

CHAPTER 10
PORT AUTHORITY OF GUAM

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ARTICLE 1
PORT AUTHORITY OF GUAM

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§ 10101. Definitions.

As used herein, unless otherwise indicated:

- (a) Authority means the Port Authority of Guam.

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(b) Board means the Board of Directors of the Authority.

(c) Port facilities means channels, waterways, basins, seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities necessary for the development or operation of the Port of Guam and recreational boating facilities of Guam.

(d) Port means the Civil Port, small boat marinas, and all related facilities of the territory of Guam located on Cabras Island, Apra Harbor, Agana Boat Basin, and all other Government of Guam small boat marinas.

(e) Manager means the General Manager of the Authority.

(f) Director means the Director of the Board.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14000 GC. Codified as 12 GCA § 10101. Subsection (c) amended by P.L. 17-071:1 (Oct. 2, 1984); Subsection (d) amended by P.L. 17-071:2 (Oct. 2, 1984).

§ 10102. Authority.

There is hereby established the Port Authority of Guam as a public corporation and autonomous instrumentality of the government of Guam, which shall provide for the needs of ocean commerce, shipping, recreational and commercial boating, and navigation of the territory of Guam. The Authority shall have perpetual succession unless sooner terminated by law and shall adopt a seal and sue or be sued in its own Corporate name.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14001. Codified as 12 GCA § 10102. Amended by P.L. 17-071:3 (Oct. 2, 1984).

2014 NOTE: Subsection designation deleted to adhere to the Compiler's general codification scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10103. Board.

(a) The Authority shall be directed by the Board which shall consist of five (5) directors appointed by the Governor with the advice and consent of the Legislature.

(1) Directors shall be appointed and their names transmitted to the Legislature within thirty (30) days of the effective date of this Chapter.

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(2) The five (5) directors first appointed shall classify themselves by lot so that their terms shall expire respectively as follows:

(A) One (1) on December 31, 1976, Two (2) on June 30, 1977 and Two (2) on June 30, 1978.

(B) Their successors shall be appointed each for a term of three (3) years to commence on the date of their confirmation by the Legislature.

(3) Any director vacancy shall be filled by the Governor, with the advice and consent of the Legislature, for the unexpired term.

(b) Any director may be removed upon charges, and after hearing, by the Governor.

(c) Three (3) directors shall constitute a quorum of the Board and three (3) affirmative votes are required for the transaction of all business.

(1) The Board shall meet in regular session at least once each month and in special session as often as it may deem necessary.

(2) (A) The Board shall keep a minute book wherein all its actions and proceedings shall be recorded.

(B) Minutes shall be signed by the Board Secretary and a copy thereof shall be forwarded to the Governor within forty-eight (48) hours following adjournment of each meeting.

(d) Directors shall be paid Fifty Dollars (\$50.00) per meeting but not to exceed One Hundred Dollars (\$100.00) a month and shall be reimbursed for actual travel, subsistence and out-of-pocket expenses incurred in the discharge of their responsibilities.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14002 GC. Codified as 12 GCA § 10103.

2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA § 1606.

§ 10104. Same: Duties.

The Board shall:

(a) Conduct their first meeting within thirty (30) days of their confirmation.

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(b) Elect a Chairman, Vice-Chairman and Secretary from among its members.

(c) Appoint a Manager and fix his compensation within forty-five (45) days of their first meeting.

(d) Maintain constant review and evaluation of the planning, promotion, development, construction, alteration, maintenance and operation of the port facilities, any of which activities the Board may delegate to the Manager.

(e) Establish its internal organization and management and adopt regulations for the administration of its operations and the conduct of its affairs.

(f) In accordance with law, control, manage and have jurisdiction over all government of Guam lands within the boundaries of Cabras Island and Drydock Island and seaward therefrom to the limits of the Glass Breakwater and all areas designated as small boat basins or recreational boating facilities, including submerged lands except for the following:

(1) those facilities under the control and jurisdiction of departments or agencies of the United States government; and

(2) all seashore properties and facilities which fall under the Territorial Parks System and boat launching ramps under the jurisdiction of the Department of Parks and Recreation.

(g) Employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such report shall be furnished to the Governor and to the Legislature.

(h) Report to the Governor concerning its administration of the Authority by annual report within one hundred twenty (120) days after the end of each fiscal year and, if requested by the Governor, shall present special reports within thirty (30) days after the end of each intervening quarter. The financial information presented in such reports shall be in accordance with the Uniform System of Accounts adopted by the Board.

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(i) Require operators of water terminal properties and facilities to keep same in proper condition and repair and shall have the right to inspect such terminal facilities at reasonable times.

(j) Establish and modify from time to time, subject only to the regulatory oversight supervision and approval of the Public Utilities Commission, all rates, dockage, rentals, tolls, pilotage, wharfage and charges for the use and occupation of the public facilities or appliances of the Port, and for services rendered by the Port and to provide for the collection thereof.

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

(l) Exercise its powers and perform its duties by resolution adopted by majority vote of the Board in public meeting for which notice of an agenda was published in a Guam newspaper of general circulation three (3) times within five (5) days of the meeting. Resolutions shall be signed by the Board Chairman and attested by its Secretary. The Board shall index all of its resolutions which shall be public record, provided, that the Board shall not, except as expressly provided herein, delegate its responsibility for the general operation of the Port.

(m) Adopt, amend and repeal pilotage rules and regulations in accordance with the Administrative Adjudication Law and § 56403 of Title 18 of the Guam Code Annotated, which rules and regulations shall provide for safe and efficient navigation of all vessels entering, leaving and operating within Guam waters that are required by § 56403.13 to have a licensed pilot on board; and to ensure an adequate supply of qualified pilots in aid of commerce and navigation.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14003 GC. Codified as 12 GCA § 10104. Subsection (f) amended by P.L. 17-071:4 (Oct. 2, 1984). Subsection (m) added by P.L. 25-009:28 (May 12, 1999). Subsections (j) and (k) amended by P.L. 30-052:2 (July 14, 2009).

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NOTE: P.L. 25:009:29 states: Savings Clause. Pending the promulgation or amendment of rules and regulations governing mandatory pilot licensing by the Port Authority of Guam pursuant to the Administrative Adjudication Law, the Port Authority's existing harbor rules and regulations shall be construed as requiring the use of a harbor pilot by all vessels within pilotage waters, *unless* exempt pursuant to § 56403.15, and for the supervision and investigation of complaints against all pilots by the Manager of the Port Authority of Guam.

§ 10105. Same: Powers.

The Board may:

(a) Enter into and perform such contracts, leases, cooperative agreements and other transactions with any agency or instrumentality of the United States, or with any state, territory or possession, or any political subdivision thereof, or with any person, firm, association or corporation, as may be deemed necessary for the execution of its responsibilities.

(b) In accordance with 5 GCA Chapter 5 (Procurement Law) and other laws, any property real, personal or mixed, tangible or intangible and hold, maintain, use, operate, encumber or dispose of same whenever deemed necessary in the execution of its responsibilities.

