NITIJELA OF THE MARSHALL ISLANDS
24th CONSTITUTIONAL REGULAR SESSION, 2003 BILL NO. 124ND2

P.L. 2003-81

AN ACT

To establish the RMI Ports Authority; and to transfer all assets and liabilities of the current Marshall Islands Ports Authority and the Marshall Islands Airports Authority to the new Authority; and to repeal the Marshall Islands Ports Authority Act, 1999 and the Marshall Islands Airports Authority Act, 1999.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS

PART I- PRELIMINARY

Section 1. **Short Title.**

This Act may be cited as RMI Ports Authority Act, 2003.

Section 2. **Purpose.**

It is the intention of this legislation to integrate the Marshall Islands Ports Authority and the Marshall Islands Airports Authority into a single ports authority, to be known as the RMI Ports Authority, responsible for the establishment, maintenance and operation of all ports in the Marshall Islands.

Section 3. **Interpretation.**

In this Act, unless the context otherwise requires:

(a). "air navigation facility" means a facility or facilities as defined under the Civil Aviation Safety Act, 1988.

(b). "Airport security" means combination of measures, human and material resources intended to safeguard airport facilities, personnel and customers against unlawful acts.

(c) "assets" mean funds, fund accounts, investments, estates, real or personal property, interests in real or personal property, whether actual or

contingent or prospective, and includes all rights, powers, privileges and immunities;

(d). "Authority" means the RMI Ports Authority as established under this Act

(e). "Aviation security" means a combination of measures, human and material resources intended to safeguard civil aviation against acts of unlawful interference;

(f). "Board" means the Board of Directors of the Authority as set up under this Act.

(g) "Board member" means all members of the Board of Directors of the Authority, including the Chairman;

(h) "Charge" means a charge, rate of fee imposed under this Act.

(i) "Director" means the person holding the position, or acting in the position of the Director of the Authority, as provided for under this Act.

(j) "family" within the meaning of Section 12 herein refers to a Board member's parents, spouse or children.

(k). "Fund" means the Marshall Islands Ports Authority Fund established under this Act.

(l). "Government" means the Government of the Republic of the Marshall Islands;

(m). "Government Agency" means any corporation or statutory body established by the Government for the purpose of development generally or with respect to any particular locality or subject;

(n) "harbor master" the person appointed to hold the post of harbor master as provided for under this Act.

(o) "Liabilities" mean all liabilities, duties and obligations, whether actual or prospective;

(p) "Minister" means the Minister of Transport and Communications.

(q) "net profit" refers to the amount shown in the audited accounts of the Authority for a particular year as net profit.

(r) "ports" a reference to ports includes reference to;

(i). the area known as the port at Majuro, Ebeye and Jaluit or any other publicly owned port in the Republic as may be declared by the Minister to be such.

(ii). the area consisting the airport in Majuro and any other publicly owned and operated airports in the Republic, as may be declared by the Minister as such.

(iii) the facilities and other structures situated in the areas of these ports and airports.

(s) "Secretary" as referred to under section 65 herein, Means the Secretary for the Ministry of Transport and Communication.

Section 4. **Repeal**

Subject to section 66 herein, the Marshall Islands Ports Authority Act, 1999 and the Marshall Islands Airports Authority Act, 1999, and all existing amendments thereto are hereby repealed.

PART II – ESTABLISHMENT OF THE AUTHORITY

Section 5. **The Authority.**

(1) The RMI Ports Authority is hereby established.

(2) The Authority:

(a) is a body corporate with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold, charge, and dispose of property; and

(d) may sue and be sued in its corporate name.

(3) Common Seal:

(a) all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed;

(b) the common seal of the Authority shall be in the custody of the Authority;

(c) the common seal of the Authority may only be altered in such a manner as may be determined by the Authority;

(d) the common seal of the Authority shall not

be affixed to any document except in the presence of;

(i). the chairman of Board, or

(ii). a member of the board, or

(iii). an officer of the Authority authorized by the Board to act on behalf of the Chairman.

