

**AN ACT**

To further amend Public Law 10-57 to place the Board of Public Lands and the Division of Public Lands as a single independent agency within the Executive Branch; and for other purposes.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

Section 1. Title. This act may be cited as the "Board of Public Lands Act of 2000."

Section 2. Findings. The Legislature finds that an inherent conflict exists by placing the Board of Public Lands (BPL) and Division of Public Lands (DPL) within the Department of Lands and Natural Resources (DLNR). See PL 10-57, as amended. The Secretary of DLNR is required to implement the policies put forth by the BPL. However, the Secretary, who serves at the pleasure of the Governor, must also implement the policies of the administration. A potential conflict arises when BPL and the administration's policies differ or are inconsistent. By separating BPL and DPL from DLNR, such conflicts would be avoided and help ensure that public land policy is dictated by an independent Board.

Section 3. Repeal and Re-enactment. Except as provided in Section 4 of this act, Public Law 10-57, as amended and codified under Article 3, Chapter 13, Part 2 of Title 1 of the Commonwealth Code is hereby repealed and re-enacted as a new Chapter 14 under Division 2 of Title 1 as follows:

**“CHAPTER 14**

Section 101. Board of Public Lands Management.

(a) There is established within the Executive Branch an independent Board of Public Lands. An Office of Public Lands, headed by a Public Lands Administrator, is established under the control and general supervision of the Board to execute, implement and enforce the policies, decisions, orders, rules and regulations of the Board.

(b) The Board of Public Lands is declared the successor to the Marianas Public Lands Corporation pursuant to N.M.I. Const. art. XI, § 4(f). Except as provided in this act, all powers and duties assigned to the Marianas Public Land Corporation by existing statute shall be considered as assigned to the Board of Public Lands Management.

Section 102. Board Powers and Duties.

(a) The Board of Public Lands shall have the following powers and duties:

(1) To be responsible for the management, use, and disposition of submerged lands off the coast of the Commonwealth, pursuant to the Submerged Lands Act, as amended [2 CMC § 1201 et seq.];

(2) To be responsible for the management, use, and disposition of surface lands of the Commonwealth.

(b) The authority of the Board of Public Lands extends to all those lands defined as public lands by N.M.I. Const. art. XI, § 1 or any other provision of law, subject to the provisions of this chapter and except as limited by transfers of freehold interests.

Section 103. Board Members.

(a) The Board of Public Lands shall be composed of five directors, appointed by the Governor with the advice and consent of the Senate, who shall set policy with respect to public lands for the benefit of the people of the Commonwealth who are of Northern Marianas descent. The Public Lands Administrator shall carry out the policies of the board concerning matters under its jurisdiction. No interest in public land shall be transferred except upon approval by the board of the particular interest to be transferred, stated with specificity at least equal to that required to form a legally sufficient conveyance, and any attempted transfer of such an interest without prior board approval shall be void and of no effect; provided, that any provisions imposed as a condition of legislative approval pursuant to Section 104 shall not require further approval by the board.

(b) One director shall be a resident of the first senatorial district, one shall be a resident of the second senatorial district, and three shall be residents of the third senatorial district; provided that of the five directors, at least one shall be a woman and at least one shall be a person of Carolinian descent. Each director shall be a citizen or

national of the United States and a resident of the Commonwealth for at least five years immediately prior to taking office, shall have at least two years management experience, shall not have been convicted of a crime carrying a maximum sentence of imprisonment of more than six months, shall have adequate knowledge of landholding practices, customs and traditions in the Commonwealth and be able to speak Chamorro or Carolinian, shall be a person of Northern Marianas descent as defined by law, and shall not hold any other Commonwealth government employment or position.

(c) No person may act as a director until confirmed by the Senate. In the event the Senate does not act upon the submission of an individual for appointment to the board within 30 calendar days following the submission of that name to the Senate, the appointment shall be deemed rejected and the Governor may not at any time during the same legislature resubmit the same individual as a nominee to the board. In the event the Governor withdraws a name submitted for appointment to the board, the Governor may not at any time during the same legislature resubmit the same individual as a nominee to the board.

(d) The directors shall serve a term of four years except that three of the first five directors appointed shall serve a term of two years and two shall serve a term of four years. The Governor shall specify the term of a director at the time of nomination. Directors appointed to fill a vacancy shall serve the remainder of the unexpired term. A director may not hold any other Commonwealth government employment or position. The directors shall be held to strict standards of fiduciary care. The governor may remove a director only for cause.

(e) The Board shall act only by the affirmative vote of the majority of the five directors.

