

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

THIRD-SPECIAL SESSION, 2006

**PUBLIC LAW NO. 15-13
SENATE BILL NO. 15-47, HD1**

AN ACT

To create portable individual retirement accounts for all new public employees who are hired on or after January 1, 2007; to provide the conditions under which certain Class I members of the Retirement Fund may transfer from the existing defined benefit plan to the new defined contribution plan; to establish a Northern Mariana Islands Public Employees' Defined Contribution Retirement Plan; to vest the administration of the Plan with the Administrator of the Northern Marianas Retirement Fund and his or her designees; to add new Sections 8451 – 8478 to Title 1 of the Commonwealth Code; to add a new subsection (k) to Section 1701 of Title 4 of the Commonwealth Code; 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 "Defined Contribution Plan Act
2 of 2006."

3 Section 2. Purposes. The purposes of this Act are:

4 (a) To create portable individual retirement accounts for all new public
5 employees who are hired on or after the effective date determined under §8454;

6 (b) To provide the conditions under which certain Class I members of the
7 Retirement Fund may transfer from the existing defined benefit plan to the new
8 defined contribution plan;

9 (c) To establish a Northern Mariana Islands Public Employees' Defined
0 Contribution Retirement Plan;

1 (d) To encourage qualified personnel to enter and remain in service with the
2 Commonwealth Government by establishing a defined contribution plan for the
3 payment of retirement benefits to or on behalf of the members;

4 (e) To amend the Northern Marianas Retirement Fund Act to improve the
5 defined benefit plan's fiscal solvency and reduce its significant unfunded actuarial
6 accrued liability; and

7 (f) To vest the administration of the Plan with the Administrator of the
8 Northern Marianas Retirement Fund.

9 Section 3. Amendment. Title 1, Division 8, Part 3 (Retirement Fund) is hereby
10 amended to add a new Chapter 10 – Northern Mariana Islands Public Employees' Defined
11 Contribution Retirement Plan - to read:

12 **"CHAPTER 10. Northern Mariana Islands Public Employees'**

13 **Defined Contribution Retirement Plan.**

14 §8451. Definitions.

15 §8452. Applicability of Chapter.

16 §8453. Chapter to be Liberally Construed; Purpose.

17 §8454. Defined Contribution Retirement Plan Established; Federal Qualification
18 Requirements

19 §8455. Administration of the Defined Contribution Retirement Plan.

20 §8456. Membership in Defined Contribution Plan; Limiting Participation in the

21 **Defined Benefit Plan.**

22 §8457. Participation in the Plan: Ineligible Persons.

23 (58458. Conditions for Transfer Into Defined Contribution Plan by Class I and
24 Class II Members of the Defined Benefit Plan.

25 §8459. Members' Contributions; Mandatory.

26 (58460. Employer Contributions.

27 §8461. Rollover Contributions and Distributions.

28 §8462. Transmittal of Contributions.

29 §8463. Limitations on Contributions.

- 1 \$8464. Vesting.
- 2 \$8465. Investment of Individual Accounts.
- 3 §8466. Distribution Election at Termination.
- 4 \$8467. Forms of Distribution.
- 5 \$8468. Manner of Electing Distributions.
- 6 \$8469. Distribution Requirements.
- 7 \$8470. Designation of Beneficiary.
- 8 \$8471. Rights Under Qualified Domestic Relations Order.
- 9 §8472. Occupational Disability Benefits and Reemployment of Disabled
- 10 Employees.
- 11 \$8473. Occupational Death Benefit.
- 12 \$8474. Amendment and Termination of Plan.
- 13 §8475. Exclusive Benefit.
- 14 \$8476. Nonguarantee of Returns, Rates, or Benefit Amounts.
- 15 \$8477. Nonguarantee of Employment.
- 16 \$8478. Fraud.
- 17 \$8451. Definitions. As used in this Chapter:
- 18 (1) "Administrator" means the Administrator of the Northern Mariana
- 19 Islands Retirement Fund;
- 20 (2) "Alternate payee" means the person for whom an amount has been
- 21 separated into an account under a qualified domestic relations order;
- 22 (3) "Annuitant" means a member, beneficiary, or alternate payee who is
- 23 receiving a benefit under this plan;
- 24 (4) "Beneficiary" means the person or persons entitled under the provisions
- 25 of this plan to receive benefits after the death of a member or alternate payee;
- 26 (5) "Board" means the Northern Mariana Islands Retirement Fund Board;
- 27 (6) "Calendar year" means the period beginning on January 1 and ending on
- 28 December 31;
- 29 (7) "Compensation"

1 (A) means (i) the total remuneration earned by an included employee
2 for individual services rendered, including cost-of-living differentials, as
3 reported on the included employee's Income Tax Withholding Statement
4 (Form W-2) from the employer for the calendar year; and (ii) the member
5 contribution to the plan under §8459, as those statutes may be amended from
6 time to time;

7 (B) does not include retirement benefits, severance pay or other
8 separation bonuses, welfare benefits, per diem, expense allowances, workers'
9 compensation payments, payments for leave not used whether those leave
10 payments are scheduled payments, lump-sum payments, donations, or cash-
11 ins, any remuneration contributed by the employer for or on account of the
12 included employee under this plan or under any other qualified or
13 nonqualified employee benefit plan, any remuneration not specifically
14 included above which would have been excluded under 26 U.S.C. 3121(a)
15 (Internal Revenue Code) if the employer had remained in the Federal Social
16 Security Plan, or any remuneration paid by the employer in excess of the
17 Social Security Taxable Wage Base for the calendar year;

19 (C) notwithstanding (B) of this paragraph, includes any amount that is
20 contributed by the employer under a salary reduction agreement and that is
21 not includible in the gross income of the included employee under 26
22 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b) (Internal Revenue
23 Code); the annual compensation limitation for the member, which is so taken
24 into account for those purposes, may not exceed \$200,000, as adjusted for the
25 cost of living in accordance with 26 U.S.C. 401(a)(17)(B) (Internal Revenue
26 Code), with the limitation for a fiscal year being the limitation in effect for
the calendar year within which the fiscal year begins.

