



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

STANDING COMMITTEE REPORT NO. 23-74
Date: February 16, 2024
RE: House Bill No. 23-95, HS1, SS1

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. 23-95, HS1, SS1, entitled:

“To Repeal and Re-enact Public Law 23-12; and for other purposes,”

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. 23-95, HS1, Senate Substitute 2.

II. ANALYSIS:

A) Purpose:

The purpose of House Bill No. 23-95, HS1, SS1 is to repeal and reenact Public Law 23-12.

B) Committee Findings:

As stated under Senate Standing Committee Report No. 23-68:

Your Committee finds that Public Law No. 23-12 was enacted to authorize a revolving Line of Credit (LOC) in the amount of \$15,000,000.00 between the Commonwealth Government and the Marianas Public Land Trust (MPLT). These funds are intended to subsidize ongoing projects that have been preapproved by the United States Economic Development Administration (EDA) with specific repayment terms by the CNMI government to MPLT within 30 days from the drawdown date from the LOC.

On January 16, 2024, a Senate Session was held to take action on House Bill No. 23-95, HS1. However, during deliberation on the proposed legislation, a request was made to include additional amendments to extend the LOC to the municipalities of Rota and Tinian for future projects that may arise within the seven-year period. After much deliberation, a motion was made, seconded, and unanimously carried to refer the proposed legislation to your Committee. Upon further review, your Committee finds that the legislation as transmitted to the Senate incorporated proposed amendments that were reflected only in Section 1. Findings and Purpose, however, no enabling language was reflected in the proposed statutory provisions of the bill.

A Committee Meeting was held on Thursday, January 25, 2024, and continued the following day on Friday, January 25, 2024, with the presence of Mr. Philip Long, Board of Trustees Chairperson of the Marianas Public Lands Trust; Ms. Tracy Norita, Secretary of the Department of Finance (DOF); and Ms. Elizabeth Balajadia, Administrator of the Capital Improvement Program (CIP), to discuss House Bill No. 23-95, HS1.

Before the adjournment of the Committee Meeting on Friday, January 26, 2024, your Committee informed MPLT Chairman Long and Finance Secretary Norita that a proposed Senate Substitute would be provided to them before the end of the day and requested for comments to be submitted to the Committee by Tuesday, January 30, 2024, at 11:30 a.m. Accordingly, your Committee called for a Committee Meeting on Tuesday, January 30, 2024, to formally discuss the provisions of the proposed legislation, as amended by your Committee. Present before your Committee was: Mr. Alvaro Santos, Trustee, MPLT; Ms. Tracy Norita, Secretary, DOF; and Ms. Elizabeth Balajadia, Administrator, CIP.

In summation of all three aforementioned dates that your Committee convened, discussions during these meetings included, but were not limited to, the following:

1. MPLT's Proposed Amendments. MPLT had embedded proposed amendments under Section 2 of *House Bill No. 23-95, HSI* that reflect the intent of the amendments made to the Findings and Purpose under a new subsection (k) and to insert a new subsection (l) that authorizes the autonomous agencies to enter into the LOC agreement, to read:

“(k) The Commonwealth hereby pledges and appropriates the sum not to exceed \$15,000,000.00 from future interest income distributions into the CNMI General Fund by the Marianas Public Land Trust (MPLT) starting Fiscal Year 2024 and authorizes the withholding of such distributions for future fiscal years for payment and/or as security, in the event of any default and to satisfy any delinquent or default amount owed by the CNMI Government, for MPLT to withhold such distributions until such time as fully reimbursed and/or the Revolving Line of Credit with the Commonwealth Department of Finance is fully satisfied and retired. Any withholding of interest income distributions shall be separate from the prior authorized withholding for the Yutu Loan for which MPLT is currently withholding distributions until fully repaid. Thereafter, MPLT shall remit any net distributable interest income to the General Fund for the subsequent fiscal year.

(l) In the event that there are any autonomous CNMI Government agencies funded by the EDA-funded CIP projects participating or benefitting from the MPLT Line of Credit Agreement bridge financing, or any duly-approved non-profit organizations, those entities shall, as a condition of such participation, agree to be bound by the terms of this law and/or all agreements with MPLT in writing such as through a Memorandum of Understanding, Contract and/or Promissory Note including, but not limited to, the interest rate charged by MPLT.”

Your Committee had no objections to the proposed amendments offered by MPLT and agreed to incorporate these amendments into the proposed legislation.

2. LOC with Autonomous Agencies. DOF Secretary Norita clarified that the proposal made to MPLT encompassed all approved and funded specific EDA projects that include certain autonomous agencies of the Commonwealth government, such as the Northern Marianas Technical Institute, the Northern Marianas College, and the CNMI Public School System. As part of ensuring payment security of the LOC, a memorandum of understanding is being drafted for EDA projects approved for these autonomous agencies.

3. Sweep Account. It was presented to the Committee that MPLT had requested to be a co-signatory to a sweep account with the central government that was denied by the administration. DOF Secretary Norita clarified that the administration did not oppose opening a sweep account with MPLT but does not agree to MPLT being a co-signatory to the account because such action would cause a delay in the processing of payments by the central government. As shared by DOF Secretary Norita, the central government currently processes payment transactions electronically, by including MPLT as a co-signatory to the sweep account, the transactions would need to be done manually; which would require the physical presence of both parties to jointly sign-off prior for a transaction to occur.

