

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 1576



Introduced by **Hon. PABLO JOHN F. GARCIA**

EXPLANATORY NOTE

Republic Act 762 creates the Cebu Port Authority with the power to "manage, administer, operate, maintain, improve and develop, coordinate and otherwise govern the activities of all the ports" in all "seas, lakes, rivers and all other navigable inland waterways within the Province of Cebu including all other highly urbanized cities which may hereafter be created therein."

The power of the Authority is vested in a Commission composed of the Secretary of Transportation and Communications or his duly designated undersecretary as Chairman, a Vice-Chairman and five (5) other Commissioners. These other Commissioners are appointed by the President of the Republic of the Philippines representing ship owners and shipping operators, cargo-handling, labor sector and the business sector. The law fails to provide for representation from the local government units in whose territorial jurisdictions the port facilities governed by the Authority are located.

Thus, while the commission is vested with the power to determine policies affecting each and every inhabitant of the Province of Cebu, including the highly urbanized and independent component cities, on a matter imbued with the highest public interest, representation is denied in the determination of such policies.

While local government units have the duty, under section 16 of the Local Government Code, to ensure public health, safety and convenience – in short, the general welfare – they are not represented in an authority that has almost plenary powers over facilities where public health, safety and convenience should be ensured.

To the contrary, and quite ironically, sectors with vested, pecuniary interest in operation of port facilities – namely, ship owners and shipping operators, cargo-handling, labor sector and the business sector – are more than adequately represented in the Commission.

There is a need, therefore, to correct the unbalanced situation by ensuring local government representation in the Authority. This bill, if enacted into law, will further improve coordination between local government units and the Authority in terms of, among others, ensuring public health, safety and convenience, infrastructure development and support, legislative support for policies and programs of the Authority, and revenue-generating activities for their mutual benefit.

The early passage of this bill, therefore, is urgently sought.


PABLO JOHN F. GARCIA

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AN ACT
STRENGTHENING THE CEBU PORT AUTHORITY, AMENDING THEREOF
CERTAIN PROVISIONS OF REPUBLIC ACT NO. 7621, OTHERWISE KNOWN AS
THE "CHARTER OF THE CEBU PORT AUTHORITY", AND FOR OTHER
PURPOSES

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

Section 1. Section 7 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 7. *Powers.* – The Authority shall have the power and responsibility to:

"(a) Have perpetual succession under its corporate name until otherwise provided by law;

"(b) Prescribe its bylaws and such rules and regulations as may be found necessary to promote or enhance the business of the Authority, WHICH SHALL INCLUDE, BUT NOT LIMITED TO, THOSE PERTAINING TO PILOTAGE, CARGO-HANDLING, SECURITY AND OTHERS;

"(c) Adopt and use a seal;

"(d) Sue and be sued in any court;

"(e) Enter into contracts, transactions, and undertakings of whatever nature, which are necessary or incidental to its functions and objectives, with any natural or juridical persons or with any government institutions, domestic or foreign;

"(f) Acquire, own, hire, use, operate and dispose of personal property and to acquire, own, use, lease, operate and dispose of real property and interests thereon and to make improvements on such real property, including the reclamation, for port purposes, of foreshore and submerged lands within its territorial jurisdiction; which reclaimed land shall ipso facto be deemed transferred in ownership to the Authority; and to enter into contracts with any public or private entity for such reclamation under such terms and conditions as it may deem to be for the public interest: *PROVIDED, FURTHER, THAT EXISTING OR FUTURE FORESHORE LEASE AGREEMENTS (FLA) OR SIMILAR PERMITS DEVOTED TO PORT DEVELOPMENT OR PORT OPERATION SHALL BE TRANSFERRED TO AND OWNED BY THE AUTHORITY UPON THE EXPIRATION OF THE FORESHORE LEASE OR PERMIT;*

"(g) Purchase, hold, alienate, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bond, security or other evidences of indebtedness created by any other corporation or co-partnership of this or any other country, and while the owner of said stock, to exercise all the rights of ownership, including the right to vote thereon;

"(h) Exercise the right of eminent domain;

"(i) Exercise all other powers not contrary to law which may be necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments and, in general to exercise in connection with property within its control all powers which may be exercised by a natural or juridical person over its property and affairs;

"(j) Levy dues and impose rates and charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority, or any other organization concerned with port operations;

"(k) Make expenditures in foreign countries to pay commissions and hire or contract experts and consultants, both foreign and local;

"(l) Make expenditures for promotion of the business affairs of the Authority [, and];

