



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lieutenant Governor

**EXECUTIVE ORDER No. 2012-06**

**SUBJECT:** DECLARATION OF A STATE OF DISASTER EMERGENCY AS REGARDS THE NORTHERN MARIANAS RETIREMENT FUND; AND EXECUTIVE REORGANIZATION OF THE NORTHERN MARIANA ISLANDS RETIREMENT FUND

**AUTHORITY:** Article III, §§ 10 and 15 of the Constitution of the Commonwealth of the Northern Mariana Islands and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979

**WHEREAS, THE RETIREMENT FUND HAS DECLARED ITSELF UNABLE TO PAY ITS CREDITORS** by bringing an action for bankruptcy in federal court, *In re Northern Mariana Islands Retirement Fund*, BK-12-0003. This action was subsequently dismissed from federal bankruptcy court on other matters of law and this problem is left without resolution. Until this problem is addressed, I find that the Retirement Fund will continue to disburse its remaining assets unsustainably to a handful of retirees until the benefits of all members in the retirement system will be depleted; the Retirement Fund has estimated that, without intervention, the Retirement Fund's current rate of collection and expenditures will leave it without assets within approximately two years. In order stabilize the Retirement Fund's cash outflow and ensure continued viability of the Fund, change must be effectuated now; and

**WHEREAS, THE RETIREMENT BOARD OF TRUSTEES CANNOT RESOLVE THESE PROBLEMS** as it currently does not have the minimum number of members needed for quorum requirements and cannot effectuate any change in the Retirement Fund's policies and financial strategies until more members are appointed; and

**WHEREAS, THE LIVELIHOOD OF THOUSANDS OF RETIREES DEPENDS UPON THE RETIREMENT FUND.** Because the Retirement Fund is the only source of income for many retirees, other savings cannot compensate for the rising cost of living in the CNMI. Left without a stable source of income, the security of many retirees will be jeopardized as they may not be able to afford continued secure housing, healthcare, and may be subject to food uncertainty; and

**WHEREAS, A SIGNIFICANT PROPORTION OF THE POPULATION HAS BASED ITS FINANCIAL PLANNING UPON RETIREMENT FUND BENEFITS.** Because participation in the Retirement Fund has been mandated for government employees for years, and members have not been able to participate in the U.S. Social Security System, most members have relied upon these funds as part of their savings and have not prepared other retirement plans; and

**WHEREAS, THE RETIREMENT FUND IS A VITAL PART OF THE STRUGGLING CNMI ECONOMY** because a large percentage of the population derives its only income from retirement benefits. The abrupt end to the infusion of Retirement Fund benefits into the economy will result in a lower tax base, which will threaten the availability of vital government services; and

**WHEREAS, THE LOSS IN CONFIDENCE IN THE RETIREMENT FUND** and the ability of the Commonwealth to invest in the future of its citizens will encourage a brain drain, driving away talented young citizens who would pursue more secure futures, further impeding the growth of the economy and the stability of the culture; and

**WHEREAS, SUCH CONDITIONS AS DESCRIBED WOULD BE A DISASTER** for the people of the Commonwealth; and

**WHEREAS, IT IS THE RESPONSIBILITY OF THE GOVERNMENT** of the CNMI to take steps to increase the Retirement Fund's longevity, uphold its promises to its senior citizens, and therefore prevent the social and economic disaster that would result from the imminent disintegration of the Retirement Fund; and

**WHEREAS, Section 15, Article III of the Constitution of the Commonwealth of the Northern Mariana Islands empowers the Governor** may make changes to the allocation, functions, and duties of offices, agencies, and instrumentalities of the executive branch necessary for efficient administration; and

**WHEREAS, Section 15, Article III of the Constitution states that if such changes affect existing law,** they shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of the members of each house of the legislature; and

**WHEREAS, there exists substantial uncertainty and in the resolution Commonwealth and Federal Courts;** and that these legal actions have had the effect of removing the policy-making actors in the Legislative Branch and Executive Branch from direct engagement and resolution of Retirement Fund issues; and

**WHEREAS, the debts and obligations of the Retirement Fund are ultimately the debts and obligations of the Commonwealth of the Northern Mariana Islands pursuant to NMI Const. art. III, section 20(a),** and it is inefficient and senseless to have intra-governmental litigation when the Commonwealth is ultimately responsible, acknowledges its responsibility and desires fulfill its duties; and

**WHEREAS, the Retirement Fund has initiated numerous lawsuits against the Commonwealth Government and other governmental units despite the fact that it is a part of the same government,** and that these lawsuits have caused great expense to the Retirement Fund and Commonwealth,

