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

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

This is to certify that **Substitute Bill No. 336-31 (COR), "AN ACT TO FURTHER *AMEND* SECTION 4 OF PUBLIC LAW 30-57, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON/ HORIZON, INC. OR ITS SUCCESSOR,"** was on the 8th day of November, 2011, duly and regularly passed.

Tina Rose Muña Barnes
Acting Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 14th day of Nov., 2011, at 3:45 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 336-31 (COR)
As substituted by the Committee on Youth,
Cultural Affairs, Procurement, General Government
Operations and Public Broadcasting; and amended on the Floor.

Introduced by: T. C. Ada
R. J. Respicio
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
F. F. Blas, Jr.
M. Silva Taijeron
Chris M. Dueñas
Aline A.Yamashita, Ph.D.
V. Anthony Ada
B. J.F. Cruz
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
v. c. pangelinan
Judith T. Won Pat, Ed.D.

AN ACT TO FURTHER *AMEND* SECTION 4 OF PUBLIC LAW 30-57, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF THE "POLA" GANTRY CRANES OWNED BY MATSON/ HORIZON, INC. OR ITS SUCCESSOR.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the Jose D. Leon Guerrero Commercial Port (Port), established by Public Law 13-87 as a public corporation and autonomous government entity, is charged with

providing continued support for the diversification of Guam's economy, seaborne commerce and international trade. Furthermore, the Port is vested with the responsibility of developing its assets and the implementation of policies and strategies to enable the efficient loading and unloading of goods and materials destined for retail operations in Guam and Micronesia, and to facilitate a smooth transition to the military-induced expansion and anticipated population growth.

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

I Liheslaturan Guåhan finds that there are five (5) cranes currently on the Port's commercial docks, and that through a license agreement executed in December 2007 between the Port and Matson/ Horizon, Inc. or its successor (the Carriers), three (3) of these cranes, referred to as POLA Cranes 15, 16 and 17, were purchased and refurbished by the Carriers and placed on the Port's rails. Additionally, the Port currently maintains and operates two (2) older and smaller Gantry Cranes, referred to as Gantry 2 and Gantry 3, to service non-Matson/ Horizon, Inc. or its successor vessels, and that due to their age and material condition are more expensive to maintain and provide less reliable service. Retirement of these cranes is overdue.

I Liheslaturan Guåhan finds that Public Law 30-100 mandates the Port to acquire, either through purchase or lease-to-own, *at least* two (2) Gantry Cranes *no later than* December 31, 2012, pursuant to the Guam Procurement Act, and "not through the use of a Task Order attached to any existing contract". In 2006, the U.S. Department of Agriculture (USDA) made available to the Port direct/guaranteed loans to acquire *at least* two (2) new or refurbished Gantry

Cranes. The USDA loan for the acquisition of the cranes is still currently available to the Port.

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

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

I Liheslaturan Guåhan further finds in consideration of the aforementioned findings that certain provisions of existing public law should be amended.

Section 2. Section 4 of Public Law 30-57, as *amended* by Public Law 30-100, is further *amended* to read as follows:

"**Section 4.** The Port Authority of Guam (PAG) *shall* immediately initiate research to identify potential Federal grants and similar funding sources, and *shall* initiate necessary discussions and communications to secure funding as necessary for the modernization of the PAG. The PAG *shall* report to the Speaker of *I Liheslaturan Guåhan* (the Legislature) *no later than* June 2010, of (1) the status of its efforts to secure commitments for grants and similar funding; and (2) its recommendation(s) in moving forward with PAG's modernization, which include, but are *not* limited to, the scaling back of modernization plans that would address organic growth capacity requirements and funded through debt that is within the PAG's ability to pay, estimated to be about Fifty-four Million Five Hundred

Thousand Dollars ($54,500,000), and which *shall* include the acquisition, either through purchase *or* lease to own, of *at least* two (2) Gantry Cranes. Such cranes *shall* be acquired *no later than* December 31, 2012. *If* the PAG secures a grant, and the USDA loan or other comparable loan, then Phase I-A *shall* proceed along with the acquisition of *at least* two (2) Gantry Cranes. Such cranes *shall* be acquired *no later than* December 31, 2012, either through purchase or lease to own. No other loan or additional rate increase may be requested for funding of the Master Plan by PAG without an executed Capital Recovery Charge agreement as discussed in Part 3.3.3 of the Revised August 3, 2009 Report, and specifically in the Financial Plan. The Guam procurement laws prohibiting direct negotiation and acquisition, or inconsistent with the succeeding authorities, are hereby waived."

Section 3. A new Section 5 is *added* to Public Law 30-57, to read as follows:

"**Section 5.** The Port Authority of Guam is hereby authorized to enter into negotiations with the Carriers for the specific purpose of acquiring through purchase or lease-to-own one (1) or more of the POLA Gantry Cranes, *provided* that the following requirements are met:

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

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

(1) elected officials of the government of Guam who hold office at the time of the negotiation; or

(2) advisors, consultants, and employees who are or had previously been employed with the Carriers prior to the effective date of this Act; or

(3) any person who might stand to personally benefit from the negotiated terms; and

(4) a person or spouse of such person related by consanguinity of the third (3^{rd}) degree, which for the purpose of this Act *shall* include spouses, all children, parents, grandchildren, siblings, grandparents, great-grandchildren, nieces, nephews, uncles, aunts, and great-grandparents of a person described in Items (1), (2), and (3) of this Subsection.

(c) **Assessment.** Prior to the initiation of negotiations, the Port s*hall* engage the service(s) of an independent crane expert to:

(1) provide an assessment of the material condition and life expectancy of the POLA cranes to be acquired;

(2) provide an "as is" valuation assessment, starting with estimated value in a fully operational condition and identifying current retrofit requirements, if any, to place the POLA cranes in that fully operational condition; and

(3) determine a range of fair and reasonable value of the POLA cranes. The owners' recouped investment in the POLA gantry crane through the "crane surcharge" that was implemented by the owners of the cranes at the start of operations of the POLA gantry cranes at the Port, and the

container handling surcharge that continues to be implemented, *shall* be factored and deducted from the value.

(d) **Reports.** A copy of the Assessment report(s) *shall* be provided, within five (5) working days upon completion, to *I Maga'lahen Guåhan* and to the *Speaker of I Liheslaturan Guåhan.*

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

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

(1) A majority vote "to not ratify" *shall* in effect terminate the discussions and efforts to acquire the POLA cranes through direct negotiation with the Carriers. The Port *shall* then proceed to procure *at least* two (2) Gantry Cranes pursuant to Guam procurement laws, and *not* through the use of a Task Order to any existing contract.

(2) If the majority vote is to "ratify", the terms of the acquisition *shall* be transmitted to the Public Utility Commission (PUC) for review and disposition. The PUC *shall* perform its review and disposition in a timely and expeditious manner.

(g) **Public Disclosure.** Terms of the acquisition are to be publicly disclosed and backed by a full disclosure of all relevant documents after the negotiations and PUC review and disposition have been completed.

(h) **Maintenance.** In the event the Port acquires the POLA Gantry Cranes, the Port *shall* contract, pursuant to the Guam Procurement

Act, the services of a Performance Management Contractor (PMC) to manage the performance, operation and maintenance of the newly acquired POLA Gantry Cranes, and other Gantry Cranes used in support of Port operations. Said contractual services *shall* be crafted to ensure that employees of the Port Equipment Maintenance Division will be utilized to the maximum extent possible, and that *no* employee will be displaced *except* for cause. The Port *shall not* obtain such services through the use of a Task Order to any existing or subsequent contract, lease or agreement. During the interim period that the Port is procuring the PMC contract, the previous owners of the Cranes *shall* continue to provide maintenance of the cranes, on account of the Port."

Section 4. Severability. *If* any provision 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.