(c) Make any investigation deemed necessary to enable it to carry out its responsibilities, and for this purpose take and hear proofs and testimony and compel by subpoena the attendance of witnesses and the production of books, papers, records and documents, including public records.

(d) Enter into contracts for loans or grants with the government of Guam or with the United States.

(e) At any time or from time to time, incur indebtedness.

(f) Employ, retain or contract for the services of qualified managers, specialists or experts as individuals or as organizations, for advice and assistance.

(g) Adopt, enforce, amend or repeal harbor and port regulations for the use and navigation of Apra Harbor and the facilities of the Port Authority of Guam, and to adopt, enforce, amend or repeal such other orders, regulations and practices that are necessary for the administration and discharge of its duties and powers.

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(h) Rules and regulations previously promulgated under the authority of the Department of Parks and Recreation concerning small boat basins and recreational boating facilities are to remain in effect unless or until the Board promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section. All references and rules and regulations pertaining to persons in or duties of the Department of Parks and Recreation in regard to small boat basins and recreational boating facilities shall be considered as pertaining to the General Manager or his designee and the duties of the Port Authority of Guam until or unless the Board amends or promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section.

(i) Notwithstanding any other provision of law, make, negotiate and enter into a commercial lease, or issue a permit or license for the use of its real property and other related facilities for a term not to exceed five years.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14004 GC. Subsection (b) as amended by P.L. 16-124:18 (Dec. 29, 1982). Codified as 12 GCA § 10105. Subsection (g) amended by P.L. 17-058:1 (June 22, 1984). Subsection (h) added by P.L. 17-071:5 (Oct. 2, 1984). Subsection (i) added by P.L. 26-028:2 (July 19, 2001).

§ 10106. Manager.

The Manager shall be the Authority's chief executive officer and who shall serve at the Board's pleasure. He shall be responsible for the maintenance, operation and development of the Port administration and for the Authority's business affairs.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14005 GC. Codified as 12 GCA § 10106.

2013 NOTE: Subsection designation deleted to adhere to the Compiler's general codification scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10107. Same: Duties.

The Manager shall:

- (a) Insure that the Board's rules and regulations are enforced;
- (b) Attend all board meetings;
- (c) Keep the Board advised as to the needs of the Authority;

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(d) Approve demands for the payment of obligations of the Authority within the purposes and amounts authorized by the Board;

(e) Prepare or cause to be prepared all plans and specifications for the construction of the works of the Authority;

(f) Select and appoint the employees of the Authority, except as otherwise provided by this Chapter, and plan, organize, coordinate and control the services of such employees;

(g) Publish a financial report in a manner provided by the Board within one hundred twenty (120) days from the end of each fiscal year showing the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof;

(h) Render a monthly accounting statement to the Board in such form as the Board directs;

(i) Shall annually submit to the Board and the Governor programs and financial plans in accordance with the provisions of 5 GCA Chapter 4;

(j) Chair the Territorial Transportation and Communications Coordinating Council;

(k) Perform such other and additional duties as the Board may direct.

(l) Grant licenses to pilots pursuant to 18 GCA § 56403;

(m) Develop appropriate standards and procedures for licensure of harbor pilots, including such examinations and investigations to determine whether persons applying for a pilot's license are qualified as the Manager deems necessary or appropriate;

(n) Enforce the provisions of 18 GCA § 56403 and rules adopted pursuant thereto;

(o) Suspend, revoke or deny the issuance of any pilot's license for any cause prescribed by 18 GCA § 56403, or for any violation of the Port Authority of Guam's pilotage rules and regulations;

(p) Appoint members of the Pilot License Advisory Committee;

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(q) Investigate complaints and any violation of the provisions of § 56403 of Title 18 of the Guam Code Annotated or the Port of Authority of Guam's rules and regulations; and

(r) Do all things reasonable, necessary, and expedient to ensure safe navigation and proper pilotage, and to facilitate the efficient administration of 18 GCA § 56403.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14006 GC. Codified as 12 GCA § 10107. Subsection (j) added by P.L. 21-095:4 (Mar. 30, 1992); subsection (k) relettered by same law. Subsections (l) - (r) added by P.L. 25-009:21-27 (May 12, 1999).

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code in subsection (i) was altered to reflect the codification of the chapter and title in the GCA.

§ 10108. Claims.

(a) Cargo shortage and property damage claims shall be presented to the Manager within six (6) months of accrual for payment under this Act. Claims shall be in such form as the Manager shall direct.

(b) The Manager shall personally entertain cargo shortage or property damage claims in excess of Five Hundred Dollars (\$500.00). He may, however, delegate the review, settlement and payment of claims for cargo shortages or property damage up to One Hundred Dollars (\$100.00).

(c) Payments of claims for cargo shortage or property damage shall be charged to an account title "Shortage and Damage Claims," said account to be shown in the monthly accounting statement to the Board. A listing of each payment in excess of One Hundred Dollars (\$100.00) shall accompany the statement.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14007 GC. Codified as 12 GCA § 10108.

§ 10109. Fiscal Authority.

(a) There is hereby established a fund to be known as the Port Authority Fund which shall be maintained by the Board separate and apart from other funds of the government of Guam. Independent records and accounts shall be maintained in connection therewith.

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(b) All moneys received by the Authority from whatever source derived shall be deposited in the Port Authority Fund in eligible banks as defined in 5 GCA § 21112.

(c) All expenditures including payments into sinking funds or other special accounts shall be made from the Port Authority Fund.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14008 GC. Codified as 12 GCA § 10109.

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code section in subsection (b) was altered to reflect the codification of this section in the GCA.

§ 10110. Contracts and Purchases.

[Repealed.]

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as §14009. Repealed by P.L. 16-124:19 (Dec. 29, 1982). Codified as 12 GCA § 10109.

§ 10111. Employment.

(a) Pursuant to the provisions of 4 GCA §§ 4104 and 4105, the Board shall establish, and may amend, rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Authority. Such rules and regulations shall be effective upon approval by the Civil Service Commission before implementation. Such rules and regulations shall be filed with the Legislative Secretary.

(b) Employees of the Authority, excluding the directors, shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA § 8105 except that for the purposes of Subsection (a) of said Section, the employees of the Authority shall not be considered employees of a public corporation whereby their membership in the Fund is optional and membership therein must be specifically requested. The Authority shall contribute to the Government of Guam Retirement Fund on the basis of monthly billings as determined by the Board of Trustees of the Government of Guam Retirement Fund, for the benefit payments made from such Fund on account of the Authority's employees.

(c) Notwithstanding any other provision of law, the manager, assistant managers, the manager's secretary, the comptroller and assistant comptroller shall be within the unclassified service of the government of

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Guam and shall be hired, compensated and employed under the terms and conditions fixed by and at the pleasure of the Board.

(d) The Board shall establish, and may amend from time to time, the compensation rates and classification plan of the employees. Such rates and plan shall be effective upon approval by the Governor.

