



HOUSE OF REPRESENTATIVES

TWENTY-THIRD LEGISLATURE

COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

P.O. BOX 500586 SAIPAN, MP 96950

ANGELO A. CAMACHO
CHAIRMAN
NATURAL RESOURCES COMMITTEE

Adopted - 8/18/2023

STANDING COMMITTEE REPORT NO. 23-38

DATE: July 21, 2023

RE: House Bill No. 23-28

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Third Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Natural Resources to which was referred:

H. B. No. 23-28:

“To clarify the process for appropriation of administrative expenses of the Department of Public Lands and timely transfer of funds to Marianas Public Land Trust.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 23-28, be passed by the House in the form of House Substitute 1.

II. ANALYSIS:

A. Purpose:

The purpose of House Bill No. 23-28 is to clarify the process for appropriation of administrative expenses of the Department of Public Lands and timely transfer of funds to Marianas Public Land Trust.

B. Committee Findings:

Your Committee finds that the Legislature acknowledges uncertainties regarding the Department of Public Lands (DPL) responsibilities for collecting and using funds related to public lands and the duty of the Marianas Public Land Trust (MPLT) to receive and invest these funds. The CNMI Constitution initially established MPLT to invest money collected from public lands by the Marianas Public Land Corporation (MPLC), which could budget its operations by deducting reasonable expenses before transferring the remainder to MPLT.

Furthermore, over time, the MPLC's duties were transferred to the executive branch, leading to its transformation into the Marianas Public Land Authority (MPLA), now known as DPL. This transfer rendered certain provisions of the Constitution, including the provision allowing MPLA (now DPL) to budget its operations from collected public land money, as "inoperative." As a result, there is uncertainty about how DPL should be funded, how expenses should be reimbursed, and how its budget should be established.

Your Committee finds that to address this ambiguity, House Bill No. 23-28, HS1 proposes placing DPL into a regular budgeting process for an executive branch agency. DPL will submit a proposed budget to the Governor, which will require approval by the Legislature. The funding for DPL's budget will come from the funds retained from public land money collections, unless the Supreme Court rules otherwise. Any funds not approved by the Legislature for DPL's expenditures must be promptly transferred to MPLT for investment, as mandated by the CNMI Constitution. MPLT will continue to be responsible for investing the funds and releasing interest earned on those investments to the general revenue.

Lastly, your Committee felt the need to further make technical changes to strengthen the bill. The proposed amendments focused on three key aspects. Firstly, the bill aims to allocate a percentage of the revenue collected from public land leases specifically for infrastructure improvements in homesteads, thereby enhancing the quality of living for residents. Secondly, the amendments seek to provide clear and well-defined powers to the legislature concerning the Department of Public Lands (DPL) budget, ensuring a more transparent and accountable budgeting process. Lastly, the bill mandates a timely transfer of all monies collected from land leases to the appropriate recipients within 30 days of each fiscal year's conclusion, promoting efficient financial management and the timely distribution of funds. These technical changes are aimed at fostering better development, governance, and utilization of public lands for the overall benefit of the community.

C. Public Comments/Public Hearing:

Your Committee did not hold any public hearings on House Bill No. 23-28, however your Committee did solicit for comments from the following agencies:

- Office of Attorney General
- Department of Public Lands (DPL)
- Marianas Public Land Trust (MPLT)

Comment(s) were received from:

- Department of Public Lands (DPL)

- Marianas Public Land Trust (MPLT)

D. Legislative History:

House Bill No. 23-28 was introduced by Representative Angelo A. Camacho on March 09, 2023 to the full body of the House and was jointly referred to the House Standing Committee on Natural Resources and House Standing Committee on Ways & Means.

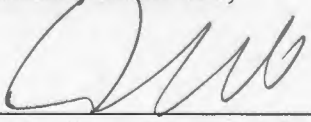
E. Cost Benefit:

The enactment of House Bill No. 23-28, HS1 will result in additional cost to the CNMI Government as it is necessary to analyze the specific changes and their potential impact on the CNMI Government's budget and financial resources. Factors such as allocated percentage for infrastructure improvements, the extent of the changes in DPL's budget process, and the administrative costs related to the timely transfer of funds from land leases will need to be considered.

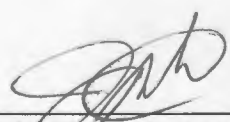
III. CONCLUSION:

The Committee is in accord with the intent and purpose of H. B. NO. 23-28 and recommends its passage in the form of House Substitute 1.