For accountability purposes, DOF offered MPLT with an alternative option to have view-only access to the sweep account, which MPLT refused. It was further stated by MPLT Chairman Long that the view-only access into the sweep account would not be a form of collateral, which potentially affects the investment of MPLT with the risk profile not matching the yield.

DOF Secretary Norita further expressed that payment security has been an ongoing discussion with a guaranteed payment of the projects provided to the CNMI within the agreed-upon timeframe with EDA in the drawdown process. Additionally, the administration had inquired with EDA if they could directly deposit to MPLT. However, since MPLT is not a co-grantee of the EDA projects such direct payments are not authorized by EDA.

With the interest being compounded daily at a 5.5% interest rate from the date of drawdown of the funds by MPLT, the administration is focused on ensuring reimbursements from EDA are paid to MPLT promptly to avoid additional compounding of the interest charges.

4. Drawdown Process. DOF Secretary Norita shared that a flowchart has been created to properly document and provide guidance to all the project managers with EDA projects. Additionally, it was shared that initial drawdowns take approximately 3-5 days for EDA to process and that the administration is working closely with a Project Officer from EDA assigned to the CNMI for these projects.

A copy of the flowcharts and a drawdown schedule of EDA projects has been attached to this report for reference purposes.

5. LOC with the Municipalities of Rota and Tinian. Proposed amendments were provided to the three entities to extend the LOC agreement with the municipalities of Rota and Tinian to include existing and future EDA projects that may be approved and potential 702 CIP annual projects during the seven-year period of the LOC. The administration indicated that there is

always an opportunity for the CNMI to compete in future EDA funding and had no objections to the potential approval of such projects for the municipalities of Rota and Tinian.

In regards to the proposed amendments to include 702 CIP annual projects for the CNMI, CIP Administrator Balajadia clarified that the annual budget is dependent on the CNMI's performance, including procurement audits. Furthermore, CIP Administrator Balajadia indicated that any project for Rota, Tinian, or Saipan through the 702 Covenant funding may be charged against the grant without a need to secure other funding to move the projects forward. Once a project has been identified for the Commonwealth the biggest delay is often the National Environmental Policy Act (NEPA) process. In regards to vendor payments, CIP Administrator Balajadia acknowledged that since her tenure with the CIP, there have not been any delays in payment with drawdowns from the Office of Insular Affairs being remitted within 3-5 days.

In terms of grant management, DOF Secretary Norita further expressed that interest rate charges to secure the advance payments through the LOC for the EDA projects are covered by EDA. Unlike the EDA-approved projects; CIP-funded projects do not require advance payment or proof of payment to draw the funds from the U.S Office of Insular of Affairs as stated by CIP Administrator Balajadia.

MPLT Chairman Long requested for consistency in the language throughout the bill that would authorize the debt with the governor to extend to the municipalities of Rota and Tinian.

Both the administration and MPLT had no objections to the proposed amendments in this regard.

6. Clarification of EDA Projects related to Non-profit Organizations. In reference to the drawdown schedule of EDA-funded projects, it was the understanding that the LOC is intended for government projects which raised an inquiry regarding projects of non-profit organizations, namely: 500 Sails, the Oleai Sports Complex managed by the Northern Marianas Sports Association (NMSA), and the Oleai Cultural Events Center. CIP Administrator Balajadia clarified that 500 Sails is a non-profit organization but is a co-grantee with the Office of Indigenous Affairs and that the Oleai Sports Complex and Oleai Cultural Events Center fall under the Department of Community and Cultural Affairs.

A legal concern was raised about the use of the EDA funds for the Oleai Sports Complex because NMSA, a non-profit corporation, primarily runs the sporting activities in the complex. Legal Counsel Jose Bermudes

clarified that EDA funds for the complex are for infrastructure development and enhancement, not the operations of the NMSA.

During a meeting held on January 30, 2024, no member objected to the passage of the proposed legislation, as amended, and the proposed legislation was adopted in the form of House Bill No. 23-95, HS1, Senate Substitute 1.

House Bill No. 23-95, HS1, Senate Substitute 1 was reported by your Committee under Senate Standing Committee Report (SCR) No. 23-68 and placed on the Senate Agenda for action during its 2nd Day, Third Regular Session scheduled on February 9, 2024. Under item (M)- Reports of Standing Committee of the Session agenda, SCR 23-68 was unanimously adopted by the Senate. Under item (P)- Bill Calendar of the Session agenda, a motion was made and unanimously carried to refer House Bill No. 23-95, HS1, SS1 back to your Committee to formally address additional concerns raised in the proposed legislation. Additionally, the Senate Standing Committee on Resources, Economic Development and Programs, and Gaming was tasked to address the status and delay of 702 Covenant funded projects for the First and Second Senatorial Districts that correlates to the proposed amendments reflected in House Bill No. 23-95, HS1, SS1.