(e) The Authority shall contribute to the Worker's Compensation Fund, on the basis of annual billings or as determined by the Worker's Compensation Commission, for the benefit payments made from such Fund on account of the Authority's employees for injuries prior to July 1, 1985. The Authority shall obtain Worker's Compensation insurance coverage no later than July 1, 1985.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14010 GC; Subsection (a) amended by P.L. 16-023:11 (Aug. 11, 1981). Codified as 12 GCA § 10110. Subsection (a) amended by 17-058:2 (June 22, 1984). Subsection (b) amended by P.L. 17-058:3 (June 22, 1984). Subsection (c) amended by P.L. 17-005:14 (Apr. 21, 1983), P.L. 17-011:2 (June 22, 1983), and P.L. 17-012:4 (June 22, 1983). Subsections (d) and (e) added by P.L. 17-058:4 and 5 (June 22, 1984).

§ 10111.1. Port Authority Police.

(a) (1) There is hereby established, under the direction of the Authority, a Port Authority Police which shall be responsible for the protection of persons and property at the Port Authority of Guam and all related facilities, and which shall coordinate its activities with the Guam Police Department, which shall have concurrent jurisdiction therewith.

(2) The Board, pursuant to the Administrative Adjudication Law, shall adopt reasonable rules and regulations regarding its personnel, which rules and regulations shall be consistent with the provisions of Title 4 of this Code.

(b) Members of the Port Authority Police, while on Port grounds and acting within their official capacity, shall have the powers of peace officers, including, but not limited to, the authority to arrest and enforce the Port Rules and Regulations, applicable federal security programs, and the Vehicle Code of Guam.

(c) Employees currently occupying positions in the Port Authority of Guam Security Force upon enactment of this section shall be reassigned to the new positions within the new Port Authority Police.

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SOURCE: Added by P.L. 20-130:1 (Jan. 24, 1990). Amended by P.L. 23-028:2 (June 27, 1995).

CROSS-REFERENCES: See 8 GCA § 5.55 relating to “peace officers”.

§ 10111.2. Training of Officers.

All Port Security Force officers shall be required to complete training, with a minimum of one hundred twenty (120) hours, on the laws of arrest, searches and seizures, the Vehicle Code of Guam, the Criminal and Correctional Code, the use and handling of firearms, and such other training as required to effectively carry out their duties and responsibilities as peace officers.

(a) In addition, refresher training in the areas of search and seizure, arrest and the use of firearms shall be given to each officer annually for a minimum of ten (10) hours.

(b) All such training shall be conducted at a local institution applying the standards used in the training of the police officers for the Guam Police Department.

SOURCE: Added by P.L. 20-130:2 (Jan. 24, 1990).

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 10111.3. Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions.

(a) The Board shall adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment of personnel occupying maritime positions unique to Port operations and certified, technical and professional positions, subject to the provisions of the Administrative Adjudication Act.

(b) Such rules and regulations shall provide for the employment and retention of persons on the basis of merit and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants.

(c) Maritime positions unique to Port operations and certified, technical and professional positions are defined as:

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(1) positions whose qualification requirements mandates certifications and licensing requirements, e.g., stevedores, cargo checkers, equipment operators, marine traffic controllers, etc.;

(2) positions with multi-skill qualification requirements, e.g., preventive maintenance mechanics, crane mechanics, etc.;

(3) positions with specific maritime knowledge and skills, e.g., tariff technicians, etc.; and

(4) other similar technical and professional positions which are unique and critical to the Port's operations and no other government entity which is not a port of entry, but not limited to those jobs listed herein.

(d) Compensation for all other positions shall remain consistent with compensation plans and pay scales as determined by law.

SOURCE: Added by P.L. 29-024:2 (Oct. 24, 2007).

§ 10112. Violation of Regulation: Penalty.

Every person who violates, causes or permits to be violated, or fails or refuses to comply with any rule or regulation adopted pursuant to this Article, is guilty of a misdemeanor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14011 GC. Amended by P.L. 13-187:119.1. Codified as 12 GCA § 10112.

§ 10113. Territorial Transportation and Communications Coordinating Council.

(a) There is hereby created a Territorial Transportation and Communications Coordinating Council (the Council), which Council shall meet on a regular basis as determined by its membership but not less than once each calendar quarter to exchange views and information on transportation, communications and related matters.

(b) The Manager shall be the chairperson of the Council.

(c) The Authority shall provide staff support for all Council meetings.

(d) The Council shall be composed of eighteen (18) members:

(1) ten (10) members from the government, including

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(A) the Manager of the Jose D. Leon Guerrero Commercial Port of Guam;

(B) the Executive Manager of the A. B. Won Pat International Airport Authority Guam;

(C) the General Managers of

(i) the Guam Visitors Bureau and

(ii) the Guam Mass Transit Authority;

(D) the Directors of

(i) the Department of Public Works,

(ii) the Guam Economic Development and Commerce Authority,

(iii) the Department of Revenue and Taxation,

(iv) the Bureau of Planning;

(E) the President of the Mayors Council;

(F) a representative from the Guam Public Utilities Commission involved with regulating the New Guam Telephone Authority; and

(G) eight (8) appointed by *I Maga'lahi* (the Governor) with the advice and consent of *I Liheslatura* (the Legislature) from among the Guam business community as follows:

(i) one (1) representing the shipping industry;

(ii) one (1) representing the airline/cargo industry;

(iii) one (1) representing the telecommunications industry;

(iv) one (1) representing the trucking industry;

(v) one (1) representing the construction industry;

(vi) one (1) representing the wholesalers/retailers;

(vii) one (1) representing the Chamber of Commerce;

and

(viii) one (1) representing the disabled community.

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(e) Appointed members shall serve four (4) year terms, and every effort shall be made to appoint a representative number of women members.

(f) Each member appointed as a representative of the business community must have background or experience within the respective industry.

(g) Nine (9) members shall constitute a quorum.

SOURCE: Added by P.L. 21-095:2 (Mar. 30, 1992). Subsection (c) amended by P.L. 27-110:7 (Nov. 1, 2004).

2017 NOTE: Subsection/subitem designations altered/added pursuant to authority granted by 1 GCA § 1606.

2009 NOTE: Public Law 30-043 (July 2, 2009) added a new subsection (e) regarding the adoption of personnel rules and regulations. This new subsection (e) was renumbered by the Compiler and given its own section number, 10114, to better fit this chapter.

§ 10113.1. Duties.

The Council shall focus its discussions on international, regional and local transportation and communications issues to enhance and assist in the long-range planning efforts for the island, including:

(a) The exchange of views, plans, contacts and information among members and with national and international organizations on transportation, communications and related matters;

(b) The coordination of activities with appropriate local and Federal and international entities including but not limited to the Guam Economic Development Authority, the Guam Environmental Protection Agency, the Aviation Task Force, the Guam Civil Defense, the Guam Educational Telecommunications Corporation, the Territorial Land Use Commission (TLUC), the U.S. Department of Transportation, the Federal Aviation Administration, the Federal Communications Commission, the U.S. Department of Commerce, and the United Nations;

(c) The implementation and monitoring of the progress of transportation and communications recommendations made by the TLUC;

(d) The formation of recommendations concerning the planning and development of transportation and communications

infrastructure for Guam and the monitoring of progress of infrastructure projects to facilitate better coordination of private sector responses for expansion programs. The Council shall have sixty (60) days after preparing the same to submit its recommendations to the appropriate agencies;

(e) The report of its findings and recommendations to the TLUC, the Governor and the Legislature for appropriate action; and

(f) The submission of an annual report to the Governor and the Legislature.