Section 6. **Functions of the Authority**

(1) The RMI Ports Authority shall have the following functions;

(a) to establish, maintain and operate port facilities at its ports;

(b) to provide facilities and services at its ports ;

(c) to operate or assist in operating landing facilities in the outer islands;

(d) to provide navigational aids and to regulate the movement of aircraft and ships in and around the ports;

(e) to provide security at its ports;

(f) to provide services and facilities to ships and/or aircrafts using its ports;

(g) to support the overall government strategic development of civil aviation and shipping plans within the Republic.

(h) to perform other functions related to the use of its ports.

(2) In addition to the above, the Authority is authorized to;

(a) carry on commercial activities at or in relation to the Ports;

(b) to extend cooperation and assistance to the Director of Civil Aviation in matters relating to the operation of airports;

(3) In performing its functions, the Authority must ensure that it embarks on policy that is commercially sound and in line with the goals and priorities of the National Government.

(4) In the performance of its functions the Authority must comply with the provisions of the laws of the Republic, in particular, the Environmental Protection Act and the Civil Aviation Safety Act, 1988.

(5). The functions of the Authority do not extend to;

(s) aviation safety;

(ii) the provision of non-visual air navigation facilities, communication services, or meteorological services and facilities.

Section 7. **Powers of the Authority**

(1) Subject to this and any other law, the Authority shall have all the powers as are necessary or convenient for carrying out its functions.

(2) Without prejudice to the generality of the powers conferred by Subsection (1) of this Section, the Authority may:

(a) Enter into contracts;

(b) acquire by lease, sublease, easement, or as otherwise allowed by law, any improved or unimproved land or interest in land, for its purposes under this Act;

(c) erect any building or structure required by

the purposes of this Act on land belonging to or administered by the Authority;

(d) alter or reconstruct any building or property belonging to or administered by the Authority;

(e) dispose of by sale, lease, sublease, or easement, any building or interest therein;

(f) dispose of by lease, sublease, or easement any land or interest therein;

(g) acquire by purchase, lease, or sublease any personal property or license which the Authority considers necessary or convenient for carrying out its purposes;

(h) dispose of by sale, or any other manner allowed by law, any personal property or license of the Authority;

(i) borrow money and accept advance, contributions, gifts, or other forms of assistance;

(j) invest or reinvest its funds from time to time;

(k) take and hold any property as security for the payment of funds loaned or invested;

(l) insure or provide for the insurance of any property, project, or operation against any or all risks;

(m) appoint agents, attorneys or accountants in the Islands or abroad for the purposes of the Authority .

Section 8. **The Water Reservoir**

(1) In the performance of its functions, the Authority must take all practical steps to prevent the pollution of the water reservoir adjacent to the Amata Kabua International Airport in Majuro.

(2) In particular, the Authority must;

(a) prevent fuel, oil and other petroleum products spills;

(b) develop a contingency plan in conjunction with the Environmental Protection Authority, the Majuro Water and Sewer Company and other relevant government agencies for the prevention of fuel, oil and other petroleum product spills, and for an adequate response in the event of a spill;

(c) immediately notify the Majuro Water and Sewer Company and EPA of any fuel, oil or other petroleum product spills;

(d) allow Majuro Water and Sewer Company access on the runway at reasonable times to conduct their duties in relation to the water reservoir;

Section 9. **Liability of the Authority**

(1) The Authority is covered under the Government Liability Act (3 MIRC Chapter 10).

(2) The Authority is not liable for the pollution of the water reservoir by acts beyond the control of the Authority.

PART III – ORGANIZATION OF THE AUTHORITY.

Section 10. **The Board of the Authority**

(1) The powers and duties of the Authority are hereby vested in and shall be exercised by a Board of Directors. The Board shall consist of 7 members appointed by Cabinet.

(2) The Cabinet shall designate as Chairman, any one of the members of the Board.

Section 11. **General Policy**

The Minister may advise the Board in writing of the general policy to be adopted by the Authority.

