

TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2000

PUBLIC LAW NO. 12-20

H. B. NO. 12-011, SD1

AN ACT

To stimulate the economy of the Northern Mariana Islands through the creation of free trade zones, the creation of tax incentives, and the establishment of a public corporation to administer free trade zones; and for other purposes.

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

Section 1. Short Title. This Act may be cited as the Northern Mariana Islands Free Trade Zone Act of 2000.

Section 2. Findings and Purpose. The Legislature finds that it is in the best interest of the Commonwealth to establish free trade zones as an economic development tool to encourage the establishment of new business, industrial and commercial activities in order to diversify the Commonwealth economy. Two industries, tourism and garment manufacturing, constitute the current economic base of the CNMI. As recent events, including the prolonged economic downturn in Asia, have demonstrated, this economy is extremely vulnerable to forces outside of the CNMI's control. In addition, it appears that apparel manufacturing activity may lessen in the Commonwealth in the next several years as international trade agreements affecting tariffs make other international manufacturing locations more economically attractive than the CNMI.

The Legislature further finds that it is in the best interests of the people of the Commonwealth to take aggressive actions to broaden the CNMI's economic base through diversification. The Legislature further finds that the types of business, industrial and commercial activity that are in the best long term interests of the people of the CNMI are those that require significant capital investment, are low labor intensive, have negligible impact on the environment, and are compatible with tourism. Illustrative examples of such types of desirable business activities would be: production of computer hardware and software, licensing and distribution of intellectual property, computer programming services, data base

storage and retrieval, financial and trade related services. These examples are illustrative only, not limiting. Such businesses will attract skilled and highly paid employees, and will provide meaningful training opportunities for the citizens of the CNMI. The Commonwealth's leading industry will remain tourism so businesses in the free trade zones must not cloud the air, foul the beaches or contaminate the aquifer.

It is the intention of the Legislature to entice appropriate new business, industrial and commercial enterprises to relocate into the Commonwealth from other jurisdictions. It is not the Legislature's intent to lessen the existing tax base by allowing existing business, industrial and commercial enterprises currently operating in the Commonwealth to relocate into the free trade zones. In order to entice new economic activity, the CNMI must provide tax and other financial incentives similar to those offered by the United States and other countries internationally. To accomplish this, the Legislature finds that it is in the best interest of the people of the Commonwealth to make available for lease public lands at reasonable rates and to provide incentives in the form of tax relief for desirable businesses establishing operations within the free trade zones.

The Legislature further intends to streamline and expedite obtaining the necessary permits or licenses applicable to businesses wishing to establish operations in the free trade zones by directing that these applications be expedited on a priority basis and that the Authority assist the businesses in coordinating with relevant regulatory agencies to limit unnecessary delays.

Section 3. Definitions. As used in this Act, unless the context clearly indicates otherwise:

(a) "Authority" means the Commonwealth Free Trade Zone Authority established by this Act.

(b) "Board" means the Board of Directors of the Commonwealth Free Trade Zone Authority.

(c) "CNMI" or "Commonwealth" means the Commonwealth of the Northern Mariana Islands and the geographic area of which it is comprised, and may include the Commonwealth government.

(d) "Chambers of Commerce" means the Saipan Chamber of Commerce and any other Chamber of Commerce organized in and for the Commonwealth or any part thereof and includes any non-profit entity organized to promote business, commercial,

or economic interests, whether denominated as a chamber of commerce or not, provided that the membership thereof is non-exclusive and the entity is not organized to promote any particular private, familial, or personal interest.

(e) "CPA" means the Commonwealth Ports Authority.

(f) "Domestic merchandise" means tangible and intangible property of every description entering the free trade zone from within the customs territory of the CNMI.

(g) "Foreign merchandise" means tangible and intangible property of every description entering the free trade zone from outside the customs territory of the CNMI.

(h) "Free Trade Zone(s)" or "Zone(s)" means the free trade zones established pursuant to this Act.

(i) "General Fund" means the chief operating fund for the Commonwealth used to account for all financial resources except those required to be accounted for in another fund.

(j) "Legislative delegation" means the legislative delegations from each senatorial district as defined by 1 CMC § 1404(a).

(k) "Person" means any individual, estate, firm, corporation, company, joint venture, association, partnership, trust, receiver, club, syndicate, cooperative association or any other entity.

(l) "Public Land" means all real property the title to which is held by the Commonwealth government, any branch, department, agency, instrumentality, public corporation, or political subdivision thereof, and includes, except to the extent that title has passed to private parties, that real property described by Section 801 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, those lands described by Sections 1 of Article XI of the Commonwealth Constitution, and lands in which freehold interest has been transferred to an agency of the Commonwealth government pursuant to Section 5 of Article XI of the Commonwealth Constitution.

(m) "FTZ" means a Free Trade Zone created pursuant to this Act and such additional Free Trade Zones as subsequently may be established by or pursuant to law.

(o) "FTZ Authority" means the Free Trade Zone Authority established by this Act.

(p) "FTZ licensee" means Free Trade Zone licensee and includes, where appropriate to the context, prospective licensees and lessees.

Section 4. Free Trade Zones Created.

(a) There are hereby created free trade zones in the following locations in the Commonwealth:

(1) Twenty (20) hectares of land belonging to the Commonwealth Ports Authority and situated at Saipan International Airport, the exact location of which property shall be as determined and designated by CPA within 60 days of the effective date of this Act. After all of said twenty hectares have been leased to FTZ licensees, the FTZ Authority may request CPA to make available additional land for FTZ purposes and, from such land, the FTZ at Saipan International Airport shall be expanded, or one or more additional FTZs described, as agreed by CPA and the FTZ Authority. Without limitation by the foregoing, CPA and the FTZ Authority may from time to time agree to expand, or designate additional, FTZs in the vicinity of Saipan International Airport with additional land belonging to CPA.

(2) Such other areas within each of the senatorial districts of the Commonwealth as may be designated as Free Trade Zones by the Saipan and Northern Islands, Tinian, or Rota legislative delegations respectively, subject to the concurrence of the Governor; Provided that, if the area so designated encompasses land belonging to the Commonwealth Ports Authority, the CPA Board will make the decision as to availability, size, and specific location of the land, and may impose any use condition that CPA may require.

(b) Whenever CPA property is designated as part of a FTZ, it is understood that CPA has no obligation to construct or install any infrastructure needed by FTZ industries.

(c) Whenever a FTZ encompasses CPA property, CPA rules and regulations shall apply on, within, and with respect to the CPA property and shall prevail in the event of a conflict with FTZ rules and regulations.

(d) Whenever a FTZ encompasses CPA property, any improvement, structure, building, or infrastructure to be built on CPA property therein shall be subject to the prior review and written approval of CPA.

(e) Pursuant to the mandate of Section 4(f) of Article XI of the Commonwealth Constitution (requiring transfer of public lands management functions to the executive branch of government) and the legislative power vested in it by Article II, Section 1 of the Commonwealth Constitution, the Legislature hereby makes the following provisions for the administration of public lands designed to stimulate and facilitate economic growth on Rota and Tinian and complement the establishment of Free Trade Zones in furtherance of the purposes of this Act. Within 180 days of the effective date of this Act, the Board of Public Lands, in consultation with the mayors and legislative delegations of the Tinian and Rota, shall designate thirty (30) hectares of public land on Rota, and thirty (30) hectares of public land on Tinian, to be administered by the respective mayors in accordance with this subsection, notwithstanding 1 CMC §§ 2653(c), 2672, 2673, and 2676, and notwithstanding whether such land is designated a Free Trade Zone or not.

(1) Such land may be put to municipal uses or leased for commercial purposes. Subject to other provisions of this Act, 1 CMC § 2674(e), (f), and (g), 1 CMC § 2675(b), (c), (d), and (f), and 1 CMC § 2677(a), (b), (c)(2) through (6), and (d), shall apply to the mayors in their administration of the designated land; Provided that, minimum rental requirements may be waived as provided by paragraph (4) of this subsection. 1 CMC § 2153(g) shall not apply to leases, contracts, or other instruments employed in the mayor's administration of the designated lands; Provided that, such documents shall be reviewed and approved by a duly qualified government attorney and copies thereof provided to the Attorney General.

(2) The mayors may enter into agreements with the Division of Public Lands or other governmental agencies for assistance in the administration of the designated lands. The mayors may not transfer a freehold interest in any part of the designated land.

(3) 1 CMC § 2674(i) shall not be construed as applying to any public benefit contribution under any public land lease now or hereafter in effect with respect to any public land anywhere in the Commonwealth. The Legislature further recognizes and affirms that management of public lands for the benefit of persons of Northern Marianas descent does not require that all persons of Northern Marianas descent throughout the Commonwealth benefit equally from each and every use or disposition of public land, so long as there is no invidious discrimination and equal protection standards are met for the beneficiary class by the management of public lands in the Commonwealth overall.

(4) Minimum rental requirements may be reduced by the mayor based on the economic or other public benefit of the project or development, up to fifty percent (50%) from the amounts otherwise mandated by law, and may be further reduced by the mayor with the concurrence of the Governor. All such exemptions shall be supported by a written finding published in the Commonwealth Register, detailing the economic and/or other public benefits to be derived from the project or development. The 30-day waiting period prescribed by 1 CMC § 9104(a) shall apply to such findings prior to going into effect.