27 (8) "Defined benefit plan" means the plan providing to employees' Class I
28 and Class II membership in the Northern Mariana Islands Retirement Fund
29 established under 1 CMC Division 8, Part 3;

1 (9) "Dependent child" means an unmarried child of an included employee,
2 including one adopted, who is dependent upon the included employee for support
3 and who is either (A) under 19 years old or (B) under 23 years old and registered at
4 and attending on a full-time basis an accredited educational or technical institution
5 recognized by the Administrator; age restrictions set out in this paragraph do not
6 apply to a child who is totally and permanently disabled;

7 (10) "Distribution commencement date" has the meaning given in §8469(a).

8 (11) "Employee" means an employee of an Employer, as defined in
9 paragraph (12). An "included employee" is an employee who is a member of the
10 plan.

11 (12) "Employer" means the Commonwealth Government including every
12 department or agency of the Executive Branch, every autonomous and semi-
13 autonomous agency or instrumentality, public corporations, every educational
14 institution whether secondary or post secondary, the Judicial Branch, the Legislative
15 Branch, the Public School System, and every public entity hereafter to be created by
16 law, within the Commonwealth which has employed or employs a member of the
17 plan;

18 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
19 amended, as adopted and applied in the Commonwealth;

20 (14) "Limitation year" means the year for which contributions are made to a
21 member's individual account as reported to the Internal Revenue Service and as
22 meets the limits described in 26 U.S.C. 415(c);

23 (15) "Member" means an employee of an employer or former employee of an
24 employer who retains a right to benefits under the plan. A member may also be
25 referred to as an included employee;

26 (16) "Membership service" means full-time or part-time employment with an
27 employer in the plan;

1 (17) "Normal retirement age" means the age of 62 or such other age, if any,
2 that the Administrator, following consultation with the actuary and legal counsel,
3 determines is required under applicable law to maintain the qualification of the plan;

4 (18) "Participant" means the person who has a vested right to an individual
5 account, such as a member, an alternate payee if the account is subject to a qualified
6 domestic relations order, the member's beneficiary if the member is deceased, or an
7 alternate payee's beneficiary if the alternate payee is deceased;

8 (19) "Peace officer" or "Fire fighter" means an included employee occupying
9 a position as a peace officer, chief of police, correctional officer, chief of corrections,
10 fire fighter, fire chief, or probation officer;

11 (20) "Plan" or "defined contribution plan" means the Northern Mariana
12 Islands Public Employees' Defined Contribution Retirement Plan as established
13 under this chapter;

14 (21) "Prudent investment standard" means the degree of care, skill, prudence,
15 and diligence under the circumstances then prevailing that a prudent person acting in
16 a like capacity and familiar with such matters would use in the conduct of an
17 enterprise of a like character and with like aims;

18 (22) "Qualified domestic relations order" means a divorce or dissolution
19 judgment under Commonwealth law, including an order approving a property
20 settlement, that

21 (A) creates or recognizes the existence of an alternate payee's right to,
22 or assigns to an alternate payee the right to, receive all or a portion of an
23 individual account or the benefits payable with respect to a member;

24 (B) sets out the name and last known mailing address, if any, of the
25 member and of each alternate payee covered by the order;

26 (C) sets out the amount or percentage of the member's benefit, or of
27 any survivor's benefit, to be paid to the alternate payee, or sets out the manner
28 in which that amount or percentage is to be determined;

1 (D) sets out the number of payments or period to which the order
2 applies;

3 (E) sets out the retirement plan to which the order applies;

4 (F) does not require any type or form of benefit or any option not
5 otherwise provided by this chapter;

6 (G) does not require an increase of benefits in excess of the amount
7 provided by this chapter; and

8 (H) does not require the payment to an alternate payee of benefits
9 that are required to be paid to another alternate payee under another order
10 previously determined to be a qualified domestic relations order;

11 (23) "Retiree" means a member who has withdrawn from the active
12 employment of a participating employer and has completed all conditions precedent
13 to retirement;

14 (24) "Surviving spouse" means the spouse of an included employee who has
15 been married to the included employee for at least one year at the time of the
16 included employee's death;

17 (25) "Year of service" means the equivalent of 52 weeks of permanent full-
18 time employment, which may consist of a combination of permanent full-time or
19 permanent part-time membership service; for these purposes, "permanent full-time"
20 means an included employee who is occupying a permanent position that regularly
21 requires working 30 or more hours a week and "permanent part-time" means an
22 included employee who is occupying a permanent position that regularly requires
23 working at least 15 hours but less than 30 hours a week.

24 §8452. Applicability of Chapter.

25 The provisions of this chapter apply only to members first hired on or after
26 the effective date determined under §8454, or to Class I and Class II members of the
27 Northern Mariana Islands Retirement Fund defined benefit plan who meet the
28 conditions required under §8458 for transfer into the defined contribution plan.

29 §8453. Chapter to be Liberally Construed; Purpose.

1 The provisions of this Chapter shall be liberally construed so as to provide a
2 portable individual retirement account for public employees who are eligible to
3 participate in the plan.

4 The purpose of the Chapter is to provide public employees with a defined
5 contribution retirement plan that is fully funded on a current basis from member and
6 any employer contributions.

7 §8454. Defined Contribution Retirement Plan Established; Federal Oualification
8 Requirements.

9 (a) A defined contribution retirement plan is established for employees of the
10 Commonwealth. The defined contribution retirement plan is a plan in which savings are
11 accumulated in an individual retirement account for the exclusive benefit of the member or
12 beneficiaries.

13 (b) The plan is established effective **January 1, 2007**, or such later effective
14 date as shall be **determined** necessary by the Administrator for the appropriate
15 administration and qualification of the plan. On the effective date contributions by
16 employers and members shall begin.

