



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

STANDING COMMITTEE REPORT NO. 23-86
Date: April 11, 2024
RE: House Bill 23-72

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 23-72, entitled:

“To establish a Department of Labor Revolving Fund and authorize the collection of fees through the Administrative Hearing Office for services to other agencies,”

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 23-72, Senate Draft 1.

II. ANALYSIS:

A) Purpose:

The purpose of House Bill 23-72 is to authorize the collection of fees through the Administrative Hearing Office for services to other agencies through the establishment of a Department of Labor Revolving Fund.

B) Committee Findings:

Your Committee finds that since the reorganization of the CNMI Department of Labor (DOL), that the department has been operating without any means of accessing a revolving fund account to provide supplemental funding to the department. Additionally, established under the reorganization of the DOL, the Administrative Hearing Office (AHO) was created to provide critical service about managing, hearing, and adjudicating labor and wage disputes while adhering to the regulatory compliance of labor laws of the Commonwealth.

Your Committee met on April 11, 2024, along with the presence and participation of Ms. Leila Staffler, DOL Secretary, and Ms. Jackie Nicolas, DOL Chief Administrative Hearing Officer, to deliberate on the proposed legislation. During the meeting, it was clarified that approximately 31 government agencies require access to an appeal process, with multiple cases piling up without any resolution in years as a result of the unavailability to properly fund the services and operations of an administrative hearing officer in the government. It was further shared that at one point in time, the DOL had provided their services to the government at no additional cost. However, as a result of the increasing claims filed under the public unemployment assistance (PUA) program which is also under the purview of the department, the AHO was no longer able to provide these services for free to the CNMI government.

Your Committee further finds that despite the DOL being approached by several agencies who were willing to pay a fee for the services provided by the AHO, however, the DOL indicated that they could not accept their request absent the establishment of the revolving fund account (RFA). Further clarification was provided to the Committee that absent an RFA, any funds intended for DOL would be deposited into the general fund of which the Department of Finance could not transfer the funds to DOL, further hampering their financial pool to fund the needs of the department. Additionally, with one hearing officer currently staffed, the DOL was provided additional personnel for the hiring of a hearing officer, however, the current salary rate budgeted for this position is not enticing to fill the vacancy with the expected duties and responsibilities. In full support of the establishment of the DOL Revolving Account, the DOL shared that the funds would assist the AHO with personnel and supplemental salary adjustments, necessary operations and supplies, and provide an opportunity for access to training and online resources.

Upon further review of the proposed legislation, your Committee indicated that the intent of establishing an RFA to support the operations of the AHO coincided with language to allow other fees of the DOL to be deposited into the same account. Your Committee agreed that the funds for the AHO should remain separate from any other fees collected to fund the operations of other divisions under DOL. Furthermore, your Committee believes that a separate legislation to establish another RFA should be introduced by the House of Representatives to ensure that all funds rendered for services provided by AHO remain consistent with the intent of the proposed legislation. Therefore, your Committee agreed to delete language in the proposed legislation that would authorize the deposit of other fees collected from other divisions and programs of the department.

During the meeting, no member objected to the passage of the proposed legislation, as amended, and was adopted in the form of House Bill 23-72, Senate Draft 1.

C) Legislative History:

House Bill 23-72 was formally introduced by Representative Edwin K. Propst on September 7, 2023 and subsequently referred to the House Standing Committee on Ways and Means (WM) for disposition. The House WM Committee, through the adoption of House Standing Committee Report No. 23-64, recommended the passage of the proposed legislation in its current form. The House of Representatives passed House Bill 23-72 on First and Final Reading during its First Day, Third Regular Session on January 12, 2024. House Bill 23-72 was transmitted to the Senate on January 16, 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 23-72. However, a Committee Meeting, which is open to the public, was held on April 11, 2024. See below for further details.
2. Committee Meeting. The proposed legislation made its first appearance during the scheduled Committee Meeting convened on April 11, 2024. The Committee Meeting notices and agenda were officially posted on April 5, 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 Comment* of the Committee Agenda. However, no oral testimony in support or in opposition were stated before your Committee.
3. Written Comment. A request for comment on the proposed legislation was made with a deadline to submit a response by April 10, 2024 to the following entities:
 - a. *Honorable Edward Manibusan, Attorney General, Office of the Attorney General, letter dated April 12, 2024*

E) Estimated Fiscal Cost:

The enactment of House Bill 23-72, as amended, may result in additional costs to the CNMI government for the establishment of the DOL Revolving Account. However, the establishment of the revolving fund account would address the financial dilemma of the Department of Labor to ensure a continuity of the services and necessary operations provided by the Administrative Hearing Office to the CNMI government.