"(m) [Exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Act.] EXERCISE POLICE AUTHORITY WITHIN THE PORTS ADMINISTERED BY THE AUTHORITY AS MAY BE NECESSARY TO CARRY OUT ITS POWERS AND FUNCTIONS AND ATTAIN ITS PURPOSES AND OBJECTIVES WITHOUT PREJUDICE TO THE EXERCISE OF THE FUNCTIONS OF THE BUREAU OF CUSTOMS AND OTHER LAW ENFORCEMENT BODIES WITHIN THE AREA. SUCH POLICE AUTHORITY SHALL INCLUDE THE FOLLOWING:

"(1) TO PROVIDE SECURITY TO CARGOES, PORT EQUIPMENT, STRUCTURE, FACILITIES, PERSONNEL AND DOCUMENTS: *PROVIDED*, HOWEVER, THAT IN THE PORTS OF ENTRY, PHYSICAL SECURITY TO IMPORT AND EXPORT CARGOES SHALL BE THE SOLE AUTHORITY OF THE BUREAU OF CUSTOMS;

"(2) TO REGULATE THE ENTRY TO, EXIT FROM, AND MOVEMENT WITHIN THE PORT OF PERSONS AND VEHICLES AS WELL AS THE MOVEMENT WITHIN THE PORT OF WATERCRAFT;

"(3) TO MAINTAIN PEACE AND ORDER INSIDE THE PORT, IN COORDINATION WITH THE LOCAL POLICE AUTHORITIES;

"(4) TO SUPERVISE PRIVATE SECURITY AGENCIES OPERATING WITHIN THE PORT AREA;

"(5) TO DEPUTIZE OTHER LAW ENFORCEMENT AGENCIES TO ASSIST THE AUTHORITY IN THE ENFORCEMENT OF ITS ORDERS, DIRECTIVES, POLICIES AND RULES AND REGULATIONS; AND

"(6) TO ENFORCE RULES AND REGULATIONS PROMULGATED BY THE AUTHORITY PURSUANT TO LAW.

"(N) CONTROL, REGULATE AND SUPERVISE PILOTAGE AND THE CONDUCT OF PILOTS IN THE PORTS WITHIN ITS TERRITORIAL JURISDICTION; AND

"(O) EXERCISE ALL THE POWERS OF A CORPORATION UNDER THE CORPORATION LAW INsofar AS THEY ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS ACT."

Sec. 2. Section 8 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 8. *Governing Body.* – The powers and functions of the Authority shall be vested in and exercised by a Cebu Port Commission composed of a Chairman, a Vice-Chairman and [five (5)] SEVEN (7) other Commissioners. The Chairman shall be the Secretary of the Department of Transportation and Communications or his duly designated undersecretary. [The Vice-Chairman, who shall be designated as the Cebu Port General Manager, shall be elected by the Commissioners from among themselves.] THE GENERAL MANAGER SHALL BE THE EX OFFICIO VICE-CHAIRMAN OF THE COMMISSION.

"THE GOVERNOR OF THE PROVINCE OF CEBU AND THE LOCAL CHIEF EXECUTIVE OF THE HIGHLY URBANIZED CITY OR INDEPENDENT COMPONENT CITY WHERE THE MAJORITY OF THE PORT FACILITIES WITHIN THE JURISDICTION OF THE COMMISSION ARE LOCATED SHALL BE EX OFFICIO MEMBERS.

"The FIVE (5) Commissioners shall be appointed by the President of the Philippines, UPON THE RECOMMENDATION OF THE GOVERNANCE COMMISSION FOR GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS (GCG), and shall represent the following sectors:

"(a) TWO (2) REPRESENTATIVES FROM THE [S]Ship owners and shipping operators;

"(b) TWO (2) REPRESENTATIVES FROM THE [C]Cargo-handling labor sector; and

"(c) ONE (1) REPRESENTATIVE FROM THE [B]Business sector."

Sec. 3. Section 9 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 9. *Powers and Functions of the Commission.* – The powers and functions of the Cebu Port Commission shall be as follows:

"(a) To manage, administer, operate, maintain, improve and develop, coordinate and otherwise govern the activities of all the ports within its territorial jurisdiction;

"(b) To investigate, prepare, adopt, implement and execute a comprehensive and orderly plan for the overall development of all ports within its territorial jurisdiction, and to update such plans, as may be warranted from time to time;

"(c) To raise revenues for the Authority through fees, tolls, charges, rentals and the like for the use of any property, equipment or facility owned or controlled by it;

"(d) To raise and administer, together with such revenues as may by law accrue to the Authority, capital outlays by means of loans from any local or foreign financial institution to finance its projects;

"(e) To determine by survey and establish by engineering design the exact location, system and character of any and all port facilities which it may own, construct, establish, effectuate, operate or control;

"(f) To provide and maintain port facilities including accessory buildings and installations within its territorial jurisdiction on its own or through the private sector;

"(g) To prescribe and enforce rules and regulations on the use of wharves, piers and anchorages by ships and other watercraft;