17 (c) The retirement plan established by this chapter is intended to qualify
18 under 26 U.S.C. 401(a), 414(d), 414(k), 457, and other applicable law (Internal Revenue
19 Code) as a qualified retirement plan established and maintained by the Commonwealth for
20 its employees, including the employees of its political subdivisions, public corporations, and
21 independent agencies.

22 (d) An amendment to this chapter does not provide a person with a vested
23 right to a benefit if the Internal Revenue Service determines that the amendment will result
24 in disqualification of the plan under the Internal Revenue Code, as adopted in and applied to
25 the Commonwealth.

26 (e) The retirement plan established by this chapter is supplemental to any
27 participation now or hereafter provided to Commonwealth employees in the United States
28 social security system.

29 §8455. Administration of the Defined Contribution Retirement Plan.

1 (a) Powers and Duties of the Administrator. The Northern Mariana Islands
2 Retirement Fund through its Administrator appointed under §8316 administers the plan. The
3 Administrator shall take whatever lawful action may be necessary to carry out the purposes
4 and requirements of the plan. Among the actions that the Administrator shall take is to:

5 (1) approve or disapprove claims for retirement benefits;

6 (2) make payments for the various purposes specified;

7 (3) cause periodic reports or statements of account to be rendered
8 to members of the plan;

9 (4) as soon as possible after the close of each fiscal year, send to
10 the governor and the legislature an annual statement on the operations of
11 the plan in a format acceptable to them;

12 (5) engage the Public Auditor or an independent certified public
13 accountant designated by the Public Auditor to conduct an annual audit of
14 the plan in a form acceptable to the Public Auditor;

15 (6) publish an information handbook for members and the public
16 concerning eligibility, benefits, and other information relating to the plan
17 at intervals that the Administrator considers appropriate;

18 (7) meet at least annually with the Board to review the condition
19 and management of the plan and to review significant changes to policies,
20 regulations or benefits;

21 (8) adopt policies and promulgate such regulations as are deemed
22 by the Administrator to be necessary to govern the operation of the plan;
23 and

24 (9) do whatever else may be necessary to carry out the purposes of
25 the plan.

26 (b) The Administrator shall charge uniform fees to members' accounts to
27 cover the ongoing cost of administering the plan and its operations. Following the second
28 year of the plan's administration, the Administrator shall rely solely on such uniform fees
29 and shall not plan for or request an appropriation from the general fund for this purpose. The

1 ongoing cost of administering the plan and its operations includes the cost of compensation
2 to public employees and private contractors involved in the plan.

3 (c) The Administrator shall contract with qualified private entities to provide
4 record keeping, benefits payments, investment arrays, and other functions necessary for all
5 aspects of a third party's administration of the plan. The Administrator's selection of such
6 service providers shall be conducted through a competitive selection process. In selecting
7 such providers and options, the Administrator shall take into account as his highest fiduciary
8 duty, the proper safeguard and protection of member and employer contributions, and the
9 interest, dividends, or other returns thereon.

10 (d) Legal Counsel. The legal counsel of the Northern Mariana Islands
11 Retirement Fund is the legal counsel for the plan and shall advise the administrator and
12 represent the plan in legal proceedings.

13 (e) Board of Trustees. The Board of Trustees of the Northern Mariana
14 Islands Retirement shall serve in an advisory capacity to the Administrator of the plan.

15 §8456. Membership in Defined Contribution Plan; Limiting Participation in the
16 Defined Benefit Plan.

17 Beginning on the effective date determined under §8454, and to the fullest extent
18 permitted by law, the Northern Mariana Islands Public Employees' Defined Contribution
19 Retirement Plan shall be the single retirement program offered by the Commonwealth for all
20 employees whose first time CNMI government employment commences on or after that
21 date.

22 Unless otherwise provided by federal law and Section 8457, first time new public
23 employees who are hired on or after the effective date determined under §8454 shall be
24 enrolled in the Defined' Contribution Plan. A public employee who was previously a
25 member of the defined benefit plan and who has an interruption in government service but
26 has not received any retirement benefits from the defined benefit plan, including but not
27 limited to contributions withdrawals, shall be reinstated to the defined benefit plan by
28 written request upon being rehired as a public employee if that rehiring occurs within five

1 (5) years of the termination date of the employee's most recent CNMI government
2 employment and that employee meets the requirements of this chapter.

3 Class I and Class II members of the Northern Mariana Islands Retirement
4 Fund whose employment continues on or after the effective date determined under §8454,
5 shall continue to contribute and participate in the defined benefit plan without change in
6 provisions or benefits, unless such members meet the conditions for transfer that are
7 required under §8458.

8 In all cases where a question exists as to the readmission to membership in a
9 retirement plan, the Administrator shall decide the question with the assistance of the plan's
10 legal counsel.

11 An employee who participates in the defined contribution plan may not
12 concurrently participate in the defined benefit plan with respect to their employment.

13 §8457. Participation in the Plan: Ineligible Persons.

14 (a) The following persons shall not be eligible for membership:

15 (1) Persons whose services are compensated on a fee basis.

16 (2) Independent contractors.

17 (3) Persons whose employment is for a specific project.

18 (4) Persons whose employment is purely temporary, seasonal,
19 intermittent or part-time.

20 (b) The Administrator may further define the persons covered by this section.

21 §8458. Conditions for Transfer Into Defined Contribution Plan by Class I and Class
22 II Members of the Defined Benefit Plan.

23 (a) Class I Members With Less Than 10 Years Contributing Member Service.

24 The Administrator shall identify Class I members of the Northern Mariana Islands
25 Retirement Fund. Members with less than 10 years of contributing member service shall
26 have an option, upon written election, to voluntarily and irrevocably elect to become
27 members of the defined contribution plan, on a prospective basis, on or after a date selected
28 by the Administrator that is on or after the effective date determined under §8454. As

1 required by law, this option shall expire 12 months after first taking effect with respect to
2 such members.

3 The election to participate in the defined contribution retirement plan must be
4 made in writing on forms and in the manner prescribed by the Administrator.