F) Summary of Committee Amendments:

For reference purposes, single underlines and ~~single strikethroughs~~ are the original amendments proposed; double underlines and ~~double strikethroughs~~ are amendments recommended by the Committee. Therefore, your Committee agreed to the following amendments:

1. Section 1. Findings and Purpose. Amendments were made to reflect the amendments adopted by the Committee to ensure that all fees collected for the services provided to resolve administrative cases remain within the expenses of the DOL AHO, beginning on page 3, lines 1-2, to read:

“This bill authorizes the DOL to establish a revolving fund account and, through an amendment to regulations, provide administrative hearing services for a fee for such agencies that are authorized to resolve administrative cases. Those fees ~~and other fees~~ collected by DOL may be used to fund personnel and operations expenses of DOL AHO.”

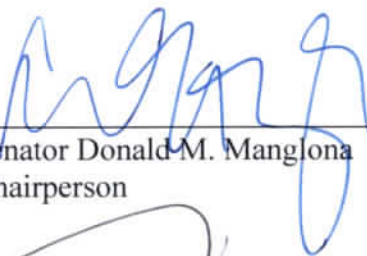
2. Section 2. Amendment. Deleted proposed language under 1 CMC §9115(b)(2), beginning on page 3, lines 20-21, that read:

~~“(2) Fees collected from an agency by DOL for providing hearing officer services, along with any other fees collected by DOL pursuant to DOL regulations, shall be deposited on behalf of DOL into a revolving account, established by the Department of Finance and known as the DOL Revolving Fund.”~~

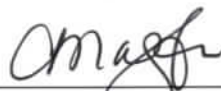
III. CONCLUSION:

Your Committee agrees with the intent and purpose of the proposed legislation, as amended, and recommends passage in the form of House Bill 23-72, Senate Draft 1.


Respectfully submitted,



Senator Donald M. Mangiona
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:

- Written Comment(s)
 1. *Honorable Edward Manibusan, Attorney General, Office of the Attorney General, letter dated April 12, 2024*

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2023

Second Regular Session, 2023

H. B. 23-72, SD1

A BILL FOR AN ACT

To establish a Department of Labor Revolving Fund and authorize the collection of fees through the Administrative Hearing Office for services to other agencies.

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

1 **Section 1. Findings and Purpose.** The legislature recognizes that the
2 CNMI Department of Labor (DOL) has been reorganized and renamed several
3 times since it was originally created in 1978. In 1994, during the first
4 reorganization, funds collected as part of DOL agency duties were converted into
5 the general fund. The current-day Department of Labor was organized in 2003.
6 There is a need to update the DOL, including the creation of a revolving account to
7 supplement the CNMI Department of Labor's operational needs.

8 The DOL Administrative Hearing Office (AHO), which provides due
9 process hearings for cases within the Department's jurisdiction, was established in
10 the 2003 reorganization. Since then, there has been an increase in requests from
11 other CNMI agencies for assistance in administrative hearings. The AHO has been
12 established for 20 years and has the experience and skill to provide administrative

1 hearing services to other agencies. With the creation of a revolving fund, DOL
2 would be able to collect fees from providing such services, along with fees collected
3 through established DOL regulations.

4 In the CNMI, the published regulations of over 25 agencies, offices, and
5 public entities call for the need for a hearing officer or other due process hearing.
6 Despite these regulations, most agencies do not have a hearing officer to preside
7 over due process hearings. Most agencies do not have the resources to replicate
8 their own Administrative Hearing Office.

9 The CNMI Legislature finds that the imposition of fees for hearing services
10 is necessary to support the Department of Labor operations. The CNMI Legislature
11 further recognizes that using the DOL ~~AOH~~ AHO to provide services for other
12 agencies would be more efficient and cost-effective than replicating it for
13 themselves.

14 The Commonwealth Code sets out the general process for conducting
15 administrative hearings. 1 CMC Division 9, Chapter 1. Administrative Procedures
16 Act. However, the CNMI Department of Labor Administrative Hearing Office was
17 established to provide administrative hearings for cases within the Department's
18 jurisdiction. 4 CMC §§ 4511(a) & (h) & 4528.

19 This bill authorizes the DOL to establish a revolving fund account and,
20 through an amendment to regulations, provide administrative hearing services for
21 a fee for such agencies that are authorized to resolve administrative cases. Those

1 fees ~~and other fees~~ collected by DOL may be used to fund personnel and operations
2 expenses of DOL AHO.

3 **Section 2. Amendment.** 1 CMC §9115 of the Commonwealth Code is
4 hereby amended to read as follows:

5 **“§ 9115. Administrative Procedure: Implementation.**

6 (a) Each agency is granted the authority to comply with the
7 requirements of this chapter through the issuance of rules.

8 (b) Notwithstanding any other law, the Administrative Hearing
9 Office, as defined in 3 CMC § 4511(a), may assign a hearing officer to
10 provide services for any CNMI government agency that has complied with
11 subsection (a). Such services may include administrative adjudication,
12 mediation or any other administrative hearing support.