In an effort to expeditiously address the pressing matters before your Committee, a Joint Committee Meeting was scheduled by your Committees on Fiscal Affairs and Resources, Economic Development and Programs, and Gaming on February 15, 2024 to discuss the (1) status of Capital Improvement Program funded projects for the municipalities of Rota and Tinian and (2) House Bill No. 23-95, HS1, SS1- *To Repeal and Re-enact Public Law 23-12; and for other purposes.*

As part of the Joint Committees discussion, Ms. Tracy B. Norita, Secretary of the Department of Finance and Ms. Elizabeth S. Balajadia, Administrator of the Capital Improvement Program (CIP) and Acting Director of the Office of Planning and Development (OPD) were invited to participate in the discussion and provide clarification on the items appearing on the Joint Committee's agenda. Discussion during the meeting included but were not limited to the following:

1. CNMI Capital Improvement Program. CIP Administrator Balajadia shared that each year the CIP office meets with the mayors of Rota and Tinian to discuss what projects they would like to pursue. Once agreed upon, a proposal is developed by CIP and sent to the Office of Interior Affairs (OIA). Originally, as part of the OIA requirements, CIP would determine potential environmental impacts from the projects and submit that to OIA for approval. Once approved the funding is awarded to the CNMI.

However, with the newly imposed National Environmental Policy Act (NEPA) process requirement, the CNMI is being challenged to improve their rating to expend the amount awarded, which is reflected in OIA's report card that includes their grading of the CNMI's CIP status and financial audit as a whole.

It was further shared that the CNMI receives roughly \$8 million a year with approximately 7% for administrative cost, and a period of performance of five years. In the event CIP is not able to complete the project within that period an extension request is submitted to OIA. In certain instances, CIP Administrator Balajadia further stated that any funding balance from CIP projects have been redirected to assist the needs of agencies with the approval of OIA.

Finance Secretary Norita also shared that each grant awarded is based on obligation through an allotted form of the year. These funds are not recognized as received into the Commonwealth because the grant award is obligated to specific projects and that it is not a pool of unrecorded money of the CNMI. When funds are expended DOF imposes a just-in-time (JIT) method: when DOF receives it, they pay it; when an invoice is approved and signed off by the engineers, a request is made to OIA for a drawdown of the funds and it is paid for right away.

2. NEPA Process Requirement. CIP Administrator Balajadia shared that every federal grant awarded requires an environmental compliance mandated by NEPA. For OIA, the Capital Improvement Program retained the Army Corps of Engineers (Army Corps) as their consultant to perform all NEPA processes. In the CNMI, the CIP office would notify all regulatory agencies of a project that is being undertaken by their office. CIP would compile all the necessary documents and submit them to both OIA and the Army Corps of Engineers to review the environmental impact.

CIP Administrator Balajadia acknowledged that with the new requirement of the NEPA process by Army Corps, they have recently retained, through the procurement process an environmental consultant, Mr. John Gurley to assist their office with the NEPA process for the CIP projects on both Rota and Tinian.

It was further stated that in order for OIA to grant an authorization to proceed (ATP) they must first be in receipt of recommendations by the Army Corps that the NEPA process has been completed.

CIP Administrator Balajadia also indicated that if a project meets all the NEPA requirements that there may be conditions identified that should be addressed in the environmental assessment. Such conditions may precede with the construction with the understanding that monitoring will be required as a condition to proceed with the project. Additionally, it was expressed that the OIA funding grant terms and conditions mandate the NEPA process in order to receive the grant funding.

3. CIP Funding is Competitive. CIP Administrator Balajadia shared that CIP funding is competitive based on the CNMI's expenditure rate and the entire financial status of the CNMI. CIP Administrator Balajadia has reached out to OIA requesting for assistance with the NEPA process in an effort to expend the CIP funds. She further stated that in order to drawdown CIP funds, OIA must receive recommendation from the Army Corps of Engineers that the environmental concerns for the projects are being addressed in order to move the projects forward. Absent the completion

and approval of the NEPA process, projects remain on a standstill. CIP Administrator Balajadia expressed her frustration with the delay of the NEPA process affecting the performance period of the CIP projects in the CNMI. As result, the CNMI is at a risk to lose additional CIP funds should these projects continue to experience challenges with the NEPA process.

4. Status of CIP Projects for Rota and Tinian. CIP Administrator Balajadia shared that the current CIP projects for the municipalities are the water line and power line for the West San Jose subdivision on Tinian and the Dugi waterline that connects to the Dugi homestead on Rota. She further stated that initially, CIP was providing all the necessary information requested by Army Corps. However, the process changed when her office was notified by Army Corps that because these projects are subdivisions that they require an environmental assessment report that includes biological and archeological requirements. It was shared that when the Department of Public Lands (DPL) designated the village homesteads they had developed an environmental assessment. However, DPL's environmental assessment is not in compliance with the requirements of the Army Corps of Engineers.

In regards to the West San Jose waterline project on Tinian, CIP Administrator Balajadia stated that they may be able to use DPL's environmental assessment while gathering the additional requirements to be compliant with the NEPA process without duplicating the work. Additionally, CIP Administrator Balajadia shared that CIP paid for the design of the West San Jose waterline. However, she also emphasized that a design is different from construction because designs do not involve a lot of earth moving, while construction does, which is the intent of the NEPA process.

In regards to the proposed amendments reflected in House Bill No. 23-95, HS1, SS1 clarification was sought as to whether the proposed provisions to allow the First and Second Senatorial District to use funds from the LOC as an upfront payment for their pending CIP projects is permissible. CIP Administrator Balajadia stated that 702 funded projects do not require an upfront payment of the costs because CIP charges against the allocation of the grant. She further reiterated that the EDA is the only grantor that requires an upfront payment of to receive a reimbursement of the funds, but funding the upfront payment is not required for 702 and FEMA projects.

Furthermore, clarification was sought on the \$15 million LOC for the EDA funded projects when the largest potential drawdown is approximately \$12 million and what is the reasoning behind the additional \$3 million. Finance Secretary Norita indicated that the current costs of the projects are estimates and not concrete costs at the time of anticipated drawdown and that the \$15 million LOC would allow some flexibility should a time come that a lot of construction progress is occurring simultaneously that would require multiple drawdowns. Finance Secretary Norita further stated that they do not anticipate to exhaust the LOC but that it would provide flexibility considering the multiple projects occurring at the same time. It was asked if the administration would consider reducing the LOC to aid the infrastructure projects on Rota and Tinian with the understanding that most of the EDA

drawdown requests are smaller. Finance Secretary acknowledged that it would be something to consider however, in the event that the constructions are all in full effect this may result in some vendors having to wait until others are processed first.

After much deliberation, your Committees recognized that the First and Senatorial District be supported in their efforts to identify a funding source to address the infrastructure project needs that were not considered during the initial search for the original project proposal to be submitted to EDA for approval, which resulted in the approval of EDA projects on the island of Saipan. Your Committee agreed to remove the upfront payment provisions of the 702 CIP projects for the First and Second Senatorial District. Additionally, your Committee agreed to (1) reduce the LOC from \$15 million to \$13 million and (2) adopted amendments to authorize a \$2 million loan for the First and Second Senatorial District, at \$1 million each, to include a fixed interest rate not to exceed 7.5% to be deducted respectively in the year that the loan is provided by MPLT. Use of the loan is to fund infrastructure projects for the respective islands of Rota and Tinian to support their local economy.

During the meeting, no member objected to the passage of the proposed legislation, as amended, and the proposed legislation was adopted in the form of House Bill No. 23-95, HS1, Senate Substitute 2.

C) Legislative History:

House Bill No. 23-95 was formally introduced by Representative Edmund S. Villagomez on January 12, 2024. The House of Representatives passed the proposed legislation on First and Final Reading during its First Day, Third Regular Session in the form of House Bill No. 23-95, House Substitute 1 on January 12, 2024. House Bill No. 23-95, HS1 was transmitted to the Senate on January 12, 2024.

House Bill No. 23-95, HS1 was placed on the Bill Calendar for Senate action during its 1st Day, Third Regular Session on January 16, 2024. During deliberation on the proposed legislation, a motion was made, seconded, and unanimously carried to refer House Bill 23-95, HS1 to the Senate Standing Committee on Fiscal Affairs for disposition.

Reported under Standing Committee Report No. 23-68, House Bill No. 23-95, HS1, SS1 was placed on the Bill Calendar for Senate action during its 2nd Day, Third Regular Session on February 9, 2024. However, a motion was made and unanimously carried to refer House Bill No. 23-95, HS1, SS1 back to your Committee for disposition.

D) Public Hearing and Comment:

1. Public Hearing. In reference to House Bill No. 23-95, HS1 no public hearing was scheduled. However, Committee Meetings, which are open to the public, was held on January 25, 2024, which continued the following day, and on January 30, 2024. See below for further details.

No public hearing was scheduled for House Bill No. 23-95, HS1, SS1. However, a Joint Committee Meeting by your Senate Standing Committees on Fiscal Affairs (FA) and Resources, Economic Development and Programs, and Gaming (REDPG), which are open to the public, was held on February 15, 2024, which continued the following day. See below for further details.

2. Committee Meeting. House Bill No. 23-95, HS1 made its first appearance during the scheduled committee meeting convened on January 25, 2024. The Committee Meeting notices and agenda were officially posted on January 19, 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. Public comments in opposition to the proposed legislation were received by the following:
 - a. Richard Untalan Hofschneider, Part-time Advisor, Matua Council for Native Chamorro Advancement
 - b. Liana Manglona Sablan Hofschneider, President, Matua Council for Native Chamorro Advancement

House Bill No. 23-95, HS1 made its second appearance during the scheduled committee meeting convened on January 30, 2024. The Committee Meeting notices and agenda were officially posted on January 26, 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. Public comments in opposition to the proposed legislation were received by the following:

- a. Richard Untalan Hofschneider, Part-time Advisor, Matua Council for Native Chamorro Advancement
- b. Edwin Raymond Borja Quitugua, personal testimony
- c. Liana Manglona Sablan Hofschneider, President, Matua Council for Native Chamorro Advancement

House Bill No. 23-95, HS1, SS1 made its first appearance during the scheduled Joint Committee Meeting convened on February 15, 2024 and continued the following day by your Senate Standing Committees on FA and REDPG. The Joint Committee Meeting notices and agenda were officially posted on February 12, 2024, on various legislative forums and social media sites to invite members of the general public to provide comments as indicated under *Item No. IV. Public Comment* of the Joint Committee Agenda. Public comments in opposition to the proposed legislation were received by the following:

