

**TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**PUBLIC LAW NO. 10-57  
H.B. NO. 10-325**

**THIRD REGULAR SESSION, 1997**

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**AN ACT**

To establish a Board of Public Lands and fundamental policies for the management, use, and disposition of public lands; to repeal and reenact Chapter 13 of Division 2 of Title 1 of the Commonwealth Code concerning the Department of Lands and Natural Resources; and for other purposes.

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

Section 1. Short Title. This Act may be cited as the Public Lands and Natural Resources Administration Act of 1997.

Section 2. Findings. The Legislature finds that control over public lands is too important a function to the people of the Commonwealth to be left simply to a line department under the direct control of the governor. Public Lands policy and administration needs to be overseen by an autonomous Board which brings a broader and more independent perspective to the critical issues of land management. In addition, a recent Inspector General's audit revealed a need for better standards and better enforcement of the terms of public land leases. The Legislature further finds that there is a need to repeal and reenact those provisions of the Executive Branch Organization Act formerly dealing with the Department of Natural Resources to continue the Department of Lands and Natural Resources established by Executive Order 94-3 with the structure, duties, and responsibilities as modified by this Act. It is the purpose of this Act to address these needs.

Section 3. Amendment. Chapter 13 of Division 2 of Title 1 of the Commonwealth Code is repealed and reenacted as follows:

"CHAPTER 13

Department of Lands and Natural Resources

Article 1. General.

- § 2651. Department of Natural Resources.
- § 2652. -- Secretary: Appointment.
- § 2653. -- Duties.
- § 2654. -- Rules and Regulations.
- § 2655. -- Staff.
- § 2656. -- Permit Simplification and Coordination.

§ 2651. Department of Lands and Natural Resources.

There is in the Commonwealth Government a Department of Lands and Natural Resources to be headed by a Secretary of Lands and Natural Resources.

§ 2652. Department of Lands and Natural Resources: Secretary: Appointment.

The Secretary of Lands and Natural Resources shall be appointed by the governor with the advice and consent of the Senate.

§ 2653. Department of Lands and Natural Resources: Duties.

The Department of Lands and Natural Resources shall have the following powers and duties:

- (a) To be responsible for the protection and enhancement of the natural resources of the islands, including the marine environment;
- (b) To protect wildlife resources including fish, game, and endangered species;
- (c) To be responsible for the management and disposition of public lands subject to the supervision of the Board of Public Lands as provided by this Chapter.
- (d) To conduct surveys of public lands;
- (e) To maintain and provide for the conservation of agricultural and aquatic resources;
- (f) To issue permits for fishweirs;
- (g) To perform the duties, functions, and responsibilities previously vested in the Marianas Fishing Authority;
- (h) To maintain and provide for the conservation of forests;
- (i) To establish landscaping and beautification projects;
- (j) To promote, develop, and administer agricultural programs, including but not limited to, plant industry, agricultural extension services, and animal industry and health;
- (k) 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;
- (l) To simplify, coordinate, and, to the extent practicable, integrate the development permitting process and public land leasing process within the Department;
- (m) To perform, under the guidance of the Special Assistant for Planning and subject to the approval of the Board of Public Lands established by this Chapter, the land use planning functions previously performed by the Special Assistant for Planning and Budgeting.

§ 2654. Department of Lands and Natural Resources: Rules and Regulations.

The Department of Lands and Natural Resources may adopt rules and regulations in furtherance of its duties and responsibilities.

§ 2655. Department of Lands and Natural Resources: Staff.

The Department of Lands and Natural Resources may employ staff as required to

assist it in performing its duties, subject to budgetary appropriation and the employment ceilings established pursuant to Article X, Section 7 of the Constitution.

§ 2656. Permit Simplification, Coordination, and Integration.

The Secretary of Lands and Natural Resources, the Secretary of Public Works, and the head of any other agency regulating development shall simplify, coordinate and, to the maximum extent practicable, by agreement integrate the permitting and regulatory processes within, between, and among their agencies in order to expedite government decisions incident to private sector development. Such processes shall also provide for a prospective applicant to be given a list of items required for the application to be considered complete. The simplification, coordination, and integration required by this subsection shall be carried out under the oversight of the Special Assistant for Planning, who shall resolve any disagreement arising under this subsection between or among any such agencies.

Article 2. Division of Fish and Wildlife.