5 Before accepting an election to participate in the defined contribution
6 retirement plan, the Administrator must provide the employee planning on making an
7 election to participate in the defined contribution retirement plan with written information,
8 including calculations to illustrate the effect of moving the employee's retirement plan from
9 the defined benefit retirement plan to the defined contribution retirement plan as well as
10 other information to clearly inform the employee of the potential consequences of the
11 employee's election. **An** election made under this subsection to participate in the defined
12 contribution retirement plan is irrevocable.

13 Upon making the election, the participant shall be enrolled as a member of
14 the defined contribution retirement plan, the member's participation in the plan shall be
15 governed by this act, and the member's participation in the defined benefit retirement plan
16 shall terminate and no benefits shall accrue to the member under that plan. The participant's
17 enrollment in the defined contribution retirement plan shall be effective the first day of the
18 month after the administrator receives the completed enrollment forms.

19 **An** election made by an eligible member who is married is not effective
20 unless the election is signed by the individual's spouse.

21 Members transfemng to the defined contribution plan will have their
22 transfers effective at the end of the first pay period following the month of transfer or at such
23 other time as determined by the Administrator for administrative necessity.

24 (b) All Other Class I Members and All Class II Members. Class I members
25 with 10 or more years of contributing member service and all Class II members of the
26 defined benefit plan of the Retirement Fund are not eligible to transfer under this section to
27 the defined contribution plan.

28 (c) **An** eligible Class I or Class II member whose account is subject to a
29 qualified domestic relations order may not elect to become a member of the defined

1 contribution plan under any elective provisions set forth in subsection (a), unless the
2 qualified domestic relations order is amended or vacated and court-certified copies of the
3 order are received by the Administrator.

4 (d) To the extent permitted by federal law, each eligible member who elects
5 to participate in the defined contribution retirement plan shall have transferred to a new
6 account the employee contribution account balance held in trust for the member under the
7 defined benefit retirement plan of the Northern Mariana Islands Retirement Fund. A
8 matching employer contribution may be made on behalf of that included employee to the
9 new account if the employer makes the matching contribution from funds appropriated by
10 the legislature for that purpose. The amount of the matching employer contribution shall be
11 subject to, and may not exceed, the limitation of 26 U.S.C. 415(c) during the applicable
12 limitation year in which the contribution is made.

13 (e) Upon a transfer, all membership service previously earned under the
14 defined benefit retirement plan shall be nullified for purposes of entitlement to a future
15 benefit under the defined benefit retirement plan but shall be credited for purposes of
16 determining vesting in employer contributions under the defined contribution plan. For
17 these purposes, "membership service" earned under the defined benefit retirement plan
18 means service under which employee contributions to the defined benefit plan have been
19 paid and does not include any service for which reinstatement indebtedness to the defined
20 benefit plan has not been fully paid.

21 (f) If the Administrator receives notice from the United States Department of
22 the Treasury, Internal Revenue Service, that this section or a portion of this section will
23 cause the retirement plan under this chapter, or a portion of the retirement plan under this
24 chapter, to be disqualified for tax purposes under the Internal Revenue Code, the portion that
25 will cause the disqualification does not apply, and the Administrator shall notify the
26 Governor and presiding officers of the legislature.

27 §8459. Members' Contributions; Mandatory.

28 (a) Each member shall contribute to the member's individual account an
29 amount equal to ten (10) percent of the member's compensation during the calendar year or a

1 shortened year determined from the date of the first pay period commencing after the date
2 on which the employee became a member of the plan.

3 (b) Subject to the limitations on contributions under §8463, a member may
4 elect to make additional contributions to the member's individual account.

5 (c) The employer shall deduct the contribution from the member's
6 compensation at the end of each payroll period, and the contribution shall be credited by the
7 plan to the member's individual account. The contributions shall be deducted from the
8 member's compensation before the computation of applicable taxes under 4 CMC 91201 *et*
9 *seq.* To the extent permitted by federal law, the contributions shall be deducted from the
10 member's compensation before the computation of applicable federal taxes and shall be
11 treated as employer contributions under 26 U.S.C. §414(h)(2). A member may not have the
12 option of making the payroll deduction directly in cash instead of having the contribution
13 picked up by the employer.

14 (d) Contributions of included employees shall be made by payroll deductions.
15 Every included employee shall be considered to consent to payroll deductions. It is of no
16 consequence that a payroll deduction may cause the compensation paid in cash to an
17 included employee to be reduced below the minimum required by law. Payment of an
18 included employee's compensation, less payroll deductions, is a full and complete discharge
19 and satisfaction of all claims and demands by the included employee relating to
20 remuneration of services during the period covered by the payment, except with respect to
21 the benefits provided under the plan.

22 §8460. Employer contributions.

23 (a) An employer shall contribute to each member's individual account an
24 amount equal to 4 percent of the member's compensation during the calendar year or a
25 shortened year determined from the date of the first pay period commencing after the date
26 on which the employee became a member of the plan.

27 (b) An employer shall make annual contributions to a fund, established by
28 and in an amount determined by the Administrator, to be required to purchase insurance and

1 otherwise fully fund the cost of providing occupational disability and occupational death
2 benefits under Sections 8472 and 8473.

3 (c) Members may enforce through a private cause of action against their
4 employers the timely performance of the employers in making the contributions due under
5 this section. Attorneys fees and costs shall be awarded to the prevailing party.

6 §8461. Rollover Contributions and Distributions.

7 (a) An employee entering the plan may elect, at the time and in the manner
8 prescribed by the Administrator, to have all or part of a direct rollover distribution **from** an
9 eligible retirement plan owned by the member paid directly into the member's individual
10 account.

11 (b) Rollover contributions do not count as a purchase of membership service
12 for the purpose of determining years of service.

13 (c) A distributee may elect, at the time and in the manner prescribed by the
14 Administrator, to have all or part of an eligible rollover distribution paid directly to an
15 eligible retirement plan specified by the distributee in the direct rollover.

