, any one or more of the following provisions:

(a) That payments of principal and interest of bonds shall be secured by all or by part of net revenue;

(b) Creating one or more funds or accounts into which all or any part of net revenue shall be deposited (i) for payment of the principal of and interest on bonds at or prior to maturity or (ii) for reserve or sinking funds for the further security of bonds. All moneys in any such fund or account shall be paid out by the trustee bank to pay the principal, interest and premiums on the bonds when due or when redeemed or purchased prior to maturity, as provided in any indenture;

(c) Requiring the bank to pay or cause to be paid punctually the principal, interest and premiums on the bonds on their due dates from funds in the account or accounts provided therefore;

(d) Requiring the Board to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights;

(e) Requiring the Board and the trustee to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest and premiums thereon, and any fund or account created therefor, and to apply and cause to be applied such revenues or any part of revenues only as provided in the indenture;

(f) To invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture;

(g) Against entering into any agreement which would impair the security of the bonds, the revenues or contracts from which the revenues are derived;

(h) Against mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon or disposing of any of the revenues, mortgages or contract obligations from which the revenues are derived, detrimental to the security of the bonds;

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(i) Specifying the events of default and the terms and conditions upon which any or all of the bonds may be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(j) For the rights, liabilities, powers and duties arising upon the Agency's breach of any covenants, conditions or obligations;

(k) For vesting in the trustee the right to or duty to enforce covenants to secure payment of or in relation to the bonds and the trustee's powers, duties and limitations of its liabilities and for the conditions upon and manner in which a substitute trustee may be appointed;

(l) For the terms upon which the bondholders or a percentage of them may enforce covenants and duties prescribed in the indenture and this Article;

(m) The procedure by which the terms and conditions of the indenture or the bonds may be subsequently amended or modified with the consent of the Board, subject to the approval of the Governor, and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given;

(n) The effect of any modification or amendment upon the rights of the holders of all or a specified portion of any outstanding bonds and interest coupons pertaining thereto, whether attached thereto or detached therefrom;

(o) With respect to a modification or amendment of an indenture that bonds held by the Authority, the Territory, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind or class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to any such modification or amendment;

(p) For the purchase out of any available funds of any outstanding bonds or other obligations, and the price at and manner in which the purchase may be made;

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(q) That the Governor and the Director of Revenue and Taxation and all other officers and agencies of the Territory shall (i) be bound by all covenants and agreements on the part of the Board set forth in such indenture and (ii) perform all such covenants and agreements which, under the Organic Act or any provision of this Code or any other statute of the Territory, can be taken for or on behalf or in lieu of the Board only by the Governor and the Director of Revenue and Taxation or such other officer of agency;

(r) Capitalizing any working capital fund or interest or account or contingency fund or account;

(s) Provision for the refunding of all or any bonds authorized by such indenture, subject to the provisions and limitations as herein described;

(t) Such other acts and matters as may be necessary or convenient or desirable in order to better secure the bonds or to make the bonds more marketable.

SOURCE: § 14062 GC.

§ 10214. Same: As Negotiable Instruments.

All bonds issued under the provisions of this Article are negotiable instruments transferable by physical delivery, except when registered in the name of a registered owner.

SOURCE: § 14063 GC.

§ 10215. Trustee: Federal Reserve Member Bank.

(a) A Federal Reserve member bank shall act as trustee for the Board and the holders of bonds issued hereunder, and the Board may authorize the trustee to act on behalf of the holders of the bonds, or any stated percentage thereof, and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The indenture shall provide (i) for the deposit of all revenues with the trustee and for the holding thereof by the trustee in one or more separate funds or accounts in the Guam Port Authority Revenue Fund and (ii) for the transfer to such trustee of such portions of revenues as are provided as security for the bonds and for the holding thereof by such trustee in one or more separate funds or accounts in said Revenue Fund.

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All money in each such fund or account shall be disbursed only as provided herein and in the indenture.

SOURCE: § 14064 GC.

