

RALPH DLG. TORRES
Governor



ARNOLD I. PALACIOS
Lieutenant Governor

COMMONWEALTH of the NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

26 JUL 2019

The Honorable Blas Jonathan "BJ" T. Attao
Speaker
House of Representatives
Twenty-First Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

The Honorable Victor B. Hocog
Senate President
The Senate
Twenty-First Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker and Mr. President:

This is to inform you that I have signed **House Bill No. 21-44, HS1** entitled, "To authorize a loan between the Commonwealth Government and the Marianas Public Land Trust in the amount of \$15,000,000 and appropriate and authorize the Marianas Public Land Trust to withhold and to retain Net Annual Distributable Interest Income starting Fiscal Year 2019 for repayment and security of the loan," which was passed by the House of Representatives and the Senate of the Twenty-First Northern Marianas Commonwealth Legislature.

H.B. 21-44, HS1 authorizes the Commonwealth government to enter into a loan agreement to borrow \$15,000,000 from the Marianas Public Land Trust for a period of up to five years in order to ensure that there are adequate funds at the disposal of the Commonwealth Department of Finance for purposes of paying expenses resulting from Super Typhoon Yutu. The Attorney General has expressed concerns that the bill, as currently presented, does not include the *specific purpose* of the MPLT loan and further, that the Constitution prohibits creating public debt for the purpose of paying for normal operating expenses of the government. Expenses incurred for emergency disaster relief and recovery programs, however, are *not* normal operating expenses because they arise from extraordinary events such as costs derived from Super Typhoon Yutu. As such, public debt *may* be used to pay for such expenses.

Although **H.B. 21-44, HS1** references this public debt restriction in **Section 1**, the Findings and Purpose Section of the bill, the boundaries of "expenses as a result of Typhoon Yutu" are not clearly defined and the language lacks the required degree of specificity that would survive constitutional scrutiny, specifically, for public debt that may be acquired to pay for *expenses incurred for emergency disaster relief and recovery programs*. Moreover, like the preamble of a

bill, **Section 1** is not an operative or substantive part of a statute, and has no substantive legal force; thus, the purpose of the loan is not provided for in the operative and substantive parts of the bill. See 1A Sutherland Statutory Construction §§ 20:3 and 20:12. (They may be used only to clarify ambiguous provisions in the substantive parts of a statute; they cannot be used to discern legislative intent if no doubt exists as to a statute's meaning. *Id.*)

House Bill 21-44. HS1, Section 2, which is an operative part of the bill, sets forth the authorization for the loan but fails to state what the loan will be used for. Without such reference, **Section 1** cannot be used to prevail over the silence in **Section 2** on the use of the loan. Simply put, the language in **Section 1** cannot control **Section 2**. To comply with Section 4 of Article X, the Attorney General has advised that the Legislature identify the public debt it is authorizing to the purpose of the debt to ensure it is not to pay operating expenses. As it stands, the authorization in **Section 2** has no restriction on what the loan may be used for. Therefore, **H.B. 21-44, HS1** falls short in addressing the purpose of the loan in that it fails to provide a legally enforceable provision that specifically restricts the use of the MPLT loan to expenses that are not normal operating expenses of the government.

Accordingly, while I approve of the passage of this critical piece of legislation and agree that the need for this loan agreement with MPLT is in the best interest of our people and the Commonwealth, it is with great concern that I urge this esteemed Legislative body to make the necessary amendments to this law in accordance with the Attorney General's recommendations regarding existing constitutionality issues—in a companion bill.

This bill becomes **Public Law No. 21-3**. Copies bearing my signature are forwarded for your reference.

Sincerely,


ARNOLD I. PALACIOS
Acting Governor

cc: Governor; Press Secretary; Attorney General's Office; Secretary of Finance; Marianas Public Land Trust; Office of Public Auditor; Special Assistant for Administration; Special Assistant for Programs and Legislative Review



House of Representatives

TWENTY-FIRST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. Box 500586
SAIPAN, MP 96950

July 18, 2019

The Honorable Ralph DLG. Torres
Governor
Commonwealth of the Northern
Mariana Islands
Capitol Hill
Saipan, MP 96950

Dear Governor Torres:

I have the honor of transmitting herewith for your action **H. B. No. 21-44, HS1** entitled: "To Authorize a loan between the Commonwealth Government and the Marianas Public Land Trust in the amount of \$15,000,000 and appropriate and authorize the Marianas Public Land Trust to withhold and to retain Net Annual Distributable Interest Income starting Fiscal Year 2019 for repayment and security of the loan.", which was passed by the House of Representatives and the Senate of the Twenty-First Northern Marianas Commonwealth Legislature.