13 (1) DOL must adopt regulations to authorize and establish a process
14 for requesting and receiving hearing officer services and include a uniform
15 fee schedule for payment of those services. Until regulations have been
16 adopted, but not more than 180 days from the effective date of this Act,
17 DOL may rely upon memorandums of understanding with agencies to
18 provide hearing officer services and receive payments for such services.

19 (2) Fees collected from an agency by DOL for providing hearing
20 officer services, ~~along with any other fees collected by DOL pursuant to~~
21 ~~DOL regulations,~~ shall be deposited on behalf of DOL into a revolving

1 account, established by the Department of Finance and known as the DOL
2 Revolving Fund.

3 (3) The DOL Revolving Fund shall be non-lapsing and may be used
4 for the exclusive purpose of funding the personnel and operational needs of
5 DOL. The Secretary of Labor shall be the expenditure authority for this
6 Fund. Fund monies shall be available for expenditure without further
7 appropriation and without fiscal year limitations.”

8 **Section 3. 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 other circumstances other than those to which it is held
12 invalid shall not be affected thereby.

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

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

HOUSE BILL 23-72, SD1

Prefiled: 9/6/2023

Date: _____ Introduced by: /s/ Rep. Edwin K. Propst
/s/ Rep. Roman C. Benavente
/s/ Rep. Angelo A. Camacho
/s/ Rep. Diego V. F. Camacho
/s/ Rep. Joel C. Camacho
/s/ Rep. Manny G. T. Castro
/s/ Rep. Marissa R. Flores
/s/ Rep. Julie M. A. Ogo
/s/ Rep. Edmund S. Villagomez
/s/ Rep. Ralph N. Yumul

Reviewed for Legal Sufficiency by:
/s/ John M. Bradley
House Legal Counsel



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

VIA EMAIL: sen.dmanglona@gmail.com

April 12, 2024

OAGSEN: 2024-022
LSR No. 24-217

Hon. Donald M. Manglona
Chairman, Committee on Fiscal Affairs
The Senate
Twenty-Third Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Re: House Bill 23-72: "To Establish a Department of Labor Revolving Fund and authorize the collection of fees through the Administrative Hearing Office for services to other agencies."

Dear Chairman Manglona:

This is in reference to your request for comments from the Office of the Attorney General on House Bill No. 23-72.

The bill appears to address the needs of various CNMI agencies for administrative due process hearings by having the Department of Labor ("DOL") provide the hearing services; it also seeks to establish a revolving fund to support this endeavor. The establishment of a revolving fund may not be necessary as there is an existing statute, 1 CMC § 7712 (Interagency Transfers), that provides a mechanism for agencies to receive reimbursements for the provision of materials, supplies, equipment, or services to other agencies.

With respect to the goal of providing administrative due process hearings, the Office of the Attorney General also recognized that need due to many contested cases that are still pending in various agencies. On May 31, 2023, my office submitted a draft bill establishing an Office of Administrative Hearings ("OHA") for the legislature's consideration. (Copy enclosed.) The bill was modeled after the Revised Model State Administrative Procedure Act of 2010 and sought to establish an independent office in order to ensure impartiality and fairness to the parties. The creation of the OHA would promote efficiency by providing the hearing officers, standardized forms and templates, hearing procedures, and evidentiary standards throughout. I am submitting the proposed legislation once again for your consideration.

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7600
Facsimile: (670) 234-7016

Attorney General Investigation Division
Telephone: (670) 237-7628
Facsimile: (670) 234-7016

Victim Witness Advocacy Unit
Telephone: (670) 237-7602
Facsimile: (670) 234-7016

Hon. Donald M. Manglona
Chairperson, Committee on Fiscal Affairs
The Senate, 23rd Northern Marianas
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If your committee prefers to continue working with the proposed House Bill No. 23-72, the bill is constitutionally permissible as written. However, the Committee might want to consider clarifying Section 2 of the bill (amending 1 CMC §9115)¹ which references 3 CMC §4511(a). According to 3 CMC §4511(a), the term "Administrative Hearing Office" refers to "...the hearing office of the *Department of Labor*; and for purposes of 1 CMC §§ 9109 and 9110² as those provisions may apply to this chapter³." (Emphasis added.). The Committee might consider removing the words following "9110" (words underlined above) to clarify that the administrative hearing office would apply the Administrative Procedures Act (and not just with regards to only those matters involving the Department of Labor).

Thank you for the opportunity to provide comments on H.B. No. 23-72 and for your consideration of the attached model draft legislation.

Please feel free to contact me should you require any further assistance with this matter.

Sincerely,



EDWARD MANIBUSAN
Attorney General

cc: All Members, Committee on Fiscal Affairs

¹ See page 3, line 9 of the bill.

² 1 CMC § 9109 refers to the conduct of hearings and § 9110 refers to issuance of orders and decisions.

³ Chapter refers to the section under Title 3, Division 4 (in particular, the chapter discussing the Department of Labor).