Section 12. **Conflict of Interest**

A member has a conflict of interest in a subject matter before the Board if the subject matter relates in anyway to;

(a) property the member directly or indirectly controls or owns;

(b) property directly or indirectly owned by a person who is part of the member's family;

(c) property in which the member holds an interest, whether through trust or otherwise.

Section 13. **Disclosure of Conflict**

(1) A member of the Board who has a conflict of interest with any matter before a meeting of the Board shall;

(a). Disclose or declare the conflict to the members of the Board at such meeting; and

(b). not participate in the deliberations on the

matter; and

(c) not vote on the matter.

(2). A member who may have a conflict of interest on a subject matter before the Board only by reason of his expertise or professional field;

(a) may declare the conflict; and

(b) may participate in the deliberations; and

(c) may vote on the matter only with the approval of the Board.

(3). A disclosure under Subsections (1) and (2) above shall be recorded in the minutes.

(4) The Authority may enter into a contract with a member, or a company in which a member holds an interest only if such member or company was chosen after a public competitive tender process, and provided that the decision of the Board was arrived at in conformity with the provisions of this section and section 12 above.

Section 14. **Meetings of the Board.**

(1) The Board shall meet at any time or place as the business of the Authority requires, and at least once every two months;

(2) The Chairperson may convene a meeting of the Boards at any time, or upon receiving a written request signed by at least two members of the Board. All meetings of the Board shall be held in the Republic.

(3) The Board may invite persons with professional or technical expertise to advise the members on any matter before the Board.

(4) The Board shall determine its own procedures.

Section 15. **Notice of Meetings of the Board**

The Chairman, through the Director of the Authority shall notify all members of the date and venue of the meeting, at least 5 working days before the date of the meeting.

Section 16. **Voting**

All questions before the Board shall be decided by a simple majority of the members present and voting. The Chairperson shall also be voting member but shall only cast his vote in the event of tie.

Section 17. **Quorum**

Three members shall constitute a quorum. If meeting fails to convene a quorum, the Chairman shall adjourn the meeting to another date no earlier than five (5) working days, and shall notify the members accordingly.

Section 18. **Absences from Board Meetings**

(1) The Chairperson shall notify the Minister and the Minister may grant the Chairman a leave of absence from a meeting of the Board.

(2) All other members of the Board may be granted leave of absences from a meeting of the Board by the Chairperson.

(3) In the event that the Chairperson is absent from a meeting of the Board, the members present shall appoint one member to preside as Acting Chairman for the time being. The Acting Chairman shall have the full powers of the Chairperson.

Section 19. **Vacation of Office.**

(1) A member of the Board vacates his office;

(a). upon death;

(b). by submitting a letter of resignation;

(d) by ceasing to hold the office which was the basis for his or her appointment; or

(e) by being removed from office as provided for for under this Act;

(2) A resignation under this Section shall take effect on the date received by the Minister or on such a later date that may be agreed upon by the Minister and the member.

Section 20. **Removal from Office**

(1). The Minister may, for cause,

(a) remove a member of the Board from office; or

(b) suspend a member of the Board from duties, pending a final decision;

(2) The grounds for which a member may be removed or have his appointment terminated include the following;

(a) the member is elected to the Nitijela;

(b) the member is employed by the government;

(c) the member becomes of unsound mind, bankrupt or convicted of crime within or outside the Republic;

(d) the member is absent from three consecutive meetings of the Board without being granted leave;

(3) In the event of the vacation of office by any member, the Minister may appoint another person to serve out the un-expired term of the member who has vacated office.

(4) If any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from the country, or any other cause, for a period of six months or more, the Minister may appoint another person to act in his place for the time being.

Section 21. **Delegation by the Board and Director**

(1) The Board may, by written instrument, delegate any of its powers and functions to the Director. The delegation may relate:

(a) to the whole or any part of the operations

of the Authority, and specified in the instrument of delegation; or

(b). to all activities conducted by the Authority

or in which the Authority is concerned, or to such of them as are specified in the instrument of delegation.

(2). A delegation under Subsection (1) of this Section, may be made subject to limitations and conditions.

