

COMMITTEE ON EXECUTIVE BRANCH AND LOCAL GOVERNMENT

REPORT NO. 1: ARTICLE III: EXECUTIVE BRANCH

The Committee met on Monday, June 12, 1995, Tuesday, June 13, 1995, Friday, June 16, 1995, -----, and ----- to consider proposed amendments to Article III. The Committee considered Delegate Proposals that had been referred to it by the Committee on Organization and Procedures pertaining to any of the sections of Article III.

Section 2: Qualifications of the Governor

The Committee considered Delegate Proposal 314. The Committee decided not to reduce the present residency and domiciliary requirement for Governor from ten years to seven years. The Committee was advised regarding the applicable legal principles under which a requirement of this length might be challenged, but concluded that the unique circumstances within the Commonwealth justified the ten-year period. Only by spending this amount of time in the Commonwealth learning its languages, studying its culture and traditions, and getting acquainted with its families could a candidate for this high office become equipped to serve the Commonwealth citizens as Governor. The Committee also believed that changing this requirement after it had already be changed once as a result of the Second Constitutional Convention, without a clear reason for doing so, would suggest a measure of indecision that would reflect adversely on the Commonwealth. The Committee recognized that the Legislature had the authority under Section 2 to provide for a different period of residence and domicile if such a change became necessary or desirable.

The Committee decided to recommend that a candidate for Governor be a United States citizen. Section 2 currently provides that a gubernatorial candidate be "qualified to vote" in the Commonwealth, which under the provisions of Article VII means that United States nationals also could run for Governor. The Committee decided that the Governor should be a person who, in addition to the other required qualifications and attributes, would share in the goals and aspirations of all United States citizens. The Committee did not believe that the relatively few local people who elected to become U.S. nationals rather than U.S. citizens under the Covenant after termination of the Trusteeship Agreement would considered themselves unfairly treated by this proposed amendment.

Section 4: Joint Election of Governor and Lieutenant Governor

The Committee considered Delegate Proposal 187 and decided to remain with the present system under which the Governor and Lieutenant Governor are elected jointly with each voter casting a single vote applicable to both offices. The Committee recognized that some States in the United States have a different system under which the Governor and the Lieutenant Governor can run individually for their respective offices, so that the Governor and the Lieutenant Governor elected could come from different political parties. Although recognizing that the split ticket may offer some advantages, the Committee concluded that the change would not benefit the Commonwealth. It was generally agreed that the present system has worked well, that the Commonwealth was too small for separate tickets, and that separate tickets for these high offices would invite dissention and engender disunity.

Section 5: Compensation

The Committee considered Delegate Proposals 4 and 234 relating to this section. The Committee decided to delete the specific dollar amounts in the section as outdated. The Committee decided to propose an amendment to the section that would prohibit the Legislature from revising or otherwise amending the recommendations of the advisory commission on compensation. In short, the Legislature would have only two choices when presented with the recommendation of the advisory commission: to accept it or reject it. If the Legislature rejected the commission's recommendation, the Committee assumed that the matter could be returned to the commission for further consideration.

Section 8: Absence or Disability of the Governor

The Committee considered Delegate Proposals 2 and 235 in connection with this section. The Committee decided to delete the references in the section to "the Commonwealth appeals court or the United States District Court if no Commonwealth appeals court has been created under article IV, section 3." Since this provision was written, the Commonwealth Supreme Court has been created and will be given constitutional status if the proposed amendments to Article IV recommended by this Convention are accepted. The Committee concluded, therefore, that this section should expressly designate the Commonwealth Supreme Court as the court with original and exclusive jurisdiction to consider the questions of disability and vacancy addressed by Section 8.

Section 9: Executive Functions

Section 9(a)

The Committee had before it proposals numbered 64, 73, 100, 104, 109, 138, 144, 198, 236, 269, 311, 327, 342, 385 and 390 referred to it by the Committee on Organization and Procedures. The Committee's discussion considered the desirability of a biennial budget procedure rather than an annual one and evaluated procedures that might facilitate the timely consideration of the Commonwealth's budget by the Governor and the Legislature.