(5) Notwithstanding paragraphs (1) and (4) of this subsection, the mayors may lease any of the designated public land included in a Free Trade Zone on any terms conforming with Section 10(k) of this Act.

(f) Whenever this section authorizes a legislative delegation to take an action "subject to the concurrence of the Governor" such action may be accomplished by local law enacted by way of a Local Bill for an Act, which acts are hereby expressly declared pursuant to Article II, Section 6 of the Commonwealth Constitution to be proper subjects of local law. Nothing in the Local Law Act (1 CMC § 1401 et seq.) shall be construed as precluding the enactment of such local laws or restricting the application of this Act.

Section 5. Admission of Raw Materials and Merchandise; Treatment; Shipment to Customs Territory; Shipment from Customs Territory. Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the Commonwealth, except as otherwise provided in this Act, be brought into a zone and may be produced, created, improved, stored, sold, exhibited, broken up, repackaged, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured, except as otherwise provided in this Act, and be exported, destroyed or sent into the customs territory of the Commonwealth therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into the customs territory of the Commonwealth it shall be subject to the laws and regulations of the Commonwealth affecting imported merchandise.

Section 6. Commonwealth Free Trade Zone Authority. There is in the Commonwealth government a public corporation called the Commonwealth Free Trade Zone Authority to be governed by a Board of Directors. Its functions are governmental and public and it may sue and be sued in its own name. The Authority shall prepare an annual budget to be submitted to the Governor, and approved by the Commonwealth Legislature. In the absence of a budgetary appropriation, the Governor is authorized to reprogram such unexpended funds as may be available in the general fund, to fund the operations of the Authority.

Section 7. Board of Directors; Composition; Terms.

(a) All powers vested in the Authority shall be exercised by a board of directors composed of nine (9) members appointed by the Governor with the advice and consent of the Senate, at least five (5) of whom shall represent the private sector. These five members, or any vacancy amongst them, shall be chosen from a list of persons submitted to the Governor by the Chambers of Commerce; Provided, that persons on the list need not be members of the chamber. Pursuant to the provisions of 1 CMC § 2901(g), at least one member of the board shall be a female, at least one member shall be of Carolinian descent, and each senatorial district shall be represented by at least one member.

(b) Members of the board shall serve staggered terms of four years and may be reappointed. The initial terms of members shall be as follows: five members shall serve an initial term of two years, and four members shall serve an initial term of four years. The terms of the initial members shall be determined by the drawing of lots.

(c) Appointments to fill vacancies shall be for the remainder of the term of the replaced member.

(d) Board members may be removed by the Governor for cause.

Section 8. Board of Directors: Organization and Quorum. The Board shall organize by electing one of its members as chairman and another as vice chairman. The Board shall designate a secretary to keep the minutes and records of the Board, who may or may not be a member of the Board itself. Any five members of the Board shall constitute a quorum, and a concurrence of five members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board. The Board may meet at such times and places as the chairman may determine.

Section 9. Board of Directors: Reimbursements. Members of the Board are entitled to reimbursement for actual expenses incurred in the performance of their official duties, upon approval by the Board.

Section 10. Commonwealth Free Trade Zone Authority: Powers and Duties. In addition to the powers and duties elsewhere conferred and imposed, the Authority shall have the following powers and duties:

(a) The Authority shall determine what types of specific business, industrial and commercial enterprises best meet the Legislature's policy objectives of fostering environmentally friendly, non-labor intensive, high skill activities that will offer training and future job possibilities to residents of the CNMI.

(b) The Authority may purchase, lease and hold real and personal property, supplies, goods, materials and commodities incident to the operation of free trade zones, including contracting with other agencies such as the Commonwealth Ports Authority and the Board of Public Lands for the use of their properties in free trade zones.

(c) Subject to the provisions of this Act and the property rights of those holding title to the land, the Authority may develop and maintain or may cause to be developed and maintained any land declared to be a free trade zone for use by persons licensed in accordance with this Act.

(d) The Authority may, in coordination with the Commonwealth Ports Authority, the Commonwealth Utilities Corporation, the Division of Customs, and

other appropriate agencies of Commonwealth Government, cause such infrastructure as may be required, to be constructed, installed or delivered in or to the free trade zone. Such infrastructure shall include the following:

- (1) roads and highways sufficient to give the free trade zone access to existing international seaports and airports in the Commonwealth;
- (2) electrical power, water, sewer services, and telecommunications services essential for the operations of the free trade zone; and
- (3) the establishment of customs and excise posts.

(e) The Authority may enter into contracts with any person or government agency to carry out its functions under this Act, including rendering planning and management services within the free trade zones.

(f) The Authority may issue licenses to any approved person, firm, or corporation to operate businesses in the free trade zones established under this Act.

(g) The Authority shall adopt and enforce rules and regulations for the lawful, orderly, safe and sanitary management, control and operation of free trade zones and of all business activities carried on in the free trade zones; and for the issuance of licenses to operate businesses in the free trade zones, and the terms and conditions thereof, including requiring an independent professional cost/benefit analysis of the proposed business activity.

(h) The Authority may apply for, accept, expend and repay the United States or Commonwealth Government, and the Commonwealth Development Authority for any and all moneys made available by grant, loan or both to plan or accomplish any of the purposes of this Act. Unless otherwise directed by the agency from which such funds are received, the chief financial officer of the Authority shall deposit all moneys received pursuant to this subsection in separately denominated accounts.

(i) The Authority may employ agents and employees, or contract for the services of qualified specialists or experts, as individuals or organizations, to advise and assist the Authority and its employees. Persons so employed shall be exempt from application of the Commonwealth Civil Service Act [1 CMC §8101 *et. seq.*]. The Authority may set its own compensation, wage and salary scales.

(j) The Authority shall prepare a detailed statement of its proposed budget for each ensuing fiscal year, to be adopted by a majority vote of the members of the Board

of Directors at a meeting called for that purpose. No expenditures shall be made for a purpose not included in the adopted budget, and no debt, obligation or liability shall be created in any period for which the budget was adopted, in excess of the amounts specified therein for each purpose named unless with the express approval of a majority of the Board.

(k) The Authority shall represent the interests of free trade zone licensees, actual and prospective occupants in negotiating, with the entity owning or controlling the property within the free trade zones, the charges, rentals, or fees for the use of such property, including the terms and conditions under which the property may be used; Provided, that nothing in this section shall prohibit licensees, actual or prospective occupants from negotiating on their own behalf; Provided further, that nothing in this subsection shall be construed as permitting the Authority to bind a licensee, actual or prospective occupant without their consent. The Authority shall negotiate charges that are reasonable and with due regard for the public benefit. In no event shall public land be let for less than \$0.25 per month per square foot for buildings, and \$0.10 per month per square meter for undeveloped land; Provided, however, that under special circumstances, as determined by the Authority, these amounts may be reduced by up to 50% for projects on Tinian and Rota.

(l) The enumeration of specific powers and duties in this section shall not be deemed to be exclusive.

Section 11. Public Land in Free Trade Zones: Lease Restricted to FTZ Licensees. Public land within a Free Trade Zone shall not be leased for any purpose except to a Free Trade Zone licensee. This restriction does not apply to preexisting uses and leases in effect on the effective date of this Act.

Section 12. Private Land; Pre-existing Uses. Nothing in this Act shall be construed as imposing any restraint on the use of private land within any Free Trade Zone by persons other than a FTZ licensee. Private land within Free Trade Zone shall be eligible, however, for all benefits of the FTZ, and when receiving such benefits or leased or otherwise used by a FTZ licensee shall be subject to all conditions on such benefits or imposed by or with respect to the FTZ license. Pre-existing uses of land on the date the land becomes part of a FTZ shall not be affected by inclusion of the land within the FTZ except to the extent the benefits of this Act are

subsequently sought with respect to the land or the land is subsequently leased or used by a FTZ licensee.

Section 13. Executive Director: Appointment. The Board shall appoint an executive director to be its chief executive officer. The executive director shall serve at the pleasure of, and be compensated as determined by, the Board.

Section 14. Executive Director: Powers and Duties. The executive director shall have the following powers and duties:

(a) To aggressively market and promote the CNMI free trade zones internationally to businesses of the type determined by the Board by regulation to be desirable for the future economic development and diversification of the CNMI; In making its determination of the desirability of business activities, the Board shall be guided by the intention of the Legislature as reflected in this Act

(b) To be in full charge and control of the operation and maintenance of the property controlled by the Authority, and of construction of any facilities and other necessary or incidental works controlled by, or required to be constructed or repaired by the Authority.

(c) To ensure that all rules and regulations of the Authority are enforced;

(d) To attend all meetings of the Board and to submit a general report on the affairs of the Authority;

(d) To keep the Board advised on the needs of the Authority;

(e) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;

(f) To prepare or cause to be prepared all plans and specifications for the construction and repair of works and facilities operated by the Authority;

(g) To devote full time to the business of the Authority; to select and appoint the employees subject to the approval of the Authority, except as otherwise provided in this chapter; to plan, organize, coordinate and control the services of such employees in the exercise of the powers of the Authority under the general direction of the Board; and, in lieu of hiring employees of the Authority to perform any of the tasks, works or other services required by the Authority, to contract with independent contractors, as persons, organizations, or corporations, to provide such services;

(h) To cause to be published within 60 days after the end of each fiscal year a financial and operations statement showing the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof, which publication shall be made in the manner provided by the Board;

(i) To perform such other and additional duties as the Board may require; and

(j) To be an ex officio (non-voting) member of the Board.

Section 15. Free Trade Zones Authority: Accounting and Reporting.

(a) The Board shall adopt and maintain a system of accounting which is in accordance with generally accepted accounting principles applicable to free trade zones.

(b) With the concurrence and under the supervision of the Public Auditor, the Board shall employ a firm of independent certified public accountants to 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 reports shall be furnished to the Governor and the legislature. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the Governor or the legislature, shall present special reports within 30 days after the end of each intervening quarter.

(c) The fiscal year of the Authority shall correspond to that of the Commonwealth.

Section 16. Conflict of Interest. Members of the Board, employees and agents of the Authority shall be bound by the conflict of interest provisions of Public Law 8-11, the Government Ethics Code of 1992, as amended, 1 CMC § 8531 *et. seq.*

Section 17. Procurement. The Board shall promulgate procurement regulations for itself that ensure open and competitive procurement procedures. The purchase of all supplies, materials, and construction work with an expenditure exceeding \$25,000 shall be by contract to the lowest responsible bidder. Notice requesting bids shall be published at least 10 days before bids are due. The Board may reject any and all bids and re advertise at its discretion. If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices. The Authority, as an instrumentality of the government, shall utilize the services of federal or Commonwealth purchasing agencies wherever practical.

Section 18. Lease of Public Land; Satisfaction of the Public Trust. In any action in a court of competent jurisdiction challenging any lease of public land in a free trade zone as contrary to the public interest, or alleging a breach of the public trust or fiduciary duty in such a lease, the court shall not limit itself to the rentals prescribed by the lease but shall take into account, in determining the matter, the public and economic benefit of the use of land. In any such action, any cost/benefit analysis accepted by the Authority pursuant to this Act with respect to the use to be made of the leased land shall be conclusive as to the findings contained therein. Lease of public land in conformance with Section 10(k) of this Act is prima facie commensurate with the public interest and in satisfaction of the public trust and fiduciary obligations.

Section 19. Licenses to Operate Business in Free Trade Zone.

(a) A license issued by the Free Trade Zone Authority is required for any business operating or planning to operate within a free trade zone to gain the benefits of this Act.

(b) Any person may apply on the prescribed form to the Board to establish and operate a business, industrial or commercial activity in a free trade zone, provided, however, that existing businesses within the Commonwealth may not relocate existing business, industrial or commercial activities from outside a free trade zone into a free trade zone.

(c) The Board shall promulgate regulations setting forth the factors to be considered in granting a license to operate in the zones. These policies may include: an analysis of the economic impact on the Commonwealth, the amount of capital investment proposed, a cost/benefit analysis of the proposed activity, the environmental impact of the proposed activity, the impact on other business, industrial and commercial activities within the Commonwealth, the labor requirements of the proposed activity, and to what extent the applicant proposes to train and to employ resident workers. Where the Board is satisfied that the business or enterprise described in the application meets the stated policies of this Act and the regulations, , and upon payment of the prescribed fee, the Board may approve the application and issue to the applicant a license, authorizing the applicant to establish and operate within the free trade zone the business or enterprise specified in the license.

(d) There may be attached to every license such conditions as the Board may consider necessary, including but not limited to:

- (i) the time within which the person or company shall commence operation;
- (ii) the minimum amount of investment to be made in the free trade zones;

and

- (iii) any limitations on the licensee's labor force.

- (iv) the business, industrial and commercial activities that may be carried on in the zone.

(e) licenses granted by the Board shall not be transferable to any other person without prior approval of the Board.

(f) the Board shall publish in the Commonwealth Register the name of any person to whom a license has been granted under this Act.

Section 20. License Revocation.

(a) No person shall establish and operate on any business, industrial or commercial activity within a free trade zone except in conformity with all applicable laws and regulations.

(b) Pursuant to the Administrative Procedures Act, 1 CMC § 9101 *et. seq.*, the Board may revoke the license of any licensee who contravenes the provisions of any applicable law or regulation or any condition attached to a license.

Section 21. Incentives to Licensed Industries. Notwithstanding any other provision of commonwealth law, licensed free trade zone businesses shall be:

(a) exempted from the payment of Business Gross Revenue Tax, imposed by the Commonwealth pursuant to 4 CMC §1305 on business, industrial or commercial activity carried on within free trade zones in an amount and for a period of up to 20 years, to be determined by the Authority. This exemption shall not apply to construction activity or to retail/wholesale sales conducted within the zone, subject to 4 CMC § 1305 (a).

(b) exempted from the payment of the Excise Tax on the importation of capital equipment, machinery, which includes machinery specifically designed, and used exclusively for, hauling and loading cargo and spare parts, into, within, and out of the

free trade zones, in an amount and for a period not to exceed 20 years, to be determined by the Authority;

(c) exempted from the payment of Excise Tax on raw materials and other goods brought into the free trade zones which are to be incorporated in the products produced or assembled within the free trade zones, unless they are brought into the CNMI customs territory, in an amount and for a period of years, not to exceed 20, to be determined by the Authority. This exemption shall not apply to consumable supplies, food, or other expendable items utilized in the daily operations of the business;

(d) entitled to a rebate on CNMI sourced income under the Northern Mariana Territorial Income Tax Code in an amount and for a period of years, not to exceed 20, to be determined by the Authority;

(e) exempted from the Developers Tax on the construction of commercial buildings, structures, or infrastructure located within the free trade zones in an amount and for a period not to exceed 20 years, to be determined by the Authority; and

(f) exempted from any export taxes or user fees that may be enacted in an amount and for a period of years, not to exceed 20, to be determined by the Authority.

(g) the Authority shall determine the amount of tax exemption and/or rebate under subsections (a) through (f) above in an amount from 1% to 100%, and for a period of years from 1 to 20 years. The Authority shall determine tax incentives at a level that is commensurate with the economic benefit to be received by the Commonwealth.

(h) the Secretary of Finance shall establish a special rebate trust account into which all taxes collected from businesses in Free Trade Zones shall be deposited.

(i) exempted from the provisions of public law 11-6, however that the applicant will be subject to the prevailing United States Federal minimum wage law.

(j) The Secretary of Finance shall consult with the Authority to establish the necessary tax forms for the orderly implementation of this Act.

Section 22. Applicability of Other Laws; Coordination by the Authority.

(a) Except to the extent made specifically inapplicable under this Act, all provisions of Commonwealth and federal criminal and civil law and regulation otherwise applicable in the Commonwealth, including but not limited to environmental laws and regulations, business licensing laws and regulations, labor and immigration

laws and regulations, shall apply in the free trade zones in the same manner and to the same extent as applicable in the Commonwealth.

(b) In order to facilitate timely action in licensing and permitting matters within the jurisdiction of other Commonwealth agencies, including the Division of Coastal Resources Management and the Division of Environmental Quality, the Authority shall coordinate with the permitting agencies and assist free trade zone businesses in securing the necessary licenses and permits required under Commonwealth or federal law.

(c) All Commonwealth regulatory agencies shall expedite the processing of permits on a top priority basis for developments within the free trade zones.

Section 23. Insurance and Indemnification.

(a) Every licensee shall undertake to hold the Authority free and harmless for any loss incurred by the licensee by reason of or ensuing from the failure in any service to the free trade zone pertaining to the supply of water, electricity, sewerage, telecommunication or other services that are provided to or within the free trade zone and not under the control of the Authority;

(b) Every licensee shall secure and maintain insurance in an amount set by the Board by regulation relating to any liability for injury or damage occasioned by or to any person and his property in a free trade zone while that person is on the premises whereon the licensee is conducting business operations or utilizing the common approaches contiguous to those premises;

(c) undertake to hold the Authority free and harmless for any loss or damage to the goods, articles, machinery and things upon the premises occupied by the licensee in the free trade zone for any loss or damage arising from any acts or omission of other licensees;

Section 24. Movement of Goods In and Out of Free Trade Zone.

(a) The Secretary of Finance shall, after consultation with the Authority, make regulations relating to:

(1) the entry, removal, importation and exportation of goods, articles, machinery or other things into or out of a free trade zone;

(2) the seizure and forfeiture of goods, articles, machinery or other things intended for or brought into or taken out of a free trade zone in breach of Customs regulations and tax laws.

(b) For the purposes of this section, goods, articles, machinery or other things manufactured, processed, assembled by a licensee and exported out of the free trade zone into a non-free trade zone in the Commonwealth will be considered subject to the payment of all taxes and duties applicable outside of the free trade zone.

Section 25. Establishment of Customs Posts in Free Trade Zone.

