



Gov. Msg. No. 17-432

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

September 05, 2011
The Honorable Paul A. Manglona
Senate President
Seventeenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

*Sept. 06, 2011
11:00am
Petitioner*

Honorable Eli D. Cabrera
Speaker, House of Representatives
Seventeenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Mr. President and Mr. Speaker:

This is to inform you that I have signed into law Senate Bill 17-43, SD1, HS1, CCS2, entitled, "To expand shareholder derivative actions to the NMI Retirement Fund so that individual beneficiaries can maintain lawsuits when trustees refuse to do so," which was passed by the Seventeenth Northern Marianas Commonwealth Legislature.

It is evident based on the amendments, debates, deliberations, and public concerns that this measure is controversial. Much discussions and deliberations were considered and weighed on the administration's part as well in approving this bill.

While the opposing comments received raised some meritorious concerns, the measure as passed places sufficient safeguards to address those. The NMIRF's portfolio has reached a point wherein members of the NMIRF have become gravely concerned about its longevity and should be allowed to pursue action where there is clear evidence to support his/her cause of action against those entrusted to properly invest monies on their behalf. This is especially true when the NMIRF's board of trustees refuse to act on the member's best interest.

This legislation requires the beneficiary to first request the board of trustees to take action when he/she claims the NMIRF has been injured. It also requires the beneficiary to allow reasonable time for the board of trustees to act or decide not to act, and has measures in

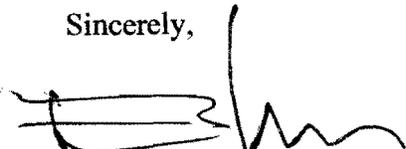
Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

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Doris
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place to prevent frivolous claims. Contrary to NMIRF's position, numbers of litigations and cost of doing business is unlikely to rise as a result of this measure.

This bill becomes **Public Law No. 17-51**. Copies bearing my signature are forwarded for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read 'ELOY S. INOS', with a stylized flourish extending to the right.

ELOY S. INOS
Acting Governor

CC: Governor
Board of Trustees, NMIRF
Press Secretary, Office of the Governor
Special Assistant to the Administration
Special Assistant for Programs & Legislative Review
All Departments and Agencies



THE SENATE
SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SENATE BILL NO. 17-43, SD1, HS1, CCS2

AN ACT

TO EXPAND SHAREHOLDER DERIVATIVE ACTIONS TO THE NMI
RETIREMENT FUND SO THAT INDIVIDUAL BENEFICIARIES CAN
MAINTAIN LAWSUITS WHEN TRUSTEES REFUSE TO DO SO.

SENATE ACTION

Offered by Senator(s): Pete P. Reyes; Jovita M. Taimanao

Date: September 17, 2010

Referred to: None

Conference Committee Report No. 17-5 (Adopted on August 03, 2011)

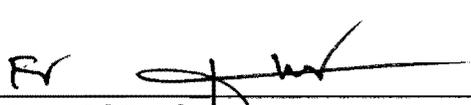
Final Reading: August 03, 2011

HOUSE ACTION

Referred to: Ways & Means and Judiciary, Governmental Operations

Conference Committee Report No. 17-5 (Adopted on August 09, 2011)

First and Final Reading: August 09, 2011



SENATOR JOVITA M. TAIMANAO
SENATE LEGISLATIVE SECRETARY

THE SENATE
SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SECOND REGULAR SESSION, 2010

SENATE BILL NO. 17-43, SD1, HS1, CCS2

AN ACT

TO EXPAND SHAREHOLDER DERIVATIVE ACTIONS TO THE NMI
RETIREMENT FUND SO THAT INDIVIDUAL BENEFICIARIES CAN
MAINTAIN LAWSUITS WHEN TRUSTEES REFUSE TO DO SO.

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

1 **Section 1. Short Title.** This Act may be cited as the “Retirement Fund Beneficiary
2 Derivative Lawsuit Act of 2011.”

3 **Section 2. Findings.**

4 (a) The Legislature finds that current laws allow the shareholders of a corporation to
5 bring an action on behalf of the corporation when the board of directors of the corporation
6 refuses to do so. Such actions are called “Shareholders Derivative Actions” and are
7 common throughout the United States.

8 (b) The Legislature finds that beneficiaries of the Northern Mariana Islands
9 Retirement Fund (“Retirement Fund”) should likewise be allowed to bring actions for the
10 benefit of the Fund when the board of trustees of the Retirement Fund refuse to act. This is
11 particularly important for Retirement Funds because the Commonwealth provides broad
12 indemnification of trustees, making it essentially useless for beneficiaries to sue the trustees
13 for the breach of fiduciary duties. *See. e.g.* 1 CMC §8317(b) and (c).

14 (c) The Legislature finds that allowing for beneficiary derivative lawsuits will not
15 result in a flood of unwarranted litigation. This is because Rule 11 of the CNMI Code of
16 Civil Procedure prohibits the filing of any lawsuit or brief for an “improper purpose” and
17 requires all actions to have “evidentiary support” and be “warranted by existing law.” If a

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1 frivolous case is filed the court may award monetary sanctions against “the attorneys, law
2 firms, or parties” that violate the rule.

3 (d) The Legislature finds that the Commonwealth courts can manage actions brought
4 under this Act by consolidating multiple actions brought against the same named defendant
5 into a single case, and by setting special procedures for such cases under the inherent powers
6 of the courts to manage cases.

7 (e) The Legislature finds that allowing beneficiaries of the Retirement Fund to sue
8 under the circumstances and as limited by this Act will improve the accountability of money
9 managers and the Retirement Fund to their beneficiaries.

10 (f) The Legislature finds that the existence of the right to bring Shareholder Derivate
11 Actions has not prevented businesses from entering into contracts with corporations or
12 prevented corporations from doing business. Therefore, the Legislature finds that it is
13 unlikely that the creation of Beneficiary Derivative Actions will harm the Retirement Fund
14 in doing business with legitimate and honest businesses.

15 (g) The Legislature finds that in beneficiary derivative lawsuits there are no risks to
16 the Retirement Fund because the attorney fees for prosecuting the case have to be paid from
17 any damages recovered and should the beneficiaries lose the action the Retirement Fund will
18 not be held liable for any costs or expenses of the prevailing party. Further, as a nominal
19 plaintiff, the Retirement Fund will likely not be required to file an answer and should incur
20 at most diminimus legal fees related to its involvement in the action.

21 (h) The Legislature finds that often beneficiaries do not discover that the Retirement
22 Fund that they belong to has been harmed until after the normal statute of limitations has
23 expired, and for that reason extending the statute of limitations for beneficiary derivative
24 actions is justified.

25 **Section 3. Purpose.** The purpose of this Act is to allow beneficiaries of the
26 Retirement Fund to maintain causes of action on behalf of the Retirement Fund when the
27 board of trustees who manage the Retirement Fund to bring such actions. It is intended that
28 beneficiaries of the Retirement Fund be allowed the analogous standing and rights to sue as
29 shareholders of corporations.

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1 **Section 4. Enactment.** Subject to codification by the Law Revision Commission,
2 the following new provisions are hereby enacted:

3 “Section 101. Derivative Beneficiary Actions Allowed. Beneficiaries of the
4 Northern Mariana Islands Retirement Fund (“Retirement Fund”) shall have the right
5 to maintain an action before the Commonwealth courts for the benefit of the
6 Retirement Fund of which they are beneficiaries, and against anyone or any entity
7 who has done harm to the Retirement Fund, provided that the beneficiaries first
8 request the board of trustees to take action or join with them in a lawsuit against the
9 individual or entity that they claim has injured the Retirement Fund. Such actions
10 shall be referred to as “Beneficiary Derivative Actions.”

11 Section 102. Notice Required. Beneficiaries must request that the board of
12 trustees of the Retirement Fund file suit or join with them in a lawsuit against a
13 clearly identified potential defendant (the “named defendant”.) Beneficiaries must
14 then allow a reasonable time for the board of trustees to act or decide not to act, but
15 beneficiaries need not wait more than ninety days for the board of trustees to act. If
16 the required notice is given and the board of trustees refuses or fails to act in the
17 required time, the beneficiary may initiate or proceed with a lawsuit for the benefit of
18 the Retirement Fund against the named defendant pursuant to this Act.

19 Section 103. Beneficiary Standing. It is not necessary for a beneficiary of
20 the Retirement Fund to prove damages specifically as to the individual beneficiary in
21 order to maintain a Beneficiary Derivative Action on behalf of the Retirement Fund,
22 because the action is brought on behalf of the Retirement Fund and not just on behalf
23 of the individual beneficiary. When the beneficiary brings an action for breach of
24 contract against a named defendant then the beneficiary stands in the place of the
25 Retirement Fund and is bound by the terms of the contract between the Retirement
26 Fund and the named defendant, unless the beneficiary can show that the contract was
27 unconscionable or for other reasons persuade the court to set aside or invalidate the
28 contract, in whole or in part. When the beneficiary brings an action sounding in tort
29 against a named defendant, such as for negligence or for breach of fiduciary duty,

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1 then the beneficiary shall not be restricted in the action by any contacts, waivers,
2 releases, or other limitation on the action entered into between the Retirement Fund
3 and the named defendant.