§ 10216. Same: Duties and Powers.

The duties and powers of the trustee may be prescribed in an indenture with respect to the issuance, authentication, sale and delivery of the bonds provided for therein and with respect to the payment of principal of and interest on such bonds, and redemption thereof, the registration and discharge from registration thereof, and the management of any and all funds provided as security therefor.

SOURCE: § 14065 GC.

§ 10217. Guam Port Authority Development Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited forthwith to the credit of a fund to be designated as the Guam Port Authority Development Fund, which fund is hereby created, and shall be expended for the purposes authorized by this Article and the indenture subject to any limitations provided therein. This fund shall be a separate account within the Port Authority Fund (See § 10108 (b), this Title).

SOURCE: § 14066 GC.

§ 10218. Balances of Fund.

After all bonds shall have been fully paid and discharged, or provision for their payment and discharge irrevocable made, any surplus moneys in any fund or account created by this Article or any indenture shall, subject to the limitations and restrictions in any indenture, be transferred to the Authority. After payment of all costs, expenses and charges required or authorized to be expended therefrom, any balance remaining in any of the funds or accounts created by this Article or any indenture, may be allocated and used for such other purposes, as the Board may determine, subject to limitations and restrictions in any indenture.

SOURCE: § 14067 GC.

§ 10219. Preparation of Bonds and Documents.

The Authority shall prepare or procure the requisite number of suitable bonds and appurtenant coupons of the denominations and in

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accordance with the specifications contained in the indenture. The Authority shall prepare or procure the printing, engrossing or publication of any indentures, notices, contracts, agreements or other documents required or convenient for or pertaining to the issuance or sale of bond.

SOURCE: § 14068 GC.

§ 10220. Bonds: Execution and Authentication.

An indenture may provide for the execution and authentication of bonds and coupons by the manual, lithographed or printed facsimile signature of any one or more officers of the Board and by additional authentication by endorsement by the manual signature or a signature stamp of any agent designated as trustee, and for a like impressing of the seal of the Authority. If any officer or agent whose signature, counter-signature or endorsement appears upon the bonds or coupons ceases to be an officer or agent before the delivery of the bonds or coupons his signature, counter-signature or endorsement is nevertheless valid and of the same force and effect as if he has remained such officer or agent until the delivery of the bonds and coupons.

SOURCE: § 14068 GC.

§ 10221. Same: Sale of.

Bonds authorized to be issued under this Article shall be sold by the Board for cash, in accordance with the provisions of a resolution providing for such sale adopted by the Board and approved by the Governor. Such resolution may provide that the bonds shall be sold at either public or private sale upon such notice as shall be specified in such resolution, may fix terms and conditions for the sale or other disposition of the bonds and may provide that the bonds shall be sold less than their par or face value, except that the discount on any bonds so sold shall not exceed five percent (5%) of the par value thereof. Before any bonds are delivered to the purchaser thereof, all coupons, if any, which have matured on or before the date of such delivery shall be detached therefrom and canceled.

SOURCE: § 14070 GC.

§ 10222. Same: Payment from Other than Revenues.

The Board may use and expend all or any part of any funds other than revenues, or proceeds of any property owned by it, whether received by gift, appropriation or otherwise (if not restricted as to the use of such

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funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

SOURCE: § 14071 GC.

§ 10223. Same: Payments from Sale.

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) For the acquisition or construction of harbor improvement set forth in the indenture;

(b) For the payment of legal and fiscal fees and costs relating to the issuance and sale of the bonds;

(c) For payment of any other costs or expenses relating to the authorization, issuance or sale of bonds;

(d) For payment of interest on bonds during the period of actual acquisition or construction;

(e) For payment of trustee's fees and costs and fees incurred by it;

(f) For payment of the principal of and interest on any indebtedness incurred pursuant to § 10203, this Title, that is by its terms repayable from the proceeds of sale of bonds.

SOURCE: § 14072 GC.

§ 10224. Same: Temporary.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Board may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

SOURCE: § 14073 GC.