(f) On June 1 of every year, the Board shall make an annual written report available to the Governor and the presiding officers of the legislature and, upon request and for a reasonable fee, to the people of the Commonwealth describing the management of the public lands and the nature and effect of transfers of interests in public land made during the preceding year and disclosing the interests of the directors in Commonwealth land.

Section 104. Public Lands: Fundamental Policies.

(a) The Board of Public Lands shall follow the fundamental policies set forth in this section in the performance of its responsibilities.

(b) The Board shall make available some portion of the public lands for a homestead program. A person is not eligible for more than one agricultural and one village homestead. Upon approval by the Board, a person shall receive a freehold interest in a homestead that the person has met or complied with all the requirements, terms and conditions of the homestead permit. In the case of a village homestead, a person shall receive a freehold interest in the homestead upon approval by the Board when a habitable dwelling has been constructed on the homestead. A person may not transfer a freehold interest in a homestead for 10 years after receipt except that these requirements are waived for persons who have established a continuous use of public lands for at least 15 years as of the effective date of the Constitution. Upon receiving a homestead permit, the permittee may mortgage the land provided that all funds received from the mortgage shall be devoted to the improvement of the land.

(c) The Board may not transfer a freehold interest in public lands for 20 years after the effective date of the Constitution, except for homesteads as provided under subsection (b) of this section, or for use for a public purpose by another agency of government, or for land exchanges to accomplish a public purpose as authorized by law.

(d) The Board may not transfer a leasehold interest in public lands that exceeds 25 years including renewal rights. An extension of not more than 15 years may be given upon approval by three-fourths of the members of the legislature sitting in joint session.

(e) The Board may not transfer an interest in more than five hectares of public land for use for commercial purposes without approval of the legislature in a joint session.

(f) The Board may not transfer an interest, and may prohibit the erection of any permanent structure, in public lands located within 150 feet of the high water mark of a sandy beach, except that the Board may authorize the construction of facilities for public purposes.

(g) The Board shall adopt a comprehensive land use plan with respect to public lands including priority of uses and may amend the plan as appropriate.

(h) All moneys from the public lands except those from lands in which freehold interest has been transferred pursuant to subsection (c) of this section shall be paid into the Commonwealth Treasury and deposited into a special account established by 2 CMC § 4489. Except as otherwise provided by 2 CMC §§ 4484, 4486 or 4489, the Commonwealth Treasurer shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust as provided in 2 CMC § 4489(d)(1), which subject to certain limitations excludes such specific amounts appropriated for reasonable expenses of administration and management of public lands, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of the functions of the Board.

Section 105. Public Lands: Additional Fundamental Policies.

(a) The Board may not transfer an interest in less than five hectares of public land for use for commercial purposes to a holder of an interest in contiguous or adjoining public land if the combination of the interests in public land would be more than five hectares, without the approval of the legislature in a joint session.

(b) The Board may not approve a sublease, assignment, or transfer of any interest in public land for use for commercial purposes to a holder of an interest in contiguous or adjoining public land if the combination of the interests in public land would be more than five hectares, without the approval of the legislature in a joint session.

(c) Term "holder of an interest" in subsections (a) and (b) of this section shall be broadly construed to include all real parties in interest.

(d) The Board may not amend or otherwise make any substantive changes in the terms and conditions of a lease subject to legislative approval without legislative approval of the amendment or change in the same manner as required for the original approval. "Lease" includes all extensions thereof.

(e) The Board may not exchange public land that a private company has indicated it wants to develop, for private land, unless based on current appraisals the value of the private land is at least three times the net present value of the proposed compensation offered by the private developer. It is the purpose of this subsection to

maximize the return on public lands and prevent private parties from reaping windfall gains from land exchanges at the expense of the Commonwealth.

(f) (1) Prior to the execution of any lease of public land for use for commercial purposes, the Board shall give at least 15 days notice of its intended action and shall afford all interested persons reasonable opportunity to submit data, views, or arguments in writing and shall accept from interested persons alternative proposals for lease of the public land which is the subject of the intended action; provided, that the Board need not accept alternative proposals if alternative proposals have previously been solicited by public notice captioned "Request for Proposals to Lease Public Land" and conforming with the requirements of this subsection, excepting subsections (f)(1)(ii) through (f)(1)(v) of this section. Notice shall be by publication at least eight times during two consecutive weeks in a newspaper of general circulation in the Commonwealth and by posting in convenient places in the civic center and in local government offices in each senatorial district, and shall be in the English, Chamorro, and Carolinian languages. The notice shall be captioned "Notice of Proposed Lease of Public Land" and shall contain at a minimum the following:

(i) A description of the property, including the location in terms making it readily identifiable by the general public;

(ii) The proposed lessee, and if the proposed lessee is not a natural person, the names of the officers, directors, and principal shareholders or members of the proposed lessee, and including all real parties in interest;

(iii) The names of any agents, representatives, or attorneys involved in negotiating the lease on behalf of the proposed lessee;

(iv) A concise statement of the terms and conditions of the proposed lease and information where a complete copy of the proposed lease and any alternative proposals may be obtained without charge at any time during normal working hours;

(v) Identification of all alternative proposals received pursuant to a Request for Proposals to Lease Public Land for lease of all or any part of the public land covered by the proposed lease; and

(vi) The time when, the place where, and the manner in which interested persons may present their views or proposals.

