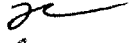
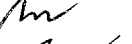
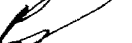







I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

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Bill No. 336-31 (cov)

Introduced by:

T.C. Ada 
R.J. Respicio 
A.B. Palacios, Sr. 
D.G. Rodriguez, Jr. 
F.F. Blas Jr. 
M.S. Taijeron 
C.M. Duenas 
A.A. Yamashita, Ph.D. 

**AN ACT TO FURTHER AMEND SECTION 4 OF
PUBLIC LAW 30-57 AND TO AUTHORIZE THE
JOSE D. LEON GUERRERO COMMERCIAL PORT
OF GUAM TO ENTER INTO NEGOTIATIONS FOR
THE ACQUISTION OF THE "POLA" GANTRY
CRANES OWNED BY MATSON NAVIGATION
COMPANY AND HORIZON LINES, INC.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the Jose D. Leon Guerrero Commercial Port (the "Port"),
4 established by Public Law 13-87 as a public corporation and autonomous
5 government entity, is charged with providing continued support for the
6 diversification of Guam's economy, seaborne commerce and international
7 trade. Furthermore, the Port is vested with the responsibility of developing
8 its assets and the implementation of policies and strategies to enable the
9 efficient loading and unloading of goods and materials destined for retail
10 operations in Guam and Micronesia, and to facilitate a smooth transition to
11 the military-induced expansion and anticipated population growth.

1 *I Liheslaturan Guåhan* finds that Port ownership or unrestricted
2 access to all Gantry Cranes operating on its rails would improve operational
3 efficiency and reliability in the movement of cargo through the Port and for
4 transshipment to the neighboring islands in the region.

5 *I Liheslaturan Guåhan* finds that there are five (5) cranes currently on
6 the Port’s commercial docks, and that through a license agreement executed
7 in December 2007 between the Port and Matson Navigation & Horizon
8 Lines (the “Carriers”), three (3) of these cranes, referred to as POLA Cranes
9 15, 16 and 17 were purchased and refurbished by the Carriers and placed on
10 the Port’s rails. Additionally, the Port currently maintains and operates two
11 older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to
12 service non-Matson/Horizon vessels, and that due to their age and material
13 condition are more expensive to maintain and provide less reliable service.
14 Retirement of these cranes is overdue.

15 *I Liheslaturan Guåhan* finds that Public Law 30-100 mandates the
16 Port to acquire, either through purchase or lease-to-own, at least two (2)
17 Gantry Cranes no later than December 31, 2012, pursuant to the Guam
18 Procurement Act and “not through the use of a Task Order attached to any
19 existing contract”. In 2006, the U.S. Department of Agriculture (USDA)
20 made available to the Port direct/guaranteed loans to acquire at least two (2)
21 new or refurbished gantry cranes. The USDA loan for the acquisition of the
22 cranes is still currently available to the Port.

23 *I Liheslaturan Guåhan* finds that the acquisition of the POLA Cranes
24 by the Port has the potential to present a singularly unique opportunity and
25 value to the territory given their presence on the rails, record of operational
26 reliability, and the elimination of disruption to ongoing operations.

1 *I Liheslaturan Guåhan* finds that it would be prudent to explore
2 acquisition of the POLA cranes through direct purchase or lease-to-own, and
3 that further to this exploration, acquisition should be authorized provided
4 that this unique opportunity and value can be realized through independent
5 assessment of material condition and market value, and follow-on
6 negotiation of acquisition terms is uniquely and demonstrably favorable to
7 Guam.

8 *I Liheslaturan Guåhan* further finds in consideration of the
9 aforementioned findings that certain provisions of existing Public Law
10 should be amended.

11 **Section 2.** Section 4 of P.L. 30-57, as amended by P. L. 30-100, is
12 hereby further amended to read as follows:

13 “**Section 4.** The Port Authority of Guam (PAG) shall immediately initiate
14 research to identify potential Federal grants and similar funding sources and
15 shall initiate necessary discussions and communications to secure funding as
16 necessary for the modernization of the PAG. The PAG shall report to the
17 Speaker of the *I Liheslaturan Guåhan* (the Legislature) no later than June
18 2010, of (1) status of its efforts to secure commitments for grants and similar
19 funding; and (2) its recommendation(s) in moving forward with PAG’s
20 modernization which include, but are not limited to, the scaling back of
21 modernization plans that would address organic growth capacity
22 requirements and funded through debt that is within the PAG’s ability to
23 pay, estimated to be about Fifty-four Million Five Hundred Thousand
24 Dollars (\$54,500,000), and which *shall* include the acquisition, either
25 through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such
26 cranes *shall be* acquired *no later than* December 31, 2012. ~~, pursuant to the~~
27 ~~Guam Procurement Law and not through the use of a Task Order to any~~

