

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2023

H. B. 23-27

A BILL FOR AN ACT

To ensure that the expenditure authority designated in the Annual Appropriation Act retains exclusive control over all funds appropriated to it.

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

1 **Section 1. Findings.** The Separation of Powers doctrine provides that the
2 Commonwealth government shall consist of three co-equal and independent
3 branches. The Legislature enacts laws. The Executive enforces the laws. The
4 Judiciary interprets them. To maintain that separation and ensure the proper
5 performance of their respective constitutional roles, each branch must receive and
6 retain fiscal autonomy and exercise substantial control over their respective
7 budgets. To achieve this, each branch of the Commonwealth must receive and
8 retain all funds that are appropriated by law.

9 As set forth in detail herein, this legislation is consistent with Article X,
10 section 8 of the CNMI Constitution that holds that all public funds must be
11 “controlled and regulated” by the CNMI Department of Finance (DOF). However,
12 this legislation recognizes that the “public funds” at issue in Article X section 8

1 were not necessarily those funds that were appropriated to the respective branches,
2 but rather the funds that were directly expended by public officials. And absent any
3 clear legal precedent that defines the scope of Article X section 8, this Legislature
4 hereby determines that this Act is entirely consistent with both the spirit and letter
5 of the CNMI Constitution—especially the doctrine of separation of powers and the
6 principle of proper checks and balances that would be meaningless if one branch
7 could unilaterally control or regulate the funds of the other branches by decreasing
8 or cutting the funds appropriated to the expenditure authorities through emergency
9 impoundment, reprogramming, or other unilateral measures.

10 In its entirety, Article X, section 8 provides,

11 **Section 8: Control of Public Finance.** The Department of Finance or
12 its successor department shall control and regulate the expenditure of
13 public funds. The department shall promulgate regulations including
14 accounting procedures that require public officials to provide full and
15 reasonable documentation that public funds are expended for public
16 purposes.

17 Judicial interpretation as to the scope and applicability of Article X section
18 8 with respect to the goal of this legislation may not exist. However, an Opinion
19 issued by the CNMI Office of the Attorney General found that the provisions of
20 Article X section 8 are met when the members of the CNMI Legislature “present
21 the requisite documentation” with respect to their legislative allowances. Thus, the
22 instant legislation is consistent with Article X section 8’s constitutional spirit

1 because the Annual Appropriations Act itself provides sufficient documentation to
2 prove that the appropriated funds shall be expended for a public purpose. (*See*,
3 OAG 21-02, Commonwealth Register, Vol. 43, No. 10, Oct. 28, 2021, at 047881)
4 Moreover, this legislation maintains that constitutional oversight by the Secretary
5 of Finance by only addressing how funds are appropriated and maintained, leaving
6 expenditure control and regulation standards intact.

7 Expenditure authorities for the appropriated public funds are listed in Title
8 1 sections 7401 to 7409. If Article X section 8 limited the control and regulation of
9 all public funds to the Department of Finance, these statutory provisions would be
10 unconstitutional and unnecessary because the DOF should exercise exclusive control
11 of the funds. As set forth above, this overly literal interpretation lacks merit. Just as
12 expenditure authorities for autonomous agencies exercise control over their
13 respective funds, all branches must be able to retain and manage their respective
14 appropriations.

15 Recognizing that entities such as the Commonwealth Healthcare
16 Corporation, Northern Marianas College, Public School System, Commonwealth
17 Utilities Corporation, and the Department of Public Lands can exercise control over
18 their public funds to varying degrees, this legislation will prevent unilateral
19 decisions that can jeopardize the entire Commonwealth government's ability to
20 perform its constitutional duties, for example, using 1 CMC section 7204 (e) which
21 states that "decreases in estimated revenues may be absorbed proportionately by all

1 branches, offices, departments, and agencies of the Commonwealth.” Significantly,
2 Title 1 Government, Division 7, Planning, Budgeting and Auditing, section 7204
3 (e) titled, “Approval of Annual Budget,” requires an actual amendment to the
4 Annual Appropriations Act to allocate additional funds when there is a increase in
5 revenue. If enacted, this legislation shall require legislative action, not just when
6 there is an increase, but also when there is a decrease in funds.

