

FILE COPY

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

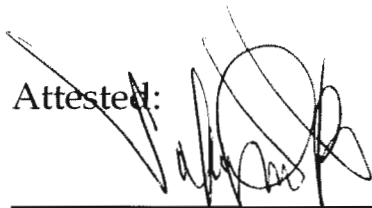
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 121 (LS)**, "AN ACT TO *AMEND* §§10104(j) AND 10104(k) OF CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED; TO *AMEND* §§12000, 12001.2 AND 12015, AND TO *ADD* NEW §§12001.2(f) AND 12015(g) OF CHAPTER 12, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PLACING THE JOSE D. LEON GUERRERO COMMERCIAL PORT UNDER THE OVERSIGHT OF THE PUBLIC UTILITIES COMMISSION," was on the 2nd day of July 2009, duly and regularly passed.



Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 2 day of July, 2009, at 243 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 121 (LS)

As amended on the Floor.

Introduced by:

T. C. Ada
Telo Taitague
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
M. J. Rector
R. J. Respicio
Ray Tenorio
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§10104(j) AND 10104(k) OF CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED; TO *AMEND* §§12000, 12001.2 AND 12015, AND TO *ADD* NEW §§12001.2(f) AND 12015(g) OF CHAPTER 12, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO PLACING THE JOSE D. LEON GUERRERO COMMERCIAL PORT UNDER THE OVERSIGHT OF THE PUBLIC UTILITIES COMMISSION.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that it is imperative that the Port Authority of Guam (PAG) be able to effectively

1 adjust its tariffs for port operations and services to cover its cost of operation and
2 to generate revenues for capital improvements.

3 The last adjustment to the Port's tariff schedule was in 1993, excepting its
4 2009 adjustment of rates for leasing of office, warehouse, and yard space.
5 Although the cost of operations has increased substantially over a period of sixteen
6 (16) years, tariffs were *not* adjusted to adequately cover these costs.

7 As the Port moves towards the implementation of its Port Modernization
8 Master Plan, the Port will need to generate adequate revenues to fund an estimated
9 Two Hundred Million Dollars (\$200,000,000) capital improvement undertaking.
10 Consequently, tariffs will have to be adjusted accordingly.

11 *I Liheslaturan Guåhan* finds that including the Port as a public utility under
12 the regulatory oversight supervision of the Public Utilities Commission (created by
13 P.L. 17-74) will provide the Port a method for timely review of proposed rate
14 changes and appropriate oversight of such rate changes by an independent
15 regulatory authority.

16 It is, therefore, the intent of *I Liheslaturan Guåhan* to include the Jose D.
17 Leon Guerrero Commercial Port within the regulatory oversight supervision
18 authority of the Public Utilities Commission. Henceforth, the establishment *or*
19 modification of rates and other charges for the Port *shall* require the approval and
20 to limit required approval for rate increases to that of the Public Utilities
21 Commission, in accordance with those procedures applicable by law to the rate
22 making process for public utilities.

23 **Section 2.** §10104(j) and §10104(k) of Chapter 10 of Title 12, Guam Code
24 Annotated, are hereby *amended* to read:

25 “(j) Establish and modify from time to time, subject only to the
26 regulatory oversight supervision and approval of the Public Utilities
27 Commission, all rates, dockage, rentals, tolls, pilotage, wharfage and charges

1 for the use and occupation of the public facilities *or* appliances of the Port,
2 and for services rendered by the Port and to provide for the collection
3 thereof.”

4 “(k) Review the Manager’s annual estimates and schedules and
5 promptly adjust rates and charges prepared to recover the cost of each
6 facility and service, including interests, loan repayments, amortization of
7 depreciable assets and a reasonable return on value of assets. Additional
8 adjustments in rates may be made from time to time upon approval by the
9 Public Utilities Commission and its determination that such adjustments are
10 “just” and “reasonable.”

11 **Section 4.** §12000(a) of Article 1, Chapter 12 of Title 12, Guam Code
12 Annotated, is hereby *amended* to read:

13 (a) *Public Utility* means the Guam Power Authority, the Jose D.
14 Leon Guerrero Commercial Port, the Guam Waterworks Authority or any
15 duly licensed private contractors operating: (i) a facility or subsystem of the
16 community-wide water production and distribution system, or (ii) a facility
17 or subsystem of the community-wide waste water disposal system, or both,
18 or any private golf course management corporation leasing public property
19 providing preferential golf rates and reservations to Guam residents, or (iii) a
20 marine terminal with facilities for loading and unloading commercial cargo
21 or passengers onto and from ocean common carriers.”

