



THE SENATE

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

THIRD REGULAR SESSION, 2007

PUBLIC LAW NO. 15-70
SENATE BILL NO. 15-76, HD1

AN ACT

To amend the Northern Mariana Islands Retirement Fund Act to improve its fiscal solvency, to subject to referendum any changes that by law increase benefits offered under the defined benefit plan of the Northern Mariana Islands Retirement Fund Act, and for other purposes.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 Section 1. Short Title. This Act may be cited as the “The Defined Benefit Plan Reform
2 Act [DBPRA] of 2007.”

3 Section 2. Findings and Purposes.

4 The Legislature finds that the actuary of the Northern Mariana Islands Retirement Fund
5 most recently has reported that the Fund’s defined benefit plan is only 46% funded and that the
6 Commonwealth Government has not fully funded the plan for more than ten years, if ever.
7 Although the Fund counts assets of approximately \$450 million, the actuary reports that it is
8 saddled with an *unfunded* liability that is approaching one-half billion dollars (approximately
9 \$470 million as of October 1, 2004). Stated another way, the Commonwealth Government faces
10 an unfunded obligation whose present value is, on average, \$ 58,537.80 for *each* of the 8,029
11 participants in the Commonwealth’s defined benefit plan.

12 This unfunded obligation was created principally because of (1) prior service credits
13 granted to fund participants, (2) amendments to the Retirement Fund Act that have granted early
14 retirement concessions and new and increased benefits to participants, and (3) the government’s
15 financial inability to remit the actuarially required employer contributions to the Fund because of

1 the size of the obligation that has been incurred. Additionally, the ratio of active participants
2 who are funding the plan has reached an all time low relative to retirees and other participants
3 who are drawing benefits.

4 This current fiscal situation has created an unsustainable economic emergency. The
5 Commonwealth Government faces an unfunded governmental obligation to Fund participants of
6 more than one-half billion dollars, although Article X, Section 4 of the Commonwealth
7 Constitution limits bonds and other obligations of the government that constitute public
8 indebtedness to 10% or less of the aggregate assessed valuation of the real property within the
9 Commonwealth. Moreover, for several years now the Commonwealth Government has been
10 unable to constitutionally balance its budget and follow a fiscally sound deficit reduction
11 program, as mandated in Article X, Section 6 of the Commonwealth Constitution. The
12 Legislature recognizes that the Commonwealth lacks the financial resources to pay off a
13 \$500,000,000 unfunded government liability to the Retirement Fund, and that a rescue and
14 reform plan is necessary to restore the Fund to a more sound financial footing.

15 The adversity created by a nearly \$500,000,000 unfunded liability precludes the
16 Commonwealth from entering the bond market at other than an exorbitant rate of interest. The
17 bond rating agencies may treat the government's unfunded liability as public indebtedness. Until
18 this issue is addressed, the Commonwealth may be unable to secure additional credit at
19 reasonable rates from private sources.

20 This Act makes economically required prospective changes to the structure of the
21 Commonwealth's defined benefit plan to rescue it from an inevitable fiscal meltdown and move
22 it closer to a more fully funded, and less publicly indebted, state. It also moves the
23 Commonwealth closer to the possibility of enacting a constitutionally mandated balanced budget
24 and a realistic deficit reduction program. It will assist the Commonwealth in the restoration of
25 healthy public finances and a future date when the Commonwealth can enter the bond market to
26 obtain financing for public improvements at reasonable rates of interest. Through these fiscal
27 reforms, this legislation provides the citizens, public employees, and retirees of the
28 Commonwealth with a greater assurance that the Government will be able to meet its future
29 financial obligations to the Fund and other creditors.

1 Enactment of these fiscal reforms is necessary at the earliest possible date. These reforms
2 are consistent with the legislature's consideration of a defined contribution plan for new public
3 employees and for those current public employees made eligible to participate in the plan.

4 The principal purposes of this Act are:

5 (a) To enhance the retirement security of public employees and the
6 continued payment of benefits to retirees of the defined benefit plan of the
7 Northern Mariana Islands Retirement Fund by amending the plan to improve its
8 fiscal solvency and to improve the fiscal solvency of the Commonwealth
9 Government, thereby assuring the future payment of timely employer
10 contributions to the Fund; and

11 (b) To subject to referendum any changes that by law increase benefits
12 offered under the defined benefit plan of the Northern Mariana Islands Retirement
13 Fund.

14 Section 3. Future Benefit Increases Required to be Ratified by Referendum.

15 If there is enacted hereafter any changes that increase directly or indirectly the benefits to
16 participants in the defined benefit plan of the Northern Mariana Islands Retirement Fund (1
17 CMC Section 8301 *et seq.*) such changes shall not take effect until they are: (i) funded, in a
18 manner that in the opinion of the Fund's actuary is a fiscally sound, dedicated source of new
19 funding and not a redirected source of existing funding, (ii) ratified by referendum at the next
20 succeeding election following the increase in benefits, and (iii) approved by a majority of the
21 votes cast in a referendum to approve or disapprove the increase in benefits. The Commonwealth
22 Election Commission shall publish information relating to the referendum that discloses to the
23 voters a summary of a full actuarial valuation of the cost to the taxpayers of the Commonwealth
24 of the proposed increase in benefits and the actuary's opinion of the dedicated funding source.

25 Section 4. Amendments to Improve the Fiscal Solvency of the Commonwealth
26 Government and the Northern Mariana Islands Retirement Fund.

27 (a) 1 CMC § 8356 is amended to add a new last sentence to read as follows:

28 "Notwithstanding any other provision of law, no refund of contributions shall be
29 made to a Class I or Class II member upon complete separation from service following

1 both (i) the first pay period fifteen (15) years from the effective date of this act and (ii)
2 180 days following the date on which the member is eligible to receive a refund of the
3 member's contributions by electing to participate in the defined contribution plan under
4 Public Law 15-13."

5 (b) 1 CMC § 8394 is repealed and the last sentence of 1 CMC § 8358 is repealed and
6 reenacted to read as follows:

7 "The cost of living increase percentage will be applied to the first thirty thousand
8 dollars (\$30,000) of the previous year's annuity amount paid in equal semimonthly
9 increments. This figure shall not be adjusted."

10 (c) (1) 1 CMC § 8342(a) is repealed and reenacted to read as it read prior to the
11 enactment of Public Law 13-60 as follows:

12 "(a) Any Class I member electing to take early retirement shall receive an amount equal
13 to the amount the member would have been entitled to at normal retirement age reduced by an
14 actuarially determined amount for each month the member is under 62 years of age."

15 (2) Transition Provision. Class I members who have elected early retirement prior to the
16 effective date of this act shall not be affected by this change in law and shall maintain the same
17 rights and obligations as was provided under §8342(a) prior to this amendment. Class I members
18 who were eligible to elect early retirement prior to the effective date of this act shall have five
19 years from the effective date of this act to elect early retirement under §8342(a) as it was enacted
20 under Public Law 13-60; provided that any such electing members shall pay a lumpsum
21 contribution to be set by the Fund based on an actuarial study but no more than the contribution
22 required of class II members under §8361(b) of this act."

23 (d) 1 CMC § 8361(a) is amended to read as follows:

24 "(a) Each class I member of the fund shall contribute 6.5 percent of the salary
25 earned and accruing to the member in fiscal year 2006 and 2007. Beginning on the first
26 day of fiscal year 2008 the rate shall increase by 1.0 percent per fiscal year until the
27 contribution rate reaches 10.5 percent."

28 (e) 1 CMC § 8361(b) is amended to read as follows:

29 "(a) Each class II member of the fund shall contribute 9.0 percent of the salary
30 earned and accruing to the member in fiscal year 2006 and 2007. Beginning on the first
31

1 day of fiscal year 2008 the rate shall increase by 1.0 percent per fiscal year until the
2 contribution rate reaches 11 percent.”

3 (f) 1 CMC § 8382 is amended to read as follows:

4 “Each member shall, by virtue of the payment of contributions to the system,
5 receive a vested interest in the member’s contribution reserve account as provided in
6 other sections of this part, and in consideration of this vested interest shall be
7 conclusively deemed to undertake and agree to pay those contributions and to have the
8 amount deducted from his compensation as herein provided.”

9 (g) 1 CMC §8357 is repealed with respect to governors and lieutenant governors
10 assuming office after the effective date of this Act, and is frozen as of the effective date of this
11 Act with respect to the governor and lieutenant governor currently in office and any other
12 persons, so that no additional benefits will accrue to such persons under §8357.”

13 (h) 1 CMC §8392 is amended to add the following last paragraph to that section: “As
14 authorized under the provisions of N.M.I. Const. art. III, § 20(b), and as permitted by law, all
15 retirees who are re-employed by the Commonwealth following the effective date of this act shall
16 not, in any event or under any circumstances, have their retirement benefits recomputed based on
17 their re-employment services.”

18 (i) 1 CMC §8383(b) is amended to add a new last sentence to read as follows: “Benefits
19 specified in this section that are payable to a recipient in an amount exceeding \$30,000 per year
20 may be set-off, assigned, or otherwise transferred administratively or judicially or both for the
21 payment of, and to answer for, debts owed by the recipient to the Commonwealth Government
22 and its political subdivisions.”