16 (d) In this section,

17 (1) "direct rollover" means the payment of an eligible rollover
18 distribution by the plan to an eligible retirement plan specified by a distributee
19 who is eligible to elect a direct rollover;

20 (2) "distributee" means a member, or a beneficiary who is the
21 surviving spouse of the member, or an alternate payee;

22 (3) "eligible retirement plan" means

23 (A) a conduit individual retirement account described in 26
24 U.S.C. 408(d)(3)(A);

25 (B) an annuity plan described in 26 U.S.C. 403(a);

26 (C) a qualified trust described in 26 U.S.C. 401(a);

27 (D) an annuity plan described in 26 U.S.C. 403(b); or

28 (E) a governmental plan described in 26 U.S.C. 457(b);

1 (4) "eligible rollover distribution" means a distribution of all or
2 part of a total account to a distributee, except for

3 (A) a distribution that is one of a series of substantially
4 equal installments payable not less frequently than annually over the life
5 expectancy of the distributee or the joint and last survivor life expectancy
6 of the distributee and the distributee's designated beneficiary, as defined in
7 26 U.S.C. 401(a)(9);

8 (B) a distribution that is one of a series of substantially
9 equal installments payable not less frequently than annually over a
10 specified period of 10 years or more;

11 (C) a distribution that is required under 26 U.S.C.
12 401(a)(9);

13 (D) the portion of any distribution that is not includable in
14 gross income;

15 (E) a distribution that is on account of hardship; and

16 (F) other distributions that are reasonably expected to total
17 less than \$200 during a year.

18 \$8462. Transmittal of Contributions.

19 All contributions deducted in accordance with this chapter shall be
20 transmitted to the plan for deposit in the trust fund as soon as administratively feasible, but
21 in no event later than 15 days following the close of the payroll period.

22 \$8463. Limitations on Contributions.

23 Notwithstanding any other provisions of this plan, the annual additions to
24 each member's individual account under this plan and under all defined contribution plans of
25 the employer required to be aggregated with the contributions from this plan under the
26 provisions of 26 U.S.C. 415 may not exceed, for any limitation year, the amount permitted
27 under 26 U.S.C. 415 at any time. If the amount of a member's defined contribution plan
28 contributions exceeds the limitation of 26 U.S.C. 415(c) for any limitation year, the
29 Administrator shall take any necessary remedial action to correct an excess contribution.

1 The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied
2 to qualified defined contribution plans of governmental employees are incorporated as part
3 of the terms and conditions of the plan.

4 §8464. Vesting.

5 (a) A participating member is immediately and fully vested in that member's
6 contributions and related earnings. Member's contributions includes any rollover
7 contributions made by the member.

8 (b) A member shall be fully vested in the employer contributions made on
9 that member's behalf, and related earnings, **after** five years of service. A member is partially
10 vested in the employer contributions made on that member's behalf, and the related earnings,
11 in the ratio of

12 (1) 25 percent with two years of service;

13 (2) 50 percent with three years of service; and

14 (3) 75 percent with four years of service.

15 §8465. Investment of Individual Accounts.

16 (a) The Administrator shall provide a range of investment options and permit
17 a participant to exercise investment control over the participant's assets in the member's
18 individual account as provided in this section. If a participant exercises control over the
19 assets in the individual account, the participant is not considered a fiduciary for any reason
20 on the basis of exercising that control.

21 (b) A participant may direct investment of plan funds held in an account
22 among available investment funds in accordance with rules established by the
23 Administrator.

24 (c) A participant may elect to change or transfer all or a portion of the
25 participant's existing account balance among available investment funds not more often than
26 once each day in accordance with the rules established by the Administrator. Only the last
27 election received by the Administrator before the transmittal of contributions to the trust
28 fund for allocation to the individual account shall be used to direct the investment of the
29 contributions received.

1 (d) Except to the extent clearly set out in the terms of the investment plans
2 offered by the employer to the included employee, the employer is not liable to the
3 participant for investment losses if the prudent investment standard has been met.

4 (e) The employer, Administrator, Commonwealth, board, or a person or
5 entity who is otherwise a fiduciary is not liable by reason for any participant's investment
6 loss that results from the participant's directing the investment of plan assets allocated to the
7 participant's account.

8 (f) To the extent that a member's individual account has been divided as
9 provided in a qualified domestic relations order between participants, each participant shall
10 be treated as the holder of a separate individual account for purposes of investment yields,
11 decisions, transfers, and time limitations imposed by this section.

12 \$8466. Distribution Election at Termination.

13 (a) A member is eligible to elect distribution of the member's account in
14 accordance with this section 60 days after termination of employment.

15 (b) Notwithstanding (a) of this section, distribution of all or a portion of the
16 individual account of a member may take place before the 60th day after the termination of
17 employment with the approval of the Administrator if the member makes a written request
18 for a distribution under this subsection. The member's spouse must consent to the request in
19 writing if the member is married. Distribution of an individual account may only be made on
20 account of an immediate and heavy financial need of the member for the following reasons
21 and in the amount the need is demonstrated for

22 (1) medical care described in 26 U.S.C. 213(d) incurred by the
23 member, the member's spouse, or the member's dependent, or necessary to obtain
24 that medical care;

25 (2) the purchase of a principal residence for the member;

26 (3) postsecondary education tuition and related educational fees for
27 the next 12-month period for the member, the member's spouse, or a dependent of
28 the member; in this paragraph, "dependent" has the meaning given in 26 U.S.C.
29 152;

1 (4) prevention of the eviction of the member from the member's
2 principal residence or foreclosure on the mortgage of the member's principal
3 residence; or

4 (5) any need prescribed by the United States Department of the
5 Treasury, Internal Revenue Service, in a revenue ruling, notice, or other document
6 of general applicability that satisfies the safe harbor definition of hardship under
7 regulations adopted under 26 U.S.C. 401(k).

8 (c) If a member dies before benefits commence, the member's beneficiary is
9 immediately eligible to elect distribution of the member's share of the member's individual
10 account.