22 **Section 4.** §12001(a) of Article 1, Chapter 12 of Title 12, Guam Code
23 Annotated, is hereby *amended* to read:

24 “(a) *I Maga’Lahen Guåhan* [Governor of Guam] shall appoint, with
25 the advice and consent of *I Liheslaturan Guåhan* [Guam Legislature], two
26 (2) members from the business community of Guam; one (1) member who is
27 a certified public accountant; two (2) members, each of whom have training

1 or experience in at least one (1) of the following four (4) areas (power
2 generation, telephone, water/sewer utilities, or marine terminal
3 operations/transportation via ocean common carrier), with the additional
4 requirement that the two (2) members appointed each have training or
5 experience in a different area; and two (2) members who are from the
6 community at large.

7 *Except* for the initial term, the terms of such members shall be for six
8 (6) years. *No* member shall be a director, deputy director, appointed,
9 unclassified employee, any other unclassified employee of the government
10 of Guam, or a member of any other board or commission. The appointment
11 of any person to the Commission *shall* become void if at any time during
12 that person's term of office, that person shall become a director, deputy
13 director, appointed to any unclassified position in the government of Guam,
14 or accept appointment to any other board or commission."

15 **Section 5.** §12001.2(a) of Article 1, Chapter 12, of Title 12, Guam Code
16 Annotated, is hereby *amended* to read:

17 "(a) §§12001.1 through 12001.2, which shall be known as the
18 Ratepayers' Bill of Rights, shall in no way restrict the powers of the Public
19 Utilities Commission (Commission) granted in this Chapter to regulate or set
20 rates for a Public Utility. The Ratepayers' Bill of Rights sets conditions *only*
21 on the manner in which a Public Utility shall submit a proposed rate increase
22 to the Commission. No Public Utility, as defined in §12000 of this Chapter,
23 with the *exception* of the Guam Memorial Hospital, and the Jose D. Leon
24 Guerrero Commercial Port, may submit a proposed rate increase to the
25 Commission before complying with the mandates of this Section. This
26 Section shall *not* apply to the Guam Memorial Hospital and the Jose D. Leon
27 Guerrero Commercial Port. In the case of the Jose D. Leon Guerrero

1 Commercial Port, notice of any proposed changes in rates shall be made as
2 described in subsection (f) herein.”

3 **Section 6.** A new subsection (f) is hereby *added* to §12001.2, Article 1,
4 Chapter 12 of Title 12, Guam Code Annotated, to read as follows:

5 “(f) The Jose D. Leon Guerrero Commercial Port (the Port) *shall*
6 *not* submit any proposed rate change to the Commission until the following
7 actions have occurred:

8 (1) The Port *shall* publish notice of any proposed rate change in a
9 newspaper of general circulation, as defined in §8104 of
10 Chapter 8 of Title 5 of the Guam Code Annotated, Open
11 Government Law, at least sixty (60) days prior to submitting
12 the proposed rate change to the Commission. The notice
13 required herein *shall* include the Port’s intention to submit its
14 proposed rate change to the Commission, its current rate, the
15 proposed rate, the difference in the current and proposed rates
16 stated in percentage form, a justification for the change, and an
17 electronic mail address and physical location where comments
18 on the proposed rate change may be submitted; and

19 (2) The Port *shall* publish notice of any proposed rate change on
20 the Port’s official website at least sixty (60) days prior to
21 submitting the proposed rate change to the Commission. The
22 notice required herein *shall* include the Port’s intention to
23 submit its proposed rate change to the Commission, its current
24 rate, the proposed rate, the difference in the current and
25 proposed rates stated in percentage form, a justification for the
26 change, and an electronic mail address and physical location

1 where comments on the propose rate change may be
2 submitted.”

3 **Section 7.** A new subsection (g) is hereby *added* to §12015, Article 1,
4 Chapter 12 of Title 12, Guam Code Annotated, to read as follows:

5 “(g) Upon enactment of this Subsection (g), any existing rates and
6 other items and charges of the Jose D. Leon Guerrero Commercial Port (the
7 Port) shall continue to remain in effect unless and until modified in
8 accordance with the applicable provisions of this Chapter. Pursuant to its
9 oversight supervision, the Commission *shall* begin proceedings with the Jose
10 D. Leon Guerrero Commercial Port (the Port) to review and modify, or
11 establish rates and other items and charges set forth in Title 12 GCA
12 §10104(j), for the use of Port facilities or appliances. Until December 31,
13 2010, the Commission may establish interim rates and charges for the use of
14 Port facilities or appliances as may be necessary for estimated operation or
15 maintenance costs, required capital improvements, or other reasonable costs.
16 To establish any such interim rates or charges, the Commission may conduct
17 such investigation and hearings as it deems necessary pursuant to its powers
18 under Title 12 GCA §12004. *No later than* December 31, 2010, the Port
19 *shall* submit to the Commission the results from a study of existing rates,
20 charges and cost of services provided by the Port. The request for proposals
21 to study existing rates, charges and cost of services *shall* be subject to the
22 review and approval of the Commission prior to issuance; and any contract
23 entered into by the Port for such services *shall* be subject to the prior
24 approval of the Commission. Any modification to or establishment of rates
25 *shall* thereafter be implemented in accordance with the procedures set out in
26 this Chapter.”

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