



The Senate
NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. BOX 500129
SAIPAN, MP 96950

STANDING COMMITTEE REPORT NO. 23-122
Date: December 31, 2024
RE: House Bill No. 23-120, HD1

Honorable Edith E. DeLeon Guerrero
President of the Senate
Twenty-Third Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Madam President:

Your Committee on Fiscal Affairs, to which was referred House Bill No. 23-120, House Draft 1, entitled:

“To impose a 3% surtax on gross revenues derived from non-residential construction projects that cost three hundred fifty thousand dollars or more,”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion and deliberation, your Committee recommends the passage of the proposed legislation in the form of House Bill No. 23-120, House Draft 1, Senate Substitute 1.

II. ANALYSIS:

A) Purpose:

The purpose of House Bill No. 23-120, HD1 is to impose a 3% surtax on gross revenues derived from non-residential construction projects that cost three hundred fifty thousand dollars or more.

B) Committee Findings:

Your Committee finds that during deliberation of the FY 2024 Budget, both the Senate and House Conferees agreed to collaboratively consider legislative action on proposed tax legislation in an effort to address the limited source of revenue for the CNMI government. In September, the legislature transmitted House Bill No. 23-74, HD1, SS1 that proposed an additional tax of 3% on gross revenue directly derived from construction activities in excess of \$350,000 except for construction relative to residential housing. However, on October 28, 2024 Governor Arnold I. Palacios notified the Legislature he vetoed House Bill No. 23-74, HD1, SS1. In his message, Governor Palacios stated that the proposed legislation “is insufficiently protective of the reliance interests of contractors which entered into construction contracts prior to the bill’s effective date. Retroactively imposing new taxes on vested contractual interests is unfair and may be unlawful”. To address the concern raised, a new proposal was drafted to clarify the intent of the proposed 3% construction tax as reflected in House Bill No. 23-120, HD1.

On December 30, 2024, your Committee met to review the proposed draft in comparison to the previous construction tax proposal. Based on the Committee’s review, House Bill No. 23-120, HD1:

1. Maintained the construction project threshold at \$350,000.00;
2. Maintained the exception of residential housing construction projects from this new tax proposal;
3. Clarified the definitions for general contractor, residential housing, and subcontractor;
4. Clarified that the 3% construction surtax would be imposed if any change orders or modifications initiated, executed, or effective after January 2025 that result in contracts meeting the scope of the qualifying construction project. This would also apply retroactively to contracts prior to January 2025 that did not originally meet the scope as a qualifying construction project; and
5. Established a special Gross Revenues from Qualifying Construction Projects (GRQCP) account, separate from the general fund, to provide an earmark for the implementation and enforcement of proposed legislation.

During deliberations, your Committee agreed to further amend the proposed legislation to (1) amend the reference of primary contractor to “general contractor” for consistency purposes, (2) change of the dates referenced in the proposed legislation, and (3) expand the earmark under the GRQCP account to include road maintenance, solid waste, and environmental protection in the CNMI. Your Committee agreed that expanding the earmark to address these matters is consistent with this tax intended to mitigate costs associated to the large scale of construction activities in the Commonwealth.

It is for these reasons that your Committee supports the intent of the proposed legislation, as amended, and recommends its passage in the form of House Bill No. 23-120, House Draft 1, Senate Substitute 1.

C) Legislative History:

House Bill No. 23-120 was formally introduced by Representative Edmund S. Villagomez on October 25, 2024. The proposed legislation was passed by the House of Representatives on First and Final Reading during its Fourth Day, Fourth Regular Session on October 25, 2024 in the form of House Bill No. 23-120, House Draft 1.

House Bill No. 23-120, House Draft 1 was transmitted to the Senate on October 28, 2024, and subsequently referred to the Senate Standing Committee on Fiscal Affairs for disposition.

D) Public Hearing and Comment:

1. Public Hearing. No public hearing was scheduled for House Bill No. 23-120, HD1. However, a Committee Meeting, which is open to the public, was held on December 30, 2024. See below for further details.
2. Committee Meeting. The proposed legislation made its first appearance during the scheduled committee meeting convened on December 30, 2024, which continued the following day on December 31, 2024. The Committee Meeting notices and agenda were officially posted on December 27, 2024, on various legislative forums and social media sites to invite members of the general public to provide comments as indicated under *Item No. III. Public Comments* of the Committee Agenda. However, no oral testimony in support or in opposition were stated before your Committee.
3. Written Comment. The proposed legislation was introduced as a remedy to a similar legislation, House Bill No. 23-74, HD1, SS1, that was vetoed by Governor Palacios. For this reason, your Committee agreed to not solicit for comments on the proposed legislation.

