

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2023

H. B. 23- 46

A BILL FOR AN ACT

To amend Title 1, Division 2, Part 1, Chapter 3, Article 1, § 2153 (h) of the Commonwealth Code to exclude public corporations and autonomous agencies from obtaining the Office of Attorney General's services; and for other purposes.

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

1 **Section 1. Findings and Purpose.** The Commonwealth of the Northern
2 Mariana Islands (CNMI) has always upheld the principles of good governance,
3 transparency, and accountability in the conduct of its affairs. In line with this, Title
4 1, Division 2, Part 1, Chapter 3, § 2153(h) of the CNMI Code, requires the Attorney
5 General to act as counsel to all departments, agencies, and instrumentalities of the
6 Commonwealth, including public corporations, except the Marianas Public Land
7 Trust.
8 However, recent developments have shown that this provision has its
9 limitations. One of the concerns raised is the potential conflict of interest that may
10 arise when the Attorney General provides legal counsel to public corporations and
11 autonomous agencies. These entities are established with their own board of

1 directors or governing body and are therefore separate and distinct from the
2 Commonwealth government.

3 In some cases, the interest of the public corporations or autonomous agency
4 may not necessarily align with the interests of the Commonwealth government.
5 This may create a situation where the Attorney General is unable to provide
6 objective and independent legal advice to both entities. This, in turn, may
7 undermine the principles of good governance, transparency, and accountability that
8 CNMI upholds.

9 Therefore, there is a need to amend Title 1, Division 2, Part 1, Chapter 3, §
10 2153(h) of the CNMI Code to exclude public corporations and autonomous
11 agencies from obtaining the Attorney General's services. This will allow these
12 entities to hire their own legal counsel, which will enable them to receive
13 independent and objective legal advice that is aligned with their interests.

14 In support of this legislation, a case study involving the Commonwealth
15 Utilities Corporation (CUC) is an example of the need for public corporations and
16 autonomous agencies to obtain independent legal counsel. CUC, as a public
17 corporation responsible for the generation, transmission, and distribution of
18 electricity and water throughout the CNMI, has been subject to potential conflicts
19 of interest when relying on the Office of the Attorney General for legal advice and
20 representation.

1 In 2018, the CNMI government filed a lawsuit against the CUC board of
2 directors over the award of a multimillion-dollar contract to a consulting firm. The
3 CUC board, represented by the Office of the Attorney General, had to defend
4 against the lawsuit while simultaneously working with the CNMI government to
5 resolve the issue. This scenario highlights the potential for conflicts of interest
6 when the same legal counsel represents both the government and public
7 corporations or autonomous agencies.

8 Therefore, the proposed amendment to Title 1, Division 2, Part 1, Chapter
9 3, § 2153(h) of the CNMI Code will promote good governance, transparency, and
10 accountability by allowing public corporations and autonomous agencies to obtain
11 independent legal counsel. This will ensure that these entities can receive objective
12 and impartial legal advice that is aligned with their interests, without creating a
13 conflict of interest for the Attorney General. It is our duty as lawmakers to ensure
14 that the CNMI upholds the principles of good governance, transparency, and
15 accountability in all its affairs, and this amendment is a step in that direction.

16 **Section 2. Amendment.** Title 1, Division 2, § 2153 (h) of the
17 Commonwealth Code is hereby amended to read as follows:

18 “(h) To act, upon request, as counsel to all departments, agencies, and
19 instrumentalities of the Commonwealth, ~~including~~ excluding public corporations
20 and autonomous agencies, except and the Marianas Public Land Trust. ~~Subject to~~
21 ~~the availability of funds by budgetary appropriations, separate legal counsel may~~

1 ~~be retained for particular matters~~ All public corporations and autonomous agencies,
2 including the Marianas Public Land Trust, must hire private counsel.”


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

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


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

Prefiled: 5/1/2020

Date: 27 APRIL '23

Introduced by: 
Rep. Vincent R. S. Aldan

Reviewed for Legal Sufficiency by:

 4-28-23
House Legal Counsel