"(h) To determine the organization of the Authority, REORGANIZE OR ABOLISH OFFICES and create such functional units therein as it may deem necessary in the proper and efficient implementation of the functions and purposes of the Authority, including the appointment of officials and employees[, it being understood that the security of tenure of these workers shall be respected consistent with existing laws]: *PROVIDED*, THAT ANY OFFICIAL OR EMPLOYEE WHOSE POSITION MAY BE ABOLISHED BY REASON OF THE REORGANIZATION OF OFFICE SHALL BE ALLOWED TO RETIRE UNDER EXISTING RETIREMENT LAWS TO WHICH THEY ARE QUALIFIED: *PROVIDED, FURTHER*, THAT THOSE WHO ARE NOT QUALIFIED UNDER ANY EXISTING RETIREMENT LAW SHALL BE PAID SEPARATION BENEFITS IN ACCORDANCE WITH EXISTING LAWS, RULES AND REGULATIONS;

"(i) To define the duties and fix the compensation and benefits of the general manager, deputy general manager, port managers, and other officers of the Authority, in accordance with the rules and regulations of the Civil Service Commission and the Department of Budget and Management;

"(j) To REVIEW AND approve the annual [budget] ESTIMATES OF INCOME AND EXPENDITURES AND ESTIMATES OF CAPITAL EXPENDITURE of the Authority and/or such supplemental budgets thereof as may be submitted by the general manager from time to time; [and]

"(k) [To perform such other duties as may be necessary and convenient for the attainment of the objectives of the Authority.] TO DEREGULATE THE CARGO-HANDLING SERVICES TO ENHANCE GLOBAL COMPETITIVENESS;

"(L) TO ISSUE CEASE AND DESIST ORDERS AGAINST ANY PERSON OR ENTITY THAT OPERATES A PORT OR ENGAGES IN PORT OPERATIONS AND OTHER PORT-RELATED ACTIVITIES WITHOUT HAVING FIRST SECURED A PERMIT AND/OR ACCREDITATION FROM THE AUTHORITY OR IN VIOLATION OF THE RULES AND REGULATIONS OF THE AUTHORITY; AND

"(M) TO PERFORM SUCH OTHER DUTIES AS MAY BE NECESSARY AND CONVENIENT FOR THE ATTAINMENT OF THE OBJECTIVES OF THE AUTHORITY."

Sec. 4. Section 10 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 10. *Term of Office.* – The members of the Cebu Port Commission shall be appointed for a term of [three (3) years] ONE (1) YEAR, UNLESS SOONER

REMOVED FOR CAUSE: *PROVIDED*, HOWEVER, THAT THE APPOINTIVE DIRECTOR SHALL CONTINUE TO HOLD OFFICE UNTIL THE SUCCESSOR IS APPOINTED: *Provided, FURTHER*, That any person appointed to fill a vacancy shall hold office only for the unexpired term of the Commissioner whom he succeeds. THOSE SERVING IN AN EX OFFICIO CAPACITY SHALL SERVE AS MEMBERS OF THE COMMISSION THROUGHOUT THE DURATION OF THEIR TERM OF OFFICE."

Sec. 5. Section 12 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 12. *General Manager.* – The management of the day-to-day business and operations of the Authority shall be under the direction and control of the general manager WHO SHALL BE APPOINTED BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FROM A SHORT LIST OF RECOMMENDEES BY THE GCG. [He]THE GENERAL MANAGER shall have the following powers and duties:

"(a) To manage, direct and supervise the operations and internal administration of the Authority, subject to the control and supervision of the Commission;

"(b) To prepare all memoranda pertaining to each and every item in the agenda for the meetings of the Commission and to submit for the consideration thereof such proposals or recommendations which he believes to be necessary to carry out effectively and beneficially the business of the Authority;

"(c) To implement the policies and administer the measures approved by the Commission;

"(d) To devise the executive organization pattern of the Authority, submit from time to time to the Commission the corresponding organizational and functional charts, and enforce the executive elements thereof;

"(e) To appoint and employ the services of subordinate officials and employees, subject to the confirmation of the Commission;

"(f) To prepare and submit to the Commission budget proposals of all kinds; and

"(g) To perform such other duties and exercise such other powers as may be directed or authorized specifically by the Commission."

Sec. 6. Section 15 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 15. *Supplies and Services Other Than Personal.* – All purchases or contracts for services, except for personal services, entered into by the Authority shall be done only after public bidding therefor is held: *Provided*, That such bidding may NOT be required when an emergency, as explained and certified to by the general manager, requires immediate delivery of the supplies or performance of the services and the unit costs or prices of such emergency procurement do not exceed the latest costs or prices paid by the Authority for the same or similar goods or services: *Provided, further*, That the general manager shall report under oath to the Commission the details of any such emergency procurement within two (2) weeks after its consummation, including a statement of assurance that the transaction constitutes the best arrangement possible under the circumstances."