§ 10225. Same: Replacement of.

The indenture may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

SOURCE: § 14074 GC.

§ 10226. Same: Tax Exemptions.

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation in accordance with the provisions of the last sentence of § 11 of the Organic Act. (§ 1423a, Title 48, U.S. Code.)

SOURCE: § 14075 GC.

§ 10227. Same: Bonds as Legal Investments and Security.

Notwithstanding any other provision of law, all bonds sold and delivered pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings, and may be deposited as security for the performance of any act whenever any evidence of indebtedness of the Territory may be so deposited, and may also be used as security for the deposit of public moneys in banks in the Territory.

SOURCE: § 14076 GC.

§ 10228. Same: Refund.

The Board, with the approval of the Governor, may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article. All provisions of this Article applicable to the issuance of bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

SOURCE: § 14077 GC.

§ 10229. Same: Same: Principal Amount.

Refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be refunded thereby, and in addition for the payment of all expenses incident to the calling, purchasing, retiring or paying of such outstanding bonds, and the issuance of such refunding bonds. These expenses include (i) the difference in amount between the par value of the refunding bonds are sold, (ii) any amount necessary to be made available for the payment of the interest upon such refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and (iii) the premium, if any,

necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

SOURCE: § 14078 GC.

§ 10230. Title in Authority Subject to Trusts in Favor of Bondholders.

Title to port facilities, floating equipment, land areas and all property assigned or acquired by or for the Authority and the revenues and income therefrom is in the Authority. The title to any moneys, revenues, bond reserve funds and other funds and accounts created by this Article or any indenture and the income thereof pledged to the payment of the principal or interest of any bonds is subject to any trusts declared in favor of the bondholders.

SOURCE: § 14079 GC.

§ 10231. Use of Other Funds.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Board may use for the same purpose or purposes any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any sources which may be expended for the accomplishing of the purposes set forth in this Article or in Guam Port Authority Act of 1971.

SOURCE: § 14080 GC.

§ 10232. Insurance.

The Board may insure against loss of revenues from any cause whatsoever, the proceeds of which shall be used solely for the payment or security of bonds and the interest thereon. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

SOURCE: § 14081 GC.

§ 10233. Right of Bondholders to Bring Action.

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The holder of any bond issued pursuant to this Article may by accounting, injunction, mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon or assumed by the Authority, the Board, the Governor, the trustee or any other officer or agency of the Authority or the Board or the Territory, or any employee thereof, or the collection, deposit, investment, application and disbursement of all revenues or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds issued pursuant to this Article. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Article. All remedies are alternative and cumulative and the use of one shall not exclude any other remedy.

SOURCE: § 14082 GC.

§ 10234. Appropriation of Money in Funds.

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purpose herein and therein provided.

SOURCE: § 14083 GC.

§ 10235. Validity of Bonds, Recital or Issuance Pursuant to Article.

Any indenture authorizing bonds shall recite that they are issued pursuant to this Article and bonds containing such recital are conclusively deemed valid and issued in conformity with this Article.

SOURCE: § 14084 GC.

§ 10236. Publication of Notice of Adoption of Resolution; Statute of Limitations on Action Involving Bonds.

Within fifteen (15) days of the adoption of a resolution by the Board constituting an indenture providing for the issuance of bonds under this Article, the Board shall publish notice of adoption of the resolution, stating the aggregate principal amount of bonds proposed to be issued, once in a newspaper of general circulation in Guam. No action attacking, questioning or affecting in any way the validity of any bonds issued under such a resolution, or seeking to enjoin the issuance of such bonds, may be commenced by any person more than sixty (60) days after the date of publication of the notice of adoption of such resolution.

SOURCE: § 14085 GC.

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§ 10237. Short Term Borrowing.

The Board may at any time or from time to time, by ordinance adopted by a majority of all the members of the Board and approved by the Governor, incur indebtedness for any lawful purpose, for any period not exceeding ten (10) years evidenced by contract with any person or by one or more promissory notes. Any such indebtedness shall be incurred subject and subordinate to any contractual obligation of the Board to the holders of any bonds and the principal thereof and interest thereon may be repaid (a) from revenues, or (b) if incurred for a purpose for which bonds may be issued, from revenues or from the proceeds of sale of bonds.

SOURCE: § 14086 GC.

**ARTICLE 3
JOSE D. LEON GUERRERO COMMERCIAL PORT
PUBLIC-PRIVATE PARTNERSHIP**

SOURCE: This Article was added by P.L. 27-60.

- § 10301. Short Title.
- § 10302. Legislative Intent.
- § 10303. Public-Private Partnership Authorization.
- § 10304. Submission of Proposals.
- § 10305. Terminal Operator.
- § 10306. Port Employees.
- § 10307. Port Employment.
- § 10308. Temporary Casual Employment Authorized.
- § 10309. Revenue Sharing.
- § 10310. Capital Improvement Fund.
- § 10311. Tariffs.
- § 10312. Equipment.
- § 10313. Operational Area.
- § 10314. Indemnification.
- § 10315. Cargo Handling Operations.
- § 10316. Insurance.
- § 10317. Port Master Plan.
- § 10318. Legislative Approval.
- § 10319. Specific Disclosure Rules.
- § 10320. Conflicts of Interest.

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§ 10321. Transitional Period.

§ 10322. Severability.

§ 10301. Short Title.

This Article may be cited as the *Port Public-Private Partnership Authorization Act of 2003*.

§ 10302. Legislative Intent.

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

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

Passage of this Act shall authorize the Board of Directors of the Port to enter into a Public-Private Partnership (PPP) Contract for terminal operations and maintenance and the lease of the land known as the Commercial Port Area, as well as existing buildings, and operational machinery, vehicles, tools and equipment with the permit to operate the same as a common user port.

§ 10303. Public-Private Partnership Authorization.

The Board of Directors of the Jose D. Leon Guerrero Commercial Port (hereinafter referred to as the 'Board') shall enter into a Public-Private Partnership (PPP) Contract, Lease Agreement, and Operating Permit for terminal operations and maintenance of the Jose D. Leon Guerrero Commercial Port with a Terminal Operator for a period

not less than five (5) years and not more than twenty (20) years, with options to renew.

§ 10304. Submission of Proposals.

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

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

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

(c) A Management and Financial Plan for the seaport to increase efficiency resulting in the reduction of the port tariff charges or the abatement of the port tariff charge increases and increase customer satisfaction.

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

§ 10305. Terminal Operator.

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

§ 10306. Port Employees.

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The Terminal Operator shall submit his proposed employment arrangement for the existing Port employees to be assigned to the Terminal Operator, subject to the following guidelines:

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

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

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

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

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

§ 10307. Port Employment.

(a) Employee Qualifications. The Port shall certify and make available, a schedule of employees to include job titles and divisions and/or sections to be assigned, to the Terminal Operator. All Port employees to be assigned to the Terminal Operator by the Port shall be, at the time of their assignment, and shall, at all times during their assignment, continue to be Qualified Port employees. Before assigning an employee to the Terminal Operator, the Port shall establish, to the Terminal Operator that the employee is a Qualified Port employee.

(b) Vacated Positions. Any position vacated for any reason by a Port employee assigned to the Terminal Operator, including, but not limited to, retirement, termination, removal, layoff, discharge, resignation, or otherwise shall cease to be a Port position. Any such position vacated for whatever reason, including, but not limited to, reassignment, transfer, promotion, demotion, Port adverse action or otherwise shall cease to exist and shall *not* be filled by the Port or the government of Guam.

§ 10308. Temporary Casual Employment Authorized.

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

§ 10309. Revenue Sharing.

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

§ 10310. Capital Improvement Fund.

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

§ 10311. Tariffs.