§ 2661. Division of Fish and Wildlife.

(a) There is in the Department of Lands and Natural Resources a Division of Fish and Wildlife, headed by a Director serving under the supervision and control of the Secretary.

(b) The Division of Fish and Wildlife is a successor to the Marine Resources Division. All powers and duties assigned to the Marine Resources Division shall be considered as assigned to the Division of Fish and Wildlife.

(c) In addition to the powers and duties assigned to the Division pursuant to subsection (b), the Director shall be responsible for the day-to-day administration and enforcement of the Fish, Game, and Endangered Species Act, as amended.

Article 3. Public Lands.

- § 2671. Division of Public Lands.
- § 2672. -- Duties.
- § 2673. Board of Public Lands.
- § 2674. Public Lands: Fundamental Policies.
- § 2675. Public Lands: Additional Fundamental Policies.
- § 2676. Public Lands: Senatorial District Advisory Boards.

§ 2671. Division of Public Lands.

(a) There is in the Department of Lands and Natural Resources a Division of Public Lands, headed by a Director serving under the supervision and control of the Secretary and the Board of Public Lands.

(b) The Division of Public Lands is a successor to the Marianas Public Lands Corporation pursuant to Section 4(f) of Article XI of the Constitution. All powers and duties assigned to the Marianas Public Land Corporation by statute shall be considered as assigned to the Division of Public Lands.

§ 2672. Division of Public Lands: Duties.

(a) The Division 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) To be responsible for the management, use, and disposition of surface lands of the Commonwealth, subject to the supervision of the Board of Public Lands and the policies of this Act.

(b) The authority of the Division of Public Lands extends to all those lands defined as public lands by Article XI, Section 1 of the Constitution or any other provision of law, subject to the provisions of this Act and except as limited by transfers of freehold interests.

§ 2673. Board of Public Lands.

(a) There is hereby established a Board of Public Lands composed of five directors, appointed by the governor with the advice and consent of the Senate, who shall direct the affairs of the Division of Public Lands for the benefit of the people of the Commonwealth who are of Northern Marianas descent. The Secretary and the Director shall carry out the policies and decisions 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 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 Article XI, Section 5 of the Commonwealth Constitution or section 2674 or 2675 of this Chapter 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, 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. A director may be removed only for cause.

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

(f) The directors shall make an annual written report 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.

§ 2674. Public Lands: Fundamental Policies.

(a) Findings. The Legislature finds that the following fundamental policies are mandated by Article XI, Section 5 of the Constitution and are binding on all persons involved in the management, use, and disposition of public lands. The Legislature further finds that these fundamental policies should be given separate and independent force and effect as statutory law apart from their vitality as constitutional provisions.

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

(c) The Division 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. A person may not receive a freehold interest in a homestead for three years after the grant of a homestead and may not transfer a freehold interest in a homestead for ten years after receipt except that these requirements are waived for persons who have established a continuous use of public lands for at least fifteen years as of the effective date of the Constitution. At any time after receiving the freehold interest, the grantee may mortgage the land provided that all funds received from the mortgage be devoted to the improvement of the land.

(d) The Division may not transfer a freehold interest in public lands for twenty years after the effective date of the Constitution, except for homesteads as provided under subsection (c) 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.

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

(f) The Division 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.

(g) The Division may not transfer an interest, and may prohibit the erection

of any permanent structure, in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that the Division may authorize the construction of facilities for public purposes.

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

(i) All moneys from the public lands except those from lands in which freehold interest has been transferred pursuant to subsection (d) of this section shall be paid into the Commonwealth Treasury and deposited into a special account established by Section 10 of Public Law 10-29. Except as otherwise provided by Section 5, Section 7, or Section 10 of Public Law 10-29, the Commonwealth Treasurer shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust as provided in Section 10(d)(1) of Public Law 10-29, 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 Division.

§ 2675. Public Lands: Additional Fundamental Policies.

(a) The Division 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 Division 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 Division 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 Division 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 Division shall give at least 30 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. Notice shall be by publication for four consecutive

weeks in a newspaper of general circulation in 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:

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

(B) 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;

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

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

(E) Identification of all alternative proposals received during the preceding five years for lease of all or any part of the public land covered by the proposed lease, unless the proposer shall have requested confidentiality at the time of submission, presentation, offer, or suggestion of the proposal and continues to desire confidentiality; Provided that the Division shall not demand, request, or suggest that proposals be presented in confidence, and shall request a waiver of confidentiality with respect to any such alternative proposal previously received in confidence prior to giving the notice required by this subsection; and

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

(2) The requirements of paragraph (1) of this subsection (f) 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 subsection (f) of this section shall be given prior to submission of the proposed lease to the legislature.