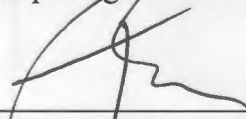
Respectfully submitted,




Rep. Angelo A. Camacho, Chairperson




Rep. John Paul P. Sablan, Vice Chair



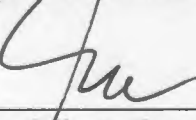
Rep. Joel C. Camacho, Member



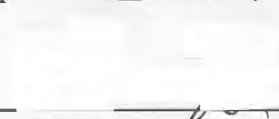
Rep. Blas Jonathan "BJ" Attao, Member



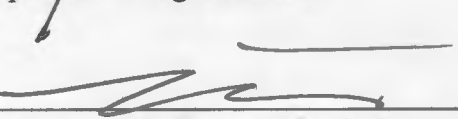
Rep. Vincent S. Aldan, Member



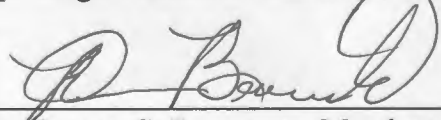
Rep. Julie A. Ogo, Member



Rep. Diego Vincent F. Camacho, Member

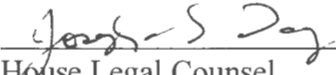


Rep. Manny T. Castro, Member



Rep. Roman C. Benavente, Member

Reviewed by:


House Legal Counsel

Attachments:

- Letter dated April 24, 2023 from Phillip Mendiola-Long, Chairman, Marianas Public Land Trust
- Letter dated April 27, 2023 from Teresita A. Santos, Secretary, Department of Public Lands



MARIANAS PUBLIC LAND TRUST

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

April 24, 2023

Rep. Angelo A. Camacho
Chairman
House Natural Resources Committee

Rep. Ralph N. Yumul
Chairman
House Ways & Means Committee

CNMI House of Representatives
23rd CNMI Legislature
Jesus P. Mafnas Legislature Building
Saipan, MP 96950

RECEIVED
DATE BY 4/28/23
Andrea

Via Fax & Hand Delivery

**Subject: Comments by the Marianas Public Land Trust re: HB 23-28 HS1
Re: Amending PL 15-2 as to the CNMI Department of Public Lands
As to the Process for Appropriation of Administrative Expenses
and Timely Transfer of Funds to the Marianas Public Land Trust**

Dear Chairman Angelo Camacho, Chairman Yumul & Members of the House Natural Resources Committee and House Ways & Means Committee,

The Trustees of the Marianas Public Land Trust ("MPLT") submit the following in response to the request for comments and input from your Natural Resources Committee as to HB 23-28 HS1. By this submission, the MPLT Trustees also inform the House Ways & Means Committee of our similar views from the original request for comments in the original draft HB 23-28 prior to the House Substitute version.

We very much appreciate the consideration that your Committees have extended to MPLT as to HB 23-28 HS 1 (referred to here as the "DPL Bill") which is specifically intended to bring DPL in line with the budgeting process under the Planning and Budgeting Act and reaffirming the House's role as the constitutional appropriating authority. Further the DPL bill, to the extent it was not clear to DPL before, makes it emphatically clear that all funds net of its approved budget shall be transferred to MPLT within thirty-days at the end of each fiscal year. The DPL Bill would end the practice by DPL of "banking" or segregating for itself, public land lease funds without any authority to do so.

The MPLT Trustees support and endorse the passage of the DPL Bill. However, the Trustees do suggest further edits/revisions to the DPL Bill and urge a detailed Joint Committee Report that provides clear legislative intent and unequivocal legislative mandate for DPL to comply with the Planning and Budgeting Act as an Executive Branch department and no longer a constitutionally created entity.

For the reasons discussed below, the Trustees respectfully request that your Committees make minor amendments and ultimately recommend passage of the DPL Bill by the House members. We also urge a robust and detailed legislative history with a Committee Report supported by attachments that inform the members and their constituents of the compelling necessity of the DPL Bill and its passage as soon as possible.

HB 23-28 HS1: MPLT's Substantive Comments on the DPL Bill

For MPLT, there are no ambiguities as to DPL's responsibilities nor are there unresolved legal issues regarding the proper method of establishing a DPL budget. The CNMI Supreme Court decision in *DPL v. CNMI*, 2010 MP 14 involved a certified question between DPL and the CNMI government as to a statute which appropriated public land lease funds for land compensation. The CNMI Supreme Court, in striking P.L. 16-31 requiring the payment of land compensation judgments out of public land funds as unconstitutional and conflicting with Article XI Section 6 of the Constitution, was unequivocal in the role of the House as to its appropriation authority¹.

MPLT submits that the following substitute language may be appropriate for the Findings/Purpose for the DPL Bill:

"The Legislature finds that it has not abdicated nor delegated its appropriation power to the Department of Public Lands (DPL) and that DPL's enabling act, as construed and applied by DPL as to its use and accounting for public land lease funds, constitutes a fundamental disregard of the Legislature's appropriation power. Further, as a line department under the Executive Branch established pursuant to P.L. 15-2 as amended, the Planning and Budgeting Act and the authority of the Legislature to set the most reasonable budget and spending authority for DPL's expenses compels legislation to affirm this authority on DPL."