Sec. 7. Section 19 of Republic Act No. 7621 is hereby amended to read as follows:

"SEC. 19. *Bond Limits.* – The bonds that may be issued by the Authority shall in no case exceed the total [amount of one billion pesos (P1,000,000,000)] **VALUE OF ALL ITS EXISTING ASSETS**: *Provided*, That no single issue shall be made if at least seventy percent (70%) of the immediately preceding issue is not yet sold.

"The bonds shall be issued only in such amounts as will be needed at only one (1) integral operation not exceeding one (1) year duration, taking into account the state at which said bonds may be absorbed by the buying public and the fund requirements of the project ready for execution, and considering further a proper balance between productive and nonproductive projects so that inflation shall be held to a minimum."

Sec. 8. Insert new Sections 27, 28, 29, 30, 31 and 32 after Section 26 of Republic Act No. 7621 and redesignate Sections 27, 28 and 29 to Sections 33, 34 and 35. Sections 27, 28, 29, 30, 31 and 32 shall read as follows:

"SEC. 27. *MODE OF GRANTING CONTRACTS OR PERMITS.* – TO PROMOTE TRANSPARENCY, ALL CONTRACTS OR PERMITS FOR THE OPERATION AND MANAGEMENT OF CARGO-HANDLING SERVICES SHALL BE GRANTED BY THE AUTHORITY THROUGH PUBLIC BIDDING IN ACCORDANCE WITH REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE "GOVERNMENT PROCUREMENT REFORM ACT": *PROVIDED*, THAT THE AUTHORITY MAY GRANT PROVISIONAL CARGO-HANDLING PERMITS WITH A TERM NOT TO EXCEED ONE (1) YEAR IN CASE OF EMERGENCIES OR WHEN DEEMED TO BE FOR PUBLIC INTEREST OR BENEFIT, SUBJECT TO THE GUIDELINES ISSUED BY THE AUTHORITY."

"SEC. 28. *WITHDRAWAL OF EXEMPTION FROM DUES, FEES AND CHARGES.* – NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, EXEMPTION FROM DUES, FEES, CHARGES AND OTHER SUMS GRANTED TO OR PRESENTLY ENJOYED BY ANY PERSON, WHETHER NATURAL OR JURIDICAL, IS HEREBY WITHDRAWN UPON THE EFFECTIVITY OF THIS ACT."

"SEC. 29. *EXEMPTION/REDUCTION OF DUES, RATES OR CHARGES.* – THE CEBU PORT COMMISSION MAY WAIVE OR REDUCE DUES, RATES OR CHARGES BEING IMPOSED, UNDER SUCH TERMS AND CONDITIONS AS IT MAY DEEM NECESSARY."

"SEC. 30. *PENALTY.* – ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ACT SHALL BE PUNISHED BY A FINE OF NOT LESS THAN FIVE THOUSAND PESOS (P5,000.00) BUT NOT MORE THAN TWO HUNDRED THOUSAND PESOS (P200,000.00) OR SUFFER IMPRISONMENT OF NOT LESS THAN ONE (1) MONTH BUT NOT MORE THAN SIX (6) MONTHS, OR BOTH, AT THE DISCRETION OF THE COURT. IN CASE THE VIOLATION IS COMMITTED BY A CORPORATION, COMPANY OR ENTITY, ITS DIRECTORS, OWNERS AND/OR MANAGERS SHALL LIKEWISE BE LIABLE FOR SUCH VIOLATION."

"SEC. 31. *PROHIBITION TO RESTRAINING ORDER/ INJUNCTION.* – NO OFFICE OR COURT, EXCEPT THE SUPREME COURT, MAY ISSUE A TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION OR ANY INJUNCTIVE WRIT AGAINST THE AUTHORITY IN CONNECTION WITH ITS OPERATION AS A PUBLIC UTILITY, INCLUDING ARRASTRE AND STEVEDORING, AND AS REGARDS ANY OF ITS INFRASTRUCTURE PROJECTS."

"SEC. 32. *TRANSITORY PROVISION.* – THE EX OFFICIO MEMBERS SHALL ASSUME OFFICE IMMEDIATELY UPON THE EFFECTIVITY OF THIS ACT. THE INCUMBENT COMMISSIONERS SHALL CONTINUE TO SERVE AS SUCH UNTIL REPLACED OR REAPPOINTED BY THE PRESIDENT OF THE PHILIPPINES FROM A SHORT LIST PREPARED BY THE GCG."

Sec. 9. Separability Clause. If any provision of this Act or the application of such provision to any person or circumstance is declared unconstitutional, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

Sec. 10. Repealing Clause. All laws, executive orders, letters of instruction, rules and regulations or provisions thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

Sec. 11. Effectivity Clause. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,