1 ~~existing contract.~~ If the PAG secures a grant, and the USDA Loan or other
2 comparable loan, then Phase I-A shall proceed along with the acquisition of
3 at least two (2) Gantry Cranes. Such cranes shall be acquired no later than
4 December 31, 2012, either through purchase or lease to own, ~~pursuant to the~~
5 ~~Guam Procurement Law, and not through the use of a Task Order to any~~
6 ~~existing contract.~~ No other loan or additional rate increase may be
7 requested for funding of the Master Plan by PAG without an executed
8 Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised
9 August 3, 2009 Report, and specifically in the Financial Plan. The Guam
10 Procurement laws prohibiting direct negotiation and acquisition, or
11 inconsistent with the succeeding authorities, are hereby waived.”

12 **Section 3.** Add a new Section 5 to Public Law 30-57 as follows:

13 “**Section 5.** The Port Authority of Guam is hereby authorized
14 to enter into negotiations with the Carriers for the specific purpose of
15 acquiring through purchase or lease-to-own at least but not limited to, two
16 (2) of the POLA gantry cranes, provided that the following requirements are
17 met:

18 (a) **Negotiating Team.** The Port Board of Directors shall appoint a
19 negotiation team that will be authorized to engage in the negotiations
20 with the Carriers.

21 (b) **Conflicts Prohibited.** No Covered Person, as such person is defined
22 below, shall be eligible to participate in the negotiations for the
23 acquisition of the POLA cranes, in whole or in part. For the purpose
24 of this Section, the term, ‘Covered Person’ shall mean any:

- 25 i. elected officials of the government of Guam who hold office at
26 the time of the negotiation; or

- 1 ii. advisors, consultants, and employees who are or had previously
2 been employed with the Carriers prior to the effective date of
3 this Act; or
4 iii. any person who might stand to personally benefit from the
5 negotiated terms.
6 iv. a person or spouse of such person related by consanguinity of
7 the third degree, which for the purpose of this Act, shall include
8 spouses, all children, parents, grandchildren, siblings,
9 grandparents, great-grandchildren, nieces, nephews, uncles,
10 aunts, and great-grandparents of a person, to any person
11 described in Items a., b., and c. of this Section.

12 (c) Prior to the initiation of negotiations, the Port shall engage the
13 service(s) of an independent crane expert to:

- 14 i. Provide an assessment of the material condition and life
15 expectancy of the POLA cranes to be acquired,
16 ii. To provide an “as is” valuation assessment starting with
17 estimated value in a fully operational condition and identifying
18 current retrofit requirements, if any, to place the POLA cranes
19 in that fully operational condition, and
20 iii. Determine a range of fair book value of the POLA cranes.

21 (d) A copy of the reports shall be provided within five (5) working days
22 upon completion , to *I Maga'låhen Guahan* and to the *Speaker of I*
23 *Lihselaturan Guahan*.

24 (e) If the outcome of negotiations is for lease-to-own, such lease shall be
25 based on commercially reasonable terms and structured as a capital
26 lease versus an operating lease.

1 (f) The Port Board of Directors shall review the acquisition terms, and
2 by majority vote, ratify or not ratify the terms.

3 i. A majority vote “to not ratify” shall in effect terminate the
4 discussions and efforts to acquire the POLA cranes through
5 direct negotiation with the Carriers. The Port shall then proceed
6 to procure at least two (2) Gantry Cranes pursuant to Guam
7 Procurement laws, and not through the use of a Task Order to
8 any existing contract.

9 ii. If the majority vote is to “ratify”, the terms of acquisition shall
10 be transmitted to the Public Utility Commission (PUC) for
11 review and disposition.

12 (g) Terms of acquisition are publicly disclosed and backed by full
13 disclosure of all relevant documents, after the negotiations and PUC
14 have been completed.

15 **Section 4. Severability.** If any provision of this Law or its
16 application to any person or circumstance is found to be invalid or contrary
17 to law, such invalidity shall *not* affect other provisions or applications of this
18 Law which can be given effect without the invalid provisions or application,
19 and to this end the provisions of this Law are severable.