SOURCE: Added by P.L. 21-095:3 (Mar. 30, 1992).

§ 10114. Adoption of the Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port.

(a) (1) The Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port (hereafter referred to as the “Proposed Rules”) as received by the Legislative Secretary of *I Mina’Trenta Na Liheslaturan Guåhan* on May 14, 2009, are hereby adopted with the exclusion of: “Appendix A: Listing of Maritime positions Unique to Port Operations and Certified and Technical positions” and “Appendix B: Pay Schedule” found in the Proposed Rules document and shall apply to all classified positions within the Jose D. Leon Guerrero Commercial Port.

(2) The Compensation and Classification Plan shall apply to all positions, classified and unclassified, within the Jose D. Leon Guerrero Commercial Port, inclusive if the positions for Port Police Officers, notwithstanding the DOA’s current study for Law Enforcements and Public Safety positions.

(b) The General Manager shall identify and list by title, the position description and starting pay range no later than sixty (60) days after the effective date of this Act.

(c) The compiled information shall be posted on the PAG website for no less than two (2) weeks to enable affected employees to review and comment on the identified positions and to provide the opportunity to appeal the findings to the General Manager.

(e) The General Manager shall submit said list to the Board of Directors of PAG.

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(1) The Board, shall approve, disapprove, or amend said list at any regularly scheduled Board meeting and shall transmit a copy of the approved list to the Legislature.

(2) The list which the Board acted upon shall not take effect until forty-five (45) days after the date of receipt by the Legislative Secretary.

(f) The implementation of the new Pay Scale levels will not go into effect until the Board of Directors has approved a financial plan to fund the proposed Pay Scale.

(g) The General Manager may petition the Board of Directors to amend, to include, but not limited to, deleting, adding, or modifying such positions, the approved list of the Port's Positions.

(1) The Petition shall include:

(A) The justification for the amendment;

(B) The essential details of the amendment;

(C) An analysis of the similarities or differences between the existing position and the amendment; and

(D) The job title, pay range and position description affected by the amendment.

(2) The General Manager shall post the petition on the Port's website for ten (10) days (Saturday, Sunday and government of Guam holidays excepted).

SOURCE: Added by P.L. 30-043:2 (July 2, 2009) as § 10111.3(e). Renumbered by Compiler to harmoniously fit this chapter.

2017 NOTE: Subitem designations in subsections (a) and (e) added pursuant to authority granted by 1 GCA § 1606.

**ARTICLE 2
JOSE D. LEON GUERRERO COMMERCIAL PORT
REVENUE BONDS AND OTHER INDEBTEDNESS**

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as Chapter II of Title XV of the Government Code, §§ 14050-14085. Codified as 12 GCA § 10201 *et seq.* Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

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- § 10201. Short Title.
- § 10202. Definitions.
- § 10203. Powers of Board; Incurring Indebtedness.
- § 10204. Amounts of Rates and Charges; Refunds.
- § 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.
- § 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.
- § 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.
- § 10208. Indenture Providing Terms and Conditions of Bonds.
- § 10209. Issues of Bonds.
- § 10210. Covenants and Agreements That May Be Contained in Indenture.
- § 10211. Trustee for Authority and Holders of Bonds.
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- § 10220. Payments Which May be Made Out of Proceeds of Sale of Bonds.
- § 10221. Bonds Shall be Secured by Revenues of System.
- § 10222. Temporary Bonds.
- § 10223. Replacement of Bonds or Coupons.
- § 10224. Tax Exemptions.
- § 10225. Bonds as Legal Investments and as Security For Performance of Any Act.
- § 10226. Refunding Bonds.
- § 10227. Use of Other Funds for System.
- § 10228. Insurance.
- § 10229. Pledge by the Government of Guam.
- § 10230. Limitations as to Competitive Systems.
- § 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.
- § 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.

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- § 10233. Investment of Money in Funds.
- § 10234. Use of Balances of Funds and of Surplus Money in Funds.
- § 10235. Appropriation of Money in Funds.
- § 10236. Payment Agreements.
- § 10237. Credit Enhancement.
- § 10238. No Personal Liability.
- § 10239. Waiver of Immunity.
- § 10240. Construction of Article.

§ 10201. Short Title.

This Article may be cited as the “Jose D. Leon Guerrero Commercial Port Revenue Bond Act.”

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14050. Codified as 12 GCA § 10201. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10202. Definitions.

The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with any indenture), *shall* have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Authority* means the Jose D. Leon Guerrero Commercial Port, formerly known as/also known as the Port Authority of Guam.

(b) *Board* has the meaning given in 12 GCA § 10101(b).

(c) *Bonds* means bonds, notes or other evidences of indebtedness, including, but not limited to, direct loans and payment obligations of the Authority under payment agreements and credit provider reimbursement agreements.

(d) *Bondholder* or *holder of bonds* or any similar term means any person who shall be:

(1) the bearer of any outstanding bond or bond registered to bearer or not registered; or

(2) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer;
or

(3) the direct holder of any bond.

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(e) *Credit provider* means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any credit support arrangements for some or all of the bonds.

(f) *Credit provider reimbursement agreement* means any agreement providing for the Authority to repay, from revenues, amounts advanced by a credit provider as credit support for bonds.

(g) *Credit support* means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a credit provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any bonds.

(h) *Jose D. Leon Guerrero Commercial Port Act* means Article 2 of Chapter 10, Title 12, Guam Code Annotated.

(i) *Indenture* means an agreement pursuant to which bonds are issued or incurred by the Authority, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument and including, without limitation, indentures of trust, trust agreements, payment agreements and Credit provider reimbursement agreements.

(j) *Organic Act* means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (48 U.S.C.A. § 1421 *et seq.*)

(k) *Payment agreement* has the meaning given such term in 12 GCA § 10236.

(l) *Person* includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(m) *Revenue* means

(1) all gross income and other amounts received or receivable by the Authority as revenues of any kind from the ownership or operation of any part of the system or the

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supplying and furnishing of services and commodities thereof, including

(2) all rates, rentals, tolls, fees and charges assessable and chargeable by the Authority in respect to dockage, wharfage, demurrage and rates appertaining to the system or derived from the rental of all or part of the system or from the sale or rental of any commodities or goods in connection with the system,

(3) all amounts received by the Authority pursuant to any payment agreement, and

(4) all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the system, and

(5) all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the system,

(6) together with all interest, profits or other income derived from the investment of amounts in the Jose D. Leon Guerrero Commercial Port Revenue Fund.