7 Once enacted into law this more holistic approach will result in greater
8 constitutional fiscal autonomy. Branches will make all fiscal determinations—
9 including cuts, if necessary, without outside interference. The Governor will
10 continue to be the expenditure authority over the Executive Branch and make all
11 decisions within that branch in terms of hours and positions. The Speaker of the
12 House, the Senate President, and the Director of the Legislative Bureau will manage
13 the fiscal affairs of the Legislative Branch. Moreover, the Chief Justice of the
14 CNMI Supreme Court and the Presiding Judge of the CNMI Superior Court will
15 also have complete autonomy over all expenditure decisions, consistent with their
16 power over their procurement. Significantly, instead of the governor making tough
17 decisions during times of economic hardship for all three branches, the actual heads
18 of the respective branches will be able to make all necessary decisions.

19 Natural disasters and the Covid-19 pandemic have provided the governor
20 with reason to use Title 1, Section 7403 “Emergency Powers” to exercise sole
21 authority to drastically reduce funds that were appropriated not just to the Executive

1 branch but also to the Legislature and the Judiciary. The Governor also exercised
2 sole power over several hundred million dollars in ARPA funds that were provided
3 to the Commonwealth as a whole, not just the executive branch. This legislation
4 will be consistent with the clear terms of the appropriation process that states, “no
5 Commonwealth official may make an obligation or contract for the expenditure of
6 unappropriated Commonwealth funds, unless provided by law or approved in
7 advance by joint resolution of the legislature.” (1 CMC section 7401)

8 Legislation such as the Annual Appropriations law are enacted to allow each
9 branch to exercise full fiscal control over its funds, both in good times and in bad.
10 Once a budget is passed on or before October 1st, each branch should be able to
11 rely on it. Each branch should be able to make decisions regarding its operations
12 and personnel. Procurement and payroll will also be managed internally and not by
13 the executive branch. Decisions regarding public purpose and travel will be made
14 by the respective expenditure authority.

15 Amendments to annual appropriations must be enacted by the legislative
16 process set forth in the Constitution. Impoundments, reprogramming, and other
17 unilateral actions made by the executive branch that may adversely affect the other
18 co-equal branches are hereby prohibited. Each branch must be able to exercise sole
19 control over the expenditure of funds appropriated for their personnel, utilities, and
20 operations without the concern that they may be subject to emergency
21 impoundments or reprogramming absent a duly enacted Commonwealth public

1 law.

2 With the requirement to amend the law for both increases and decreases in
3 revenue, this new process reasonably and justifiably includes all three branches in
4 a manner that more accurately reflects their status as constitutional co-equal
5 branches. With this legislation in place, there will be responsibility and
6 accountability. Each branch must live within its means and be allowed to reap the
7 benefits of fiscal conservatism or the consequences of mismanagement.

8 **Section 2. Enactment.** Title 1, Division 1 Legislative Branch, is amended
9 by adding a new Chapter 7, titled, “Legislative Branch Funding,” that shall read as
10 follows:

11 “Chapter 7. Legislative Branch Funding.

12 Section 1701. Legislative Bureau.

13 The Legislative Bureau is established by the N.M.I. Constitution,
14 Art. II, Sec. 17 to provide all required services to the members of the
15 legislature in connection with their duties and responsibilities and to
16 maintain all records, files, library and other documents of the legislature.

17 Section 1702. Legislature Operations Fund.

18 (a) There is hereby established a fund to be known as the
19 “Legislature Operations Fund” (Fund) which shall be maintained separate
20 and apart from other funds of the Commonwealth government. Independent

1 records and accounts shall be maintained for the Fund by the Legislative
2 Bureau.

3 (b) Each annual appropriation act shall appropriate to the Legislative
4 Branch not less than 9% of the funds identified by the Governor as available
5 for appropriation, or the amount that was appropriated to the Legislature in
6 the previous annual appropriation, whichever is greater.

