



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO
Governor

JESUS C. BORJA
Lt. Governor

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The Honorable Jesus R. Sablan
President of the Senate
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

MAR. 27 1997

The Honorable Diego T. Benavente
Speaker, House of Representatives
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Mr. President and Mr. Speaker.

This is to inform you that I have allowed H.B. 10-261, H.D.1, S.D.1, "To appropriate \$2.6 million for NMHC from 1995 Fiscal Year to 1998 Fiscal Year to provide funding for the purposes set forth in Public Law 9-36; and for other purposes." to pass into law without my signature.

I am doing this because I understand that this bill is badly needed, although I also think it is seriously flawed.

The bill is needed because we need to finish paying Sumitomo. If our payments are made in a timely manner, Sumitomo has agreed to waive more than \$1,000,000 of interest. Thus, it is very important that this money be paid, and promptly. Some of the money has been paid already, but this bill would allow it to be paid in full.

On the other hand, this bill also has some serious problems.

1. Appropriations in Excess of Available Funds. Our Superior Court has ruled that the Legislature cannot make retroactive appropriations in excess of the funds that were available in any fiscal year. In Rayphand v. Tenorio, Decision of April 5, 1995, pgs. 9-14, the Court overturned part of P.L. 9-23, because it would have raised the spending in a particular fiscal year over the cap for that year. The Court affirmed that the Constitution does not allow deficit spending, even after the fiscal year has passed.

Subsection 2(A)(1), appropriating \$500,000, might be constitutionally permissible, because it limits appropriations to funds that have already been encumbered or obligated. In effect, this section merely seeks to legalize what has already been done. However, Subsection 2(A)(2), appropriating \$2,000,000, seems to be unconstitutional. All available funds for FY 1996 were appropriated. We cannot appropriate an additional \$2,000,000 now.

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One way to solve this would be to certify that additional FY 1996 funds were available. Since FY 1996 has been over for nearly six months, though, this may not be possible. I am referring this matter to the Office of Management and Budget for their consideration.

2. P.L. 9-36. Subsection 2(B) claims that "the appropriations in this Act restate and revise the appropriation in Public Law 9-36 and are not in addition thereto".

This does not make sense. There were no appropriations in P.L. 9-36; there were authorizations for appropriation.

3. Reprogramming of Funds. Section 3 of the bill is supposed to allow reprogramming in addition to the appropriations. However, if the appropriations are valid, no reprogramming would be needed. The bill appears to be admitting that these funds are not really available.

In any event, the Governor already has the power to reprogram funds under 1 CMC 7402, so this section appears to be redundant.

4. Mathematical Error. In its caption, in section 2(A), and in Section 3, the bill repeatedly refers to \$2.6 million or "\$2,600,000." However, the actual appropriations in Section 2 total only \$2.5 million not \$2.6 million.

Last June, the Governor sent a letter to the Legislature detailing how \$2.6 million could be found. He recommended that the majority of the funding come from FY 1997 (which had not begun yet) and FY 1998, with some coming from a small surplus in FY 1996. Had this bill been passed in accord with the Governor's recommendation, and in a timely manner, it would not have these problems.

I am glad that the Sumitomo problem has been resolved, and I agree that it was necessary to pass some sort of appropriation. However, this bill is so flawed that I cannot feel comfortable signing it. Thus, I am allowing it to pass into law without my signature.

This Bill becomes Public Law 10-47.

Sincerely yours,


JESUS C. BORJA

HOUSE OF REPRESENTATIVES

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
THIRD REGULAR SESSION, 1997

PUBLIC LAW NO. 10-47
HOUSE BILL NO. 10-261, HD1, SD1

AN ACT

To appropriate \$2.6 million for NMHC from 1995 Fiscal Year to 1998 Fiscal Year to provide funding for the purposes set forth in Public Law 9-36; and for other purposes.

