

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2006

H. B. NO. 15-7

A BILL FOR AN ACT

To authorize and direct the assignment of FHA funds, for the financing, design, construction, maintenance and repair of public roads in the Commonwealth of the Northern Marianas Islands; and for other purposes.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Title.** This Act shall be known as the “CNMI Roadways
2 Improvement Act of 2006.”

3 **Section 2. Legislative Findings.** The Fifteenth Northern Marianas
4 Commonwealth Legislature finds that there is a critical shortage of public funds, facilities
5 and professional staff to construct needed new public roads, and to properly maintain
6 public roads throughout the CNMI. The failure to construct new public roads and to
7 properly maintain the CNMI’s existing roadways will cause increased destructive damage
8 and depreciation through vehicular traffic and natural forces, and make future
9 construction, repairs and paving more difficult and expensive. To assure that new public
10 road construction and basic repairs and paving of public roads continues in the CNMI,
11 the Fifteenth Northern Marianas Commonwealth Legislature has determined to the full
12 extent allowed by law, to 12 dedicate and assign Federal Highway Administration funds
13 to contractors who finance, design and construct new public roads, and repair, improve,
14 reconstruct or pave existing public roads. Contractors will be selected through the
15 normal procurement process through the issuance of a Request for Proposals (“RFP”).
16 The selected contractors will be required to bear all costs and expenses associated with
17 the finance, design and construction of the public roads. To assure the contractors are
18 paid for the work, the contractors, or more likely the contractor’s lenders, shall be
19 assigned the right to reimbursement directly from the FHA funds for the project awarded

1 to the contractors when received. The FHA provides funds for Public Road Construction
2 in the approximate amount of \$3.2 million per year.

3 **Section 3. Definitions.** The following capitalized terms used in this Act have the
4 meanings specified in this Section 3 or elsewhere in this Act:

5 3.01. “Contractor” means the construction company, duly licensed in the
6 CNMI, awarded Project to include the financing, design and construction of a new
7 Public Road Project, or the maintenance, repair, replacement, reconstructing or
8 paving of existing Public Roads.

9 3.02. “Contract” means the contract between the DPW and the
10 Contractor, for the Contractor to finance, design and construct the Public Roads,
11 and to maintain and repair the Public Roads over the period of the Lease.

12 3.03. “Construction” means the financing, design, and construction of
13 new Public Roads, or the financing, design, reconstruction, maintenance, repair,
14 replacement or paving of a Public Roadway.

15 3.04. “CNMI” means the Commonwealth of the Northern Mariana
16 Islands.

17 3.05. “DPW” means the Commonwealth Department of Public Works.

18 3.06. “Federal Highway Administration” means the U.S. Federal
19 Highway Administration, an agency of the United States government.

20 3.07. “FHA” means the Federal Highway Administration.

21 3.08. “Project” means an identified Public Road construction, repair or
22 maintenance project provided for in this Act.

23 3.09. “Public Road” means public roads, streets, avenues, thoroughfares,
24 alleys, highways, roadway shoulders or any avenue for vehicular use throughout
25 the CNMI which are owned by the CNMI, or otherwise lawfully subject to use by
26 the CNMI.

1 3.10. “Request for Proposal” means the solicitation of proposals by the
2 DPW for the design, construction, financing, operation, maintenance and repair
3 pursuant to the applicable provision of the procurement law of the CNMI.

4 3.11. “RFP” means Requests for Proposal defined in Section 3.10.

5 **Section 4. Selection of Public Roadways for Construction.** DPW shall identify
6 Public Road Construction Projects which will be funded by FHA funds provided to the
7 CNMI and dedicated for payment for the Project. After identification of an FI-IA funded
8 Project, the DPW shall procure a Contractor for the Projects as provided for in this Act.

9 **Section 5. Allocation of FHA Funds within the CNMI.** The FHA funds shall
10 be allocated to Projects under this Act as follows: 12.5% to Projects in Rota; 12.5% to
11 Projects in Tinian; and 75% to Projects in Saipan. Any reduction or increase in available
12 FHA funds during any year shall be reduced or increased pursuant to these percentages.

13 **Section 6. Assignment of FHA Funds to Contractor.** To expedite the Project,
14 and to provide security and assurance of payment to the Contractor, or the lenders or
15 bondholders who will provide financing to the Contractors for all costs of Construction
16 under the Contract, the CNMI shall, to the extent allowed by law, dedicate and assign the
17 FHA funds to the Contractor, lender or bondholder, as the case may be. When the FHA
18 funds for the Project are received by the CNMI, which may be before, during or after the
19 award of the Contract and the commencement of Construction, the FHA funds for such
20 assigned to the Project shall be placed in a separate account for the express and only
21 purpose of funding the Project either through loan payment to Contractor’s lender or
22 bond holders, or directly to the Contractor if the Contractor is providing the financing.

23 **Section 7. Procurement.** The DPW shall solicit RFP’s for the Construction of
24 the Project consistent with this Act and the CNMI procurement law for the award of
25 construction work.

26 **Section 8. Responsibilities of Contractor.** The Contractor shall be responsible
27 for all costs of Construction consistent with Contractors bid, the Contract, and any
28 change orders or modifications of the Contract. The Contract may include without

1 limitation the construction, installment and connection of all power, water, sewer,
2 telephone and cable if such installation is provided for in the FHA finds dedicated to the
3 Project.

4 **Section 9. Payment to Contractor; Non-FHA Funded Construction.**

5 Notwithstanding the assignment of FI-IA funds to the Contractor, lender or bondholders
6 for a Project, payment to the Contractor shall remain the responsibility of the CNMI and
7 nothing in this Act shall relieve the CNMI of its payment obligations to the Contractor in
8 the event the FI-IA finds, for any reason, are, or become, unavailable. The lenders or
9 bond underwriter may negotiate any terms of repayment with the CNMI that is mutually
10 acceptable, and the lender or bond underwriter shall assume responsibility for payment of
11 the Contractor. DPW may negotiate terms for Construction beyond the scope of the
12 allocated FHA finds for a Project provided repayment terms have been negotiated with
13 the Contractor, lender or bond underwriter.

14 **Section 10. Rules. Regulation and Restrictions.** The CNMI may, but is not
15 required, to promulgate rules and regulations pursuant to applicable CNMI law necessary
16 to implement this provision of this Act.

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

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

1 **Section 13. Effective Date.** This Act shall take effect upon its approval by the
2 Governor or becoming law without such approval.

Prefiled 1/17/06

Date: January 18, 2006

Introduced By: /s/ Rep. Arnold I. Palacios

/s/ Rep. Ramon A. Tebuteb

/s/ Rep. Joseph P. Deleon Guerrero

/s/ Rep. Benjamin B. Seman

Reviewed for Legal Sufficiency by:

/s/ Antonette R. Villagomez

House Legal Counsel