The Trustees find the substitute version of the DPL Bill with HS1 to be an improvement on the original draft/version. As to the Findings/Purpose, the Trustees submit that the opening paragraph warrants revision. The proposed language above is suggested as to Section 1 Findings.

¹ Indeed, in *DPL v. CNMI* the CNMI Supreme Court spoke to the non-delegation doctrine that the Legislature cannot delegate its legislative power to another branch. The Supreme Court questioned whether Public Law 15-2 constitutes an impermissible delegation of the Legislature's appropriation power to DPL and the Executive Branch. See, *DPL v. CNMI* at Footnote 5 (discussing the Supreme Court's concern as to why the Legislature would abdicate its appropriation power to the Executive Branch as to DPL withholding operating expenses at its discretion formerly permitted under the Constitution's Section 5(g) but no longer operative). Thus, MPLT respectfully submits that apart from its budgetary appropriation authority (which it retains and did not delegate), the Legislature's remedy for curtailing DPL's runaway expenses and to hold the agency accountable is to amend Public Law 15-2 as proposed with the DPL Bill.

As to page 2 in HS1 Line 18, MPLT suggests deleting the clause "unless a court decides otherwise." In statutory construction, a statute is presumed valid and is to be given effect, and that is the entire reason for this DPL Bill: that an Executive Branch agency must give effect to a law and not continue to ignore it if it finds it convenient to do so.

As to Section 2 (Page 3) amending 2 CMC §2803 as to DPL's powers and duties, the current statute expressly states that the DPL Secretary owes a strict fiduciary duty to the beneficiaries as to the use of public land lease funds. MPLT would suggest the additional sentence to §2803(a) "The Department shall be a co-fiduciary with the Marianas Public Land Trust as to with full responsibility for compliance with this Act and the CNMI Constitution." This language imbues DPL with fiduciary responsibility entirely as a department in addition to the strict fiduciary duty of its Secretary.

Similarly, the Trustees propose additional language as to §2803(b), consistent with the Attorney General Legal Opinion 18-03 as follows: "There shall be no reprogramming of the budgeted and appropriated funds for DPL by the Governor at any time, nor shall the Department have any authority for the expenditure, reserve of or spending of supplemental unappropriated funds at any time." This language is consistent with the perennial problem of reserving funds by DPL (discussed below).

Further, the Trustees observe with concern the language in HS1 in reference to "the homestead program" and "sums required to be held in reserved for approved homesteads." MPLT has been very aware of this priority by the Legislature to ensure capital improvement project funds for homestead infrastructure. We comment here as to this topic for your members' consideration and information. In the 22nd CNMI Legislature there was introduced a Senate Legislative Initiative 22-09 which sought to establish a constitutional provision for the use of public land lease funds by DPL for "homestead development infrastructure including water and power."

The Trustees pointed out then and do so here that the Legislature identifies and appropriates the funds for capital improvement projects for power, sewer and water throughout the CNMI not just for but including homesteads. Moreover, there is already one autonomous agency charged with the delivery of power, water and sewer service for our residents: the Commonwealth Utilities Corporation ("CUC"). The Trustees caution the Legislature against allowing DPL to self-aggrandize into a capital improvement project agency for infrastructure duplicating the responsibility of CUC. The Department of Public Works handles the roads, drainage and other transportation facilities for our Commonwealth including homestead roads. This self-appropriation power cannot be read nor allowed into DPL's enabling act, and we urge the Committee to beware of this concern.

While well-intentioned to use public land lease funds for capital improvement projects, the fundamental policies of the Constitution which DPL is charged with carrying out do not include such infrastructure for good reason: the fiscal policy allocation of funds from public land leases from the interest income remitted by MPLT is left to the Legislature to determine (not for DPL to circumvent the Legislature). It is inconsistent to have a proposed constitutional initiative that finds an agency's actions as unrestrained and needing restraint only to give that agency responsibility with funds that are properly left to the Legislature and other agencies as to their mandate.

The most salient provisions of HS1 are the amendments to §2803(c) which the Trustees discuss here. As to §2803(c)(1), the Trustees suggest a definitions section that defines the term "transfer" to mean the remittance, payment and conveyance of funds by check, wire or money order to the Marianas Public Land Trust. Experience has shown that where there are vagaries in a term for DPL, such vagaries are construed against the policy of compliance. MPLT also suggests a clear definition of "remaining revenue" as those funds which are "any excess, unexpended budgeted funds, additional earned funds or income from land leases, permits, Temporary Authorization permits but not including security deposits as required by land lease agreements."