11 (d) Distributions are payable to an alternate payee in accordance with the
12 terms and conditions of a qualified domestic relations order that is received and approved by
13 the Administrator as specified in §8471.

14 (e) Distributions that are being paid to a member may not be affected by the
15 member's subsequent reemployment with the employer. Upon reemployment, a new
16 individual account shall be established for the member to which any future contributions
17 shall be allocated. Upon subsequent termination of employment, the member's new
18 individual account shall be distributed in accordance with this section.

19 §8467. Forms of Distribution.

20 (a) A participant may elect to receive the participant's share of the individual
21 account in a

22 (1) lump sum payment, which is a single payment of the entire
23 balance in the account;

24 (2) periodic lump sum payment, which is a payment of a portion of
25 the balance in the account, not more than twice each year;

26 (3) period certain annuity payment, which is an annuity payable in a
27 fixed number of monthly installments for a duration of 60, 120, or 180 months;

28 (4) life annuity with a period certain payment, which is an annuity
29 payable until the later of the first day of the month in which the annuitant's death

1 occurs, or the date on which the payment of a fixed number of monthly
2 installments is completed; the period certain for installments is 120 or 180 months;

3 (5) single life annuity payment, which is an annuity payable
4 monthly until the first of the month in which the annuitant's death occurs; or

5 (6) joint and survivor annuity payment, which is an annuity payable
6 monthly to the member until the first of the month in which the member's death
7 occurs; after the member's death, a survivor annuity equal to 50 percent or 100
8 percent of the member's benefit, as previously elected by the member, shall be paid
9 monthly to the joint annuitant for the remainder of the survivor's lifetime.

10 (b) Upon the death of an annuitant whose payments have commenced, an
11 annuitant's beneficiary shall receive further payments only to the extent provided in
12 accordance with the form of payment that was being made to the annuitant. The remaining
13 portion of the interest shall continue to be distributed at least as rapidly as under the method
14 of distribution being used before the annuitant's death.

15 (c) If a participant dies before the distribution commencement date,
16 distribution of the participant's entire interest to a beneficiary shall be payable in any form
17 other than a joint and survivor annuity.

18 (d) If an unmarried member or other participant fails to elect a form of
19 payment before the distribution commencement date, the account shall be paid to a
20 beneficiary in the form of a lump sum to the extent required by the minimum distribution
21 requirements set out in the Internal Revenue Code. If a married member fails to elect a form
22 of payment before the distribution commencement date, the account shall be paid in the
23 form of a 50 percent joint and survivor annuity, with the member's spouse as the joint
24 annuitant.

25 §8468. Manner of Electing Distributions.

26 (a) Any election or any alteration or revocation of a prior election by a
27 participant for any purpose under this plan shall be on forms or made in a manner prescribed
28 for that purpose by the Administrator. To be effective, the forms required or the required

1 action for any purpose under this plan must be completed and received in accordance with
2 regulations adopted by the Administrator.

3 (b) At any time, but not less than seven days before the benefit
4 commencement date, a member, alternate payee, or beneficiary may change

5 (1) the form of payment election;

6 (2) an election to commence benefits; or

7 (3) the joint annuitant designation.

8 (c) Changes in elections are not allowed on or **after** seven days before the
9 benefit commencement date.

10 §8469. Distribution Requirements.

11 (a) Payments to a participant shall commence as soon as administratively
12 feasible following the distribution commencement date. The distribution commencement
13 date is the first date on which one of the following occurs:

14 (1) a member meets the requirements of §8466 and has made a
15 complete application for payment under §8468;

16 (2) a participant has elected to defer receipt of the account to a date
17 specified, the date has been attained, and the participant has made a complete
18 application for payment;

19 (3) a member attains normal retirement age and has not made an
20 application for payment or elected to defer receipt of the account to a date later
21 than normal retirement age;

22 (4) a member's beneficiary does not make an application for
23 benefits, and five years have elapsed since the member's death;

24 (5) notwithstanding (1) - (4) of this subsection, a participant whose
25 account has a balance of \$1,000 or less meets the requirements of §8466, at which
26 time the participant must take payment of the participant's account.

27 (b) The entire interest of a member must be distributed or must begin to be
28 distributed not later than the member's required beginning date.

1 (c) If a member dies after the distribution of the member's interest has begun
2 but before the distribution has been completed, the remaining portion of the interest shall
3 continue to be distributed at least as rapidly as under the method of distribution being used
4 before the member's death.

5 (d) If a member has made a distribution election and dies before the
6 distribution of the member's interest begins, distribution of the member's entire interest shall
7 be completed by December 31 of the calendar year containing the fifth anniversary of the
8 member's death. However, if any portion of the member's interest is payable to a designated
9 beneficiary, distributions may be made over the life of the designated beneficiary or over a
10 period certain not greater than the life expectancy of the designated beneficiary,
11 commencing on or before December 31 of the calendar year immediately following the
12 calendar year in which the member died, and, if the designated beneficiary is the member's
13 surviving spouse, the date distributions are required to begin may not be earlier than the later
14 of December 31 of the calendar year (1) immediately following the calendar year in which
15 the member died, or (2) in which the member would have attained 70 1/2 years of age,
16 whichever is earlier. If the surviving spouse dies after the member but before payments to
17 the spouse have begun, the provisions of this subsection apply as if the surviving spouse
18 were the member. An amount paid to a child of the member shall be treated as if it were paid
19 to the surviving spouse if the amount becomes payable to the surviving spouse when the
20 child reaches the age of majority.

21 (e) If a member has not made a distribution election before the member's
22 death, the member's designated beneficiary must elect the method of distribution not later
23 than December 31 of the calendar year (1) in which distributions would be required to begin
24 under this section, or (2) that contains the fifth anniversary of the date of death of the
25 member, whichever is earlier. If the member does not have a designated beneficiary or if the
26 designated beneficiary does not elect a method of distribution, distribution of the member's
27 entire interest must be completed by December 31 of the calendar year containing the fifth
28 anniversary of the member's death.

