

**A BILL FOR AN ACT**

To amend 1 CMC § 2805(c) & (d) to increase the maximum term of a public land lease from a total of 40 years (25 year lease plus 15 year extension) to 99 years (55 year lease plus 44 year extension); to require legislative approval of any public land lease with 1,000 square meters or more of public land; to authorize existing public land leases to be amended to extend the existing lease term up to 99 years; and for other purposes.

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

1           **Section 1. Findings and Purpose.** The Legislature finds that the  
2 Commonwealth's economy has been extremely depressed for more than ten years. In the  
3 past year or so, the Commonwealth's economy has improved but at a very slow pace.  
4 The driving economic forces that propelled the Commonwealth's prosperous economy in  
5 the 1990s no longer exist today. Therefore, the Legislature must utilize new and  
6 innovative ideas to attract new economic development and investors to the CNMI.

7           The Legislature finds that extending the term of the lease of public lands from a  
8 total of 40 years (25 year lease plus 15 year extension) to 99 years (55 year lease plus 44-  
9 year extension) will generate renewed economic interest in the Commonwealth among  
10 new investors. A longer leasehold term would further encourage lending by investment  
11 and financial institutions to finance major projects that will in turn create new job  
12 opportunities and stimulate other economic activity in the Commonwealth.

13           The Legislature finds that public land leases have been governed by the  
14 fundamental policies set forth in Section 5 of Article XI of the CNMI Constitution and  
15 Public Law 15-2. The Legislature, however, finds that based on the case *DPL v. CNMI*,  
16 2010 MP 14 (Oct. 4, 2010), Section 5 of Article XI of the CNMI Constitution is  
17 inoperative and therefore, the Legislative and Executive Branches have the authority to  
18 establish the fundamental policies governing public lands. Specifically, the Supreme

1 Court held that “the drafters of the NMI Constitution did not intend for the restrictions  
2 contained in Article XI § 5 to bind the Commonwealth Legislature in perpetuity. We  
3 further hold that the legislature possesses the constitutional authority under Article III §  
4 15 to redefine the functions of executive branch departments—including DPL. The  
5 legislature cannot, however, pass a law that infringes upon the functions of another  
6 constitutional entity.” *Id.* at ¶ 2.

7 The Supreme Court further opined that “neither the text nor the legislative history  
8 of Article XI support the proposition that the fundamental policies contained in § 5  
9 remain constitutionally operative. The legislature and executive branch are therefore free  
10 to set the policies for the body tasked with the management and disposition of public  
11 lands as they see fit, provided that they do so within their constitutional limitations.” *See*  
12 *Id.* at ¶ 23.

13 The Legislature finds that Public Law 15-2 incorporated the fundamental policies  
14 governing the disposition of public lands as set forth in Section 5 of Article XI of the  
15 NMI Constitution. The existing fundamental policies governing the disposition of public  
16 lands as set forth in Section 5 of Article XI and Public Law 15-2 has guided the CNMI  
17 from its inception up to today. The existing public land lease fundamental policies were  
18 conducive to the economic circumstances and investors of the 1980s-1990s. However,  
19 the CNMI government structure has since undergone some changes, the economic  
20 circumstances of the CNMI are different, and investors are more diverse today. The  
21 Legislature finds that these factors warrant a change in our public land lease fundamental  
22 policies. Moreover, public land leases up to 99 years including renewals are offered by  
23 other Pacific Island nations including the Republic of Palau and the Federated States of  
24 Micronesia.

25 The Legislature further finds that if public land leases are going to be extended up  
26 to 99 years, future public land leases must be strictly scrutinized and all leases with 1,000  
27 square meters or more of public land must be approved by 2/3 of the members of the  
28 legislature. Additionally, public land lease extensions up to 44 years must also be  
29 approved by 3/4 of the members of the legislature.