(3) A delegation under this Section shall be revocable at will by written instrument, and no such delegation shall prevent the exercise or performance or any power or function by the Board.

(4) The Director may, be written instrument delegate part or all of his functions to an employee of the Authority, provided that such instrument shall not purport to cover a power or function that had been delegated to the Director by the Board;

Section 22. **Confidentiality**

A member of the Board may not disclose any information about the business of the Authority except as permitted by law.

Section 23. **Compensation for Members of the Board.**

(1) Members of the Board who are not employees of the Public Service shall be entitled to receive such compensation for their services as the Board may determine.

(2) Members of the Board shall be entitled to receive per diem and travel expense at such rates and upon such terms and conditions as may be determined by the Board when traveling on business of the Authority. Such rates shall however, not exceed the government rates.

Section 24. **Misconduct in Public Office.**

A failure by a member of the Board to comply with Sections 12 and 13 of this Act shall be deemed to be misconduct in public office within the meaning of 31 MIRC, Chapter 1, Part XX, Section 46.

Section 25. **Application of Bribery Law.**

Every member of the Board and employee of the Authority shall be subject to the provisions of 31 MIRC, Chapter 1, Part VI, section 18.

Section 26. **Immunity for Official Acts.**

(1) No suit or prosecutions shall lie:

(a) against the Authority for any act which in good faith is done, or purported to be done, by the Authority under this Act, or any regulation made under this Act; or

(b) against any member of the Board, officer, servant, or agent of the Authority for any act which in good faith is done, or purported to be done, by him under this Act, or any regulations made under this Act, or on the direction of the Authority.

(2) No writ against person or property shall be issued against a member of the Board in any action brought against the Authority.

PART IV – STAFF OF THE AUTHORITY

Section 27. **Article VII of the Constitution.**

Article VII of the Constitution shall not apply or relate to the Authority, its Board or employees.

Section 28. **Director, RMI Ports Authority**

(1) There is hereby created, the Office of the Director, RMI Ports Authority.

(2). The Director shall be responsible for;

(a) the overall day to day administration and the functions of the Authority;

(b) carrying out functions delegated by the Board or under this Act;

(3) The Board must publicly advertise the position of the Director and select from amongst the applicants, the most qualified person, to fill the post of the Director.

Section 29. **Other Staff of the Authority**

The Board may also employ technical, professional, clerical, ancillary and such other staff members as may be necessary to carry out the functions of the Authority.

PART V - FINANCE

Section 30. **The RMI Ports Authority Fund**

The RMI Ports Authority Fund is hereby established. The RMI Ports Authority Fund shall be a fund other than the Marshall Islands General Fund.

Section 31. **Payments into the Fund**

(1). Notwithstanding anything to the contrary, there shall be paid into the Fund:

(a). funds appropriated by the Nitijela for the purposes of the Authority, either generally or relating to any particular purpose;

(b). funds received by the Authority through loans, advances, contribution, gifts, or assistance

(c). funds received by the Authority as profits, dividends or raised by the Authority through sale, mortgage, lease, sublease, easement, or otherwise from any other source, including repayment of loans and income from any business or other enterprise; and

(d) Funds in the form of charges or rates levied by the Authority on the users of the ports and its facilities;

(e) any other funding received by the Authority.

(2). The Authority shall separately account for each of the sources of money referred to in Subsection (1) of this Section.

Section 32. **Budget**

The Board shall approve and adopt a budget for each fiscal year, setting out projected revenues and estimated expenditures for the financial year.

Section 33 **Payments out of the Fund**.

(1) Payments may be made out of the Fund in any financial year, only in accordance with the approved budget, and only for the following purposes;

(a) to carry out the purposes of the Authority;

(b) to pay the costs of authorized expenses of the Authority;

(c) to provide working capital, petty cash, and similar purposes; and

(d) to pay the costs of administering this Act and any other Act that confers any power or duty on the Authority.

(2) No funds shall be expended from the Fund in any fiscal year except as approved by the budget for that fiscal year, except in the case of unforeseen circumstances.