- a. Richard Untalan Hofschneider, Part-time Advisor, Matua Council for Native Chamorro Advancement
- b. Liana Manglona Sablan Hofschneider, President, Matua Council for Native Chamorro Advancement

3. Written Comment. In reference to House Bill No. 23-95, HS1, your Committee requested the participation of certain entities to provide comments and critical input on the proposed legislation. Although no formal written comments were provided to the Committee, the following entities were present and participated in the discussion:

- a. Tracy B. Norita, Secretary, Department of Finance
- b. Elizabeth Balajadia, CIP Administrator, Office of the Governor
- c. Philip M. Long, Chairperson, MPLT Board of Trustees
- d. Alvaro Santos, Member, MPLT Board of Trustees

Furthermore, in reference to House Bill No. 23-95, HS1, SS1, your Joint Committees on FA and REDPG requested the participation of certain entities to provide comments and critical input on the proposed legislation. Although no formal written comments were provided to the Committee, the following entities were present and participated in the discussion:

- a. Tracy B. Norita, Secretary, Department of Finance
- b. Elizabeth Balajadia, CIP Administrator, Office of the Governor

E) Estimated Fiscal Cost:

In line with the negotiations made between the CNMI government, the U.S. Economic Development Administration (EDA), and the Marianas Public Land Trust (MPLT), the enactment of House Bill No. 23-95, HS1, Senate Substitute 2 would result in additional expenses in regards to the approved EDA projects. In the event that the CNMI government defaults on the repayment of the LOC, the proposed legislation pledges the withholding of the annual interest income by MPLT as additional security to the LOC agreement. Through constant dialogue between the EDA and the central government, a standard operating procedure has been implemented to ensure the prompt processing and preapproval of drawdown packages by the EDA before the drawdown of funds from the line of credit. In turn, the reimbursement of funds by EDA would be remitted to MPLT to settle the drawdown funds subject to a calculation of the interest rate charges for that specific amount to be included in the next payment request. Additionally, it is understood that the EDA projects are unique in that they require proof of advance payment and that the EDA grant also covers the 5.5% interest rate to be paid to MPLT.

House Bill No. 23-95, HS1, Senate Substitute 2, would be a cost to the First and Second Senatorial Districts because the loan interest not to exceed 7.5% shall be deducted from the loan principal in the year the loan is disbursed and provided by MPLT. Additionally, this would be a cost to the central government as the repayment of the respective loans will be paid by MPLT's investment interest after the Yutu loan is paid in full.

F) Summary of Committee Amendments:

Your Committee agreed to the proposed amendments, as follows:

1. Section 1. Findings and Purpose.

- a. Your Committee accepted the proposed amendments made by the House of Representatives and made technical amendments throughout this section.
- b. On page 2, line 9 the word “initial” was inserted to clarify that the \$20 million was an initial request for the line of credit (LOC) made by the administration. However, what was approved and reflected in Public Law 23-12 and this proposed legislation is an LOC of \$15 million.
- c. Additional language was inserted on page 4, line 19 through page 5, line 1, to authorize a \$2 million loan for the First and Second Senatorial Districts at \$1 million each for infrastructure projects.

2. Section 2. Repeal and Reenactment.

- a. Your Committee agreed to categorize the statutory provisions into respective sections as they relate to the intent of the proposed legislation.
- b. §101. Debt Authorization. Your Committee made a technical correction and inserted language to extend the \$13 million LOC agreement with respective to autonomous agencies of the CNMI and the \$2 million loan for the First and Second Senatorial Districts.
- c. §102. Line of Credit. Your Committee inserted amendments in regards to the advance payments of projects approved under the United States Economic Development Administration.
- d. § 103. Interest Income Withholding. Your Committee approved the statutory provision recommended by the MPLT [initial proposed subsection (k)] to reflect the House’s intent to grant MPLT authorization to withhold from its annual interest income distribution to the Commonwealth government each fiscal year as security payment for the \$13 million LOC until such time that the credit is satisfied in full.
- e. §104. Additional EDA-Funded and 702 CIP Projects. Under subsection (a), your Committee approved the statutory provision recommended by the MPLT [initial proposed subsection (l)] to authorize autonomous agencies and the CNMI CIP Office to enter into the LOC agreement.

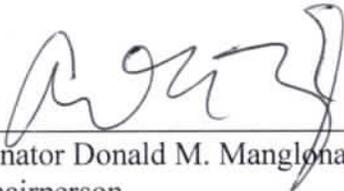
Under subsection (b), language was inserted to extend opportunities for any future EDA-funded CIP projects for the First and Second Senatorial Districts to be covered by the LOC.

Under subsection (c), language was inserted in regards to the respective municipalities entering into an agreement with MPLT pertaining to the respective \$1 million loan for Rota and Tinian.

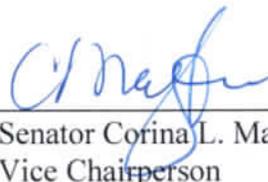
III. CONCLUSION:

Your Committee agrees with the intent and purpose of the proposed legislation, as amended, and recommends passage in the form of House Bill No. 23-95, HS1, Senate Substitute 2.