(n) *System* means all works, property and facilities now owned, operated or leased by the Authority, and used by and useful to the Authority for providing a deep water commercial port known as the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, comprising all harbor works and facilities of the Authority, including all channels, waterways, basins seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities in or upon or pertaining to the lands, improvements and waters of the Authority used or useful for, or necessary for or incidental to, the development and operation of the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, together with all improvements to such works,

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property and facilities or any part thereof hereafter acquired or constructed by the Authority, now or hereafter existing, owned and/or operated by the Authority or its contractors, agents or subcontractors.

(o) *System operation and maintenance costs* means such reasonable and necessary current expenses of the Authority, paid or accrued, for operation, maintenance and repair of the System as may be determined by the Board, and the term may include, at the Board's option, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing, and which shall not include depreciation:

(1) legal and overhead expenses of the Authority directly related and reasonably allocable to the administration of the system;

(2) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(3) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the system;

(4) the costs incurred in the collection of all or any part of the Revenues; and

(5) any costs of utility services furnished to the system by the Authority or otherwise.

(p) *United States* means the United States of America.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14051. Codified as 12 GCA § 10202. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subitem designations were added to adhere to the Compiler's alphanumeric scheme, pursuant to the authority granted by 1 GCA § 1606.

§ 10203. Powers of the Board; Incurring Indebtedness.

(a) Pursuant to 12 GCA § 50103(k), the Board, through the Guam Economic Development Authority (GEDA), has the power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act or any other provision of this Chapter or by any law of Guam or of

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the United States, but subject to the requirements of 12 GCA § 12116, to exercise any or all of the powers granted to the Board by this Article. The Board, through the agency of GEDA, with the approval of *I Liheslaturan Guåhan* in addition to this Article, may at any time or from time to time authorize the Authority to incur indebtedness:

(1) pursuant to 12 GCA § 10235; or

(2) by the issuance of bonds to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the Authority, for any purpose authorized by law, or for any combination of such purposes for which bonds may be issued or incurred and secured as provided in this Article.

(b) The sale of the bonds *shall* be approved by the Board of Directors of GEDA as provided by Chapter 50 of Title 12, Guam Code Annotated, and the terms and conditions of the issuance of the bonds *shall* be approved by the PUC as provided by Chapter 12 of Title 12, Guam Code Annotated.

(c) It is hereby declared that the system is and *shall* be a public improvement or undertaking as that term is used in Section 11 of the Organic Act of Guam (48 U.S.C.A. § 1423a). All indebtedness issued or entered into by the Authority pursuant to this Section *shall* be repayable only from funds of the Authority available therefor or solely from revenues of the system and, therefore, will not be and *shall not* be deemed to be public indebtedness of Guam as that term is used in Section 11 of the Organic Act of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14052. Codified as 12 GCA § 10203, entitled *Powers of Board; Incurring Indebtedness and Issuing Bonds; Special Obligations; Pledge; Lien; Priority and Trust Fund*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subsection/subitem designations added/alterd pursuant to the authority granted by 1 GCA § 1606.

§ 10204. Amounts of Rates and Charges; Refunds.

Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness issued or incurred by the

Authority, the Authority *shall* set rates and charges that *shall* at all times be fixed to yield annual revenues at least equal to:

(a) the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder;

(b) the annual system operation and maintenance costs; and

(c) the annual principal payments and interest charges on all other outstanding indebtedness issued by the Authority. An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and charges that are collected in error and that are refundable by the Authority.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14053. Codified as 12 GCA § 10204, entitled *Rates and Charges*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.

The validity of the authorization and issuance of or incurrence by the Authority of any bonds is not dependent on nor affected in any way by:

(a) proceedings taken by the Authority for the acquisition, construction or improvement of the system or any part thereof;

(b) any contracts made by the Authority in connection with the acquisition, construction or improvement of the system or any part thereof; or

(c) the failure to complete the system or any part thereof for which bonds are authorized to be issued.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14054. Codified as 12 GCA § 10205. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This section was originally enacted as *Bonds: Maximum Amount; Purpose and Term of*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10207, *Board to Declare Purpose and Maximum Amount of Bonds to be Issued*.

§ 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.

(a) The Board shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the Authority or against any property or funds of the government of Guam or the Authority, except to the extent of the pledge of revenues or part of revenues, as may be provided by the indenture pursuant to which such bonds are issued and every such bond shall contain a recital on its face stating that neither the payment of the principal or any part thereof, nor of any interest thereon, is a debt, liability or obligation of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14055. Codified as 12 GCA § 10206, entitled *Same: Form of; Recitals*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.

Before issuing any bond or bonds, the Board *shall* declare the purpose for which the proceeds of the bonds proposed to be issued *shall* be expended and *shall* specify the maximum amount of bonds to be issued or sold for such purpose. Bonds *shall not* be issued or sold for such purpose in an amount exceeding such specified maximum.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14056. Codified as 12 GCA § 10207. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Indenture Providing Terms and Conditions*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10208, *Indenture Providing Terms and Conditions of Bond*.

§ 10208. Indenture Providing Terms and Conditions of Bonds.

The Authority, subject to the approval of *I Liheslaturan Guåhan* in addition to this Article, may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and exchange of any bonds and coupons issued pursuant to this Article and the terms and conditions on which the same *shall* be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

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SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14057. Codified as 12 GCA § 10208. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally named *Issues, Series and Divisions of Bonds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10209, *Issues of Bonds*.

§ 10209. Issues of Bonds.

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof *shall* in each case be as set forth in such indenture that has been authorized by the Board.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14058. Codified as 12 GCA § 10209, entitled *Same: Interest*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10210. Covenants and Agreements That May Be Contained in Indenture.

An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the Authority as the Board deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds *shall* be secured by all or by part of revenues and provisions creating one or more funds or accounts to be held by the Authority or bond trustee into which all or any part of revenues shall be deposited:

- (1) for payment of the principal of and interest on bonds at or prior to maturity; or
- (2) for reserve or sinking funds for the further security of bonds.

All moneys in any such fund or account *shall* be paid out by the Authority or its agent to pay the principal of and interest on

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the bonds when due or when redeemed or purchased prior to maturity, as provided in any indenture.

(b) A provision requiring the Authority or its agent, as trustee as hereinafter provided, to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, or at the place or places and in the manner mentioned in such bonds and/or in the coupons appertaining thereto in accordance with such indenture.

(c) A provision requiring the Authority to operate the system continuously, to the extent practicable under conditions as they may from time to time exist, in any efficient and economical manner.

(d) A provision requiring the Authority to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the Authority to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the Authority to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon revenues or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the Authority to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, or to enter into any lease or agreement which impairs or impedes the operation of the system or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the right of the holders of bonds with respect to such revenues.