As to the proposed language that the Attorney General be authorized to seek "a court order requiring such transfer should the Department fail to make a timely transfer of funds," the Trustees feel that this language is unnecessary. Of more concern is that the suggested language gives the Secretary of DPL implicit authority that he or she may actually withhold the transfer of funds under the law without accountability. That is the very problem and if anything, the Governor and the Attorney General have the ultimate responsibility to enforce the law. For violating the law, it is the DPL Secretary who may be held personally responsible, under his/her strict fiduciary duty, for such failure to remit the net land lease funds to MPLT and whom would be removed and/or civilly prosecuted for such violations.

With respect to proposed language in §2803(c)(3), the Trustees respectfully suggest the deletion/strike-out of the reference for "homestead development expenses" as well as lines 10 through 12. Lines 10-12 reference potential court rulings which are inappropriate in legislation. The severability and savings clauses in the DPL Bill suffice to address potential defects in the DPL Bill. Indeed, in *DPL v. CNMI* the Supreme Court took great measures to endorse the role of the Legislature's appropriation power and until and unless a court rules otherwise, a statute is to be given effect as to its plain meaning. P.L. 15-2 is plain and clear in its meaning and allowing the proposed language (which may have been included as a potential check on the reference to homestead development and infrastructure expenditures) suggests legislative vagaries or ambivalence by the drafters rather than clarity and unequivocal pronouncements.

The foregoing are the Trustees' specific, substantive comments as to the DPL Bill. For MPLT, HS 1 and the proposed additions/edits to HS 1 would re-affirm the Legislature's appropriation authority to budget funds for DPL so long as there is fidelity to the constitutional policies, for DPL to carry out within reasonable limits as to administration and management expenses. In other words, the Supreme Court had informed the Legislature of its view that the non-delegation doctrine properly authorizes the Legislature to curtail unreasonable and unaccountable actions by agencies through its appropriation power with the direct power to contain an agency such as DPL.

Your Committees may be aware that previously the 22nd CNMI Legislature sought to correct what is being proposed in the DPL Bill, through a constitutional amendment.

Instead of a constitutional amendment, the DPL Bill amending Public Law 15-2 can achieve the corrective language and achieve the following: 1) prevent DPL from inflating its annual budget; 2) the timely remittance of net land lease income and prohibiting withholding any surplus revenue from land lease income from MPLT; 3) approve DPL's annual budget and

4) ensure that the DPL budget complements DPL's actual personnel and operational requirements (to manage public lands and establish homesteads) each fiscal year.

Through various Legal Opinions from the Office of the Attorney General, including Legal Opinion 18-03, that office has counseled compliance by DPL, as to its administration and use of public land lease funds. *See attached, AGO Legal Opinions and Memoranda.* For its part,

MPLT has also communicated on numerous occasions with DPL urging the timely remittance of net public land lease funds for investment as well as making inquiries as to DPL's actions as to public lands or land lease income. *See attached, MPLT Letters to DPL.* These are submitted for your Committees to see the history of communications and efforts to address what will hopefully be fully resolved through H.B. 23-28 HS 1.

For Consideration: The DPL FY 2020 Annual Report: Examples of DPL actions which compel passage of H.B. 23-28 HS 1

As recently discussed with members the Natural Resources Committee and MPLT counsel, MPLT has reviewed DPL's most recent audit and Annual Report which provides your Committees with illustrative examples supporting the necessity for the DPL Bill. Attached is a copy of DPL's FY 2020 Annual Report.

In its FY 2020 Annual Report DPL informed the Legislature and Governor that it "absorbed" 40 personnel from the Department of Lands and Natural Resources who now, as DPL employees, maintain public parks and beaches. This is an example of what is impermissible activity by DPL self-aggrandizing its operations. The fundamental policies of DPL do not include maintaining public parks and beaches. The reported information suggests that DPL ran afoul of the Planning and Budgeting Act, doing an end-run around the Legislature's appropriation power among other violations.

In the same FY 2020 Annual Report, DPL informed the Administration and Legislature that it collected \$5.39 million dollars in FY 2020 "mostly from leases and permit fees." The Trustees read this to mean land lease income or revenue rather than security deposits or community benefits. By simple application of the Constitution and Planning and Budgeting Act, if the appropriation or budget for DPL as approved is \$4 million dollars, then \$1.39 million dollars would have been due to MPLT.

Interestingly this amount is close to the figure that MPLT had been demanding from DPL as due for remittance. In response DPL either ignores the entreaties by MPLT for remittance or it asserts that reconciliation is necessary through its FY 2020 audit. MPLT respectfully disagrees. The simple reason is that this is DPL's reporting of income it "earned" per the DPL Secretary's report. Any excess income not budgeted is due for remittance to MPLT.