Respectfully submitted,



Senator Donald M. Manglona
Chairperson



Senator Corina L. Magofna
Vice Chairperson

Senator Celina R. Babauta
Member

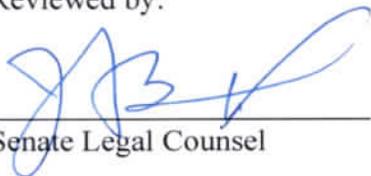
Senator Karl R. King-Nabors
Member

Senator Paul A. Manglona
Member



Senator Dennis C. Mendiola
Member

Reviewed by:



Senate Legal Counsel

Attachments:

- a. MPLT Line of Credit SOP Flow Chart for Central Government- updated 12/13/23
- b. MPLT Line of Credit SOP Flow Chart for Autonomous Agencies- updated 12/13/23
- c. Office of Planning Development- EDA Funded Projects Projected Expenditure

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

JANUARY 12, 2024

Third Regular Session, 2024

H. B. 23-95, HS1, SS2

A BILL FOR AN ACT

To Repeal and Re-enact Public Law 23-12; and for other purposes.

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

1 **Section 1. Findings and Purpose.** The Legislature finds that on November
2 20, 2023 Governor Arnold I. Palacios signed House Bill 23-77, Senate Draft One
3 into Public Law 23-12 to authorize a revolving line of Credit between the
4 Commonwealth Government and the Marianas Public Land Trust (MPLT) in the
5 amount of \$15,000,000.00 with repayment terms.

6 Furthermore, the Legislature finds that on July 17, 2023, Governor Arnold
7 I. Palacios in a letter signed by the CNMI Senate President and House Speaker,
8 submitted a written request to the Marianas Public Land Trust. Governor Palacios
9 requested a Line of Credit in the amount of \$20 million for “bridge financing or
10 advances” for costs related to federally-funded Capital Improvement Projects
11 (“CIP”) from the United States Economic Development Administration whereby

1 the CNMI would be reimbursed for such advances within thirty (30) days of
2 advancing such costs for grant projects. Further, Governor Palacios requested that
3 the line of credit (“LOC”) facility be available for a period of 5-7 years while
4 infrastructure and other CIP projects are under construction. The Marianas Public
5 Land Trust has reviewed initial planned drawdown requests by the Governor and
6 has determined that a \$15 million Line of Credit is suitable for the amounts needed,
7 in any given 30-day period, during the next few years of forecasted drawdowns
8 offered by the Governor.

9 In addition to the \$20 million LOC initial request, Governor Palacios also
10 requested that MPLT reduce the interest rate on the CNMI’s existing debt
11 obligation to MPLT for the Typhoon Yutu loan, currently at 7.5% per annum. That
12 debt currently stands at approximately \$10.7 million as of June 2023 and is being
13 repaid by MPLT’s withholding of the annual interest-income distributions to the
14 CNMI General Fund.

15 MPLT has noted that previously in June 2019 the Trust received the
16 Typhoon Yutu request from the CNMI for \$15 million through a line of credit and
17 later converted it to a loan, to pay for “extraordinary expenses made under
18 extraordinary circumstances” for disaster recovery expenses which the former
19 CNMI Secretary of Finance asserted were not normal operating expenses of the
20 government. While the CNMI expected reimbursement from the Federal
21 Emergency Management Agency for disaster-related advances or expenses, the

HOUSE BILL 23-95, HS1, SS2

1 CNMI ultimately could not repay the MPLT Yutu Loan which MPLT is now
2 servicing as repayment through the withholding of distributions for the next several
3 years.

4 The Legislature acknowledges that the Trustees of MPLT continue to
5 recognize that the \$13 million LOC request addressed in this legislation, as with
6 the Yutu Loan, constitutes a public debt obligation for government operations or
7 infrastructure, which have particular requirements under the CNMI Constitution.
8 As such, the Legislature is informed that the Trust has set forth certain requirements
9 from the CNMI Government through the Office of the Governor, Secretary of
10 Finance, and the Office of the Attorney General, to ensure the propriety of the
11 requested transaction and ensure capacity for payment.

12 As one of the requirements by MPLT, the purpose of this proposed
13 legislation is to authorize this public debt by the Commonwealth Government to
14 MPLT for a period not to exceed seven years (84 months) on a Revolving Line of
15 Credit and to ensure that there are adequate funds at the disposal of the CNMI
16 Department of Finance for purposes of paying that Line of Credit timely and
17 without default. The debt amount authorized in this Act is \$15 million of which not
18 more than \$13 million for the LOC from MPLT and not more than \$2 million loan
19 from MPLT to the First and Second Senatorial Districts.

20 The Legislature agrees that, unlike the Yutu Loan, the \$13 million LOC is
21 to be repaid by the CNMI Government through the Secretary of Finance on a

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1 regular 30-day period following each advance, with reimbursed funds from the
2 Federal government, and with other restrictions on drawdowns imposed by MPLT,
3 such as drawdown limits and drawdown pre-conditions. Therefore, this legislation
4 authorizes and pledges the funds that MPLT would distribute as interest income to
5 the General Fund pursuant to Article XI, Section 6 of the Constitution as security
6 and for repayment of the \$13 million LOC with the Commonwealth Government
7 through the Department of Finance at an annual interest rate of 5.5%. The LOC and
8 this legislative authorization expire automatically at the end of the 84-month period
9 and shall not be renewed or extended.