7 (c) The expenditure authority over the funds in the Legislature
8 Account shall be the Director of the Legislative Bureau. Consistent with
9 Public Law 15-71 section 2, "Reprogramming Authority," notwithstanding
10 any provision of law to the contrary, including, but not limited to, 1 CMC
11 §§7205, 7402, 7403 and 7831, the expenditure authorities listed herein shall
12 have authority to reprogram all or a portion of the funds under his or her
13 expenditure authority.

14 (d) The funds in the Legislative Account shall be expended in
15 accordance with the regulations of the Department of Finance for the
16 Control of Public Funds except where these regulations require certification
17 of funds or expenditure authority to be directly controlled or regulated by
18 the Department of Finance in a manner expressly inconsistent with this Act.

19 (e) The Legislative Bureau shall establish such bank accounts as are
20 necessary for the Legislature Operations Fund in banks qualified to hold
21 government deposits.

1 (f) All moneys received by the Legislature from whatever source
2 shall be deposited in the Fund's bank accounts.

3 (g) All appropriations by the Commonwealth shall be allotted and
4 transferred to the Fund's bank account at the beginning of each quarter.

5 (h) All debts, liabilities, obligations and operational expenses of the
6 Legislature and its members, the Legislative Bureau and the
7 Commonwealth of the Northern Mariana Islands Youth Congress shall be
8 paid from the Fund.

9 Section 1703. Legislature Fund Sub Accounts.

10 The following Sub Accounts are established within the Legislature
11 Fund:

12 (a) House of Representatives Members Personnel Account to fund
13 the salaries and benefits of the members of the House of Representatives.

14 (b) Senate Members Personnel Account to fund the salaries and
15 benefits of the members of the Senate.

16 (c) House Members' Office Accounts. Funds allocated for the
17 operation of the member's office, including, but not limited to, the
18 personnel costs of the member's employees and expenditures as authorized
19 by the adopted rules of the House of Representatives. Each Member may
20 initiate a request for payment of the funds allocated to their account.

1 (d) Senate Members' Office Accounts. Funds allocated for the
2 operation of the member's office, including, but not limited to, the
3 personnel costs of the member's employees and expenditures as authorized
4 by the adopted rules of the Senate. Each Member may initiate a request for
5 payment of the funds allocated to their account.

6 (e) House Leadership Account. The Speaker of the House, is
7 authorized to request such funds in support of the conduct of official and
8 representational duties to the district from which elected. The Speaker of
9 the House shall distribute a portion of the total appropriation in equal
10 amounts to each of the standing committees in support of the conduct of
11 official and representational duties to the standing committee from which
12 they preside as chairman.

13 (f) Senate Leadership Accounts. The President of the Senate, is
14 authorized to request such funds in support of the conduct of official and
15 representational duties to the district from which elected. The Senate
16 President shall distribute a portion of the total appropriation in equal
17 amounts to each of the standing committees in support of the conduct of
18 official and representational duties to the standing committee from which
19 they preside as chairman.

20 (g) Legislative Bureau. A request for payment may be initiated by
21 the Director of the Legislative Bureau.

1 (h) Northern Marianas Youth Congress. A request for payment may
2 be initiated by the Director of the Legislative Bureau.

3 Section 1704. Expenditure Ceilings.

4 (a) The N.M.I. Constitution, Art. II Sec. 16(e) of the Commonwealth
5 Constitution provides: "Beginning the second Monday of January 1998, the
6 amount of the ceiling and all other dollar amounts stated in this section shall
7 be adjusted every two years by the same percentage as the percentage
8 change in the United States Department of Commerce composite price
9 index during the two preceding fiscal years using the beginning of fiscal
10 year 1996 as the base."

11 (b) Consistent with N.M.I. Constitution, Art. II Sec. 16(e), the
12 annual fiscal year expenditure levels for the sub accounts listed in §1703
13 shall be determined every two years by the Director of the Legislative
14 Bureau and adopted by joint resolution by both houses of the Legislature.