(h) A provision requiring the Authority to fix, prescribe and collect annually rates or other charges in connection with the system services furnished from the system which, together with other available revenues, will be:

(1) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such

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additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(2) sufficient to pay the annual system operation and maintenance costs; and

(3) in such additional amount as *shall* be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no service relating the system shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the Authority to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest thereon, or to any fund or account created by any indenture relating to such bonds for the further security or protection of such bonds and to apply such revenues or any part of revenues or cause them to be applied only as provided in the indenture and to invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the Authority in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the Authority to issue additional bonds or one or more additional series of bonds, equally secured with bonds theretofore issued under the indenture, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof or for the purpose of refunding any prior bonds or any other obligations of the Authority or for any purpose authorized by law; and a provision limiting the power of the Authority to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the Authority on the system or any part thereof and the use and disposition of the proceeds of

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any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds of the Authority then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the Authority of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the Authority and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom. With respect to any provision relating to the modification or amendment of an indenture, the Authority may agree that bonds held by the Authority, Guam, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind of class) *shall not* be counted as outstanding bonds, or be entitled to vote or assent, but *shall*, nevertheless, be subject to any such modification or amendment.

(q) A provision limiting the right of action by individual bondholders in the event of a default by the Authority or proscribing the procedure for the conduct of any such action by an individual bondholder.

(r) A provision permitting the Authority to purchase outstanding bonds of the Authority from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

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(s) A provision for any working capital fund or account or contingency fund or operating reserve account relating to the system.

(t) A provision for the replacement of lost, destroyed or mutilated bonds or coupons.

(u) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14059. Codified as 12 GCA § 10210. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Issuance and Interchange*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10213, *Issuance and Interchange of Coupon and Registered Bonds*.

§ 10211. Trustee for Authority and Holders of Bonds.

(a) The Authority or any agent designated by GEDA on behalf of the Authority *shall* act as trustee for the Authority and the holders of bonds issued hereunder and the Authority may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The Authority may provide in an indenture:

(1) for the deposit of all or any portion of the revenues with the Authority and for the holding thereof by the Authority in one or more separate funds or accounts in the Jose D. Leon Guerrero Commercial Port Revenue Fund; and

(2) for the transfer to the trustee of all or any portion of the revenues as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account *shall* be disbursed only as provided herein and in the indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14060. Codified as 12 GCA § 10211. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Redemption Prior to Maturity*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10214, *Redemption of Bonds Prior to Maturity*.

§ 10212. Duties and Powers of Trustee.

The Authority *shall* prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the registration and discharge from registration thereof and the management of any and all funds provided as security therefor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14061. Codified as 12 GCA § 10212. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Places and Manner of Payment*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10215, *Places of Payment*.

§ 10213. Issuance and Interchange of Coupon and Registered Bonds.

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for registered bonds and registered bonds for coupon bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as the Authority may determine.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14062. Codified as 12 GCA § 10213. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Covenants and Agreements*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10210, *Covenants and Agreements That May Be Contained in Indenture*.

§ 10214. Redemption of Bonds Prior to Maturity.

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14063. Codified as 12 GCA § 10214, entitled *Same: As Negotiable Instruments*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10215. Places of Payment.

An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

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SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14064. Codified as 12 GCA § 10215. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Trustee: Federal Reserve Member Bank*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10211, *Trustee for Authority and Holders of Bonds*.

§ 10216. Execution and Authentication of Bonds.

An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the Authority and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the Authority or of any agent designated by the Authority as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds or coupons ceases to be an officer or agent before the delivery of the bonds or coupons, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as if he had remained such officer or agent until the delivery of the bonds and coupons.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14065. Codified as 12 GCA § 10216. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Places and Manner of Payment*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10212, *Places of Payment*.

§ 10217. Jose D. Leon Guerrero Commercial Port Construction Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited forthwith to the credit of a fund to be designated as the Guam Port Authority Development Fund, which fund is hereby created, and shall be expended for the purposes authorized by this Article and the indenture subject to any limitations provided therein. This fund shall be a separate account within the Port Authority Fund (See § 10108 (b), this Title).

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14066. Codified as 12 GCA § 10217, entitled *Guam Port Authority Development Fund*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10218. Sale of Bonds.

Bonds authorized to be issued under this Article *shall* be sold by the Authority for cash, in accordance with the provisions of a resolution

providing for such sale adopted by the Board. The bonds may be sold at either public or private sale, and upon such terms and conditions as *shall* be authorized by the Board, which may provide that the bonds may be sold at lesser or greater than their par or face value.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14067. Codified as 12 GCA § 10218. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Balances of Fund*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10234, *Use of Balances of Funds and of Surplus Money in Funds*.

§ 10219. Payment of Bonds from Sources Other Than Revenues.

The Authority may use and expend all or any part of any funds other than revenues or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14068. Codified as 12 GCA § 10219, entitled *Preparation of Bonds and Documents*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10220. Payments Which May Be Made Out of Proceeds of Sale of Bonds.

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) for payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the Authority of the cost of any work done by the United States or such public body for or jointly or in conjunction with the Board;

(b) for payment of any engineering, inspection, legal, consultants', bond trustees', escrow agents' or paying agents' fees relating or incidental to:

(1) the acquisition, construction or improvement of the system or any part thereof; or

(2) the authorization, issue or sale of bonds;

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(c) for payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) for deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or reserve account relating to the system;

(e) for payment of interest on bonds during the projected period of acquisition, construction or improvement of the system or any part thereof for the acquisition, construction or improvement of which such bonds have been issued and for a period not to exceed three (3) years thereafter;

(f) for deposit in any reserve or sinking fund;

(g) for payment of the principal of and interest on any indebtedness incurred pursuant to 12 GCA § 10235 that is by its terms repayable from the proceeds of sale of bonds;

(h) for payment of any prior bonds or other obligations of the Authority; or

(i) The Authority is prohibited from using bond proceeds for any purpose not provided for in this Section without legislative approval in the form of duly enacted legislation.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14068. Codified as 12 GCA § 10220. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Bonds: Execution and Authentication*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10216, *Payments Which May Be Made Out of Proceeds of Sale of Bonds*.

§ 10221. Bonds Shall Be Secured by Revenues of System.

(a) All bonds authorized by this Article *shall* be secured by a statutory lien on revenues of the system.

(1) This lien *shall* arise automatically without the need for any action or authorization by *I Maga'låhen Guåhan*, the government of Guam, the Authority or any other person or entity.

(2) Such lien *shall* be valid and binding from the time bonds are issued.

(3) The revenues of the system *shall* immediately be subject to such lien, and the lien *shall* automatically attach to the revenues of

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the system and be effective, binding, and enforceable against the Authority, its successors, assignees, and creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

(4) Revenues of the system that are not required to make payments on the bonds *shall* automatically, and without the need for any further action, be released from such lien and *shall* be available for appropriation for any other lawful purpose of the government.

(5) The statutory lien described in this Section *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute.

(b) In addition to the statutory lien provided for in this Section, an indenture may provide that payment of the bonds and the interest thereon *shall* be secured by a pledge of and lien upon all or a portion of the revenues of the system.

(1) Any such pledge and lien *shall* be valid and binding from the time the pledge is made without any further act.