**WHEREAS**, substantial uncertainty is engendered by the lawsuits as it relates to creating a comprehensive policy towards the Retirement Fund, retirees and active employees in the Retirement Fund; and that these legal actions have had the effect of removing the policy-making actors in the Legislative Branch and Executive Branch from direct engagement and resolution of Retirement Fund issues; and

**WHEREAS**, the functions, duties and responsibilities assigned by law under Title 1, Section 8311 *et seq.* of the Commonwealth Code to the Retirement Fund as well as the duties and obligations of the CNMI can be more efficiently carried out under the supervision and administration of the Secretary of Finance and the Department of Finance; and

**WHEREAS**, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the executive branch; and

**WHEREAS, DECLARATION OF A STATE OF DISASTER EMERGENCY AS REGARDS THE NORTHERN MARIANAS RETIREMENT FUND AND EXECUTIVE REORGANIZATION OF THE NORTHERN MARIANA ISLANDS RETIREMENT FUND**, I intend to enable the Retirement Fund to continue to provide necessary services to the retirees. This Declaration and executive Reorganization is necessary to protect the health and safety of our senior citizens, businesses, and all other CNMI residents and visitors as well as further the interests of efficient administration and effectiveness of government.

**NOW, THEREFORE**, I, Benigno R. Fitial, Governor of the Commonwealth of the Northern Mariana Islands, pursuant to the powers vested in me by the Constitution of the Commonwealth of the Northern Mariana Islands and statutes, do hereby,

**DECLARE** that a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands is exists due to the imminent threat of disruption to the economic and societal health of the Commonwealth that would be caused by the failure of the Retirement Fund.

In order to meet this imminent threat, the Constitutional authority provided under Article III §10 is invoked, including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. The reprogramming of funds necessary to meet this emergency.

**ORDER** that this Declaration of a State of Disaster shall take effect as provided in this Executive Order and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of the effective date of this Executive Order unless I, prior to the end of the thirty (30)-day period, notify the presiding officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. 1 CMC § 7403(a); 3 CMC §5121(c).

**ORDER** that under authority of this Executive Order and with the goal of mitigating or ameliorating the above described crises, I immediately suspend the power of the Retirement

Fund Board of Trustees and assume all of the executive power of the Retirement Fund which shall include any and all powers vested in the Board of Trustees and the Retirement Fund's administrator. This executive power shall be exercised either by me or by an individual so designated.

**ORDER** that, pursuant to my constitutional reorganization powers, within 60 days of the effective date of this Executive Order,

1. All the statutory authority, powers, duties, functions and responsibilities of the Northern Mariana Islands Retirement Fund as found in Title 1, Division 8, Part 3, Chapters 1 through 10 of the Northern Mariana Islands Commonwealth Code, and any regulations promulgated thereby, are hereby transferred to the Department of Finance under the management and control of the Secretary of Finance.

2. All the statutory authority, powers, duties, functions and responsibilities of the Board of Trustees of the Northern Mariana Islands Retirement Fund as found in Title 1, Division 8, Part 3, Chapters 1 through 10 of the Northern Mariana Islands Commonwealth Code, and any regulations promulgated thereby, are hereby transferred to the Secretary of Finance, and the Board of Trustees is hereby abolished and shall cease to exist.

3. All records and property (real or personal) of the Northern Mariana Islands Retirement Fund and all the personnel used in the administration of the Retirement Fund (including employees whose chief duties relate to such administration) are hereby transferred to the Department of Finance. All personnel transferred pursuant to this Executive Order shall maintain their current positions and status in the classified civil service or in the excepted service as the case may be. The Office of Personnel Management shall ensure an orderly transfer of personnel.

4. The unexpended balances of appropriations, allocations, allotments, or other funds available for the use of the Retirement Fund on the effective date of the transfer are transferred to the Department of Finance on the effective date of this transfer. In the transfer of such funds, an amount may be included for the liquidation of obligations incurred prior to the transfer. Subsequent to the transfer, Northern Mariana Islands Retirement Fund operations shall be reflected in the annual budget of the Department of Finance.

5. The Secretary of Finance shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Executive Order.

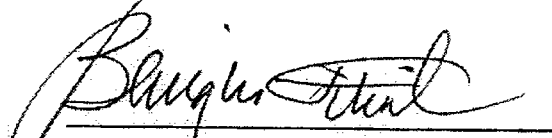
**PROVIDE** that all rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.

**PROVIDE** that if any provision of this Executive Order or the application of any such provision to any person or circumstance should be held invalid by a court of competent

jurisdiction, the remainder of this Executive Order or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

**PROVIDE** that this Executive Order shall become effective immediately upon the federal bankruptcy court in *In re Northern Mariana Islands Retirement Fund*, BK-12-0003, filing its judgment dismissing the action.

**SIGNED AND PROMULGATED** this 7<sup>th</sup> day of June, 2012

  
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**Benigno R. Fitial**  
Governor