E) Estimated Fiscal Cost:

No financial impact was prepared on House Bill No. 23-120, HD1, as amended by your Committee.

Similar to the passage of the previous construction tax proposal, a true projection of the potential anticipated revenue generated from this proposed 3% construction surtax would only be realized once implemented and enforced upon enactment of the final provisions.

F) Summary of Committee Amendments:

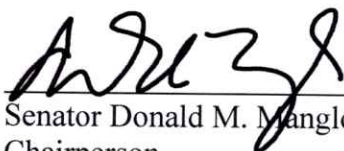
Your Committee agreed to the following amendments:

1. Section 1. Findings and Purpose. A reference to *primary contractor* was amended to “general contractor” to be consistent with the definitions of this proposed legislation, on page 2, line 6
2. Section 2. Amendment. § 105. Special Gross Revenues from Qualifying Construction Projects (GRQCP) Account. Subsection (b) was amended to increase the earmark deposited into the GRQCP account for the implementation and enforcement of the new tax and to mitigate costs impacting road infrastructure, solid waste and the environment for each respective senatorial district, beginning on page 8, lines 10-20.
3. General Amendment. Dates referenced in the proposed legislation were changed from *December 31, 2024* to “January 15, 2025” and *January 1, 2025* to “January 16, 2025” throughout the proposed legislation.

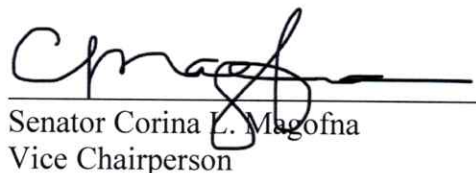
III. CONCLUSION:

Your Committee agrees with the intent and purpose of the proposed legislation and recommends its passage in the form of House Bill No. 23-120, House Draft 1, Senate Substitute 1.

Respectfully submitted,



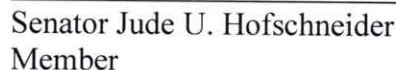
Senator Donald M. Manglona
Chairperson



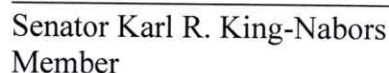
Senator Corina L. Magofna
Vice Chairperson



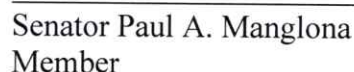
Senator Celina R. Babauta
Member



Senator Jude U. Hofschneider
Member



Senator Karl R. King-Nabors
Member



Senator Paul A. Manglona
Member

Senator Dennis C. Mendiola
Member

Reviewed by:



Senate Legal Counsel

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2024

Fourth Regular Session, 2024

H. B. 23-120, HD1, SS1

A BILL FOR AN ACT

To impose a 3% surtax on gross revenues derived from non-residential construction projects that cost three hundred fifty thousand dollars or more.

**BE IT ENACTED BY THE 23RD NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature finds that a 3% surtax
2 on gross revenues derived from non-residential construction projects that cost three
3 hundred fifty thousand dollars (\$350,000.00) or more should be imposed.

4 This tax mitigates the costs to the Commonwealth that are attributable to
5 large scale construction activities, including waste generation, pollution and
6 emissions from heavy equipment, damage and stress on roads and infrastructure,
7 erosion and pollution control, and the added costs at the ports of entry associated
8 with increased customs activities to ensure that materials and supplies are not co-
9 mingled with contraband.

10 This tax applies specifically to the revenues derived from construction
11 activities with a total project cost of three hundred fifty thousand dollars

1 (\$350,000.00) or more. Construction projects below this threshold are not subject
2 to the tax. Moreover, this tax does not apply to residential construction projects.

3 In addition, construction contractors subject to this tax are entitled to a non-
4 refundable credit against the tax imposed on Commonwealth source income under
5 Subtitle A of the Northern Marianas Territorial Income Tax. The tax shall also be
6 imposed on the total project cost paid by the general contractor, meaning
7 subcontractors are not required to pay the tax.

8 In summary, this Act implements a 3% surtax on gross revenue derived
9 from non-residential construction projects exceeding three hundred fifty thousand
10 dollars (\$350,000.00). As set forth in Section 102, any change orders or
11 modifications initiated, executed, or effective after January 16, 2025 shall subject
12 the amended or modified contracts to this provision if the change order or
13 modification brings the contract within the scope of the Qualifying Construction
14 Project. This includes but is not limited to retroactively applying to all contracts
15 executed prior to January 16, 2025 even if the original contracts did not originally
16 fall within the definition and scope of the Qualifying Construction Project absent
17 the change order or modification.