The Terminal Operator shall enforce and collect as its revenue the Terminal Tariff, as approved by the Port Board, and filed with the Maritime Transportation Authority, schedule of charges, rules and regulations covering cargo handling operations and related services, the Harbor Rules and Regulations and all other provisions of local and federal law relating to the terminal. Changes to any charges, including,

but not limited to, the Terminal Tariff, shall require the approval of the Port Board of Directors.

§ 10312. Equipment.

Equipment such as container gantry cranes and yard handling equipment shall be the responsibility of the Terminal Operator. Port owned cargo-handling equipment shall be made available to the Terminal Operator who shall have the opportunity to buy or lease the same. The Terminal Operator shall have the option to take over any existing equipment leases necessary for Port Operations. Maintenance and repair costs of Port equipment sold or leased to the Terminal Operator and equipment it acquires pursuant to the Equipment Acquisition Program shall be for the account of the Terminal Operator.

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

§ 10313. Operational Area.

The Port shall be responsible for providing expanded or additional operational area as may be requested by the Terminal Operator. Any request for the expansion of the operational area or for additional operational area shall be subject to the approval of the Port. Responsibility for costs of maintenance for the leased premises shall be clearly delineated in the proposal submitted by the Terminal Operator.

§ 10314. Indemnification.

The Port shall indemnify the Terminal Operator for all pre-existing conditions such as environmental violations and hazardous waste materials in or on the facilities. Such pre-existing conditions shall be identified and concurred by the Port and the Terminal Operator.

§ 10315. Cargo Handling Operations.

The Terminal Operator shall act as a partner with the Port in the management of cargo handling operations at the Port. A Senior

Representative of the Terminal Operator shall meet frequently with the Port General Manager and Board of Directors to keep them informed of status, problems, solutions, and projections. Written reports of activity and income shall be provided by the Terminal Operator no less than quarterly to ensure that accurate statistics of Port operations are maintained.

§ 10316. Insurance.

The Board of Directors of the Port shall ensure that adequate insurance is provided for all assets of the Port including insurance for natural disasters such as earthquakes, typhoons, windstorms, fire, and other natural disasters. The Board shall ensure that the Terminal Operator provides adequate insurance for those assets purchased, placed, or used, by the Terminal Operator for terminal operations and maintenance at the Jose D. Leon Guerrero Commercial Port.

§ 10317. Port Master Plan.

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

§ 10318. Legislative Approval.

The contract or lease agreement shall be deemed disapproved sixty (60) days after submission to the Legislative Secretary of *I Liheslaturan Guåhan* [the Legislature] if not approved by statute.

§ 10319. Specific Disclosure Rules.

The following rules shall govern the public disclosure of information received by the Port in connection with the privatization process.

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

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

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

(iii) all conflict of interest information, including, but *not* limited to, information that indicates any material relationship (family, financial or otherwise) between the owners, management, subentities or affiliates of the offeror and officials of the government of Guam, the Jose D. Leon Guerrero Commercial Port, members of *I Liheslaturan Guåhan*, or any consultants or advisors retained by the Port in connection with the privatization process; and

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

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

(b) Post Privatization. After *I Liheslaturan Guåhan's* [the Legislature's] approval of the privatization transaction, information relating to the evaluation of proposals, including prices offered for the Port and the Evaluation Summaries, will be subject to the disclosure requirements of the Sunshine Act. Trade secret information, *however*, will remain protected and exempted from the disclosure requirements of the Sunshine Act. All information required to be initially disclosed pursuant to Subsection (a) of this Section shall be subject to renewed disclosure at the time of privatization and for five (5) years thereafter, and shall additionally include, relative to the Port project, information on subcontractors of a successful offeror and their relationship with the government of Guam, the Port, members of *I Liheslaturan Guåhan*, or any consultants or advisors retained by the Port in connection with the privatization process.

§ 10320. Conflicts of Interest.

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CH. 10 PORT AUTHORITY OF GUAM

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

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

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

§ 10321. Transition Period.

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

§ 10322. Severability.

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