Further, in her report then-DPL Secretary Teregeyo informed that DPL certified over \$2 million dollars for land compensation payments. Later in the Report on Page 26, the details of the payments are laid out. However, what is not clear is that while DPL discloses the amounts and to whom the land compensation payments were paid (the payments are actually being made by DPL per this Report), what is not disclosed is the source of the funds

for compensation. Disclosure by the DPL Secretary, a fiduciary of public funds, or the Secretary of Finance to identify the funding source for land compensation is appropriate.

So long as funds for land compensation are not from public land lease funds, MPLT would not have any objection if this were the case. We should verify.

Moreover, Page 5 of the FY 2020 Report highlights that the DPL Secretary recently granted the use of \$500,000 towards the Garapan Revitalization project which will significantly enhance the Garapan area." MPLT notes that on Page 20 of the Report DPL cites the *MPLT v. MPLC* decision that it is prohibited from using revenue collected to "create infrastructure" such as constructing roads, water lines or sewer lines. However, the DPL Secretary narrows this statement or restriction from a court decision as confined to "public land designated within the homestead program" and not a capital improvement project in Garapan.

The concern for your Committees should be that the DPL Secretary has no authority to "grant" or divert public land lease revenue outside of its costs of administration, management, land surveying and homestead development. What then was this "grant" for the Garapan Revitalization project? The DPL Secretary has no authority to divert revenue in this manner and your Committees should find this action as violating the Constitution, Public Law 15-2 and the Secretary's fiduciary duty as a trustee of public land lease funds.


The same FY 2020 Annual Report on Page 7 informed that DPL reported an accumulated debt from delinquent accounts of companies and individuals (presumably leases, permits). This is disconcerting given the amount outstanding. In the Report DPL has only billed \$1 million in delinquent leases and permit charges and of this billing has only collected \$500,000. There is no transparency nor disclosure as to who are the delinquent lessees, the amount each lessee or permittee owes and DPL's action as to each delinquent lessee. MPLT maintains that your Committees should request disclosure of this information as the import of this amount is clear-- \$12.4 million dollars if collected would be available for investment to create interest income for the General Fund.

When the Supreme Court struck Public Law 16-31 as unconstitutionally infirm in taking public land lease funds from DPL for land compensation, the Court amplified and reaffirmed the role of MPLT to receive and invest public land lease funds for the benefit of persons of Northern Marianas Descent. From the interest income earned, MPLT remits those funds to the Legislature (after reporting them) for appropriation.

Your Trustees have provided the Legislature and Administration with the funds from the interest income for appropriation. MPLT has withheld no interest income other than for its costs of administration. Those funds from interest income have paid for emergency power for CUC; for the CNMI Public School System; for the Commonwealth Healthcare Corporation; for the and most recently for Typhoon Yutu reimbursement (\$15 million dollars). When DPL remits the entirety of funds, MPLT will be able to generate additional interest income for the Legislature to appropriate. The DPL Bill achieves this by aligning DPL's compliance with the Planning and Budgeting Act and remitting the net public land proceeds within 30 days of the end of each fiscal year. The proposed legislation is long-overdue and appropriate, being in the best interest of our Commonwealth.

While the Trustees look forward to the opportunity for further conference with your Committees to expand on the foregoing discussion, we submit these comments and attachments and support H.B. 23-28 HS1, with proposed further improvements.

Sincerely,



PHILLIP MENDIOLA-LONG
MPLT Chairman

Cc: Governor Arnold I. Palacios
Lt. Governor David M. Apatang

House Ways & Means Committee
Members of the 23rd House of Representatives

Senate President Edith Deleon Guerrero
Members of the CNMI Senate

MPLT Trustees

MPLT File re: H.B. 23-28 HS 1



Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



April 27, 2023

AD23-0214

Representative Angelo A. Camacho
Chairman – Committee on Natural Resources
House of Representatives
23rd Legislature-CNMI
P.O. Box 500586
Saipan, MP 96950

Subject: DPL's Position on House Bill No. 23-28 / House Bill 23-28HS1

Dear Chairman Camacho:

Thank you for your letter dated April 6, 2023 inviting the Department of Public Lands (DPL) to provide comment on the proposed House Bill 23-28 *"To clarify the process for appropriations of administrative expenses of the Department of Public Lands and timely transfer of funds to Marianas Public Land Trust."* DPL separately received a request for comment on HB23-28, HS1 and has also included its comments on HS1, to the extent the proposed revisions differ.

The existing language at 2 CMC §2803 establishes the powers and duties of the Department of Public Lands. HB 23-28 would revise it to make the following changes:

- Require approval by the Legislature of the DPL budget, 2 CMC §2803(b);
- Require transfer to the Marianas Public Land Trust all revenue not included in the approved budget, within 30 days after the budget is approved (HB23-28) or within 30 days after the last day of each fiscal year (HB23-28, HS1), 2 CMC §2803(c)(1);
- Adding homestead program development expenses to and (in HB23-28, HS1 only) deleting land compensation judgments from the list of expenses that shall be paid from the DPL Operations Fund bank account(s), ~~clarifying that such expenses shall only be paid from such account within a budget approved by the Legislature, and requiring DPL to submit a budget requesting appropriation of DPL funds from general revenue if the Commonwealth Supreme Court decides that all or any of DPL expenses may not be paid through such account (HB23-28) or any Commonwealth Court issues a final judgment with that finding (HB 23-28, HS1), 2 CMC § 2803(c)(3);~~
- Clarify the prohibition on DPL from incurring or creating any expenditure, debt, obligation, or liability beyond the amounts specified and approved by the Legislatively-approved budget, 2 CMC §2803(c)(4); and
- Clarify that appropriations of funds are by the Legislature and not the Commonwealth, 2 CMC §2803(c)(5).

DPL appreciates the legislature's attempts to clarify DPL's authority and its obligation to remit remaining revenues to the trust, subject to the following comments and clarifications.

First, DPL opposes the proposed revision to 1 CMC § 2803(b) requiring submission of DPL's proposed annual budget "for approval by the Legislature." While DPL acknowledges that the Constitutional language in Article XI Section 5(g) requiring that "[t]he annual budget of the corporation shall be submitted to the legislature for information purposes only" is no longer constitutionally operative pursuant to *DPL v. Commonwealth*, 2010 MP 14, that court also held that the legislature may not act in a way that infringes on another constitutional office. If the legislature fails to approve DPL's submitted budget, DPL may be unable to perform its duty to manage and dispose of public lands. This would prevent DPL from maximizing revenues from public lands – recognized by the framers of the Constitution as "the only significant asset that the people of the Commonwealth have, Analysis at 165 – with the result of defunding the Trust.

Second, DPL opposes the proposed revisions to 1 CMC § 2803(c)(1) requiring that "[e]very year, within 30 days after the proposed budget of the Department has been approved by the Legislature, the Department shall transfer to the Marianas Public Land Trust all remaining revenue not included in the Department budget" (HB23-28), or that such transfer must be made "[w]ithin 30 days of the last day of each fiscal year" (HB23-28, HS1). Currently, pursuant to PL 15-02, DPL required to include in its budget "sums required to be held in reserve for approved homesteads or other Department programs in the next two fiscal years." This recognizes that DPL must hold certain funds in reserve beyond the end of the existing fiscal year in order to ensure that DPL has continuous access to funding to provide uninterrupted operations from one fiscal year to the next, in the event that DPL does not collect enough cash revenue in the first months of the fiscal year to fund expenses that come due in those first months. Any specified deadline for DPL to transfer excess revenue to the Trust must, as a practical matter, take into account this practical need for DPL to maintain a reserve to ensure its continued operations. In addition, any specified deadline should also provide for the amount of payment to be determined based on an audit, as is DPL's current practice, as this assures both DPL and MPLT that the amount of remaining revenue is correct. DPL therefore suggests that 1 CMC §2803(c)(1) be revised to require that "Each year, within one year after the last day of each fiscal year, the Department shall complete an audit of its revenue and expenses for such fiscal year to determine the amount of remaining revenue to transfer to the Marianas Public Land Trust. Within 30 days after the completion of each audit, the Department shall transfer to the Trust the amount specified in the audit." DPL also suggests that 1 CMC § 2803(b) be revised accordingly to refer to "the estimated sum to be transferred within 30 days after the completion of each fiscal year audit to the Marianas Public Land Trust."

Third, DPL supports the proposed revision to 1 CMC §2803(c)(3) that would delete "land compensation judgments" as obligations and operational expenses of DPL. The provision requiring land compensation judgments to be paid out of funds derived from public lands was held unconstitutional by the NMI Supreme Court, which noted that "PL 16-31 infringes on the Public Land Trust's constitutionally mandated functions of receiving and investing the revenues from public lands for the benefit of people of Northern Marianas descent." *DPL v. Commonwealth*, 2010 MP 14 ¶35. The Court further explained that:

[T]he revenues generated from the management and disposition of public lands are trust funds that must go to the Public Land Trust to be held for the benefit of people who are of Northern Marianas descent. If the legislature wishes to add land compensation judgments to DPL's operating budget it is free to do so, but it must appropriate the money to satisfy such judgments—it may not tap into the funds

4/27/23

DPL – HB23-28

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derived from public land absent a constitutional amendment or absent the abolishment of the Public Land Trust.”