1 (f) For purposes of (b) of this section, distribution of a member's interest is
2 considered to begin (1) on the member's required beginning date, or (2) if the designated
3 beneficiary is the member's surviving spouse and the surviving spouse dies after the member
4 but before payments to the spouse have begun, on the date distribution is required to begin
5 to the surviving spouse. If distribution in the form of an annuity irrevocably commences to
6 the member before the required beginning date, the date distribution is considered to begin is
7 the date that the distribution actually commences.

8 (g) Notwithstanding any contrary provisions of this chapter, the requirements
9 of this section apply to all distributions of a member's interest and take precedence over any
10 inconsistent provisions of this chapter.

11 (h) All distributions required under this section are determined and made in
12 accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute, including
13 any minimum distribution incidental benefit requirement.

14 (i) In this section,

15 (1) "designated beneficiary" means the individual who is
16 designated as the beneficiary under the plan in accordance with 26 U.S.C.
17 401(a)(9) and regulations adopted under that statute;

18 (2) "required beginning date" means the first day of April of the
19 calendar year following the calendar year in which the member either attains
20 70 1/2 years of age or actually terminates employment, whichever is later.

21 §8470. Designation of Beneficiary.

22 (a) Each participant shall have the right to designate a beneficiary and shall
23 have the right, at any time, to revoke the designation or to substitute another beneficiary,
24 subject to the following limitation: if a married member elects a nonspouse beneficiary, the
25 value of the benefit payable to the beneficiary may not exceed 50 percent of the member's
26 portion of the account balance, and the member's spouse shall automatically be considered
27 the beneficiary for the remaining 50 percent of the account balance, unless the spouse
28 consents to the beneficiary designation in a writing that is notarized or witnessed by the
29 Administrator. If the spouse consents in this manner, a married member may designate a

1 nonspouse beneficiary for the entire benefit or any portion the benefit as part of an available
2 form of payment contained in this plan,

3 (1) except to the extent a qualified domestic relations order filed
4 with the Administrator provides for payment to a former spouse or other dependent
5 of the member; or

6 (2) unless the member filed a revocation of beneficiary
7 accompanied by a written consent to the revocation **from** the present spouse and
8 each person entitled under the order; however, consent of the present spouse is not
9 required if the member and the present spouse had been married for less than one
10 year on the date of the member's death and if the member established when filing
11 the revocation that the member and the present spouse were not cohabiting.

12 (b) Except as provided in (a) of this section, the member may change or
13 revoke the designation without notice to the beneficiary or beneficiaries at any time. If a
14 member designates more than one beneficiary, each shares equally unless the member
15 specifies a different allocation or preference. The designation of a beneficiary, a change or
16 revocation of a beneficiary, and a consent to revocation of a beneficiary shall be made on a
17 form provided by the Administrator and is not effective until filed with the Administrator.

18 (c) If a member fails to designate a beneficiary, or if no designated
19 beneficiary survives the member, the death benefit shall be paid

20 (1) to the surviving spouse or, if there is none surviving;

21 (2) to the surviving children of the member in equal parts or, if
22 there are none surviving;

23 (3) to the surviving parents in equal parts or, if there are none
24 surviving;

25 (4) to the estate.

26 (d) A person claiming entitlement to benefits payable under this chapter as a
27 consequence of a member's death shall provide the Administrator with a marriage certificate,
28 divorce or dissolution judgment, or other evidence of entitlement. Documents establishing
29 entitlement may be filed with the Administrator immediately after a change in the member's

1 marital status. If the Administrator does not receive notification of a claim before the date 10
2 days after the member's death, the person claiming entitlement is not entitled to receive from
3 the division of retirement and benefits any benefit already paid by the Administrator.

4 §8471. Rights Under Qualified Domestic Relations Order.

5 (a) Notwithstanding the nonalienation provisions in §8475(a), the
6 Administrator may direct that benefits be paid to someone other than a member or
7 beneficiary under a valid qualified domestic relations order that is executed by the judge of a
8 competent court in accordance with applicable Commonwealth law and that has been
9 accepted by the Administrator.

10 (b) The Administrator shall determine whether an order meets the
11 requirements of this section within a reasonable period after receiving an order. The
12 Administrator shall notify the member and any alternate payee that an order has been
13 received and indicate to the member and any alternate payee when the order is accepted. A
14 separate account for the alternate payee portion shall be established as soon as
15 administratively feasible after the order has been accepted by the Administrator.

16 §8472. Occupational Disability Benefits.

17 (a) The Administrator shall determine, from time to time, the employer
18 contribution rate necessary to fund occupational disability benefits for members, and the
19 employers of any members shall pay this amount into a fund created for this purpose by the
20 Administrator. The Administrator shall determine the appropriate scope of occupational
21 disability benefits to be offered.

22 (b) The Administrator shall request proposals from duly licensed insurance
23 companies to provide such coverage to members. If such coverage cannot be obtained in the
24 private sector at a reasonable cost as determined by the Administrator, the Administrator may
25 implement a self-insurance program.

26 §8473. Occupational Death Benefit.

27 (a) The Administrator shall determine, from time to time, the employer
28 contribution rate necessary to fund occupational death benefits for members, and the
29 employers of any members shall pay this amount into a fund created for this purpose by the

1 Administrator. The Administrator shall determine the appropriate scope of occupational
2 death benefits to be offered.

3 (b) The Administrator shall request proposals from duly licensed insurance
4 companies to provide such coverage to members. If such coverage cannot be obtained in the
5 private sector at a reasonable cost as determined by the Administrator, the Administrator may
6 implement a self-insurance program.

7 §8474. Amendment and Termination of Plan.