23 (j) 1 CMC § 8364 is repealed and reenacted to read as follows:

24 “Annuitants shall be provided with an option, to be exercised within six (6) months of the
25 date of retirement, to continue their Commonwealth government health insurance coverage under
26 the same group terms and conditions as that government coverage, if any, is offered each fiscal
27 year to Commonwealth government employees. The fund assumes no liability to the annuitant
28 for group health insurance coverage beyond the payment of the Government’s share of the
29 premiums for that fiscal year on behalf of an electing annuitant as provided in this section. Any
30 person who declines to exercise the health insurance option within six (6) months of the date of

1 retirement, or who exercises the option and subsequently cancels health insurance coverage more
2 than six (6) months after the date of retirement, shall not be entitled to reapply for coverage.”

3 (k) 1 CMC § 8313 – *Definitions* - is amended to add new definitions to read as follows:
4 “(r) “Accrued benefits” means financial benefits earned by a member that are attributable to past
5 services. It does not include benefits projected to arise on account of future services.

6 (s) “Vested accrued benefits” means accrued benefits to which a non-forfeitable interest of a
7 retirement plan member has attached, as provided by law.”

8 Section 5. Conformance with N.M.I. Const. Art. III, § 20(a). The provisions of this Act
9 are the result of an economic emergency arising from a \$470 million unfunded liability, as
10 actuarially determined as of October 1, 2004. The legislature finds that each provision of this act
11 is necessary to improve the depleted public finances of the Commonwealth and allow it to move
12 closer to a constitutionally mandated balanced budget, deficit reduction plan, and limited public
13 indebtedness. This act is subject to N.M.I. Const. Art. III, § 20(a). No provision of this Act,
14 including amendments and repealers, shall be construed to diminish or impair financial benefits
15 accrued as of the date of this act or otherwise be in violation of this constitutional mandate.

16 Section 6. Amendment. 1 CMC, Division 8, Part 3, Chapter 3 is amended by adding a
17 new §8360 to read as follows:

18 "§ 8360 Benefits: Transfer and Direct Roll-Over to the Defined Contribution Plan.

19 (a) A member, who is eligible to participate in the Defined Contribution Plan under 1
20 CMC §8458 or other applicable law, may submit a written request to the Administrator to roll-
21 over via direct transfer an amount equaling the member’s contribution account balance to the
22 Defined Contribution Plan. If the Administrator determines that the member has met the
23 requirements for participation and has voluntarily and irrevocably elected to do so, the
24 Administrator shall determine the amount to be transferred on behalf of the member. The roll-
25 over amount shall include the following: (1) The amount described in 1 CMC §8458(d) as “the
26 employee contribution account balance held in trust for the member under the defined benefit
27 retirement plan of the Northern Mariana Islands Retirement Fund” which shall be defined as
28 follows: all contributions made by the member to obtain various types of credit authorized under
29 §8356 and other applicable law, less any amounts that have been deducted or are due for loans,
30 hardship withdrawals, obligations to the Fund, or for other lawful purposes, and (2) regular
31 interest on the net amount determined under (1). Regular interest shall be calculated using the

1 same rate of interest as determined under §8313(n). Interest shall be pro-rated to the date that the
2 Administrator determines and approves the rollover amount.

3 (b) The Administrator shall cause the roll-over amount to be transferred out of the assets
4 of the defined benefit plan and directly rolled over into the defined contribution plan for the
5 benefit of the member's account in that plan. The transfer and roll-over shall be completed
6 within 30 days of the date on which the Administrator determines and approves the amount to be
7 rolled over."

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

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

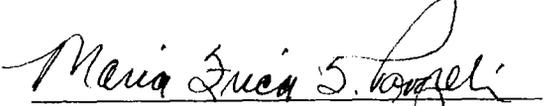
19 Section 9. Effective Date. This Act shall take effect upon approval by the Governor or
20 upon becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

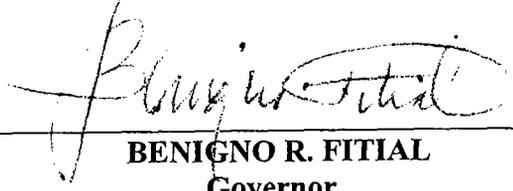


JOSEPH M. MENDIOLA
President of the Senate



MARIA FRISCA T. PANGELINAN
Senate Legislative Secretary

APPROVED this 14th day of June, 2007



BENIGNO R. FITIAL
Governor
Commonwealth of the Northern Mariana Islands