The Committee decided not to recommend a change to biennial budgets. The members recognized that such a procedure might reduce the amount of time consumed by debate over annual budgets and that it might encourage long-term fiscal planning. On the other hand, the Committee believed that the annual budget process provided for needed flexibility, that current legislation governing the budgetary process works reasonably well, and that the perceived problems with respect to legislative consideration of the budget would not be cured by changing to a biennial schedule.

The Committee decided to require that the Governor submit his proposed budget for the next fiscal year no less than three months before the beginning of the fiscal year. Based on the Commonwealth's experience under current legislation governing the budgetary process, the Committee concluded that this mandated schedule would not impose any unreasonable burden on the Governor and his financial advisers. At the same time, however, the Committee believed that giving the Legislature ample time within which to consider the Governor's proposed budget would encourage the Legislature to act in a timely manner so that any differences between the two branches of government could be resolved before the beginning of the fiscal year.

The Committee discussed the effect of the present provision in Section 9(a) to the effect that, if a balanced budget is not approved before the first day of the fiscal year, appropriations for government services and obligations shall be at the level for the previous fiscal year. The Committee concluded that it should not delete this provision from Section 9(a) because of concern that cessation of government services would work a hardship on the Commonwealth's citizens. The Committee recognized, however, that both the Governor and the Executive Branch may rely on the availability of the continuing resolution mechanism in the Constitution as an excuse or justification for their not working harder to resolve their differences regarding the proposed budget before the fiscal year begins.

The Committee also discussed whether to mandate that the Legislature must act within a fixed period of time to approve a budget and that, if it fails to do so, the Governor's proposed budget would become effective. Concern was expressed within the Committee about the discretion possessed by the Governor under such an approach to include wholly unrealistic revenue figures in such a budget. In addition, it was pointed out that the Governor might prefer to operate under the continuing resolution mechanism rather than a budget presented to the Governor for approval by the Legislature. For these reasons, the Committee decided to reject the alternative of authorizing the Governor's proposed budget to go into effect if the Legislature does not act within a fixed period.

In order to address these problems, the Committee decided to change the continuing resolution mechanism in the following respects. If a balanced budget is not approved before the fiscal year begins, governmental operations will continue on the following terms:

1) If the projected revenues for the new fiscal year are equal to or more than the fiscal year just ended, the budget for each agency receiving an appropriation during the fiscal year just ended shall be at the same level of funding for the new fiscal year;

2) If the projected revenues for the new fiscal year are less than the fiscal year just ended, the shortfall shall be allocated to each activity funded during the fiscal year just ended based on the level of funding;

3) Each person authorized to expend public funds shall be responsible for operating within the level of funding authorized; and

4) All revenues in excess of the amount of the last appropriation shall remain in the general fund until appropriated by the legislature.

The Committee concluded that this approach will prevent any undue reliance on the continuing resolution mechanism and will facilitate accommodation between the Governor and the Legislature.

Section 9(b)

The Committee had before it proposals numbered 65, 181, 286 and 318 referred to it by the Committee on Organization and Procedures. The Committee discussed the nature and timing of the report by the Governor required under this subsection.

The Committee decided to recommend that the Governor be required to deliver his report in person. One of the purposes of the annual report is to outline those new legislative and other measures that the Governor believes are in the best interests of the Commonwealth. To do so in person before a joint session of the Legislature communicates a desirable sense of ceremony and importance to the occasion and would demonstrate to the people that the two branches of government can work together.

The Committee decided not to fix the date on which the Governor will present an annual report. The scheduling should be left to the parties involved and should take into account any other reports required to be made by the Chief Justice of the Commonwealth Supreme Court and the Washington Representative.

The Committee decided to delete the second sentence of Section 9(b), requiring that the Governor include a comprehensive annual financial report in the report to the people through a joint session of the Legislature. The Committee believed that any such technical discussion of the Commonwealth's finances did not belong in such a report and should be set forth in a separate report by the Governor to the Legislature at an appropriate time during the year.

The Committee rejected a requirement that the Governor publish all proposed executive orders in advance to allow for meaningful public comment. It concluded that the present requirement that executive orders effecting reorganization of executive departments and agencies that involves a change of law be considered by the Legislature for 60 days provided a sufficient time for public input.