10 Accordingly, the Legislature hereby agrees and consents that MPLT may
11 withhold from its annual interest income distribution to the Commonwealth for
12 each fiscal year as security and to guarantee payment for the \$13 million LOC until
13 that credit facility is retired and fully satisfied.

14 The Legislature further agrees and consents that because the MPLT annual
15 interest income distribution to the Commonwealth will be used as security to
16 guarantee payment for the \$13 million LOC, it is also appropriate to authorize the
17 \$13 million LOC to be used to cover advance payments existing or future EDA CIP
18 projects during the seven-year term of the LOC.

19 Additionally, this Act intends to authorize a public debt not to exceed \$2
20 million of which \$1 million each for the First and Second Senatorial Districts for
21 infrastructure projects consistent with the public debt authorization.

1 For the foregoing reasons, the Legislature finds that the \$15 million debt
2 authorization of which \$13 million is a LOC with MPLT is in the best interest of
3 our people and our Commonwealth and authorizes the Executive Branch to enter
4 into such an agreement as required on terms and conditions by MPLT; and the \$2
5 million debt authorization for the First and Second Senatorial Districts
6 infrastructure projects of which \$1 million each for the two senatorial districts. The
7 Legislature also finds that this reserved allocation to the two senatorial districts is
8 in the best interest of the Commonwealth as a whole.

9 **Section 2. Repeal and Re-enactment.** Subject to codification by the CNMI
10 Law Revision Commission, Public Law 23-12 is hereby repealed and re-enacted to
11 read as follows:

12 “§101. Debt Authorization. Pursuant to N.M.I. CONST. ART. X
13 Section 3, the CNMI Legislature authorizes a public debt not to exceed \$15
14 million of which \$13 million is a public debt and obligation to the Marianas
15 Public Land Trust for Governor Arnold I. Palacios, through-the Department
16 of Finance, to enter into a Revolving Line of Credit with the Marianas
17 Public Land Trust. This debt authorization shall also apply to a Line of
18 Credit for an autonomous agency as provided in Section 104(a), and a loan
19 of \$2 million public debt authorization of which \$1 million each for the First
20 and Second Senatorial Districts to fund infrastructure projects.

21 §102. Line of Credit.

1 (a) The MPLT-CNMI Revolving Line of Credit shall cover CIP
2 advances from the United States Economic Development Administration
3 (EDA) projects.

4 (b) The term of the Revolving Line of Credit shall not exceed seven
5 years (84 months) starting from the date of execution of the Revolving Line
6 of Credit between MPLT and the Governor and the Secretary of Finance.

7 (c) For EDA CIP advances, the Office of the Governor and
8 Department of Finance shall repay the Line of Credit as to any drawdowns
9 no later than thirty (30) calendar days from the date of each drawdown.

10 (d) For EDA CIP advances, no further drawdowns shall be made
11 unless and until the prior drawdown is satisfied or MPLT agrees to
12 additional drawdowns.

13 (e) For any EDA CIP advances, any reimbursements received by the
14 CNMI Department of Finance/Office of the Governor from the United
15 States Economic Development Administration paid or remitted to the
16 CNMI Government for CIP project advances that are covered in the MPLT-
17 CNMI Revolving Line of Credit including future EDA CIP projects for
18 Rota and Tinian during the seven-year term of the LOC shall be paid
19 directly to MPLT as settlement for the line of credit herein.

20 (f) The interest rate of the LOC shall be 5.5% per annum.

21

1 (g) Because the Revolving Line of Credit and the respective loans,
2 collectively, is a public debt this legislation must be passed by two-thirds
3 (2/3) of the members of the House of Representatives and the Senate before
4 being signed into law. Further, the obligation for such a public debt shall
5 not exceed ten percent (10%) of the total appraised value of the properties
6 of the Commonwealth so that the Secretary of Finance shall not execute the
7 Revolving Line of Credit until the Secretary of Finance certifies, with the
8 concurrence of the Attorney General, that this constitutional requirement is
9 satisfied.

10 (h) The Attorney General shall review the Revolving Line of Credit
11 Agreement for legal sufficiency for the Governor and Secretary of Finance
12 to enter into this transaction in order for the Revolving Line of Credit to be
13 effective against the Commonwealth.

14 (i) Transactional Documents. The Marianas Public Land Trust and
15 the Commonwealth, acting through the Governor and the Secretary of
16 Finance, shall execute the transactional financial documents for the
17 Revolving Line of Credit through a line of credit agreement, assignment of
18 income, and a Promissory Note. After such documents have been duly
19 executed, MPLT shall authorize and commence any initial drawdown,
20 subject to its terms and conditions, to the Department of Finance which shall

1 be used for the CIP-approved or designated project bridge financing or
2 advances, only.