(2) The revenues pledged and thereafter received by the Authority or by any trustee, depository or custodian *shall* be deposited in the Jose D. Leon Guerrero Commercial Port Revenue Fund and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority or such trustee, depository or custodian, irrespective of whether the parties have notice thereof.

(3) The pledge *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute.

(4) The indenture by which such pledge is created need not be recorded.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14070. Codified as 12 GCA § 10221. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Sale of*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10218, *Sale of Bonds*.

Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 10222. Temporary Bonds.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Authority may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14071. Codified as 12 GCA § 10222. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Payment from Other than Revenues*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA §10219, *Payment of Bonds from Sources Other Than Revenues*.

§ 10223. Replacement of Bonds or Coupons.

The Authority may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14072. Codified as 12 GCA § 10223. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Payments from Sale*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10223 *Replacement of Bonds or Coupons*.

§ 10224. Tax Exemptions.

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14073. Codified as 12 GCA § 10224. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Temporary*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10222, *Temporary Bonds*.

§ 10225. Bonds as Legal Investments and as Security for Performance of Any Act.

Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited

and may also be used as security for the deposit of public moneys in banks in Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14074. Codified as 12 GCA § 10225. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Replacement of, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10223, Replacement of Bonds or Coupons.*

§ 10226. Refunding Bonds.

The Authority may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article or any other prior obligations of the Authority. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14075. Codified as 12 GCA § 10226. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Tax Exemptions, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10224, Tax Exemptions.*

§ 10227. Use of Other Funds for System.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Authority may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Jose D. Leon Guerrero Commercial Port Act.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14076. Codified as 12 GCA § 10227. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Bonds as Legal Investments and Security, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10225, Bonds as Legal Investments and as Security for Performance of Any Act.*

§ 10228. Insurance.

The Authority may insure against loss of revenues from any cause whatsoever. The Authority may insure against public liability or property

damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14077. Codified as 12 GCA § 10228. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Refund*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10226, *Refunding Bonds*.

§ 10229. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Authority has the ability to implement the capital improvements authorized to be financed by this legislation. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely repayments of their bonds. The government of Guam hereby pledges that while any bonds of the Authority issued under this Article remain outstanding and not fully performed or discharged:

(a) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article;

(b) to maintain the rights and remedies of bondholders provided in this Article and any indenture;

(c) to protect the exclusive right of the Authority to operate or maintain within Guam any system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive system; and

(d) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired

employees of the Authority (or its lawful predecessors) as may be required by the laws of Guam; and with the exception that the Authority *shall* collaborate fully, including, but not limited to, with the Guam Customs and Quarantine Agency and other local law enforcement and regulatory agencies to facilitate the inspection and prevention of illegal entry into Guam of potentially unlawful immigrants or items or invasive species, by or through any works, property, and facilities owned, operated, or leased by the Authority, and to facilitate the protection of coral, wildlife and biodiversity in Apra Harbor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14078. Codified as 12 GCA § 10229, entitled *Same: Same: Principal Amount*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10230. Limitations as to Competitive Systems.

An indenture may include such limitations as to acquisition, ownership or operation by the government of Guam of enterprises which may compete with the system as may be deemed necessary or desirable for the security of bonds issued pursuant to this Article.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14079. Codified as 12 GCA § 10230, entitled *Title in Authority Subject to Trusts in Favor of Bondholders*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a fund to be designated as the Jose D. Leon Guerrero Commercial Port Construction Fund, which fund is hereby created. The money in said Construction Fund shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 12 GCA § 10220, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14080. Codified as 12 GCA § 10231. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Use of Other Funds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10227, *Use of Other Funds for System*.

§ 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.

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All revenues received from the operation of the system shall be deposited to the credit of the Jose D. Leon Guerrero Commercial Port Revenue Fund, which fund is hereby created. Moneys in the Jose D. Leon Guerrero Commercial Port Revenue Fund may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 12 GCA § 10210(j):

- (a) to pay the annual system operation and maintenance costs;
- (b) to pay principal or interest on any bonds;
- (c) to replenish any debt service reserve funds related to bonds;
- (d) to pay any amounts due and owing under any payment agreement or any credit provider reimbursement agreement; and
- (e) for any other purposes of the Authority; all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14081. Codified as 12 GCA § 10232. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Insurance*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10228, *Insurance*.

§ 10233. Investment of Money in Funds.

Moneys in the Jose D. Leon Guerrero Commercial Port Construction Fund and Revenue Fund may be invested by the Authority and any revenues in any other fund or account held by or on behalf of the Authority or its agent may be invested by the Authority or its agent, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be collected by the Authority or its agent, as the case may be, and shall be deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14082. Codified as 12 GCA § 10233, entitled *Right of Bondholders to Bring Action*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10234. Use of Balances of Funds and of Surplus Money in Funds.

Any balance remaining in any of the funds or accounts created by this Article or any indenture after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system or to the Authority, as the Board may determine, subject to the limitations and restrictions in any indenture. After all bonds *shall* have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture *shall* be transferred to the Authority and *shall* be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the Authority herein or hereafter authorized by law.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14083. Codified as 12 GCA § 10234. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Appropriation of Money in Funds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10235, *Appropriation of Money in Funds*.

§ 10235. Appropriation of Money in Funds.

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purposes herein and therein provided.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14084. Codified as 12 GCA § 10235 entitled *Validity of Bonds, Recital or Issuance Pursuant to Article*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10236. Payment Agreements.

In addition to and in amplification of the powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act, this Article or any other law of Guam or of the United States, the Board has power and is hereby authorized to cause the Authority to enter into any contracts in connection with, or incidental to, the issuance of bonds or other indebtedness, or the carrying of any investment or program of investment or entering into or maintaining any agreement which secures bonds or other indebtedness (each, a “payment agreement”), which the Board determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or such indebtedness, investment, program of investment or agreement and the

contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by the Board in furtherance of the purposes of this Chapter, including, without limitation, contracts commonly known as interest rate swap agreements or contracts providing for payments based on levels of, or changes in, interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, put or call to hedge payment, rate, spread, or similar exposure with the parties, selected by the means, and containing the payment, security, default, remedy, and other terms and conditions, authorized by the Board, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate; provided, that any amounts received by the Authority pursuant to any payment agreement *shall* constitute revenues and that any obligation of the Authority under any payment agreement *shall* be payable solely from, and secured solely by a pledge of, revenues in accordance with 12 GCA § 10237. Any payment agreement may include a provision that any obligation of the Authority under any such payment agreement *shall* be secured by all or by part of revenues; provided that, at the time of execution and delivery of each payment agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to the bonds.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14085. Codified as 12 GCA § 10236, entitled *Publication of Notice of Adoption of Resolution; Statute of Limitations on Action Involving Bonds*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10237. Credit Enhancement.

(a) The Board has the power and is hereby authorized to cause the Authority to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as it determines are necessary or desirable to improve the security and marketability of the bonds or the security of the government's obligations under any contract or agreement entered into under 12 GCA § 10236.