15 Section 1705. Reporting to the Department of Finance.

16 Consistent with Article X, section 8, the Legislative Branch must
17 provide comprehensive financial reports that meet general accounting
18 principles to the Secretary of Finance on a quarterly basis prior to expending
19 funds for the next quarter."

20 **Section 3. Enactment.** Subject to codification by the CNMI Law Revision
21 Commission, Title 1, Government Division 3 Judicial Branch, of the

1 Commonwealth Code is hereby amended by adding a new Chapter titled, “Judicial
2 Branch Funding,” that shall read as follows:

3 “Chapter XX. Judicial Branch Funding.

4 Section 101. Judicial Power.

5 As set forth in N.M.I. Constitution, Art. IV, Sec. 1, the judicial
6 power of the Commonwealth shall be vested in a judiciary of the Northern
7 Mariana Islands which shall include one supreme court and one superior
8 court and such other inferior courts as established by law. This Judicial
9 branch shall be co-equal with and independent of the executive and
10 legislative branches.

11 Section 102. Judicial Operations Fund.

12 (a) There is hereby established a fund to be known as the “Judicial
13 Operations Fund” (Fund) which shall be maintained separate and apart from
14 other funds of the Commonwealth government. Independent records and
15 accounts shall be maintained for the Fund by the Judicial Branch.

16 (b) Each annual appropriation act shall appropriate to the Judicial
17 Branch not less than 7% of the funds identified by the Governor as available
18 for appropriation, or the amount that was appropriated to the Judicial
19 Branch in the previous annual appropriation, whichever is greater.
20 Consistent with Public Law 15-71 section 2, “Reprogramming Authority,”
21 notwithstanding any provision of law to the contrary, including, but not

1 limited to, 1 CMC §§7205, 7402, 7403 and 7831, as the expenditure
2 authority of the judicial branch, the Chief Justice shall have authority to
3 reprogram all or a portion of the funds under his or her expenditure
4 authority.

5 The expenditure authority over all other the funds appropriated to or
6 allocated within the Judiciary Branch shall be the Chief Justice of the
7 Supreme Court of the Commonwealth of the Northern Mariana Islands.

8 (d) The funds in the Judicial Operations Fund Account shall be
9 expended in accordance with the regulations of the Department of Finance
10 for the Control of Public Funds except where these regulations require
11 certification of funds or expenditure authority to be directly controlled or
12 regulated by the Department of Finance in a manner expressly inconsistent
13 with this Act.

14 (e) The Judicial Branch shall establish such bank accounts as are
15 necessary for the Judicial Operations Fund in banks qualified to hold
16 government deposits.

17 (f) All moneys received by the Judicial Branch from whatever
18 source shall be deposited in the Fund's bank accounts.

19 (g) All appropriations by the Commonwealth shall be allotted and
20 transferred to the Fund's bank account at the beginning of each quarter.

1 (h) All debts, liabilities, obligations and operational expenses of the
2 Judicial Branch shall be paid from the Fund.

3 Section 103. Reporting to the Department of Finance.

4 Consistent with Article X, section 8, the Judicial Branch must
5 provide comprehensive financial reports that meet general accounting
6 principles to the Secretary of Finance on a quarterly basis prior to expending
7 funds for the next quarter.”

8 **Section 4. Amendment.** Title 1, Division 7, section 7204 (e) is hereby
9 amended as follows:

10 “(e) Upon the effective date of the annual appropriation acts,
11 quarterly allotments shall be issued based on such acts. The quarterly
12 allotments shall be revised quarterly so as to be consistent with projected
13 changes in estimated revenue collections. Increases or decreases in
14 estimated revenues ~~may~~ shall be appropriated by amendments to the annual
15 appropriation acts. Pursuant to such amendments, any Decreases changes in
16 estimated revenues may be absorbed proportionately by all branches,
17 offices, departments, and agencies of the Commonwealth provided that
18 decreases to appropriations shall not exceed the percentage of the total
19 amount identified for appropriation. Accordingly, for the CNMI Legislature
20 and for the Judicial Branch, any decrease cannot be more than 9 and 7
21 percent, respectively-unless their appropriations exceeded this amount. The

1 office of the Governor and ~~Director~~ Secretary of Finance shall establish
2 procedures to insure there is timely compliance with the provisions of this
3 subsection.”