8 (a) The Commonwealth has the right to amend the plan at any time and from
9 time to time, in whole or in part, including the right to make retroactive amendments
10 referred to in 26 U.S.C. 401(b). Any amendments to the plan shall be accompanied by (i) a
11 detailed cost analysis of the financial impact of the amendments on the plan, (ii) a
12 description of the scope of the benefits to be provided and changes made, (iii) an
13 identification and lawful commitment of funds necessary to fund any amendment that
14 requires funding, and (iv) a legal opinion from the Attorney General that any such
15 amendments do not disqualify the plan from its qualified status under the Internal Revenue
16 Code, as adopted in the Commonwealth, and federal law.

17 (b) The Administrator may not modify or amend the plan retroactively in
18 such a manner as to reduce the benefits of any member accrued to date under the plan by
19 reason of contributions made before the modification or amendment, except to the extent
20 that the reduction is permitted by the Internal Revenue Code, as adopted and applied in the
21 Commonwealth.

22 (c) The Commonwealth may, in its discretion, terminate the plan in whole or
23 part at any time without liability for the termination. If the plan is terminated, all
24 investments remain in force until all individual accounts have been completely distributed
25 under the plan, and, after all plan liabilities are satisfied, excess assets revert to the
26 employer.

27 (d) Any contribution made by an employer to the plan because of a mistake
28 of fact must be returned to the employer by the Administrator within one year after the
29 contribution or discovery, whichever is later.

1 (e) The provisions of this defined contribution plan are not intended to, and do not, create an
2 "employee retirement system of the Commonwealth" as that term is used in Article III,
3 Section 20 of the Commonwealth Constitution. The defined benefit plan offered by the
4 Northern Mariana Islands Retirement Fund is the employee retirement system to which that
5 constitutional provision applies. It is intended that the legislature may exercise its authority
6 to amend the provisions of this defined contribution plan without subjecting the plan or its
7 amendments to Article III, Section 20 of the Commonwealth Constitution.

8 §8475. Exclusive Benefit.

9 (a) The corpus or income of the assets held in trust as required by the plan
10 may not be diverted or used for other than the exclusive benefit of the participants.

11 (b) If plan benefits are provided through the distribution of annuity or
12 insurance contracts, any refunds or credits in excess of plan benefits due to dividends,
13 earnings, or other experience rating credits, or surrender or cancellation credits, shall be paid
14 to the trust fund.

15 (c) The assets of the plan may not be used to pay premiums or contributions
16 of the employer under another plan maintained by the employer.

17 §8476. Nonuarantee of Returns, Rates, or Benefit Amounts.

18 The plan created by this chapter is a defined contribution plan, not a defined
19 benefit plan. The amount of money in the account of a participant depends on the amount of
20 contributions and the rate of return from investments of the account that varies over time. If
21 benefits are paid in the form of an annuity, the benefit amount payable is dependent on the
22 amount of money in the account and the interest rates applied and service fees charged by
23 the annuity payor at the time benefits are first paid. Nothing in this plan guarantees a
24 participant:

- 25 (1) a rate of return or interest rate other than that actually earned by
26 the account of the participant, less applicable administrative expenses; or
27 (2) an annuity based on interest rates or service charges other than
28 interest rates available from and service charges by the annuity payor in
29 effect at the time the annuity is paid.

1 §8477. Nonguarantee of Employment.

2 The provisions of this chapter also are not a contract of employment between
3 an employer and an employee, nor do they confer a right of an employee to be continued in
4 the employment of an employer, nor are they a limitation of the right of an employer to
5 discharge an employee with or without cause.

6 §8478. Fraud.

7 A person who knowingly makes a false statement or falsifies, or permits to be
8 falsified, a record of the plan, in an attempt to defraud the plan, is guilty of a misdemeanor."

9 Section 4. Conforming Amendment. A new subsection (k) is added to 4 CMC §
10 1701 to read as follows:

11 "(k) Pursuant to 48 U.S.C. Section 1421i(e), Covenant Section 601(a), and
12 other applicable law, in order to effect the intent of the mirror image Internal
13 Revenue Code ("IRC") and this Chapter, clarifying language and a change in
14 nomenclature is required to IRC Sections 401(a), 403(b), 414(d), 414(h), 457(e) and
15 any similar provisions in Sections 401 *et seq.*, as well as in the IRC authorities
16 described in § 1702(d) that concern those IRC sections: All references to "State" in
17 those Sections shall be deemed to include to the Commonwealth of the Northern
18 Mariana Islands."

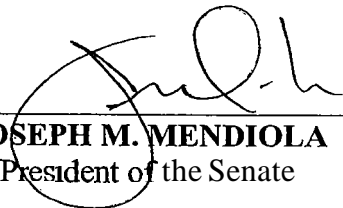
19 Section 5. Severability. If any provision of this Act or the application of any such
20 provision to any person or circumstance should be held invalid by a court of competent
21 jurisdiction, the remainder of this Act or the application of its provisions to persons or
22 circumstances other than those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

23 Section 6. Savings Clause. This Act and any repealer contained herein shall not be
24 construed as affecting any existing right acquired under contract or acquired under statutes
25 repealed or under any rule, regulation or order adopted under the statutes. Repealers
26 contained in this Act shall not affect any proceeding instituted under or pursuant to prior
27 law. The enactment of this Act shall not have the effect of terminating, or in any way
28 modifying, any liability civil or criminal, which shall already be in existence at the date this
29 Act becomes effective.

1 Section 7. Effective Date. This Act shall take effect, upon approval by the Governor
2 or upon becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

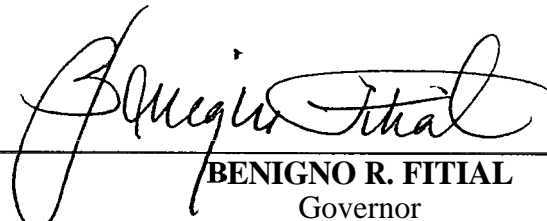


JOSEPH M. MENDIOLA
President of the Senate



MARIA FRISCA T. PANGELINAN
Senate Legislative Secretary

APPROVED this 16th day of JUNE, 2006



BENIGNO R. FITIAL
Governor
Commonwealth of the Northern Mariana Islands