(b) Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or

other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the Authority under any reimbursement agreement *shall* be payable solely from revenues.

(c) Any reimbursement agreement may include a provision that the obligations of the Authority under the agreement *shall* be secured by all or by part of revenues; provided, that at the time of execution and delivery of each such agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to bonds.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14086. Codified as 12 GCA § 10237 entitled *Short Term Borrowing*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subsection designations added pursuant to the authority granted by 1 GCA § 1606.

§ 10238. No Personal Liability.

No member of the Board, employee of the Authority, or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

SOURCE: Added by P.L. 32-042:2 (June 28, 2013), entitled *Sovereign Immunity Waived*. Amended by P.L. 32-107:1 (Feb. 4, 2014). Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10239. Waiver of Immunity.

Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the Authority *shall not* be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as to the award of attorney's fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds. *I Liheslatura* (the Legislature) does not waive immunity for costs, pre-judgment interest and post-judgment interest.

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SOURCE: Added pursuant to the reenactment of this Article by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally added as 12 GCA § 10238, by P.L. 32-042:2 (June 28, 2013), entitled *Sovereign Immunity Waived*. Amended by P.L. 32-107:1 (Feb. 4, 2014).

§ 10240. Construction of Article.

This Article *shall* be liberally construed to carry out the objects and purposes and the declared policy of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act or laws of Guam.

SOURCE: Added pursuant to the reenactment of this Article by P.L. 34-070:2 (Dec. 7, 2017).

**ARTICLE 3
PROHIBITION ON THE PRIVATIZATION, LEASE OR SALE
OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT**

§ 10301. [Untitled].

§ 10301. [Untitled].

Unless otherwise explicitly authorized by statute, the Board of Directors of the Jose D. Leon Guerrero Commercial Port is hereby prohibited from expending anything of value, either through cash or in-kind, directly or indirectly, or executing any solicitations through the Request for Proposal or Request for Information, or invitation to bid consistent with Title 5 of the Guam Code Annotated, or to commission the development of a master plan, either through its employees, partners, or agents, exploring the sale or lease of the Port. Let it be known, therefore, to anyone contemplating this notion that the Port is not to be privatized, leased or sold.

SOURCE: Added by P.L. 27-060:1 (Dec. 21, 2003). Repealed and reenacted by P.L. 31-035:2 (Apr. 18, 2011).

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2014 NOTE: As added by P.L. 27-060:1 (Dec. 21, 2003), this Chapter was entitled “Jose D. Leon Guerrero Commercial Port Public-Private Partnership” and included the following provisions:

- § 10301. Short Title.
- § 10302. Legislative Intent.
- § 10303. Public-Private Partnership Authorization.
- § 10304. Submission of Proposals.
- § 10305. Terminal Operator.
- § 10306. Port Employees.
- § 10307. Port Employment..
- § 10308. Temporary Casual Employment Authorized.
- § 10309. Revenue Sharing.
- § 10310. Capital Improvement Fund.
- § 10311. Tariffs.
- § 10312. Equipment.
- § 10313. Operational Area.
- § 10314. Indemnification.
- § 10315. Cargo Handling Operations.
- § 10316. Insurance.
- § 10317. Port Master Plan.
- § 10318. Legislative Approval.
- § 10319. Specific Disclosure Rules.
- § 10320. Conflicts of Interest.
- § 10321. Transitional Period.
- § 10322. Severability.

ARTICLE 4
PUBLIC-PRIVATE PARTNERSHIP THROUGH A
PERFORMANCE MANAGEMENT CONTRACT

SOURCE: Article added by P.L. 29-023:1 (Oct. 24, 2007).

- § 10401. Public-Private Partnership Authorization through a Performance Management Contract.
- § 10402. Contract Limits.
- § 10403. Conflicts.
- § 10404. Other Public-Private Partnership through Performance Management Contract.
- § 10405. Termination of Contract for Reasons Unrelated to Performance.
- § 10406. Severability.

§ 10401. Public-Private Partnership Authorization through a Performance Management Contract.

(a) The Board of Directors of the Jose D. Leon Guerrero Commercial Port (Port) is authorized to issue a Request for Proposal (RFP), Multi-Step Bid (MSB), Invitation for Bid (IFB), soliciting bids or proposals from qualified parties for the management, operation and maintenance of its cargo handling equipment through a performance management contract, subject to the procurement laws of Guam. The scope of work required through this RFP, MSB or IFB shall include the daily operation and maintenance of its cargo handling equipment; any repairs required, inclusive of all parts and labor; performance monitoring requirements; and preventive maintenance of all equipment and/or facilities directly associated with the equipment, including, but not limited to, the acquisition for replacement of such equipment.

(b) The RFP, MSB and/or IFB shall include performance standards that will provide operating criteria, guidelines and requirements to minimize costly downtime and maximize cargo handling equipment availability and its life span. Parties interested in submitting proposals shall have sixty (60) days to prepare and submit a response to the Port. The General Services Agency Chief Procurement Officer shall be an observer throughout the RFP, MSB or IFB process as specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the public-private partnership process specified in this Section.

(c) The Port may award a performance management contract subject to the RFP, MSB or IFB detailed in this Section no later than two hundred twenty (220) days from the established deadline for submission or receipt of the RFP, MSB or IFB; provided, that qualified offerors have submitted proposals in compliance with the procurement laws of Guam and the provisions of this Section. The Attorney General shall act as legal advisor during all phases of the solicitation or procurement process and shall have the authority to extend the timelines as outlined in this Section as it deems necessary.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007). Amended by P.L. 30-090:2 (Feb. 8, 2010).

2013 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10402. Contract Limits.

The awarded contract, which is subject to the provisions of this Act, may be awarded for periods of not less than five (5) years, with options to renew every five (5) years and not to exceed a total of twenty (20) years. The awarded contract, subject to the provisions of this Act, must contain performance reviews at least annually, and provisions for contract termination and penalty based upon such review.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10403. Conflicts.

No contract awarded subject to the provisions of this Act shall be awarded to any party who has a blood or marital relationship to the third (3rd) degree of consanguinity with the General Manager of the Port, a Board Member of the Port, *I Maga'lahaen Guåhan* or a Member of *I Liheslaturan Guåhan*.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10404. Other Public-Private Partnership through Performance Management Contract.

Notwithstanding any other provisions of law, the Board of Directors is authorized to enter into a public-private partnership through a performance management contract for other aspects of the Port operations it deems necessary, provided that the processes outlined in the above sections are complied with.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10405. Termination of Contract for Reasons Unrelated to Performance.

Should at some point in the future, a determination be made by *I Liheslaturan Guåhan*, that a broad-scale public-private partnership for the Port operations be advisable, subject to legislative approval, and if any agreements entered into pursuant to this Act are viewed as impeding, such provisions may be included in each contract for the purchase of such contract, except that no contract shall be purchased in any circumstance where a Contractor's performance has been deemed to be unacceptable in accordance with the provisions of this Act.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10406. Severability.

If any provision of this Act or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).