4 **Section 5. Amendment.** Title 1, Division 7, section 7405 is hereby
5 amended as follows:

6 **§ 7405. Certification Required Before Appropriated Funds May**
7 **be Used for Salary Adjustments and Reclassifications.** No person,
8 including the Civil Service Commission, may reclassify or adjust the salary
9 of a government employee whose salary is paid from appropriations from
10 the general funds without first receiving from the Office of Management
11 and Budget and the Department of Finance certification that lawful and
12 sufficient funds for that purpose are available. Likewise, no new or vacant
13 position may be filled without first receiving from the Office of
14 Management and Budget and the Department of Finance a certification that
15 a full-time employee (FTE) and personnel funds for that position are
16 available. Notwithstanding the foregoing, this provision is inapplicable to
17 (1) Northern Marianas Commonwealth Legislature, including the but not
18 limited to the Legislative Bureau; and (2) the CNMI Judicial Branch.

19 **Section 6. Amendment.** Title 1, Division 7, section 7604 (c) (4) is hereby
20 amended as follows:

21 **§ 7604. Changes in Revenue Estimate.**

1 (4) Transmit a special message under 1 CMC § 7204(e), mandating
2 ~~an immediate~~ a legislative session within 10 business days to re-assess all
3 budget authority and enact as provided by law and subject to the limitations
4 set forth in that section, proportionate reduction an amendment to in the
5 allotment authority of all branches, offices, departments, agencies, and
6 instrumentalities of the Commonwealth which are subject to appropriations.

7 **Section 7. Amendment.** Title 1, Division 7, section 7605 (a) is hereby
8 amended to read as follows:

9 **§ 7605. Emergency Impoundments.** (a) Notwithstanding any other
10 provision of this chapter, ~~and pending legislative action on any message transmitted~~
11 ~~under 1 CMC §§ 7604(e) or 7403,~~ the Governor, upon the advice of the ~~Director~~
12 Secretary of Finance that continued obligation, pursuant to law, of funds in the
13 Commonwealth Treasury will result, within the next 60 days, in a deficit in
14 government operations accounts for the fiscal year or in a lack of sufficient fiscal
15 resources to meet all outstanding obligations as they become due, may make any
16 necessary deferral of budget authority, ~~regardless of the branch of government to~~
17 ~~which such budget authority is provided~~ within the executive branch only;
18 ~~provided, that no budget authority for any noncapital account in the judicial or~~
19 ~~legislative branches shall be deferred in an amount representing a percentage of~~
20 ~~such authority greater than the percentage of total deferrals under this section of all~~
21 ~~General Fund, noncapital accounts, outside the judicial and legislative branches.~~

1 **Section 8. Enactment.** Title 1, Division 7, Part 1, Planning and Budgeting
2 Act, Chapter 1, “General Provisions” is hereby amended by adding a new section
3 7104, titled, “Autonomous Expenditure and Appropriations” that provides:

4 **“§ 7104. Autonomous and Expenditures and Appropriations.**

5 Notwithstanding any law to the contrary, the Northern Marianas
6 Commonwealth Legislature inclusive of the Legislative Bureau and Youth
7 Congress; and the CNMI Judicial Branch, inclusive of all its divisions shall exercise
8 complete control and expenditure authority over all appropriated funds and manage
9 and control all aspects of procurement, travel, and other matters related to the
10 performance of their respective duties. To the extent that other CNMI law,
11 regulation, or policy authorizes emergency impoundments, unilateral
12 reprogramming or reductions in appropriated funding, or requires the consent,
13 action, or authorization of other branches with respect to the use of appropriated
14 funds and any operations, those provisions, to the extent that they are inconsistent
15 with the foregoing are hereby repealed, and this provision shall govern.”

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

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

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

Prefiled: 3/6/2023

Date: 3/6/23

Introduced by: _____

Rep. Joseph A. Flores

Reviewed for Legal Sufficiency by:

Joseph S. Tanjawa
House Legal Counsel