1           The Legislature further finds that the amendment to extend public land leases up  
2 to 99 years does not automatically extend the terms of existing public land leases.  
3 However, existing public land leases may be amended to extend the existing lease term  
4 up to 99 years subject to reasonable compensation; provided that such public land lease  
5 amendments must be approved by the legislature as set forth in by this chapter. Any  
6 amendment to extend the term of existing public land leases, including existing public  
7 land leases with at least 1,000 square meters or more of public land, must comply with  
8 the provisions of the law and be approved the legislature.

9           Accordingly, the purpose of this legislation is to amend 1 CMC § 2508(c) and (d)  
10 as follows: (1) to extend public land leases from 40 years (25 year lease plus 15 year  
11 extension) to a total of 99 years (55 year lease plus 44 year extension) in order to attract  
12 new investors and to give investors more options for financing with a longer lease term;  
13 (2) to require legislative approval for all public land leases with 1,000 square meters or  
14 more of public land and for extensions of such leases; and (3) to authorize existing public  
15 land leases to be amended to extend the existing lease term up to 99 years.

16           **Section 2. Amendment.** 1 CMC § 2805(c) is hereby amended to read as follows:

17           “(c) The Department may not transfer a leasehold interest in public lands that  
18 exceeds a total of ninety-nine ~~twenty-five~~ years including renewal rights and extensions.  
19 A leasehold interest of not more than fifty-five years may be given upon approval of two-  
20 thirds of the members of the Legislature. An extension of not more than forty-four ~~fifteen~~  
21 years may be given upon approval of three-fourths of the members of the Legislature  
22 sitting in joint session.

23           The amendment to extend public land leases up to 99 years does not  
24 automatically extend the terms of existing public land leases. Existing public land leases  
25 may be amended to extend the existing lease term up to 99 years subject to reasonable  
26 compensation; provided that such public land lease amendments must be approved by the  
27 legislature as set forth in this chapter. Any amendment to extend the term of existing  
28 public land leases, including existing leases with 1,000 square meters or more of public  
29 land, must comply with the provisions of the law and be approved the legislature.”

1           **Section 3. Amendment.** 1 CMC § 2805(d) is hereby amended to read as follows:

2           “(d) The Department may not transfer an interest in ~~more than~~ 1,000 square  
3 meters or more ~~five hectares~~ of public land for use for commercial purposes without  
4 approval of the Legislature in a joint session. The Department may not transfer an interest  
5 in less than 1,000 square meters or more ~~five hectares~~ of public land for use for  
6 commercial purposes to a holder of an interest in contiguous or adjoining public land if  
7 the combination of the interests in public land would be ~~more than~~ 1,000 square meters or  
8 more ~~five hectares~~, without recommendation by the Advisory Board to the Legislature,  
9 and approval of the Legislature in a joint session. The Department may not approve a  
10 sublease, assignment, or transfer of any interest in public land for use for commercial  
11 purposes to a holder of an interest in contiguous or adjoining public land if the  
12 combination of the interests in public land would be ~~more than~~ 1,000 square meters or  
13 more ~~five hectares~~, approval of the Legislature in a joint session. The term holder of  
14 interest as used herein shall be broadly construed to include all real parties in interest.”

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

20           **Section 5. Savings Clause.** This Act and any repealer contained herein shall not  
21 be construed as affecting any existing right acquired under contract or acquired under  
22 statutes repealed or under any rule, regulation, or order adopted under the statutes.  
23 Repealers contained in this Act shall not affect any proceeding instituted under or  
24 pursuant to prior law. The enactment of the Act shall not have the effect of terminating,  
25 or in any way modifying, any liability, civil or criminal, which shall already be in  
26 existence on the date this Act becomes effective.

27           **Section 6. Effective Date.** This Act shall take effect upon its approval by the  
28 Governor or becoming law without such approval.

Date: 3/4/15

Introduced By:   
Sen. Arnold I. Palacios

Reviewed for Legal Sufficiency by:  
  
Senate Legal Counsel