18 By focusing on these larger developments, this Act ensures that projects
19 placing greater strain on public services and the environment contribute their fair
20 share toward mitigating those impacts. Additionally, by excluding residential
21 construction, this Act preserves affordability of homes for local residents. Last, the

1 inclusion of a non-refundable credit for contractors subject to this surtax offers
2 some relief from the financial burden.

3 **Section 2. Amendment.** Title 4, Division 1 of the Commonwealth Code is
4 hereby amended to add a new Chapter 14 to read as follows:

5 **“Chapter 14. Construction Activities Tax.**

6 **§ 101. Definitions.**

7 For the purposes of this Chapter:

8 (a) “General Contractor” means the primary entity that contracts for
9 the completion of an entire construction project and is typically responsible
10 for the hiring and coordinating the work of subcontractors; ensuring that the
11 project is completed on time, within budget, and according to the agreed-
12 upon specifications; acting as the main point of contact between the client
13 and the various subcontractors; purchasing of materials; and ensuring that
14 the project adheres to all applicable local and federal laws.

15 (b) “Qualifying Construction Project” means any construction
16 project, other than construction of Residential Housing, with a total project
17 cost of three hundred fifty thousand dollars (\$350,000.00) or more,
18 inclusive of executed change orders, amendments, and modifications. A
19 construction project is a Qualifying Construction Project if any additions or
20 modifications resulting in changes to the total project cost cause that cost to

1 meet or exceed the threshold of three hundred fifty thousand dollars
2 (\$350,000.00).

3 (c) "Residential Housing" means single-family homes or other
4 standalone dwellings designed for individual households and excludes
5 multi-family units, such as apartments, condominium complexes,
6 commercial residential developments, or other similar shared living
7 structures.

8 (d) "Subcontractor" means a person or company hired by a General
9 Contractor to perform tasks or services as part of a larger construction
10 project. "Subcontractors" operate under a separate contract from the one
11 between the General Contractor and the client.

12 **§ 102. Tax Imposition on Gross Revenues from Qualifying**
13 **Construction Projects.**

14 (a) In addition to the tax imposed under Chapter 3 of Division 1 of
15 Title 4 of the Commonwealth Code and unless expressly exempted herein,
16 a tax of 3% shall be imposed on the gross revenues of a General Contractor
17 that are directly attributed to or derived from a Qualifying Construction
18 Project.

19 (b) For the purpose of subsection (a), the gross revenue surtax shall
20 exclude revenues generated by or derived from construction of Residential
21 Housing.

1 (c) Revenues of a Subcontractor that are derived from construction
2 activities performed on a Qualifying Construction Project are exempt from
3 the tax imposed by this Section.

4 (d) Revenues from construction activities derived from Qualifying
5 Construction Projects arising from contracts awarded on or before January
6 15, 2025, are exempt from the tax imposed by this Section. The tax imposed
7 by this Section shall apply to any and all Qualifying Construction Projects
8 arising from contracts awarded or executed on or after January 16, 2025.

9 Provided further that any change orders or modifications initiated,
10 executed, or effective after January 16, 2025 shall subject the amended or
11 modified contracts to this provision if the change order or modification
12 brings the contract within the scope of the Qualifying Construction Project,
13 including but not limited to retroactively applying to all contracts initiated,
14 executed, or effective prior to January 16, 2025 that did not originally fall
15 within the definition and scope of the Qualifying Construction Project
16 absent the change order or modification.

17 **§ 103. Non-Refundable Tax Credit.**

18 (a) A person may take the surtax imposed on gross revenue under
19 Section 102 as a non-refundable tax credit against any taxes imposed on
20 Commonwealth source income under Subtitle A of the NMTIT pursuant to
21 Chapter 7 of Division 1 of Title 4 of the Commonwealth Code (4 CMC §§

1 1701 et. seq.). No such credit shall be allowed for any amount deducted in
2 determining taxable income under the NMTIT as shown on the taxpayer's
3 return.

4 (b) Partners and S corporation shareholders may take their
5 respective share of taxes imposed on gross revenues reported and paid by
6 their respective partnerships and S corporations under Section 102 of this
7 Chapter as a nonrefundable credit against the tax imposed on
8 Commonwealth source income under Subtitle A of the NMTIT pursuant to
9 Chapter 7 of Division 1 of Title 4 of the Commonwealth Code (4 CMC §§
10 1701 et. seq.); provided, that the total of all such credits shall not exceed the
11 total taxes and fees paid. No credit shall be allowed under this subsection
12 (b) for the amount of any taxes taken as a credit under subsection (a) of this
13 section.

