

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

_____ Session, 2023

H. B. 23-22

A BILL FOR AN ACT

To establish an investigative division of the Office of Attorney General, codify investigative subpoena power and improve the investigation of cases involving public corruption.

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

1 **Section 1. Findings.** Successful enforcement of criminal laws, especially
2 those dealing with public corruption, requires timely and professional
3 investigations. The purpose of this bill is to strengthen the authority of the Office
4 of the Attorney General in investigative matters by establishing an investigative
5 division for the Office of the Attorney General that can provide support in all
6 criminal cases but focus on sensitive cases of public corruption. AG investigators,
7 for example, may initiate cases at the direction of the Attorney General, assist
8 prosecutors during trials, and support investigations by other agencies such as the
9 Department of Public Safety or the Office of Public Auditor.

10 The work of AG investigators and investigators with other agencies is
11 enhanced and supported through the issuance of investigative subpoenas focused

1 upon collecting relevant documents, information, objects and testimony. The bill
2 establishes an express process for applying for investigative subpoenas and
3 provides warnings and protections for witnesses who are called to testify or provide
4 documents or records.

5 These tools are particularly useful in public corruption cases, when the
6 collection of records and testimony is time sensitive. This bill should allow the
7 Attorney General to act quickly in responding to complaints regarding all criminal
8 matters but especially those involving misconduct by public officials.

9 **Section 2. Amendment.** Title 1 (Government), Division 2, Chapter 3
10 (Office of the Attorney General), of the Commonwealth Code is hereby amended
11 to add section 2158 to read as follows:

12 **“§ 2158. Investigative Division.**

13 (a) **Investigative Division.** There is within the Office of the Attorney General
14 the Investigative Division, headed by a Chief Investigator appointed by the
15 Attorney General. The Attorney General may employ and deputize such
16 persons as needed for the purpose of this Division, subject to budgetary
17 appropriation. The Attorney General shall establish rules and regulations
18 governing the qualifications, investigative standards, reports and duties of
19 persons working for the Investigative Division. The qualifications for
20 employment as an investigator shall be consistent with those required of a
21 police officer.

- 1 (b) **Duties.** Investigators within the Investigative Division shall have authority
2 to serve subpoenas, arrest and perform all other functions lawfully
3 authorized for police officers.
- 4 (c) **Investigation of Public Corruption.** The Investigative Division shall
5 assign at least one investigator to prioritize work on complaints involving
6 misconduct by public officials. All investigators shall receive annual
7 training from the Office of Public Auditor on the detection and investigation
8 of cases involving public corruption and shall coordinate with the Office of
9 Public Auditor on cases involving fraud, waste and mismanagement of
10 public funds.
- 11 (d) **Investigative Subpoenas.** The following procedures for subpoenas for
12 documents, information, objects and testimony shall apply only to the
13 investigative stage of a criminal case. The Attorney General shall maintain
14 a record of the application and issuance of investigative subpoenas.
- 15 (e) **Enforcement.** Failure to obey a subpoena may be prosecuted and punished
16 as contempt. The information sought through an investigative subpoena
17 must be reasonably related to the subject matter under investigation. No
18 subpoena may be issued for purposes of harassment or any improper
19 purpose.

1 (f) **Documents, Information or Objects.** Whenever the Attorney General
2 shall have reason to believe that documents, information or objects exist
3 with respect to any criminal matter being investigated within the jurisdiction
4 of the Attorney General, the Attorney General may seek by subpoena, upon
5 sealed application with the Clerk of the Superior Courts, the production of
6 such documents or records. The application shall include:

- 7 1. A statement that the application is material to an ongoing
8 investigation;
- 9 2. A description of the documents, information or objects sought;
- 10 3. The name and address of the custodian of the documents,
11 information objects;
- 12 4. A reasonable date and place for delivery of the documents,
13 information or objects; and
- 14 5. whether a true and accurate copy is sufficient.

15 The Clerk of the Court shall issue the subpoena.

16 (g) **Testimony Under Oath.** Whenever the Attorney General, during an
17 investigation, shall have reason to believe that a person has information with
18 respect to any criminal matter within the jurisdiction of the Attorney
19 General, the Attorney General may require by subpoena, upon sealed

1 application with the Clerk of the Superior Courts, the attendance and
2 testimony under oath of the person.

3 For a subpoena seeking the attendance and testimony under oath of a
4 person, the application shall include:

- 5 1. The name and address of the prospective witness;
- 6 2. The date and place for the attendance and testimony;
- 7 3. The subject of the investigation; and
- 8 4. A summary of the general scope of the inquiry to be made of a
9 prospective witness.

10 Upon approval by the court, a clerk shall issue the subpoena. A witness
11 required by subpoena to attend and testify under oath shall be given not less
12 than 48 hours notice of the time and place of the taking of testimony, unless
13 the notice shall unduly interfere with the conduct of the investigation and
14 prior approval for a shorter period of time for the subpoena and notice has
15 been obtained from the court.

1 The subpoena shall notify the witness of:

- 2 1. The matter under investigation concerning which the witness will
3 be required to testify;
- 4 2. That the issuance of the subpoena was approved by a court and
- 5 3. Whether the witness is a target of the investigation.

6 **(h) Warnings.** Before any questioning under oath, a witness shall be notified
7 that the witness has a right to consult with and to have an attorney present
8 at the time the testimony is taken and a right not to furnish or produce
9 information which may tend to incriminate the witness.

10 **(i) Private and Recorded.** A person summoned to attend and testify shall
11 appear and testify under oath before the Attorney General in private. A
12 recording or court reporter transcript of the testimony shall be created and
13 maintained by the Attorney General.”

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

19 **Section 4. Savings Clause.** This Act and any repealer contained herein
20 shall not be construed as affecting any existing right acquired under contract or
21 acquired under statutes repealed or under any rule, regulation, or order adopted

1 under the statutes. Repealers contained in this Act shall not affect any proceeding
2 instituted under or pursuant to prior law. The enactment of the Act shall not have
3 the effect of terminating, or in any way modifying, any liability, civil or criminal,
4 which shall already be in existence on the date this Act becomes effective.

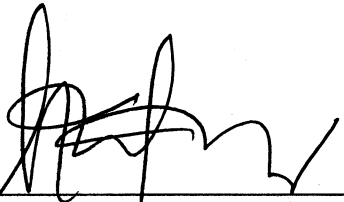
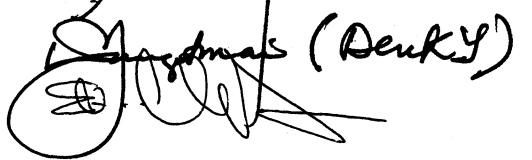
5 **Section 5. Effective Date.** This Act shall take effect upon its approval by
6 the Governor, or its becoming law without such approval.

Prefiled: 3/3/2023

Date: 3/3/2023

Introduced by: _____

Rep. Marissa R. Flores

Grady (Deputy)

Reviewed for Legal Sufficiency by:

Grady 3-3-23
House Legal Counsel