(2) The requirements of subsection (f)(1) of this section are in addition to, and not in lieu of, any requirements imposed by other law.

(3) With respect to any lease requiring legislative approval, the notice required by this subsection (f) of this section shall be given prior to submission of the proposed lease to the legislature.

(4) The Board is not required to give additional notice of any proposed lease which is substantially the same as a proposed lease for which notice has previously been given during the nine months immediately preceding execution; and further, the legislature may by joint resolution waive the requirements of this subsection (f) of this section with respect to any lease for which notice has previously been given during such period.

Section 106. Public Lands: Lease Enforcement; Other Requirements.

(a) The Board shall strictly enforce all terms of every lease and all requirements imposed as a condition of legislative approval of a lease or lease extension under Section 104.

(b) The Board shall promptly incorporate all requirements imposed as a condition of legislative approval of a lease or lease extension under Section 104 into the affected lease documents either prior to execution thereof by the parties, by amendment thereto, or by execution of a new lease agreement superseding the original.

(c) The Board shall develop management policies, procedures, and controls related to public land which shall ensure that:

(1) Public land exchanged for private land is of comparable value and current land valuations are used in all land exchanges;

(2) Public land is utilized in an efficient manner;

(3) Rental income from public land is based on appraised fair market value and actually computed and collected on that basis; provided, that the board shall, within the limits set by fiduciary duty and the provisions of this

chapter, have discretion in negotiating basic rentals (including authorizing or approving negotiations carried out by the secretary or director);

(4) All rental amounts payable under all lease agreements are fully assessed;

(5) All financial documents required under lease agreements are provided and all rental calculations by lessees are checked for accuracy; and

(6) Lease rental payments are collected or timely pursuit of default provisions of the lease agreement is made.

(d) The Board shall maintain records documenting the basis of rental computations for public land leases. Minimum annual rental payments for all public land leases shall be not less than eight percent of the appraised fair market value of the public land except where otherwise provided by the terms of a valid lease in effect prior to October 23, 1996. The Board shall establish procedures for the regular appraisal of all public lands leased for commercial purposes which ensure that the fair market value basis for computation of minimum annual rental payments for any given lease is updated no less frequently than every five years or such other period as provided in valid leases in effect prior to October 23, 1996. Failure of the Board to comply with the requirements stated herein shall not relieve any lessee of the obligation to pay the minimum rentals prescribed herein. Actions by any taxpayer to enforce the requirements of this section or collect (on behalf of the Commonwealth) underpaid minimum rentals shall be deemed within the scope of N.M.I. Const. art. X, § 9.

Section 107. Exemption. Notwithstanding any provision of Public Law 10-57, the Governor is hereby authorized to enter into a lease agreement to lease those public lands known as Lots 012 H 10, 012 H 06, 012 H 43 and 012 H 40, in Chalan Kanoa village on Saipan, to the United States Postal Service. Nothing in Public Law 10-61 shall be construed as giving the Governor authority to enter into any lease or other transfer of any public lands, nor to enter into any lease with any other lessee."

Section 4. Global Amendment. Any reference to the Division of Public Lands in the Commonwealth Code is hereby amended to read "Office of Public Lands."

Section 5. Transition. All property, equipment, supplies, and personnel of the Board of Public Lands and the Division of Public Lands under PL 10-57, as amended, are transferred

to the Board of Public Lands established under this act. The provisions of this act shall not affect the appointment and service term of the Board of directors, serving on the effective date of this act.

Section 6. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 7. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 8. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED TO BY:**

/s/ Oscar M. Babauta  
**OSCAR M. BABAUTA**  
ACTING SPEAKER  
HOUSE OF REPRESENTATIVES

/s/ Evelyn C. Fleming  
**EVELYN C. FLEMING**  
HOUSE CLERK

Approved this 5<sup>th</sup> day of December, 2000

/s/ Pedro P. Tenorio  
**PEDRO P. TENORIO**  
**GOVERNOR**  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS