



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

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January 17, 2018

OAGHB: 2018-01

Rep. Angel A. Demapan
Chairman
Committee on Ways and Means
House of Representatives
20th Northern Marianas Commonwealth Legislature
Saipan, MP 96950

Re: HB 20-100, HB 20-117, HB 20-120

Dear Chairman Demapan:

Thank you for the opportunity to comment on HB 20-100 (to establish a reserve fund to meet the future needs of the Commonwealth); HB 20-117 (to appropriate \$543,223 from the Solid Waste Management Revolving Account for the Second Senatorial District); HB 20-120 (provide for the payment of salary increases suspended by financial austerity measures).

I have reviewed the versions of the bills that were attached to your January 4, 2018 letter and offer the following comments for your Committee's consideration.

HB 20-100:

As we have stated in bills containing similar restrictions, HB 20-100 cannot restrict the legislature from passing future legislation to amend the bill if it becomes law. *See Washington State Farm Bureau Federation v. Gregoire*, 174 P.3d 1142 (Wash. 2007) (stating that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power; future legislature may repeal or modify acts of a former legislature). To illustrate, the proposed language of § 103 to prohibit the legislature from appropriating the funds at issue, is not enforceable and future bills may be passed and approved that appropriates the funds. Future bills, passed by a simple majority, could also amend the supermajority requirement to approve the use of the funds after FY 2028. On a final note, § 104 should specify the trust assets that the Commonwealth Reserve Fund Investment Board is supposed to manage.

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HB 20-117:

Although H.B. No. 20-117 does not present a constitutional issue, the use of the Solid Waste Management Revolving Account (SWMRA) for non-solid waste management expenditures, as are proposed by this bill, exposes the Commonwealth to potential EPA liability and is in conflict with the intent of SWMRA, as well as federal accounting standards. The Committee should consult closely with the Department of Public Works on the impact of the bill on DPW, the solid waste program and grant funding requirements.

HB 20-120:

As presently written, § 101 would provide affected employees a statutorily-protected right to the retroactive payment of the increases even without an appropriation to fund the increases. To prevent the Commonwealth from being exposed to potentially costly litigation over the suspension of salary increases since 1999, the Committee should obtain the fiscal impact of this bill from the Office of Personnel Management to implement the payment contemplated under HB 20-120.

Please contact my office if you have any questions on the foregoing comments.

Sincerely,



EDWARD MANIBUSAN
Attorney General

cc: Deputy Attorney General
All Members, House of Representatives