Sincerely,

A handwritten signature in blue ink, appearing to read "Venetia S. Rosario".

Venetia S. Rosario
Acting House Clerk

Attachment



*Twenty-First Legislature
of the
Commonwealth of the Northern Mariana Islands*

IN THE HOUSE OF REPRESENTATIVES

THIRD SPECIAL SESSION

JUNE 11, 2019

REPRESENTATIVE BLAS JONATHAN "BJ T. ATTAO of Saipan, Precinct 3 (*for himself*, Representatives Roman C. Benavente, Ivan A. Blanco, Antonio SN. Borja, Joel C. Camacho, Luis John DLG. Castro, Lorenzo I. Deleon Guerrero, Jose I. Itibus, Marco T. Peter and John Paul P. Sablan) in an open and public meeting with an opportunity for the public to comment, introduced the following Bill:

H. B. No. 21-44, HS1

AN ACT

TO AUTHORIZE A LOAN BETWEEN THE COMMONWEALTH GOVERNMENT AND THE MARIANAS PUBLIC LAND TRUST IN THE AMOUNT OF \$15,000,000 AND APPROPRIATE AND AUTHORIZE THE MARIANAS PUBLIC LAND TRUST TO WITHHOLD AND TO RETAIN NET ANNUAL DISTRIBUTABLE INTEREST INCOME STARTING FISCAL YEAR 2019 FOR REPAYMENT AND SECURITY OF THE LOAN.

The Bill was not referred to a House Committee.

**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON
FIRST AND FINAL READING, JULY 12, 2019;**
with amendments in the form of H. B. 21-44, HS1 and transmitted to the
THE SENATE.

The Bill was not referred to a Senate Committee.
THE BILL WAS PASSED BY THE SENATE ON FINAL READING, JULY 17, 2019;
without amendments and was returned to
THE HOUSE OF REPRESENTATIVES.

THE BILL WAS FINALLY PASSED ON JULY 12, 2019.

A handwritten signature in blue ink, appearing to read "Venetia S. Rosario".

Venetia S. Rosario, Acting House Clerk



Twenty-First Legislature
of the
Commonwealth of the Northern Mariana Islands
IN THE HOUSE OF REPRESENTATIVES

FIRST DAY, SECOND SPECIAL SESSION

APRIL 29, 2019

H. B. No. 21-44, HS1

AN ACT

TO AUTHORIZE A LOAN BETWEEN THE COMMONWEALTH GOVERNMENT AND THE MARIANAS PUBLIC LAND TRUST IN THE AMOUNT OF \$15,000,000 AND APPROPRIATE AND AUTHORIZE THE MARIANAS PUBLIC LAND TRUST TO WITHHOLD AND TO RETAIN NET ANNUAL DISTRIBUTABLE INTEREST INCOME STARTING FISCAL YEAR 2019 FOR REPAYMENT AND SECURITY OF THE LOAN.

BE IT ENACTED BY THE TWENTY-FIRST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Findings and Purpose. In March, 2019 the Office of the Governor and the
2 Acting Secretary of Finance have reported a financial shortfall for Fiscal Year 2019 in the
3 amount of \$29.9 million dollars attributed to the Typhoon Yutu disaster and economic effects
4 from the devastation to the Commonwealth.

5 Seeking to find relief and assistance due to the effects from Typhoon Yutu, Governor
6 Ralph Torres submitted his letter to the Marianas Public Land Trust Trustees requesting a Loan
7 or Line of Credit from Marianas Public Land Trust Marianas Public Land Trust.

HOUSE BILL 21-44, HS1

1 On June 12, 2019 the Marianas Public Land Trust received a letter from Finance
2 Secretary Mr. Atalig informing the Trust that he has revised the request. He confirmed the
3 amount of the Loan request remained at \$15 million dollars. The revised purpose is to pay for
4 “extraordinary expenses made under extraordinary circumstances” for the disaster recovery
5 expenses which are not normal operating expenses of the government. The source of repayment
6 would be the annual interest-income distribution from Marianas Public Land Trust to the General
7 Fund. The repayment period would be 5 years.

8 The Secretary of Finance, Mr. Atalig informed that the total estimated costs incurred for
9 the disaster stood at over \$97 million dollars. Of that amount the Commonwealth Government
10 has paid \$15 million dollars for disaster-related expenses for which it seeks FEMA
11 reimbursement. The result of this, per Mr. Atalig, is the reduced amount of funds to pay for the
12 normal operating expenses of the government. As such, the \$15 million Revised Loan is “to pay
13 disaster-related expenses including reimbursing the Commonwealth for disaster-related
14 expenses already paid.”

15 The purpose of this legislation is to authorize the Commonwealth Government to enter
16 into a Loan Agreement to borrow up to \$15,000,000.00 from the Marianas Public Land Trust
17 for a period of up to five years to ensure that there are adequate funds at the disposal of the
18 Commonwealth Department of Finance for purposes of paying on the expenses as a result of
19 Typhoon Yutu.

20 The Legislature acknowledges that the Trustees of Marianas Public Land Trust have
21 established the terms and conditions of the term Loan Agreement in its Marianas Public Land
22 Trust Amended Resolution No. 19-001-A. Therefore, this legislation authorizes and pledges the

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1 funds which Marianas Public Land Trust would distribute as interest income to the General Fund
2 pursuant to Article XI, Section 6 of the Constitution as security and for repayment for its issuance
3 of the \$15,000,000 Loan Agreement with the Commonwealth Government through the
4 Department of Finance at an annual interest rate of 7.5% due and payable on or before June 30,
5 2024 or until the loan is fully paid.

6 The Legislature hereby agrees and consents that the Marianas Public Land Trust shall
7 withhold from its annual interest income distribution to the Commonwealth for each fiscal year
8 as payment for the Loan agreement for a period of five years or until the loan is fully paid.
9 Further, the Legislature agrees that the Marianas Public Land Trust shall be entitled to withhold
10 interest income as necessary for fiscal years 2019 and beyond toward debt service of principal
11 and interest.

12 For the foregoing reasons the Legislature finds that the need for a loan agreement with
13 Marianas Public Land Trust is in the best interest of our people and our Commonwealth and
14 authorizes the Executive Branch to enter into such a loan agreement as required on terms and
15 conditions mutually agreed upon by the Marianas Public Land Trust and the Commonwealth
16 Government.

17 **Section 2. Enactment.** The following provision is hereby enacted:

18 “§101. Notwithstanding any provision of law to the contrary, the Commonwealth
19 Government, through the Governor and the Secretary of Finance and the Department of
20 Finance, is authorized to enter into a loan agreement with the Marianas Public Land Trust
21 in an amount not to exceed \$15,000,0000 at an interest rate shall not exceed 7.5% per

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1 annum for a term not exceed five-years on such terms as are mutually agreed upon by
2 the Marianas Public Land Trust and the Commonwealth Government

3 §102. The future interest income distributions into the Commonwealth General
4 Fund by the Marianas Public Land Trust starting Fiscal Year 2019 and future fiscal years
5 are appropriated for payment of the \$15,000,000.00 loan and interest and as security for
6 Marianas Public Land Trust until such time as the loan agreement with the
7 Commonwealth Department of Finance is fully satisfied and retired.

8 §103. The Secretary of Finance shall issue a quarterly summary “MPLT Loan
9 Report” which shall be a financial statement detailing the loan balance, the interest
10 accrued, list of expenses, drawdown breakdown, and any reductions due to Marianas
11 Public Land Trust withholding the interest distribution. This MPLT Loan Report shall
12 be submitted to the Governor, Lt. Governor, members of the Legislature and a copy to
13 Marianas Public Land Trust. Provided however, that a drawdown payment list is
14 provided to the respective entities prior to expending the funds.”

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


19 **Section 4. Savings Clause.** This Act and any repealer contained herein shall not be
20 construed as affecting any existing right acquired under contract or acquired under statutes
21 repealed or under any rule, regulation, or order adopted under the statutes. Repealers contained
22 in this Act shall not affect any proceeding instituted under or pursuant to prior law. The

HOUSE BILL 21-44, HS1


1 enactment of the Act shall not have the effect of terminating, or in any way modifying, any
2 liability, civil or criminal, which shall already be in existence on the date this Act becomes
3 effective.

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

Attested to by: 
Venetia S. Rosario, Acting House Clerk

Certified by: 
SPEAKER BLAS JONATHAN "BJ" T. ATTAO
House of Representatives
21st Northern Marianas Commonwealth Legislature

Approved this *26th* day of *July*, 2019


ARNOLD I. PALACIOS
ACTING GOVERNOR
Commonwealth of the Northern Mariana Islands