4 Section 104. For the Benefit of the Retirement Fund. Beneficiaries may not
5 maintain class action lawsuits under this Act. Instead, one or more beneficiaries may
6 join together as representatives of the Retirement Fund itself and sue for the benefit
7 of the Retirement Fund. None of the showings required to maintain a class action
8 shall apply to Beneficiary Derivative Actions. A Beneficiary Derivative Actions
9 shall not be treated as a class action. To serve as a plaintiff the beneficiary need only
10 show that he or she is a beneficiary under the Retirement Fund expecting to or
11 receiving benefits. Damages obtained by the beneficiary in a Beneficiary Derivative
12 Actions shall be submitted pursuant to court supervision over to the Retirement Fund
13 for the benefit of all beneficiaries. The statute of limitations for bringing a
14 Beneficiary Derivative Action shall be twelve years from the date when the cause of
15 action arises.

16 Section 105. Pleadings. The normal civil rules shall apply to Beneficiary
17 Derivative Actions. In the complaint, the beneficiaries who bring the action shall
18 identify themselves as the plaintiffs. The individual or entity that the beneficiaries
19 assert has injured the Retirement Fund shall be named as the defendant. The
20 Retirement Fund itself shall be named as a “nominal plaintiff” so that the court has
21 jurisdiction over the Retirement Fund for payments of awarded damages into the
22 Retirement Fund. The rules applicable to nominal parties shall apply to the
23 Retirement Fund’s participation in the action.

24 Section 106. Costs and Legal Fees. The costs and reasonable legal fees of the
25 beneficiary bringing the action may be recovered from the named defendant that is
26 alleged to have harmed the Retirement Fund if the beneficiary prevails. Contingent
27 fees shall be allowed for the attorneys who bring Beneficiary Derivative Actions on
28 behalf of beneficiaries and shall be based upon the total benefit obtained for the
29 Retirement Fund, the risks associated with bringing the action, the inability of the

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1 attorneys to accept other work while the Beneficiary Derivate Action was
2 proceeding, the fees agreed to be paid by the beneficiaries who initiated the action,
3 and the costs associated if the attorneys for the beneficiaries advance costs in the
4 case. The minimum contingent fee shall be the same as permitted in actions initiated
5 against the Commonwealth. Expenses, including those of the beneficiaries serving
6 as plaintiffs, shall be recoverable from the named defendant or out of any damages
7 awarded or obtained by settlement. In the event that the beneficiaries do not prevail
8 in their action and costs are awarded to the prevailing named defendant, then those
9 costs are to be borne by the attorneys for the beneficiaries, and not by the Retirement
10 Fund.

11 Section 107. Supervision by the Court. The Commonwealth Superior Court
12 shall have jurisdiction over all Beneficiary Derivative Actions and shall supervise
13 them as it would shareholder derivative actions to the extent applicable, and may
14 establish such special procedures for the resolution of such cases as are deemed
15 appropriate as a matter of judicial discretion. In particular, the Commonwealth
16 Superior Court shall hold fairness hearings for the approval of all settlements and the
17 approval of attorneys fees for the counsel who represented the beneficiaries who
18 brought suit. Beneficiary Derivative Actions shall be decided by a jury when
19 damages are sought. All appeals shall be to the Commonwealth Supreme Court in
20 accordance with the rules that apply to appeals in civil actions.

21 Section 108. Limitation on Right to Sue. This Act shall not give retirees the
22 right to sue the Commonwealth Government to force government contributions to
23 the Northern Mariana Island Retirement Fund.”

24 **Section 5. Application.** This Act shall apply to all actions involving the Retirement
25 Fund heretofore or hereafter made. This Act shall govern in all applicable proceedings
26 unless a final judgment, not subject to further appeal, has been entered prior to the effective
27 date of this Act. In all pending actions covered by this Act, the Commonwealth Superior
28 Court shall allow the parties in those actions to freely amend their pleadings to comply with
29 and plead this Act. If demands have previously been made of boards of trustees that would

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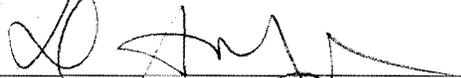
1 comply with this Act had they been made after the effective date of this Act, no new
2 demands need be made and all such pending actions shall proceed under this Act.

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

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

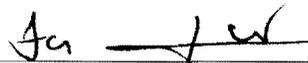
14 **Section 8. Effective Date.** This Act shall take effect upon its approval by the
15 Governor or becoming law without such approval.

CERTIFIED BY:



PAUL A. MANGEONA
PRESIDENT OF THE SENATE

ATTESTED BY:



JOVITA M. DAIMANAO
SENATE LEGISLATIVE SECRETARY

Approved this 5TH day of SEPT., 2011



ELOY S. INOS
Acting Governor
Commonwealth of the Northern Mariana Islands