See also id. at ¶34. For this same reason, however, DPL opposes the proposed addition of “homestead program development expenses” to the extent that it is intended to include expenses outside DPL’s jurisdiction. While certain homestead program development expenses (*i.e.*, surveying wages, costs of surveying equipment, recording fees, and other similar expenses required for DPL staff to implement the program) may properly be paid out of funds derived from public lands, the term “development expenses” is too broad and would be unconstitutional to the extent that it is intended to include other costs associated with homestead development, such as infrastructure expenses to develop roads and water, sewer, and power.

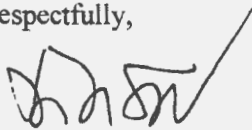
Fourth, DPL opposes the proposed revisions to 1 CMC § 2803(c)(3) requiring payment of expenses only within a budget “approved by the Legislature” and to 1 CMC § 2803(c)(4) providing that DPL “shall not incur or create any expenditures, debt, obligation or liability beyond the amounts specified and approved in a legislatively approved budget.” One of DPL’s duties and obligations is to process land compensation claims for private lands that have already been taken by the Commonwealth for a public purpose. Settlement of land claims with landowners whose private property has already been acquired for a public purpose is mandated even if the funds for those settlements has not already been appropriated by the legislature or otherwise funded by the Commonwealth. Prohibiting DPL from creating an obligation for the Commonwealth to pay land compensation claims would limit landowners’ constitutional right to receive payment of just compensation for prior takings.

For these reasons, DPL requests that the legislature revise HB 23-28, HS1 consistent with these comments prior to considering it for passage. Otherwise, DPL does not support passage of HB 23-28, HS1.

Please let me know if you need further assistance and/or clarification.

Si Yu’us Ma’ase, Olomwaay, Thank you.

Respectfully,



TERESITA A. SANTOS
Secretary, DPL

cc: Legal Counsel, DPL

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2023

First Regular Session, 2023

H. B. 23-28, HS1

A BILL FOR AN ACT

To amend the process for appropriation of administrative expenses of the Department of Public Lands and timely transfer of funds to Marianas Public Land Trust.

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

1 **Section 1. Findings.** The Legislature finds that there are ambiguities in the
2 relationship between the responsibilities of the Department of Public Lands (DPL)
3 regarding collection and expense of money related to public lands and the duty of
4 the Marianas Public Land Trust (MPLT) to receive and invest public land money.
5 In addition, there are unresolved legal issues regarding the proper method for
6 establishing a DPL budget.
7 The CNMI Constitution established MPLT to invest money collected from
8 public lands by what was then called the Marianas Public Land Corporation
9 (MPLC). CNMI Const. art. XI, sections 3-6. The Constitution expressly authorized
10 MPLC to budget its operations by retaining reasonable expenses from the collected

1 money before transferring the remainder to MPLT. CNMI Const. art. XI, section
2 5(g).

3 The Constitution also authorized the eventual transfer of MPLC duties to
4 the executive branch. CNMI Const. art. XI, section 4(f). Through this transfer
5 authority, MPLC later became the Marianas Public Land Authority (MPLA) and
6 then, in its current form, as DPL. See 1 CMC, Division 2, Chapter 14. The transfer
7 of those functions to the executive branch made article XI, § 5, which includes
8 subsection (g) (the provision allowing DPL to budget its operations by retaining
9 reasonable DPL expenses from collected public land money) “inoperative”. The
10 ongoing presence of that “inoperative” language in the CNMI constitution and the
11 absence of legislative action has created uncertainty in how DPL proposes a budget,
12 is funded and reimburses expenses. *Dept. of Public Lands v. CNMI*, 2010 MP 14
13 (CNMI Sup. Ct. 2010).

14 In order to resolve this uncertainty, this bill expressly places DPL into the
15 normal budgeting process for an executive branch agency. DPL must submit a
16 proposed budget to the Governor, subject to approval by the Legislature. The
17 funding for that budget is generated from funds retained by public land money
18 collected by DPL, unless a court decides otherwise. Any funds not approved by the
19 Legislature for DPL expenditures shall promptly be transferred to MPLT for
20 investment, as required by the CNMI Constitution. The Attorney General shall
21 enforce this requirement by court order if necessary. MPLT remains as the investing

1 authority and continues to release the interest earned on such investments to the
2 Legislature as general revenue.

3 **Section 2. Amendment.** Title 1 (Government), Division 2, Chapter 14, §
4 2803, of the Commonwealth Code is amended to read as follows:

5 **“§ 2803. Powers and Duties of Department of Public Lands.**

6 (a) The Department shall be responsible for the administration, use,
7 leasing, development, and disposition of all those lands defined as public
8 lands by N.M.I. Const. art. XI, § 1 or any other provision of law, subject to
9 the provisions of this chapter and except as limited by transfers of freehold
10 interests to individuals, entities, or other government agencies. The
11 Department’s authority does not extend to the issuance of land use permits
12 and licenses, except as specifically provided for in this Act, and does not
13 limit in any respect the authority of other Commonwealth agencies to issue
14 permits and licenses pursuant to their respective enabling legislation.

15 (b) The Department shall submit to the Governor for approval by the
16 Legislature each year a proposed annual budget for the next fiscal year in
17 accord with the budgeting and planning procedures applicable to all
18 departments of the Executive Branch. Within its proposed budget, the
19 Department shall itemize all personnel, travel, and other expenses for the
20 fiscal year in question; the sums required to be expended during the year
21 with respect to its leasing responsibilities and the homestead program; sums
22 required to be held in reserve for approved homesteads or other Department

1 programs in the next two fiscal years; a detailed statement of all other
2 Department assets, liabilities, revenues and expenditures; and the estimated
3 sum to be transferred at the end of the fiscal year to the Marianas Public
4 Land Trust.

5 (c) There is hereby established a fund to be known as the “DPL
6 Operations Fund” which shall be maintained by the Department of Finance.
7 The bank account(s) for the DPL Operations Fund shall be separate and
8 apart from the General Fund Bank Account(s) and other funds of the
9 Commonwealth Government. All records and accounts shall be maintained
10 in connection herewith.

11 (1) All revenues received by the Department, from whatever
12 source shall be deposited in the DPL Operations Fund bank
13 account(s) in banks located in the Commonwealth that are insured
14 by the FDIC. Within 30 days of the last day of each fiscal year, the
15 Department shall transfer to the Marianas Public Land Trust all
16 remaining revenue not included in the approved Department budget.

1 The Attorney General shall seek a court order requiring such transfer
2 should the Department fail to make a timely transfer of funds.

3 (2) All appropriations by the Commonwealth shall be
4 allotted for authorized disbursement of expenditures as approved in
5 the budget.

6 (3) All debts, liabilities, obligations and operational
7 expenses of the Department, including homestead program
8 development expenses, shall be paid from the DPL Operations Fund
9 bank account(s) but only within a budget approved by the
10 Legislature. If a Commonwealth Court issues a final judgment that
11 all or any part of Department expenses may not be paid through the
12 DPL Operations Fund bank account(s), the Department shall submit,
13 through the Governor to the Legislature, a proposed budget
14 requesting appropriation of Department funds from general revenue
15 for that expense.

16 (4) The Department shall not incur or create any
17 expenditures, debt, obligation or liability beyond the amounts
18 specified and approved in a ~~No expenditures not included in the~~
19 legislatively approved budget, and no debt, obligation, or liability

1 ~~shall be incurred or created in any fiscal year, in excess of the~~
2 ~~amounts specified therein for each purpose.~~

3 (5) The expenditure authority of all funds ~~collected by the~~
4 ~~Department or appropriated by the Legislature~~ to the Department ~~by~~
5 ~~the Commonwealth~~ shall be the Secretary of the Department, or
6 designee.

7 (d) The DPL shall assess, manage and collect all mining permit fees
8 for the use of CNMI public lands. If the DPL or any of its predecessors
9 issued a Commercial Mining Permit, and received and accepted payment
10 pursuant to said permit, such permit shall be held valid and enforceable for
11 the period covered by said payment(s), and shall not be terminated or voided
12 during said period except by the written consent of both the permittee and
13 the DPL.

14 (e) If the DPL delays or prevents the permit holder from performing
15 any act required by the permit without the fault and beyond the reasonable
16 control of the permit holder, the time to perform such act under said perm
17 it shall be excused, and the permit holder shall be given reasonable time
18 necessary to perform such act.

19 ~~(f) The effective date of this Act shall be retroactive to February 22,~~
20 ~~2006.”~~

21 **Section 3. Severability.** If any provisions of this Act or the application of
22 any such provision to any person or circumstance should be held invalid by a court

1 of competent jurisdiction, the remainder of this Act or the application of its
2 provisions to persons or circumstances other than those to which it is held invalid
3 shall not be affected thereby.

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

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

Prefiled: 3/7/2023

Date: _____ Introduced by: /s/ Rep. Angelo A. Camacho
/s/ Rep. Blas Jonathan "BJ" T. Attao
/s/ Rep. Roman C. Benavente
/s/ Rep. Diego V. F. Camacho
/s/ Rep. Manny G. T. Castro
/s/ Rep. Malcom J. Omar
/s/ Rep. John Paul P. Sablan
/s/ Rep. Edmund S. Villagomez
/s/ Rep. Denita Kaipat Yangetmai

Reviewed for Legal Sufficiency by:

/s/ John M. Bradley
House Legal Counsel