(4) The Division 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 subsection (f) of this section with respect to any lease for which notice has previously been given during such period.

§ 2676. Public Lands: Senatorial District Advisory Boards.

There is hereby established a Public Lands Advisory Board in each senatorial district, composed of the Mayor, Chairman of the Municipal Council, and Chairman of the Legislative Delegation for the respective senatorial district. The Secretary, Director, and Board shall

submit all proposed uses, dispositions, and plans for public lands to the Public Lands Advisory Board for the senatorial district in which the public land is located for review, comment, and recommendations at least 60 days prior to taking any final action with respect to the proposed use, disposition, or plan.

§ 2677. Public Lands: Lease Enforcement; Other Requirements.

(a) The Division 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 Article XI, Section 5 of the Commonwealth Constitution or section 2674 or 2675 of this Chapter.

(b) The Division shall promptly incorporate all requirements imposed as a condition of legislative approval of a lease or lease extension under Article XI, Section 5 of the Commonwealth Constitution or section 2674 or 2675 of this Chapter 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 Division 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;

(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 Division 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 8 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 Division 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 provided valid leases in effect prior to October 23, 1996. Failure of the Division 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 Article X, Section 9 of the Commonwealth Constitution.

#### Article 4. Division of Land Registration

##### § 2681. Division of Land Registration.

(a) There is in the Department of Lands and Natural Resources a Division of Land Registration, headed by a Director (formerly the Senior Land Commissioner) serving under the supervision and control of the Secretary.

(b) The Division of Land Registration is a successor to the Land Commission. All powers and duties assigned to the Land Commission shall be considered as assigned to the Division of Land Registration.

(c) There are within the Division of Land Registration Deputy Directors of Land Registration (formerly Deputy Land Commissioners).

#### Article 5. Division of Zoning

##### § 2691. Division of Zoning.

(a) There is in the Department of Lands and Natural Resources a Division of Zoning, headed by a Director of Zoning serving under the supervision and control of the Secretary. During any period of suspension of the Saipan Zoning Law (Saipan Local Law No. 8-7), the position of Director of Zoning shall not be filled, the Secretary shall perform the functions of the Director, and other functions of the Division of Zoning may be assigned at the discretion of the Secretary to other administrative units of the department.

(b) Except as provided by Section 401(c) of Executive Order 94-3, the Division of Zoning is a successor to the Zoning Board. Except as provided by Section 401(c) of Executive Order 94-3, all powers and duties assigned to the Zoning Board shall be considered as assigned to the Division of Zoning.

(c) The Zoning Board of Rota, established by Rota Local Law No. 8-2, is not affected by this section.

(d) Any reference to zoning in Section 401 of Executive Order 94-3 shall be inoperative during any period of suspension of the Saipan Zoning Law (Saipan Local Law No. 8-7). The Secretary of Lands and Natural Resources shall, within one year after the effective date of this subsection, submit to the Governor recommendations for a simplified system of zoning for the Third Senatorial District."

Section 4. Repealer. Section 306 of Executive Order 94-3 is vacated.

Section 5. 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 6. 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 7. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED BY:**

/s/ Diego T. Benavente  
DIEGO T. BENAVENTE  
Speaker  
House of Representatives

/s/ Evelyn C. Fleming  
EVELYN C. FLEMING  
House Clerk

        Vetoed         this   19<sup>th</sup>   day of   March  , 1997

/s/ Froilan C. Tenorio  
FROILAN C. TENORIO  
Governor  
Commonwealth of the Northern Mariana Islands

**Overridden by the House of Representatives on April 18, 1997 and the Senate on April 2, 1997 with the affirmative vote of two-thirds of the members in each house.**

**CERTIFIED BY:**

/s/ Diego T. Benanvente  
DIEGO T. BENAVENTE  
Speaker of the House

/s/ Jesus R. Sablan  
JESUS R. SABLAN  
President of the Senate

Overridden by the House on: 4/18/97

Overridden by the Senate on: 4/2/97

Became Public Law No. 10-57