

**I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (First) REGULAR SESSION**

Bill No. 121 (48)

Introduced by:

T.C. Ada

2009 MAY 29 PM 3: 54

AN ACT TO AMEND SECTION 10104 (j) OF CHAPTER 10, TITLE 12 GUAM CODE ANNOTATED; TO AMEND SECTIONS 12000, 12001.2 AND 12015 AND ADD SECTION 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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that it is imperative that the Port Authority of Guam (PAG) be able to effectively adjust its tariffs for port operations and services to cover its cost of operation and to generate revenues for capital improvements.

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

As the Port moves towards the implementation of its Port Modernization Master Plan, the Port will need to generate adequate revenues to fund an estimated \$200 million capital improvement undertaking. Consequently, tariffs will have to be adjusted accordingly.

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

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

13 **Section 2. Amendment of Section 10104(j) of Chapter 10 of Title 12 of**
14 **the Guam Code Annotated.** Section 10104(j) of Chapter 10, Title 12, Guam
15 Code Annotated is hereby amended to read:

16 **“§ 10104. Same. Duties.**

17 (j) Establish and modify from time to time, subject only to the
18 regulatory oversight supervision and approval of the Public Utilities
19 Commission, Fix all rates, deockage, rentals, tolls, pilotage, wharfage and
20 charges for the use and occupation of the public facilities or appliances of
21 the Port, and for services rendered by the ~~Authority~~ Port and to provide for
22 the collection thereof.

23 (k) Review the Manager’s annual estimates and schedules and
24 promptly adjust rates and charges prepared to recover the cost of each
25 facility and service including interests, loan repayments, amortization of
26 depreciable assets and a reasonable return on value of assets. Additional

1 adjustments in rates may be made from time to time ~~as warranted~~ upon
2 approval by the Public Utilities Commission and its determination that such
3 adjustments are “just” and “reasonable.”

4 **Section 3. Amendment of Sections 12000(a), 12001(a), and**
5 **12001.2(a) of, and addition of Sections 12001.2(f) and 12015(g) to,**
6 **Article 1 of Chapter 12, Title 12 of Guam Code Annotated.**

7 Section 12000(a) of Article 1, Chapter 12 of Title 12, Guam Code
8 Annotated is hereby amended to read:

9 **“§ 12000. Definitions.**

10 As used in this Chapter:

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

20 Section 12001(a) of Article 1, Chapter 12 of Title 12 Guam Code
21 Annotated is hereby amended to read:

22 “(a) *I Maga’Lahen Guåhan* [Governor of Guam] shall appoint, with
23 the advice and consent of *I Liheslaturan Guåhan* [Guam Legislature], two
24 (2) members from the business community of Guam; one (1) member who is

1 a certified public accountant; ~~one (1)~~ two (2) members, who has managerial
2 ~~or engineering experience in the field of power generation; one (1) member~~
3 ~~who has each of whom have training or and experience in the field of~~
4 ~~telephone, water or sewer utilities management, or related~~ at least one of the
5 following four areas (power generation, telephone, water/sewer utilities, or
6 marine terminal operations/transportation via ocean common carrier), with
7 the additional requirement that the two members appointed each have
8 training or experience in a different area; and two (2) members who are from
9 the community at large.

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

18 Section 12001.2(a) of Article 1, Chapter 12, of Title 12, Guam Code
19 Annotated is hereby amended to read:

20 “(a) Sections 12001.1 through 12001.2, which shall be known as the
21 Ratepayers’ Bill of Rights, shall in no way restrict the powers of the Public
22 Utilities commission (‘Commission’) granted in this Chapter to regulate or
23 set rates for a Public Utility. The Ratepayers’ Bill of Rights sets conditions
24 *only* on the manner in which a Public Utility shall submit a proposed rate
25 increase to the Commission. No Public Utility, as defined in §12000 of this

1 Chapter, with the *exception* of the ~~Guam Memorial Hospital~~, Jose D. Leon
2 Guerrero Commercial Port, may submit a proposed rate increase to the
3 Commission before complying with the mandates of this Section. This
4 Section shall *not* apply to the ~~Guam Memorial Hospital~~ Jose D. Leon
5 Guerrero Commercial Port. In the case of the Jose D. Leon Guerrero
6 Commercial Port, notice of any proposed changes in rates shall be made as
7 described in subsection (f) herein.”

8 A new subsection (f) is hereby added to Section 12001.2, Article 1,
9 Chapter 12 of Title 12, Guam Code Annotated as follows:

10 “(f) The Jose D. Leon Guerrero Commercial Port (the “Port”) shall
11 not submit any proposed rate change to the Commission until the
12 following actions have occurred:

13

14 (i) The Port shall publish notice of any proposed rate
15 change in a newspaper of general circulation, as defined
16 in §8104 of Chapter 8 of Title 5 of the Guam Code
17 Annotated, Open Government Law, at least sixty days
18 prior to submitting the proposed rate change to the
19 Commission. The notice required herein shall include
20 the Port’s intention to submit its proposed rate change to
21 the Commission, its current rate, the proposed rate, the
22 difference in the current and proposed rates stated in
23 percentage form, a justification for the change, and an
24 electronic mail address and physical location where

1 comments on the proposed rate change may be
2 submitted; and

3
4 (ii) The Port shall publish notice of any proposed rate change
5 on the Port's official website at least sixty days prior to
6 submitting the proposed rate change to the Commission.
7 The notice required herein shall include the Port's
8 intention to submit its proposed rate change to the
9 Commission, its current rate, the proposed rate, the
10 difference in the current and proposed rates stated in
11 percentage form, a justification for the change, and an
12 electronic mail address and physical location where
13 comments on the propose rate change may be submitted."

14
15 A new subsection (g) is hereby added to Section 12015, Article 1,
16 Chapter 12 of Title 12 Guam Code Annotated is hereby added as follows:

17 **"§ 12015. Regulation of Rates.**

18 (g) Pursuant to its oversight supervision, the Commission shall
19 begin proceedings with the Jose D. Leon Guerrero Commercial Port (the
20 "Port") to review and modify or establish rates and other items and charges
21 set forth in 12 GCA §10104(j), for the use of Port facilities or appliances.
22 Until December 31, 2010 the Commission may establish interim rates and
23 charges for the use of Port facilities or appliances as may be necessary for
24 estimated operation or maintenance costs, required capital improvements, or

1 other reasonable costs. To establish any such interim rates or charges, the
2 Commission may conduct such investigation and hearings as it deems
3 necessary pursuant to its powers under 12 GCA §12004. No later than
4 December 31, 2010 the Port shall submit to the Commission the results from
5 a study of existing rates, charges and cost of services provided by the Port.
6 The request for proposals to study existing rates, charges and cost of services
7 shall be subject to the review and approval of the Commission prior to
8 issuance; and any contract entered into by the Port for such services shall be
9 subject to the prior approval of the Commission. Any modification to or
10 establishment of rates shall thereafter be implemented in accordance with
11 the procedures set out in this Chapter.”

12

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