14 (c) No such credit shall be allowed for any amount deducted in
15 determining taxable income under the NMTIT as shown on the taxpayer's
16 return.

17 **§ 104. Returns and Payment of Tax.**

18 (a) *In General.* Every person subject to this Chapter shall file a
19 return and pay the tax, if any, on a monthly basis. The Secretary of Finance
20 shall by regulation prescribe monthly rates as necessary to carry out the
21 intent and purpose of this section.

1 (b) *Filing Returns and Payment.* The monthly returns and tax
2 payments under subsection (a) of this Section shall be filed and the tax paid,
3 if any, on or before the last day of the month following the close of each
4 month, to wit: on or before February 28, March 31, April 30, May 31, June
5 30, July 31, Aug 31, September 30, October 31, November 30, December
6 31 and January 31. The payment shall be based on the payors gross revenue
7 derived from Qualifying Construction Projects in the preceding month, and
8 the amount of tax imposed by this Chapter shall be paid to the
9 Commonwealth government through the secretary or his appointee or
10 appointees. Each business shall, on or before the date provided for payment
11 of tax under this Section, make a full, true, and correct return showing all
12 such gross revenue derived from Qualifying Construction Projects that are
13 received, accrued, or earned, whichever is earlier, and the amounts deducted
14 and set aside on account during the preceding month. This return shall be
15 filed with the secretary and include such other information as may be
16 required or prescribed by the secretary. The secretary for good cause, may
17 extend the time for making payments and returns, but not beyond the last
18 day of the first month succeeding the regular due date.

19 (c) *Tax Returns of Transferor.* The requirement to deduct, withhold
20 and pay over tax for the account of the transferor shall not relieve the
21 transferor from the duty to file any tax returns required by law.

1 (d) *Penalty*. Failure to comply with the provisions of this Section
2 shall be punishable under the penalties prescribed by this Division.

3 **§ 105. Special Gross Revenues from Qualifying Construction**
4 **Projects (GRQCP) Account.**

5 (a) The Secretary of Finance shall establish a special Gross
6 Revenues from Qualifying Construction Projects (GRQCP) account
7 separate from the General Fund. The funds in the GRQCP account shall not
8 be subject to fiscal year limitation and shall be used for the implementation
9 and enforcement of this Chapter.

10 (b) All revenues raised pursuant to this Chapter shall be deposited
11 into the General Fund, except:

12 (i) ten percent shall be deposited in the special GRQCP
13 account established by this Section, for appropriation by the
14 Legislature as follows:

15 (1) twenty percent shall be appropriated for
16 implementation and enforcement of this Chapter and
17 customs activities; and

18 (2) eighty percent shall be appropriated for road
19 maintenance, solid waste, and environmental protection
20 purposes in the First, Second and Third Senatorial Districts.

1 (c) The Secretary of Finance shall provide monthly reports to the
2 presiding officers of the Legislature describing the total funds in the
3 GRQCP.”

4 **Section 3. Regulations.** The Secretary of Finance is hereby authorized to
5 promulgate rules and regulations, including, but not limited to, providing
6 definitions and other matters necessary to effectuate the intent and purpose of this
7 Act.

8 **Section 4. Severability.** If any provisions of this Act or the application of
9 any such provision to any person or circumstance should be held invalid by a court
10 of competent jurisdiction, the remainder of this Act or the application of its
11 provisions to persons or circumstances other than those to which it is held invalid
12 shall not be affected thereby.

13 **Section 5. Savings Clause.** This Act and any repealer contained herein
14 shall not be construed as affecting any existing right acquired under contract or
15 acquired under statutes repealed or under any rule, regulation, or order adopted
16 under the statutes. Repealers contained in this Act shall not affect any proceeding
17 instituted under or pursuant to prior law. The enactment of the Act shall not have
18 the effect of terminating, or in any way modifying, any liability, civil or criminal,
19 which shall already be in existence on the date this Act becomes effective.

20 **Section 6. Effective Date.** This Act shall take effect upon its approval by
21 the Governor, or it becoming law without such approval.

HOUSE BILL 23-120, HD1, SS1

Prefiled: 10/22/2024

Date: 10/22/2024

Introduced by: /s/ Rep. Edmund S. Villagomez
/s/ Rep. Blas Jonathan "BJ" T. Attao

Reviewed for Legal Sufficiency by:

/s/ Joseph M. Hallahan 10/22/2024
House Legal Counsel

HB 23-120 HD1

Reviewed for Legal Sufficiency by:

/s/ Joseph L.G. Taijeron, Jr. 10/25/2024
House Legal Counsel