3 (j) The Secretary of Finance and the Office of the Governor shall
4 issue a quarterly summary “MPLT Loan Report” which shall be a financial
5 statement detailing the activities of the CNMI Government as to the CIP
6 project advances and status. This MPLT Loan Report shall be submitted to
7 all the members of the Legislature, the Office of the Public Auditor, the
8 Office of the Attorney General, and a copy to MPLT.

9 (k) Authorization to Defend, Hold Harmless, and Indemnify MPLT.
10 The Legislature hereby authorizes, as a condition precedent to the loan
11 agreement being authorized herein, the Commonwealth Government,
12 through the Executive Branch including the Secretary of Finance and Office
13 of the Attorney General, to defend, hold harmless, and indemnify the
14 Trustees of the Marianas Public Land Trust, individually and collectively,
15 along with MPLT’s staff, counsel and consultants for any suits, causes of
16 action, litigation, and claims as well as any loss, liability, and expense
17 whatsoever of any kind or nature including but not limited to attorneys’ fees
18 which may arise from or that are in any way related to the loan agreement
19 which is the subject of this Act or the events arising therefrom as to MPLT’s
20 actions in extending the line of credit. The Commonwealth shall pay for the
21 cost of representation being authorized herein through the Department of

1 Finance without cost to MPLT or provide representation by the CNMI
2 Office of the Attorney General. In the event MPLT is compelled to engage
3 its counsel or representation of the Commonwealth, the Department of
4 Finance shall reimburse MPLT for such costs and expenses. In the event the
5 CNMI Government fails to reimburse or pay for such costs and expenses,
6 MPLT may withhold further distributions of income until its expenses and
7 costs are fully reimbursed.

8 §103. Interest Income Withholding.

9 The Commonwealth hereby pledges and appropriates the sum not to
10 exceed \$13,000,000.00 from future interest income distributions into the
11 CNMI General Fund by the Marianas Public Land Trust (MPLT) starting
12 Fiscal Year 2024 and authorizes the withholding of such distributions for
13 future fiscal years for payment and/or as security, in the event of any default
14 and to satisfy any delinquent or default amount owed by the CNMI
15 Government, for MPLT to withhold such distributions until such time as
16 fully reimbursed and/or the Revolving Line of Credit with the
17 Commonwealth Department of Finance is fully satisfied and retired. Any
18 withholding of interest income distributions shall be separate from the prior
19 authorized withholding for the Yutu Loan for which MPLT is currently
20 withholding distributions until fully repaid. Thereafter, MPLT shall remit

1 any net distributable interest income to the General Fund for the subsequent
2 fiscal year.

3 §104. Additional EDA-Funded and other CIP Projects.

4 (a) If there are any autonomous CNMI Government agencies funded
5 by the EDA-funded CIP projects participating or benefitting from a Line of
6 Credit Agreement bridge financing with MPLT, or any duly approved non-
7 profit organizations, those entities shall, as a condition of such participation,
8 agree to be bound by the MPLT terms and conditions in writing such as
9 through a Memorandum of Understanding, Contract, or Promissory Note
10 including, but not limited to, the interest rate charged by MPLT.

11 (b) Any future EDA-funded CIP projects for the First and Second
12 Senatorial Districts shall be covered by the LOC as provided in this Act.

13 (c) If there are other infrastructure projects for the First and Second
14 Senatorial Districts, participating or benefitting from a loan with MPLT, not
15 to exceed the debt authorization under Section 101, the respective
16 legislative delegations through a resolution identify the infrastructure
17 projects to be funded. In addition, notwithstanding any provision of law to
18 the contrary, the MPLT investment interest to be transferred to the general
19 fund, after the Yutu loan is paid in full, is hereby earmarked to pay the
20 respective loans. Be it further provided that, as a condition of the loan
21 participation, the appropriate respective municipal officials shall agree to

1 be bound by the MPLT terms and conditions in writing such as through a
2 Memorandum of Understanding, Contract, or Promissory Note including,
3 but not limited to, an agreed fixed annual interest rate, but not to exceed 7.5
4 %, and that the interest on the loan in the year the loan is provided by MPLT
5 shall be deducted upfront from the loan principal.”

6 **Section 3. Severability.** If any provisions of this Act or the application of
7 any such provision to any person or circumstance should be held invalid by a court
8 of competent jurisdiction, the remainder of this Act or the application of its
9 provisions to persons or circumstances other than those to which it is held invalid
10 shall not be affected thereby.

11 **Section 4. Savings Clause.** This Act and any repealer contained herein
12 shall not be construed as affecting any existing right acquired under contract or
13 acquired under statutes repealed or under any rule, regulation, or order adopted
14 under the statutes. Repealers contained in this Act shall not affect any proceeding
15 instituted under or pursuant to prior law. The enactment of the Act shall not have
16 the effect of terminating, or in any way modifying, any liability, civil or criminal,
17 which shall already be in existence on the date this Act becomes effective.

18 **Section 5. Effective Date.** This Act shall take effect upon its approval by
19 the Governor, or it becoming law without such approval.

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Date: _____ Introduced by: /s/ Rep. Edmund S. Villagomez
/s/ Rep. Blas Jonathan "BJ" T. Attao
/s/ Rep. Roman C. Benavente
/s/ Rep. Marissa R. Flores
/s/ Rep. Ralph N. Yumul

Reviewed for legal sufficiency by:

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