(a) The Secretary of Finance shall, after consultation with the Authority, establish and staff customs posts in the free trade zones, as necessary.

(b) Customs officers assigned to a customs post in a free trade zone shall carry out such duties as are assigned to them and, in particular:

(1) Inspect, monitor and record the entry of all goods into free trade zones, including:

- (i) the names of the importer and the exporter;
- (ii) the description of the goods and the declared value of such goods; and
- (iii) the country of origin of the goods.

(2) inspect, monitor and record the exit of all goods from a free trade zone including:

- (i) the names of the exporter and the consignee;
- (ii) the description of the goods or services exported or consigned and the declared value of such goods;
- (iii) the destination of the goods.

(c) The Director of the Division of Customs shall, at the end of every month, submit to the Secretary of Finance and the Authority a report in respect of the information recorded pursuant to subsection (b).

(d) The Secretary of Finance shall, after consultation with the Authority, charge such hourly fees as he or she may consider appropriate and reasonable for handling and for customs services provided in the free trade zones.

Section 26. Applicable Law. The Commonwealth law shall apply to any contract between the Authority and a licensee, as well as to the conduct and operations of any business or enterprise, and generally for good order and management in a free trade zone.

Section 27. Disclosure of Proprietary Information to Unauthorized Persons Prohibited. Except with the consent of a licensee or as authorized by law, no officer, agent, consultant, employee or attorney of the Authority, or any customs or immigration officer assigned to a free trade zone shall disclose any proprietary or information or business trade secrets to a third party that may have come to his knowledge in the course of his duty.

Section 28. Tax Code Amendments. The following amendments are made to the tax laws of the Commonwealth to accomplish the purposes of this Act:

(a) Gross Receipts Tax. A new subsection (h) is hereby added to 4 CMC § 1305 to read:

"(h) Earned by a business licensed by the Free Trade Zone Authority established by the Northern Mariana Islands Free Trade Zone Act of 1999, to the extent of any gross receipts tax exemption granted by the Authority in accordance with law. This exemption shall not apply to:

(1) gross revenue from construction operations conducted within a Commonwealth Free Trade Zone.

(2) gross revenue from sales, whether retail or wholesale, made within a Commonwealth Free Trade Zone, except with respect to sales by a Free Trade Zone licensee to another Free Trade Zone licensee.

No exemption under this subsection shall be effective for a period in excess of 20 years or for a period or in an aggregate amount greater than that determined by the Commonwealth Free Trade Zone Authority at time of granting the exemption."

(b) Excise Tax: General Application. Subsections (b) through (e) of 4 CMC §1402 are hereby redesignated as subsections (c) through (f) and a new subsection (b) is added to section 1402 to read as follows:

"(b) *Interpretation*. A sale, use, manufacture, lease or rental of goods, commodities, resources, or merchandise is, for purposes of this section, the first sale, use, manufacture, lease or rental of goods, commodities, resources, or merchandise in the Commonwealth if it is so in fact, or if the goods,

commodities, resources, or merchandise were previously exempt from taxation on account of their sale, use, manufacture, lease or rental within or into a Commonwealth Free Trade Zone and further sale, use, manufacture, lease or rental occurs within the Commonwealth to or outside a Free Trade Zone, or if the goods, commodities, resources, or merchandise, although previously taxed under this section, have lost their identity on account of manufacturing, remanufacturing, processing, reprocessing, production, assembly, or other activity within a Free Trade Zone."

(c) Excise Tax: Exemptions. Paragraph (9) of subsection (c), as redesignated by this Act, of 4 CMC §1402 is hereby repealed and reenacted as new paragraphs (9), (10), (11), and (12) as follows:

"(9) Capital equipment, machinery, spare parts, and other items brought into a Commonwealth Free Trade Zone and used to operate facilities located within the Zone(s) pursuant to an exemption duly granted by the Free Trade Zone Authority, to the extent (amount and duration, which shall not exceed 20 years) prescribed by such exemption.

(10) Raw material and other goods, except if they enter the CNMI Customs Territory, brought into a Commonwealth Free Trade Zone for incorporation into products produced or assembled within the Free Trade Zone(s), to the extent (amount, and duration, which shall not exceed 20 years) of an exemption duly granted by the Commonwealth Free Trade Zone Authority. This exemption shall not apply to consumable supplies used in the course of ordinary business operations or to construction materials.

(11) Domestic articles on which an excise tax has previously been paid, reentering the CNMI Customs Territory from a Commonwealth Free Trade Zone, to the extent of the tax previously paid; Provided that, no exemption shall be allowed if, in the opinion of the secretary, the domestic articles have lost their identity.

(12) The secretary may prescribe regulations to exempt any other goods, commodities, resources, or merchandise from taxation under this chapter. The secretary may also prescribe regulations for the supervision and identification of goods sent into the Commonwealth Free Trade Zone(s) from the Customs

Territory of the CNMI. For purposes of this section, 'Customs Territory of the CNMI' or 'CNMI Customs Territory' means the territory of the Commonwealth of the Northern Mariana Islands with the exclusion of Free Trade Zones established by or pursuant to law."

(d) Return and Payment of Tax on Gross Revenue. 4 CMC § 1307(a), as renumbered by Public Law 10-73, is hereby further amended to read:

"(a) *In General.* Every person subject to this chapter and every person conducting business within a Commonwealth Free Trade Zone shall file a return and pay the tax, if any, on a quarterly basis. The secretary shall by regulation prescribe quarterly rates necessary to carry out the intent and purpose of this section."

(e) Special Rebate. 4 CMC §1708(b), as amended by Public Law 10-74, is hereby further amended to read as follows

"(b) *Rebate Offset Amount.*

(1) The rebate offset amount shall be:

(i) In the case of a taxpayer who is not a Free Trade Zone licensee:

<i>If the rebate base is:</i>	<i>The rebate amount is:</i>
Not over \$20,000	90 percent of the rebate base.
Over \$20,000 but not over \$100,000	\$18,000 plus 70 percent of the rebate base over \$20,000.
Over \$100,000	74,000 plus 50 percent of the rebate base over \$100,000.

(ii) In the case of a taxpayer who is a Free Trade Zone licensee, the rebate offset amount shall be the sum of:

(A) the computation set forth in subparagraph (i) applied to that portion of the rebate base attributable to income of the business from activities conducted outside of a Free Trade Zone, and

(B) an amount determined by multiplying that portion of the rebate base attributable to income of the business from

activities conducted within Free Trade Zone(s) by the yearly average proportion which resident worker employees of the licensee comprise of the licensee's total workforce within Free Trade Zone(s). For purpose of this clause, 'resident worker' means the same as defined in 3 CMC § 4412(n).

(2) Notwithstanding subsection (a) of this section, a person shall not be entitled to any rebate offset under this section with respect to:

(i) NMTIT taxes collected upon income effectively connected with the sale of diesel fuel for use in any vessel's commercial operations that are primarily outside the territorial waters of the Commonwealth."

(f) Developer's Tax. To authorize exemption of Free Trade Zone licensees from the developer's tax, a new subsection (7) is hereby added to 4 CMC § 1933(a) to read as follows:

"(7) The construction of commercial buildings, structures, or infrastructure located within a Commonwealth Free Trade Zone, to the extent (amount and duration, which shall not exceed 20 years) of an exemption duly granted by the Commonwealth Free Trade Zone Authority."

(g) Special Rebate Trust Account for Free Trade Zone Licensees. A new section 1716 is hereby added to Chapter 7 of Division 1 of Title 4 of the Commonwealth Code to read as follows:

"§ 1716. Special Rebate Trust Account for Business Located Within Free Trade Zone(s).

One hundred percent of all amounts paid to the government by Free Trade Zone licensees with respect to taxes imposed under this chapter on businesses located within and receiving income from activities conducted within a Free Trade Zone, that portion of such derived from such activities, shall not be placed into the General Fund or commingled with other funds, but shall be deposited by the Secretary of Finance into one or more FDIC or FSLIC insured special purpose trust accounts only for the purpose of:

(a) Making rebates to Free Trade Zone business as provided in this chapter;

(b) Payment into the General Fund, but only after a final determination, including a judicial determination if requested by any taxpayer, that the amount in question is not validly subject to rebate under this chapter,

(c) Payments into the General Fund of the interest or earnings derived from such trust accounts, or

(d) Payment into the General Fund after determination by the Secretary that no additional funds are needed for rebate purposes for Free Trade Zone licensees.

The Secretary shall have authority to promulgate regulations for this section."

Section 29. 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 30. Savings Clause.

(a) 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.

(b) With regard to any CPA property or lease thereof, if any provision of the Act is contrary to or is in conflict with the Commonwealth Ports Authority's existing Federal Aviation Administration grant agreements, bond indenture covenants, or any other contractual obligation or commitment, such agreements, covenants, obligations and commitments of CPA shall remain effective and shall not be impaired, compromised or subordinated.

Section 31. 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/ Benigno R. Fitial
BENIGNO R. FITIAL
SPEAKER OF THE HOUSE

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

Approved this 22nd day of September, 2000

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
Governor
Commonwealth of the Northern Mariana Islands