

**BOARD OF DIRECTORS**

*Francisco G. Santos, Chairman  
Nathan T. Taimanglo, Vice Chairman  
Isa Marie C. Koki, Board Secretary  
Dorothy P. Harris, Member  
Dr. Judith P. Guthertz, Member*



**Resolution No. 2022-10**

**RELATIVE TO AUTHORIZING MANAGEMENT TO PRESENT TO THE GOVERNOR  
OF GUAM AND 36<sup>TH</sup> GUAM LEGISLATURE OVERSIGHT COMMITTEE  
CHAIRPERSON A REQUEST TO INTRODUCE PROPOSED LEGISLATION TO AMEND  
PUBLIC LAW 35-44 RELATIVE TO PROJECTS FUNDED BY REVENUE BONDS**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:**

**WHEREAS**, the Jose D. Leon Guerrero Commercial Port's modernization program is designed to meet the Island's growth including the expansion of the U.S. military and growing tourism market; and

**WHEREAS**, the key initiatives justified to the bond market investors were: (1) expansion of wharf space to accommodate larger vessel and increase vessel handling capacity; (2) upgrade terminal operating system to allow for automated invoicing cargo and container tracking, financial management and maintenance management; (3) expansion of the existing facilities to support fishing and cruise line industries; and (4) replacement of gantry cranes at the end of the useful life to maintain uninterrupted cargo movement; and

**WHEREAS**, as part of the modernization program, the Port through Public Law 34-70 obtained \$71,445,000 in revenue bonds to finance certain capital improvements and to refinance all or a portion of outstanding loans of the Port Authority; and

**WHEREAS**, on July 20, 2018, Pro Marine Technology submitted an Underwater Assessment and Inspection Services of F-1, F-3, F-4, F-5 and F-6 and based on their assessment found that waterfront facilities were in dire need of repair and provided recommendations for such repairs; and

**WHEREAS**, to ensure the uninterrupted flow in the deployment of fuel products which could be obtained in F-1 Fuel Pier or Golf Fuel Pier, a connectivity line would need to be installed at F-1 to allow discharged or loaded fuel to be routed to and from other petroleum fuel companies' storage tanks; and

**WHEREAS**, to enhance the Port's invoicing to ensure 100% cost recovery per the established tariffs, the Terminal Operating and Financial Management systems must be integrated, along with an upgrade of the Ports' current information technology system for accurate financial data on the expenses rendered to vessels and related services versus revenues; and

**WHEREAS**, the 2010 Master Plan included a recommendation for the current Port Administration Building be extended with an annex and a bridge connecting the building to the existing building for compliance with the Americans with Disabilities Act (ADA), but such project was changed in the 2013 Master Plan Update which endorsed that a new large building be constructed and the current administration building be demolished; and

**WHEREAS**, the Port presented to Governor Lourdes A. Leon Guerrero and members of the 35<sup>th</sup> Guam Legislature that if the Port pursues the 2010 Master plan recommendation to construct an annex with a bridge connecting to the existing administration building, a portion of the funding originally earmarked for the construction of the new administration building could otherwise be used to address the deficiencies of the Port's revenue-generating waterfront facilities, a connectivity fuel line between Golf Pier and F-1 Pier, and improvements needed for the Port's information technology systems; and

**WHEREAS**, the 35<sup>th</sup> Guam Legislature unanimously agreed that an amendment to Public Law 34-70 would allow for the reprogramming of such bond proceeds needed to address the deficiencies of the Port's revenue-generating facilities, the connectivity fuel line between Golf Pier and F-1 and improvements needed for the Port's information systems, and all remaining balances, if any, shall be allocated to provide for supplemental funding for the procurement of a new gantry crane; and

**WHEREAS**, on October 16, 2019, Governor Leon Guerrero signed Public Law 35-44 which authorized the reprogramming of the Port Authority revenue bond proceeds and amending the capital improvement projects in Section 4(a) of Public Law 34-70; and

**WHEREAS**, the Port issued procurement on the architectural and engineering (A&E) designs for the Port revenue bond projects, and in the A&E designs the construction cost associated with the repairs exceeded those outlined in Public Laws 34-70 and 35-44; and



**WHEREAS**, the engineering cost estimates outlined in the revenue bond mandates obtained back in 2014 are now severely underfunded; and

**WHEREAS**, because the mandates specifically identified the revenue bond project costs to be funded by the revenue bond, it did not allow the Port to reallocate revenue bond proceeds to address the anticipated shortfalls of the construction costs for which has specific costs associated in the mandates; and

**WHEREAS**, Port management actively submitted federal grants to fund some of the revenue bond projects, i.e., the fuel connectivity line which U.S. Economic Development Authority awarded \$2.4 million, freeing up a portion of the revenue bond proceeds for that project; and

**WHEREAS**, on July 29, 2021, the Board of Directors through Resolution No. 2021-07 authorized the General Manager to use other funding sources for the payment of the cost of construction or improvement or any part thereof or any available money or funds of the Port Authority made available by a federal grant to be expended; and

**WHEREAS**, subsequently after the passage of the Resolution 2021-07, the Port held procurement solicitation openings for several of the revenue bond projects resulting in either no offers being submitted or procurement construction bid submittal costs exceeded between 10% to 156% of the legislative funding cap of the respective project; and

**WHEREAS**, the Port management reviewed other revenue bond mandates for other autonomous agencies and notated the Port's revenue bond legislation is the only legislation which specifically states the proceeds is to "*finance certain Authority capital improvements, including, but not limited to...*" and each project has an associated funding cap versus other autonomous agencies' revenue bond legislations which simply stated the project(s) and total amount authorized to borrow; and

**WHEREAS**, although the Board of Directors authorized management to use other funding sources, it appears the revenue bond legislations may disallow the Port from exceeding the cost associated with the project as outlined in Public Laws 34-70 and 35-44; and

**WHEREAS**, the Board of Directors fully understands the purpose of accomplishing the commitment of ensuring the Port's modernization program is neither further delayed nor jeopardized as a result of the legislative funding caps strictly tied to the 2018 Revenue Bond funds outlined in Public Law 34-70 and 35-44; and

**WHEREAS**, the Board of Directors recognize the need of the General Manager to engage with Guam Economic Development Authority, members of the Guam Legislature, and Governor Leon Guerrero on any possible legislative remedies to remove the funding caps associated with the project and any statutory impediments created by Public Laws 34-70 and 35-44; now therefore be it

**RESOLVED**, the Board of Directors hereby authorizes the General Manager to present to the Governor of Guam to submit a proposed legislation to the 36<sup>th</sup> Guam Legislature or request Senator Telena Nelson, Legislature Chairperson on Committee on Education and Infrastructural Advancement, Border Protection and Maritime Transportation, *Guåhan* Preservation and Self-Determination, and Federal and Foreign Relations to sponsor such legislation; and be it further

**RESOLVED**, the Chairman certify to, and the Secretary attest to, the adoption hereof and that copies of the same be thereafter transmitted to the Governor, Lt. Governor, Senator Telena Nelson and the 36<sup>th</sup> Guam Legislature for consideration and approval.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 24<sup>th</sup> DAY OF MARCH, 2022.**

  
FRANCISCO G. SANTOS  
CHAIRMAN, BOARD OF DIRECTORS  
PORT AUTHORITY OF GUAM

  
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Date: 2022.03.24 16:55:31  
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ISA MARIE C. KOKI  
SECRETARY, BOARD OF DIRECTORS  
PORT AUTHORITY OF GUAM



*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN*  
**THIRTY-SIXTH GUAM LEGISLATURE**

Bill No. \_\_\_\_\_ (COR)

Introduced by:

**AN ACT TO AMEND SECTION 4(a) OF PUBLIC LAWS 34-70 AND 35-44 RELATIVE TO THE FINANCING OR REFINANCING IMPROVEMENTS AND CAPITAL IMPROVEMENTS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT (PORT), AND OTHER RELATED FACILITIES AND OPERATIONS OF THE PORT, THROUGH REVENUE BOND PROCEEDS.**

**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's modernization program is designed to meet the Island's growth including the expansion of the U.S. military and growing tourism market, with the key project initiatives as justified to the bond market investors, as follows:

- (a) expansion of wharf space to accommodate larger vessel and increase vessel handling capacity;
- (b) upgrade terminal operating system to allow for automated invoicing cargo and container tracking, financial management and maintenance management;
- (c) expansion of the existing facilities to support fishing and cruise line industries; and
- (d) replacement of gantry cranes at the end of the useful life to maintain uninterrupted cargo movement.

As part of the modernization program, the Port through Public Law 34-70 obtained \$71,445,000 in revenue bonds to finance certain capital improvements and to refinance all or a portion of outstanding loans of the Port Authority.

*I Liheslaturan Guåhan* finds that on July 20, 2018, Pro Marine Technology submitted its findings in an Underwater Assessment and Inspection Services of F-1, F-3, F-4, F-5 and F-6 and based on their assessment found that the waterfront facilities were in dire need of repair and provided recommendations for such repair.

Moreover, *I Liheslaturan Guåhan* finds that to ensure the uninterrupted flow in the deployment of fuel products which could be obtained in F-1 Fuel Pier or Golf Fuel Pier, a connectivity line would need to

be installed at F-1 to allow discharged or loaded fuel to be routed to and from other petroleum fuel companies' storage tanks.

To enhance the Port's invoicing to ensure 100% cost recovery per the established tariffs, the Terminal Operating and Financial Management systems must be integrated, along with an upgrade of the Ports' current information technology system for accurate financial data on the expenses rendered to vessels and related services versus revenues

The 2010 Master Plan included a recommendation for the current Port Administration Building be extended with an annex and a bridge connecting the building to the existing building for compliance with the Americans with Disabilities Act (ADA), but such project was changed in the 2013 Master Plan Update which endorsed that a large new building be constructed, and the current administration building be demolished.

In 2019, the Port presented to Governor Lourdes A. Leon Guerrero and members of the 35<sup>th</sup> Guam Legislature that if the Port pursues the 2010 Master plan recommendation to construct an annex with a bridge connecting to the existing administration building, a portion of the funding originally earmarked for the construction of the new administration building could otherwise be used to address the deficiencies of the Port's revenue-generating waterfront facilities, a connectivity fuel line between Golf Pier and F-1 Pier, and improvements needed for the Port's information technology systems;

The 35<sup>th</sup> Guam Legislature unanimously agreed that an amendment to Public Law 34-70 would allow for the reprogramming of such bond proceeds needed to address the deficiencies of the Port's revenue-generating facilities, the connectivity fuel line between Golf Pier and F-1 and improvements needed for the Port's information systems, and all remaining balances, if any, shall be allocated to provide for supplemental funding for the procurement of a new gantry crane.

On October 16, 2019, Governor Leon Guerrero signed Public Law 35-44 which authorized the reprogramming of the Port Authority revenue bond proceeds and amending the capital improvement projects in Section 4(a) of Public Law 34-70.

The Port issued procurement on the architectural and engineering (A&E) designs for the Port revenue bond projects, and in the A&E designs the construction cost associated with the repairs exceeded those outlined in Public Laws 34-70 and 35-. The engineering cost estimates outlined in the revenue bond mandates obtained back in 2014 are now severely underfunded. Because the mandates specifically identified the revenue bond project costs to be funded by the revenue bond, it did not allow the Port to reallocate revenue bond proceeds to address the anticipated shortfalls of the construction costs for which has specific costs associated in the mandates.

To address these shortfalls, Port management actively submitted federal grants to fund some of the revenue bond projects, which they were awarded from U.S. Economic Development Authority \$2.4 million

for the fuel connectivity line, freeing up a portion of the revenue bond proceeds for that project. The Board of Directors also authorized the General Manager to use other funding sources for the payment of the cost of construction or improvement or any part thereof or any available money or funds of the Port Authority made available by a federal grant to be expended. The Port held procurement solicitation openings for several of the revenue bond projects resulting in either no offers being submitted, or procurement construction bid submittal costs exceeded between 10% to 156% of the legislative funding cap of the respective project.

A review of other revenue bond mandates for other autonomous agencies was made and it is noted the Port's revenue bond legislation is the only legislation which specifically states the proceeds is to “*finance certain Authority capital improvements, including, but not limited to...*” and each project has an associated funding cap versus other autonomous agencies' revenue bond legislations which simply stated the project(s) and total amount authorized to borrow. Although the Board of Directors authorized management to use other funding sources, it appears the revenue bond legislations may disallow the Port from exceeding the cost associated with the project as outlined in Public Laws 34-70 and 35-44.

*I Liheslaturan Guåhan* finds that an amendment to Public Laws 34-70 and 35-44 to remove the legislative funding caps strictly tied to the 2018 Revenue Bond funds is necessary in order for the Port to accomplish its commitment of ensuring the modernization program is neither further delayed nor jeopardized.

It is, therefore, the intent of *I Liheslaturan Guåhan* to amend Public Laws 34-70 and 35-44 by removing the legislative funding caps associated with the capital improvement projects to be funded by the revenue bonds and authorize the reprogramming of the Port Authority of Guam revenue bond proceeds to fund the shortfalls.

**Section 2.** Section 4(a) of Public Laws 34-70 and 35-44 is amended to read:

- (a) to finance certain Authority capital improvements, including, but not limited to:
  - (1) local match for the Transportation Investment Generating Economic Recovery (TIGER) grant program funding for rehabilitation of “H” Wharf and access road ~~in the approximate amount of Thirteen Million Seven Hundred Seventy-four Thousand Two Hundred Fifty-five Dollars (\$13,774,255).~~
  - (2) construction of an annex building with the construction of a bridge attached to the current Administration Biding and upgrade of infrastructure ~~in the approximate amount of Ten Million Four Hundred Forty-five Thousand Dollars (\$10,445,000).~~

~~The remaining balance of approximate Seven Million Four Hundred Twenty-five Thousand Seven Hundred Forty-five Dollars (\$7,425,745)~~ Resulting from this reset to the Port Modernization Plan *shall* be prioritized by the Port's Board of Directors in order to shore up the Port's current related revenue-generating facilities and financial management system, specifically, the repairs of

F-3, F-4, F-5, and F-6 of the waterfront facilities; the installation of a connectivity fuel line connecting Golf Pier and F-1 Fuel Pier, and an upgrade to the Port's information technology system and integration of the Terminal Operating System and Financial Management System;

- (3) replacement and relocation of the waterline ~~in the approximate amount of \$6,000,000;~~
- (4) repair and expansion of the Equipment Maintenance & Repair Building (EQMR) ~~in the amount of \$3,628,800;~~
- (5) repair of Warehouse 1 ~~in the approximate amount of \$2,000,000;~~
- (6) repair of Golf Pier ~~in the approximate amount of \$2,000,000;~~ and
- (7) all remaining balances, if any, *shall* be allocated to provide for supplemental funding for the procurement of a new gantry crane;”

**Section 3. Effective Date.** This Act *shall* be effective upon enactment.

**Section 4. Severability.** If any provision of this Act 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 application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.