(3) In the case of unforeseen circumstances, any expenditure not specified in the budget must first be approved in writing by the Board.

(4) Money received by the Authority for a specific purpose may only be expended for that particular purpose.

Section 34. **Borrowing and Limits of Borrowing.**

(1) With the approval of the Cabinet and subject to such conditions and within such limits as the Cabinet may impose, the Authority may borrow money from the government, a bank, or any other lending institution or individual necessary and convenient to carry out its purposes.

(2) Except as provided in Subsection (3) of this Section, the Authority may accept advances, grants, contributions, gifts, and other forms of financial assistance to carry out its purposes from any person or organization in the Marshall Islands and abroad.

(3) No money may be borrowed nor may any advance grant, contributions, gift, and other assistance be accepted by the Authority from any source outside the Marshall Islands except with the consent of Cabinet;

(4) Where any money is borrowed or any advance, grant, contribution, gift or assistance is received for a specific purpose, or subject to any conditions as to its use, it may be expended or used only for the purpose or subject to those conditions.

Section 35. **Bank Accounts**

(1). The Authority shall open an account, or accounts or invest in any banking institution in the Republic, provided that the Banking Commissioner certifies to the Board in writing that such financial institution owns sufficient assets to cover the full amount of the deposit or investment.

(2). any funds (other than petty cash) withdrawn from the Fund and not immediately expended, shall be deposited in an account opened under Subsection (1) of this Section.

Section 36. **Accounts and Records**

(1). The Authority shall maintain proper accounts and records, in a form satisfactory to the Secretary of Finance, for the following:

(a) the Fund;

(b) the payment of monies into the Fund; and

(c). expenditures of monies from the Fund; and

(d). the property and financial transactions of the Authority.

(2). The accounts and records referred to in this section shall be subject to audit by the Auditor-General as provided for in Article VII, Section 15 of the Constitution.

(3). The audited accounts of the Authority shall be submitted to the Nitijela by the Minister of Finance pursuant to Article VIII, Section 5(4), of the Constitution.

Section 37. **Investment**

With the approval of the Board, money in the Fund, or withdrawn from the Fund and not immediately expended, may be invested as follows:

(a) on deposits or on call with a bank or other financial institution as provided for in this Act; or

(b) in any other manner authorized by the Constitution or law for investment of public funds;

Section 38 **Exemption from Tax**

(1) Notwithstanding the provisions of any other law to the contrary, and except as provided under subsection (2) herein the income, property and transactions of the Authority are not subject to tax.

(2) This exemption does not affect the liability of any party who enters into an agreement or other transaction with the Authority.

PART VI – CHARGES, RATES AND FEES

Section 39. **Fixing Charges, Rates and Fees**

(1) The Authority is hereby authorized to fix charges, rates or fees for services provided by the Authority at all ports and facilities under its control, pursuant to this Act.

(2) In fixing such charges, rates or fees, the Authority must;

(a) submit the proposed charges, rates or fees to the Minister for Transport and Communication for approval;

(b). to publish the approval of such charges, rates and fees in two consecutive issues of a newspaper regularly circulating within the Republic of the Marshall Islands.

(3). The charges and rates shall take effect on a date to be set by the Minister.

(4) The Authority may impose charges, rates of fees for the following services;

(a) port entry;

(b) pilotage;

(c) general navigation services;

(d) dockage;

(e) site occupation;

(f) wharfage;

(g) berthing;

(h) anchorage;

(i) storage;

(j) hire of Authority equipment;

(k) access to port areas;

(l) aircraft landing services;

(m) provision of navigation lights and other general navigation services;

(n) airport terminal services;

(o) ground handling and other services for aircrafts;

(p) any other services provided by the Authority in the course of its operations;

(5) Charges may be calculated based upon the following considerations;

(a) gross tonnage of the vessel concerned;

(b) quantity of cargo and the number of passengers on a vessel or aircraft;

(c) the term of the service;

(d) maximum take-off weight of the aircrafts

concerned;

(e) any other special considerations relevant for the purposes of the Authority.

PART VII- RECOVERY AGAINST PERSONS, OWNERS AND OPERATORS OF VESSELS AND AIRCRAFTS

Section 40. **Recovery of Unpaid Charges**

Unpaid charges, rates or fees may be recovered by the Authority against vessel and aircraft owners and operators, persons, corporate or natural, for the use of ports services and facilities.

Section 41. **Detention of Vessels**

If an amount of a charge, rate or fee for a service provided for a vessel remains un-paid, the Authority may detain the vessel or its cargo or any part of its cargo, in port, until;

(a). the charge, rate or fee is paid;

(b). security for the payment of such charge, fee or rate has been provided to the Authority.

Section 42. **Proceedings Against Vessels**

(1) The following amounts due under this Act be collected by proceedings in rem against a vessel;

(a) an amount of charge payable for service provided for the vessel;

(b) an amount of charge payable for service provided for cargo that has been unloaded onto, or loaded from, the vessel;

(c) a penalty assessed against the vessel for an infringement, pursuant to the provisions of this Act.

(2) This Act does not prevent the recovery of unpaid charges, rates or fees in any other manner available to the Authority.

Section 43 **Liens against Aircrafts**

(1) If an amount of a charge, rate or fee that relates to an aircraft remains unpaid for 120 days after becoming due the Director may enter details of the charge, rate of fee and the aircraft in the Register of Liens.

(2) When the entry is made a statutory lien over the aircraft vests in the Authority.

(3) The lien covers;

(a) the outstanding amounts of the charges;

(b) any future outstanding amounts of charge in respect of the aircraft; and

(c) the amount of any civil penalty payable by the owner or operator of the aircraft;

(4) The Director must forward details of the lien to the Director of Civil Aviation as soon as practicable after making the entry.

Section 44 **Effect of Liens**

(1) The lien serves to preserve and secure the priority interest of the Authority in the assets or proceeds from the sale of an aircraft;

(a) after any secured interest that existed

prior to the date of the lien;

(b) over any secured interest acquired after the date of the lien;

(c) over any unsecured liens;

(3) A lien ceases to have any effect when;

a. all outstanding charges, rates or fees have been satisfied in full or the aircraft has been sold to satisfy its creditors;

Section 45 **Notice of Liens**

(1) As soon as practicable after the Director makes an entry in the Register that a lien has been imposed or has ceased, he or she must;

(a) publish notice in the Gazette and in a newspaper circulating in the Republic stating details of the aircraft, the name and address of its owners or operators, the date of the lien and the amount of charges outstanding; and

(b) take all steps necessary to serve such notice on the owners or operators of the aircraft, or on any other person the Director believes holds an interest in the aircraft.

(2). Failure to comply with subsection (1) above does affect the validity of the lien.

Section 46. **Register of Liens**

The Authority shall establish and maintain a register of liens and such register shall be available for inspection by members of the public during normal working hours.

Section 47. **Seizure of Aircrafts**

(1) If an amount covered by a lien remains outstanding at the end of 6 months after the lien was imposed, the Director may;

(a) seize the aircraft;

(b) keep possession of the aircraft until all outstanding amounts have been settled;

(2) The Director must take all reasonable steps to give notice of the seizure to the owners or operators of the aircraft.

Section 48. **Insurance for Seized Aircraft**

The Authority must insure an aircraft it has seized, against loss or damage, whilst it is in the custody of the Authority or its authorized agent. The amount of the premium is to be added onto the amount of outstanding charges on the aircraft.

Section 49. **Sale of Aircraft**

(1) The Authority may sell a seized aircraft to recover any amount due and outstanding and covered by the lien.

(2) Before selling the aircraft, the Authority must give at least 30 days notice to the owners and operators of the aircraft, and any other person the Director believes has an interest in the aircraft.

(3) Any balance remaining from the proceeds after that satisfaction of the lien shall be remitted to the owners or operators of the aircraft.

Section 50. **Exemptions**

(1) Persons, vessels or aircrafts which the Authority is required to exempt under the Republics international obligations are exempt from charges, rates or fees under this Act.

(2) The Director must publish a list of the classes of persons, vessels or aircrafts that are exempt from the application of charges, rates or fees under this Act.

PART VIII – ENFORCEMENT

Division 1. Powers of the Director

Section 51 **Ports**

A reference to a port means;

(a) the areas known as ports of at Majuro, Ebeye and Jaluit and any other publicly owned and operated port as may be designated by the Minister;

(b) the Amata Kabua International Airport and any other publicly owned and operated airport as may be designated by the Minister;

(c) the facilities and other structures situated in the areas of these ports and airports.

Section 52 **Director to issue instructions**

(1) The Director or an authorized employee of the Authority may give instructions to a pilot of an aircraft or the master (captain) of a vessel or the owners and operators of vessels and aircrafts about;

(a) procedures for the movement, berthing or mooring of a vessel at any of the ports in the RMI;

b. the procedures for the movement or parking

of an aircraft in any port in the RMI

(c) the discharge or the loading of passengers or cargo at any ports in the RMI;

(c) the movement of vehicles or personnel within the area of a port in the RMI;

(2) Instructions anticipated under subsection (1) herein must not extend to matters that are within the responsibility of the Director of Civil Aviation.

Section 53 **Powers of Entry**

The Director or an authorized employee of the Authority may;

(a) enter an aircraft, vessel or a warehouse for the purposes of inspecting the vessel, aircraft or warehouse and any goods or cargo contained therein in order to determine the proper charges, rates or fees payable to the Authority;

(b) enter any other building to ascertain the extent that charges have been properly paid to the Authority.

Division 2. Criminal Penalties

Section 54. **Refusing to Provide Information.**

(1) Any person who refuses to give the Director information that such person is required to provide under this Act, or any regulations made hereunder, with respect to;

(a). aircrafts or vessels arriving or departing to or from any ports in the RMI;

(b). passengers or goods and cargo loaded or

discharged at a port in the RMI;

is guilty of an offense, and upon conviction, shall be liable to a term of imprisonment not exceeding six (6) months, or a fine not exceeding five hundred dollars ($500.00), or both.

Section 55. **Discharge of Toxic Material**

(1). A person who willfully or negligently permits the discharge of noxious material;

(a) onto any airport runway or surrounding area;

(b) into the lagoon at any seaport or surrounding area;

shall be guilty of an offense and upon conviction shall be liable for term of imprisonment not exceeding six (6) months or a fine in an amount not exceeding five hundred dollars ($500.00), or both.

Section 56. **Failure to Comply with Directions**

A person who refuses or fails to comply with a lawful direction of or a requirement of the Director relating to his powers under this Act, is guilty of an offense, and upon conviction, shall be liable for a term of imprisonment not exceeding six (6) months, or fine in an amount not exceeding five hundred dollars ($500.00), or both.

Section 57. **Unlawful entry**

Any person, who;

(a) without authority, willfully enters an area of a port; or

(b) without authority, enters an area of the port that has been designated by the Authority as a restricted area;

is guilty of an offense and upon conviction, shall be liable for a term of imprisonment for a term not exceeding twelve (12) months, or a fine not exceeding one thousand dollars ($1,000.00), or both.

Section 58. **Port Infringement Notice**

(1) Where the Director or other staff members of the Authority has reasonable cause to believe that a person, captain, master, pilot, owner or operator of a vessel or aircraft has committed an offense as set out under this Division, he or she may cause to be served on the person, captain, master, pilot or operator of the vessel or aircraft, port infringement notice.

(2) A port infringement notice must;

(a) state the name of the person who served the notice;

(b) state the nature and the details of the infringement alleged;

(c) set out the penalty for the infringement and a demand for payment of the penalty.

(3). If the matter is disputed, the Attorney General's Office may commence proceedings in the courts of the Republic to recover any such penalties from the infringer.

Division 3. Civil Penalties

Section 59 **Violations of the Act or Regulations**

(1) A person who violates a provision of this Act or any Regulations made hereunder, shall be liable to a civil penalty not exceeding one thousand dollars ($1,000.00) for each **day** the violation continues.

(2) The Attorney General's Office may commence proceedings in the courts of the Republic to recover all penalties assessed under this section.

PART IX – MISCELLANEOUS

Section 60 **Corporate Plan**

(1) Before the start of each financial year, the Authority must develop and submit to the Minister for Transport and Communications a corporate plan covering the next three years. The plan must include;

(a) a forecast of the Authorities receipts and expenditures;

(b). the Authority's financial targets;

(c). the performance indicators it has adopted;

for the next three years.

(3) upon approval of the Plan, the Authority must carry out its functions in accordance with the Plan until a new plan has been approved.

Section 61. **Annual Reports**

(1) The Board must submit to the Minister a report on the operations of the Authority, no later than six (6) months after the end of each financial year.

(2) The report must include;

(a) an evaluation of the Authority's overall performance against performance indicators set out in the Corporate Plan for the financial year;

(b) the audited accounts of the Authority for the financial year;

(3) The Minister shall;

(a) present such annual report to the Nitijela no later than the 25th sitting day of the Nitijela;

(b) ensure that copies of the Report are available to the public after the report has been tabled in the Nitijela;

Section 62. **Other Reports**

(1) During the first two years of its operations, the Board shall submit to the Minister, a quarterly report on the operations of the Authority;

(2) Such a report shall be submitted no later than 14 days after the end of each quarter.

Section 63 **Transfer of Assets, Liabilities and other Responsibilities**

On the effective date of this Act, all identified assets, liabilities and other responsibilities of the;

(a) Marshall Islands Ports Authority under the Marshall Islands Ports Authority Act, 1999 and any other Act; and

(b) Marshall Islands Airports Authority, under the Marshall Islands Airports Authority Act, 1999 and any other Act;

are hereby transferred to and shall become the assets, liabilities and responsibilities of the RMI Ports Authority.

Section 64. **Regulations**

The Secretary, may with the approval of Cabinet, promulgate rules and regulations not inconsistent with this Act with respect to the following;

(a) ports security;

(b) movement of people, vehicles, aircraft or vessels in the port areas;

(c) loading and unloading of passengers and cargo at the port areas;

(d) the prevention and containment of fuel and other petroleum product spills at the port areas;

(b) the erection of private wharves and docks;

(c) the use of anchorages, moorings, wharves and docks;

(d) the information to be provided to masters and owners of vessels arriving and departing from the ports and about the goods discharge or loading at such ports;

(g) the amount of charges, rates or fees payable for services provided by the Authority;

Section 65. **Transition**

(1) The Marshall Islands Ports Authority, the Marshall Islands Airports Authority and the Secretary of Transport and Communications and the responsible government agencies are hereby accorded a six month transition period, to allow for organization and the eventual establishment of the RMI Ports Authority. Such six month

period shall begin on the effective date of this Act. The Ports Authority and the Airports Authority shall continue to operate as separate entities within this transition period.

(2) All rules and regulations, charges, rates and fees, promulgated under the Marshall Islands Ports Authority Act, 1999 and the Marshall Islands Airports Authority Act, 1999, and currently in force, shall remain in effect throughout the transition period or until such time as amended, modified or repealed by the Secretary, with the approval of Cabinet.

Section 66 **Effective Date.**

This Act shall take effect on the date of certification in accordance with Article IV, Section 21 of the constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

(1) that the above Nitijela Bill No. 124 ND-2 was passed by the Nitijela of the Marshall Islands on the 19th day of September, 2003; and

(2) that I am also satisfied that Nitijela Bill No. 124 ND-2 was passed in accordance with the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk of the Nitijela this 3rd day of December, 2003.

Attest:

BILL NO: 124ND2

P. L. 2003-81

Litokwa Tomeing,
Speaker
Nitijela of the Marshall Islands

Joe E Riklon
Clerk,
Nitijela of the Marshall Islands