Offered by Representatives: Ana S. Teregeyo and Jesus T. Attao

Date: August 9, 1996

HOUSE ACTION

Standing Committee Report: None

First and Final Reading: August 9, 1996

Rejected Senate Amendment: September 12, 1996

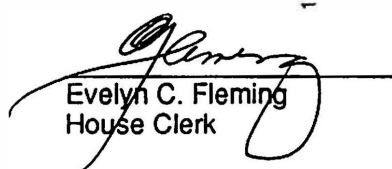
Recalled from Committee: November 29, 1996

Accepted Senate Amendment: February 4, 1997

SENATE ACTION

Standing Committee Report: None

Second and Final Reading: August 28, 1996


Evelyn C. Fleming
House Clerk

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 10-47

H. B. NO. 10-261, HD1, SD1

SECOND REGULAR SESSION, 1996

AN ACT

To appropriate \$2.6 million for NMHC from 1995 Fiscal Year to 1998 Fiscal Year to provide funding for the purposes set forth in Public Law 9-36; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Findings and Purpose. It is the purpose of this Act to provide funding by
2 way of actual appropriation for those purposes set forth in Public Law 9-36 for the Northern
3 Marianas Housing Corporation.

4 Section 2. Appropriation of Public Funds

5 A) The following sums of money, totaling \$2,600,000, are hereby appropriated
6 to the Northern Marianas Housing Corporation (NMHC) for the purposes set forth in
7 Public Law 9-36, as set forth below:

8 1) For the 1995 Fiscal Year, \$500,000 (five hundred thousand dollars) is
9 hereby appropriated retroactively, provided that funds from this appropriation
10 ~~may only be spent or otherwise encumbered or obligated to the extent that~~
11 allotments or payments that have already been made from the CNMI
12 Government to NMHC for those purposes stated in Public Law 9-36, during or
13 in relation to the 1995 Fiscal Year are, in total, less than \$500,000, and, to the
14 extent that such allotments or payments already equal or exceed \$500,000 on
15 the effective date of this Act, then the legal effect of this Act will be to only
16 retroactively legalize such allotments or payments, up to \$500,000, to the extent
17 that they may have been made without proper appropriation.

18 2) During the 1996 Fiscal Year, \$2,000,000 (two million dollars) is
19 hereby appropriated to pay accrued interest due Sumitomo Corporation for the
20 period 1980 through 1995.

21 B) Funds appropriated under this Act shall be available on or after the Fiscal
22 Years indicated above and from thereafter, without fiscal year limitation, except as
23 provided in Section 3 of this Act. The appropriations in this Act restate and revise the
24 appropriation in Public Law 9-36 and are not in addition thereto.

1 Section 3. Reprogramming of Funds The Governor may, to the extent permissible
2 under 1 CMC § 7402, reprogram funds from other sources to supplement the above
3 appropriations until \$2,600,000 has been allocated to the NMHC in total, for the purposes set
4 forth in Public Law 9-36, and, in the event that this total of \$2,600,000 is fulfilled by such
5 reprogramming, any remaining funds appropriated under this Act and not allocated,
6 encumbered or otherwise obligated shall revert to the General Fund.

7 Section 4. Expenditure Authority. Expenditure authority over funds appropriated
8 under this Act shall be with the Secretary of Finance.

9 Section 5. Severability. If any Section of this Act should be declared invalid by a court
10 of competent jurisdiction, the remainder of this Act shall not be affected thereby.

11 Section 6. Savings Clause. This Act and any repealer contained herein shall not be
12 construed as affecting any existing right required under contract or acquired under statutes
13 repealed or under any rule, regulation or order adopted under the statutes. Repealers contained
14 in this Act shall not affect any proceeding instituted under or pursuant to prior law. The
15 enactment of this Act shall not have the affect any proceeding instituted under or pursuant to
16 prior law. The enactment of this Act shall not have the effect of terminating, or in any way
17 modifying, any liability civil or criminal, which shall already be in existence at the date this
18 Act becomes effective.

19 Section 7. Effective Date. This Act shall take effect upon its approval by the Governor
20 or upon its becoming law without such approval.

CERTIFIED BY:


DIEGO T. BENAVENTE
Speaker
House of Representatives

ATTESTED BY:


EVELYN C. FLEMING
House Clerk

_____ this _____ day of _____, 1997

Became law without the Acting Governor's signature on 3/5/97.

FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands