

Draft 7/14/95

COMMITTEE ON EXECUTIVE BRANCH AND LOCAL GOVERNMENT

REPORT NO.2: ARTICLE III (EXECUTIVE BRANCH)

The Committee met on Monday, June 12, 1995, Tuesday, June 13, 1995, Friday, June 16, 1995, Monday, June 19, 1995, Tuesday, June 20, 1995, Wednesday, June 21, 1995, Friday, June 23, 1995, Saturday, June 24, 1995, Wednesday, June 28, 1995, Wednesday, July 5, 1995, Monday, July 10, 1995, Tuesday, July 11, 1995, Wednesday, July 12, 1995 and Friday, July 14, 1995. The Committee held public hearings on Saipan on Tuesday, June 27, 1995; on Rota on Friday, June 30, 1995; and on Tinian on Friday, July 7, 1995.

The Committee considered over 100 proposals referred to it by the Committee on Organization and Procedures. These proposals are listed in the attachment to this report.

The Committee recommends changes in 14 of the 23 sections of Article III and deletion of three sections added by the 1985 Convention. These changes reflect the experience of the Commonwealth with the operation of the executive branch over the past nearly 20 years since the 1976 Constitution was written, reexamination of the amendments adopted as a result of the 1985 Convention, and the need to clarify and simplify the provisions of Article III. The Committee is reserving any discussion of Section 1, pertaining to executive power and Section 17, dealing with the delivery of public services, until it has concluded its review of Article VI (Local Government).

Each section that the Committee believes should be amended is discussed below and the entire Article III as proposed to be amended is attached to this report.

Section 1: Executive Power

No change.

Section 2: Qualifications of the Governor

The Committee recommends that a candidate for governor be required to 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 all 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 United States nationals rather than citizens

under the Covenant after termination of the Trusteeship Agreement would consider themselves unfairly treated by this proposed amendment.

The Committee also recommends deleting the last sentence of Section 2 that precludes persons convicted of a felony from running for this office. The Committee is aware that a proposed amendment to Article VII addresses this subject and would be generally applicable to all elected offices in the Constitution as well as those appointed offices subject to legislative confirmation.

Section 3: Lieutenant Governor

The Committee recommends an amendment to Section 3 in order to reflect the new duties to be given the lieutenant governor under proposed amendments to Article II (Legislative Branch). The Committee believes that this can be accomplished by substituting the word "Constitution" for the word "article" in the first sentence of this Section.

Section 4: Joint Election of the Governor and Lieutenant Governor

No change.

Section 5: Compensation

The Committee recommends deleting the specific dollar amounts from Section 5.

Section 6: Other Government Employment

No change.

Section 7: Succession to the Governorship and Lieutenant Governorship

No change.

Section 8: Absence or Disability of the Governor

The Committee recommends deleting the language in Section 8(b) that specifies the court in which a petition to declare a vacancy should be filed and substitutes a reference to the Commonwealth Supreme Court. Since this provision was written, the Commonwealth Supreme Court has been created and will be given constitutional status if the proposed new Article IV is approved by the people. The Committee concluded that Section 8(b) should expressly designate the 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): As reflected by the numerous proposals on the subject, Convention delegates and the public at large are seriously concerned about the Commonwealth's failure to have an annual budget in place at the beginning of the fiscal year. The Committee is proposing several amendments to this subsection to deal with this problem.

First, the Committee recommends that the governor be required to submit a proposed budget no less than three months in advance of the fiscal year involved. Based on the Commonwealth's experience under current legislation governing the budgetary process, the Committee concluded that this mandated schedule would not impose an unreasonable burden on the governor and his advisers. At the same time, however, the Committee believed that giving the legislature ample time within which to consider the 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.

Second, the Committee recommends that the estimated revenues for the forthcoming fiscal year be based only on revenues to be derived from legislation already enacted. In discussions with knowledgeable officials, the Committee learned that the basing of estimated revenues on legislation not yet enacted complicates the legislature's prompt consideration of the proposed budget submitted by the governor. Such delays need to be avoided.

If a budget is not enacted before the fiscal year begins, the Committee recommends a modest change in the continuing resolution mechanism. If a balanced budget is not approved in time, 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 on a proportionate basis to each activity funded during the last fiscal year. In making this calculation the Committee proposes that all extraordinary or non-recurring expenditures be subtracted from the appropriations for the past fiscal year.
- 3) Each person authorized to expend public funds shall be responsible for operating within the level of funding authorized. The Committee recommends also that each such person shall be held personally liable if they authorize expenditures without the appropriate certification that funds are available for the specified purposes.
- 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. The Committee considered more draconian measures in the event that a balanced budget was not approved before the start of a fiscal year, such as denying payment of salaries to the legislature and the governor or stopping all governmental operations until any impasse was resolved. The Committee rejected these and other extreme measures and decided to place its trust in the Commonwealth's elected officials to deal with this problem under these proposed amendments.

Section 9(b): The Committee recommends that the governor be required to deliver an annual report in person before a joint session of the legislature. 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 demonstrates to the people that the two branches of government are working together to serve the people of the Commonwealth. The Committee decided, however, not to fix the date on which the governor would present his report but to leave that to the parties involved so that, if thought desirable, the governor's report and the reports of the Washington Representative and the Chief Justice of the Supreme Court could be coordinated in some useful manner.

The Committee recommends that the second sentence of this subsection be deleted. Added by the 1985 Convention, this sentence requires that the governor's report to the people through the legislature include a comprehensive annual financial report prepared in accordance with generally accepted governmental accounting principles. The Committee concluded that a technical discussion of the Commonwealth's finances does not belong in such an annual report and that the governor should have the discretion to decide when and how such a financial report should be presented to the legislature.

Section 9(c): No change.

Section 10: Emergency Powers

The Committee recommends that the phrase "as provided by law" be deleted. The Committee is aware that, since this language was added on recommendation of the 1985 Convention, the legislature has failed to define the term "calamity." The Committee believes that the term "calamity" should be defined in accordance with its customary meaning. The Committee recommends that the emergency powers granted the governor under this Section should be used only in true emergencies that have already occurred and that the governor should not exercise these extraordinary powers in order to address Commonwealth problems that, no matter how serious they may appear, should be handled through normal governmental processes. The Committee also recommends that the governor be required to report to the legislature within thirty days after exercising his emergency powers under Section 10.

Section 11: Attorney General

After hearing testimony at public hearings from several former attorneys general, the Committee concluded that the office should remain an appointed one. However, in view of the concerns expressed regarding the independence of the office and the need to have high quality candidates available for the position, the Committee makes two recommendations.

First, the Committee recommends that the residency requirement added by the 1985 Convention be deleted. The Committee agrees that the Commonwealth should have an attorney general who knows the community and can exercise the responsibilities of the office with some sensitivity to the traditions and history of the Commonwealth. At the same time, however, the Committee is concerned that the present residency requirement will exclude long-standing Commonwealth residents who were absent for educational or professional reasons in the period just before they might be considered for the position. The Committee believes that the governor should have the widest possible pool of eminently qualified candidates to choose from and that the legislature in the process of confirmation can determine whether the candidate nominated meets the professional and other needs of the position.

Second, the Committee recommends that the attorney general, once nominated and confirmed, can be removed only for cause. It is the intent of the Committee that each governor should be able to have an attorney general of the governor's own choosing. In effect, this recommendation would mean that each governor would be able to appoint an attorney general who would then serve in the office until the conclusion of the governor's term unless the attorney general is removed for cause or resigns. As with other executive branch officials, the attorney general would submit a resignation at the conclusion of the governor's four year term for the governor to accept or reject. Providing this additional measure of security to the position may better enable the attorney general to withstand the occasional political pressure to tailor the attorney general's legal views to meet the immediate needs of the administration.

Section 12: Public Auditor

The Committee believes strongly in the concept of an independent public auditor as set forth in Section 12. The Committee is concerned, however, with the question of cost and duplication of auditing services. The Committee has three recommendations to meet these concerns.

First, the Committee recommends the deletion of the guaranteed annual budget for the Public Auditor adopted as a result of the 1985 Convention. The Committee shares the widely held view within the Convention that such constitutional guarantees should be sparsely used. The Committee believes that the Public Auditor, like other Commonwealth officials, should be required to justify the office's expenditures in the course of seeking an appropriation from the legislature.

Second, the Committee recommends that the Public Auditor maximize the office's reliance on audits conducted by other private or public entities. The Committee believes that the Public Auditor should exercise review and oversight authority over audits of government agencies, but should not seek to duplicate audits that meet basic professional standards. To the extent possible, the Public Auditor should use the services of private firms in conducting the auditing responsibilities of the office. This means that the Public Auditor should perform the audit through the Public Auditor's staff only if the Public Auditor concludes that it is necessary or cost effective to do so. The Public Auditor does have important investigative responsibilities as well, and the Committee intends that the Public Auditor attach the highest priority to these tasks.

Three, the Committee recommends amendments designed to ensure that this important office does not remain vacant or headed by an "acting" Public Auditor for an unrestricted period of time. The Committee concluded that no person should serve as "acting" Public Auditor for more than 90 days and that the legislature should be required to act on the governor's nomination of a candidate to fill the office on a permanent basis within 60 days after receiving the nomination. If the legislature fails to act within this period, the Committee recommends that the appointee shall be deemed confirmed. If the legislature rejects the nominee, the candidate for the office may not be renominated by the governor. As contemplated by the Committee, the effect of these proposed amendments is that the governor would be required to submit a nomination to fill the position within 30 days after the vacancy occurs and the legislature would have 60 days to consider the nomination. If the legislature turns down the nomination, the Committee recognizes that the person serving in an "acting" capacity could continue to do so, the governor would have to submit another candidate within 30 days, and the legislature would have another 60 days to exercise its responsibilities with respect to the nomination.

Section 13: Department of Education

[Repealed in 1985. Under consideration in Committee on Judiciary and Other Elected Offices]

Section 14: Heads of Executive Departments

The Committee recommends amendments to ensure that the governor's nominations for positions covered by this Section are promptly considered by the senate and that persons not serve as an "acting" head of a department for more than 90 days. The proposed amendments require the senate to act within 60 days to confirm or reject the governor's nominee as head of an executive branch department. If the senate fails to act within this period, the appointee shall be deemed confirmed. If the senate rejects the candidate, the governor is required to submit another nominee within 30 days and the process continues until the position is filled. A nominee should not be permitted to serve in an "acting" capacity for more than 90 days under this proposal. The governor would have to submit the nomination within 30 days after the nominee is designated and begins to serve in an "acting" capacity; the legislature would have to act within 60 days; and at the conclusion of that period the nominee would either be confirmed, be deemed confirmed

because of senatorial inaction, or rejected. If rejected by the senate, the candidate could no longer serve in an "acting" capacity and the governor would have to submit another candidate within 30 days. In order to avoid deadlock between the two branches of government the Committee also recommends that a nominee rejected by the senate cannot be resubmitted by the governor for nomination to the same position.

Section 15: Executive Branch Departments

No change.

Section 16: Civil Service

[Repealed by 1985 Convention. Under consideration by the Committee on the Judiciary and Other Elected Offices]

Section 17: Public Services

[Deferred until consideration of Article VI (Local Government)]

Section 18: Executive Assistant for Carolinian Affairs

No change.

[Current Section 19: Impeachment

The Committee recommends deletion of this provision because all impeachment provisions in the Constitution are being consolidated in Article II, Section 8.]

Section 19: Retirement System [Current Section 20]

The Committee recommends no change in Section 20(a). Because of the widespread concern in the community regarding the financial integrity and adequacy of the Commonwealth retirement fund, the Committee concluded that expanded constitutional protection for the fund was required.

Section 20(b) establishes the retirement fund as an autonomous public corporation of the Commonwealth, provides for a board of trustee, and specifies that the board shall have the powers and duties set forth in the Section and as provided by law. The fiduciary obligations of the board are spelled out in Section 20(b)(1) in order to emphasize the importance of managing the fund so as to ensure that fund members will ultimately receive the benefits to which they are entitled.

Subsections 20(b)(2) and (3) impose certain restraints on the legislature and the executive branch with respect to the fund. The Committee has concluded that the legislature and executive branch have from time to time increased the liabilities of the fund or sought to use its assets without soliciting the views of the board of trustees or considering the financial impact of their action on the fund's ability to meet its responsibilities. Subsection 20(b)(2) obligates the legislature and the executive branch to obtain comments from the board of trustees before taking action that impacts the fund. This leaves the legislature and the executive branch free to take such action as they think appropriate with respect to the fund but offers an opportunity for the board's views to be considered in a timely fashion. The Committee does not intend to restrain the Commonwealth in any way from developing new and creative ways to attract government employees or enable them to invest their retirement funds.

Subsection 20(b)(3) sets a termination date for the special credit provided by the 1985 Convention to those members with twenty years service. This provision added an open ended liability for the fund that has been a major concern for the board of trustees. The expiration date is December 31, 1996, except for those members of the funds who have accumulated at least three years of vesting service credit. [payment by members?]

Subsection 20(b)(4) deals with the "double-dipping" problem. The Committee recommends a compromise solution to this issue. The general rule is that retirees will not receive pension benefits while reemployed by the government and shall not be entitled to increased benefits based on that reemployment. However, because of the periodic shortages of trained personnel in the education and public health fields, the Committee recommends that the legislature be given the authority to permit exceptions to this rule after public hearings and considering the views of the board of trustees. Retirees who achieve elective office are required to choose between receiving the compensation that goes with the office or retaining their pension.

Subsection 20(b)(5) is designed to place all former governors and lieutenant governors on an equal basis with respect to their eligibility for retirement annuities or other benefits. Any recipient of such annuities who is convicted of a felony would no longer be entitled to receive them.

[Current Section 21: Boards and Commissions]

The Committee recommends deletion of this provision from the Constitution. The Section was added in 1985 and seeks to prescribe a general rule applicable to all boards and commissions in the Commonwealth appointed by the governor with certain exceptions. The Committee concluded that this was a matter best left to the legislature and the governor to work out on a case by case basis; rules that seem required or appropriate for one kind of board or commission may not be appropriate in a different context.]

[Current Section 22: Special Assistant for Women's Affairs]

The Committee recommends deletion of this provision from the Constitution. The Committee fully supports the objectives of this office but believes that its organization and duties are best left to the legislature and the governor.]

[Current Section 23: Resident Executive for Indigenous Affairs

The Committee recommends deletion of this provision from the Constitution. The Committee concluded that the objectives of this office and its coordination with the Executive Assistant for Carolinian Affairs established by Section 18 could be best accomplished by the newly established Council for Indigenous Affairs proposed by the Committee.]

Section 20: Council for Indigenous Affairs

The Committee recommends creation of a five person Council for Indigenous Affairs to advance and promote programs aimed at preserving Chamorro and Carolinian language, culture and traditions. The council members would be appointed by the governor with the advice and consent of the senate to implement the responsibilities set forth in this Section and such other duties as may be assigned to it by the legislature or governor. The Committee expects that the executive assistant for Carolinian Affairs will work closely with the council.

The Committee's proposal requires that the council members and its executive director and deputy director have a background and capability in Carolinian or Chamorro language, culture and traditions. The chair of the Council for Indigenous Affairs will be a member of the governor's council created under article VI, section 5.

The council's functions include those now assigned to the Resident Executive for Indigenous Affairs, the Language Commission and the Council for Arts and Culture. The proposed amendment identifies several specific functions relating to educational and cultural programs. In addition, the Committee recommends that the council have the additional responsibility of allocating funds, if available, to the scholarship, medical referral and housing programs administered by other Commonwealth departments and agencies so as to benefit the local population. One of the principal responsibilities of the new council will be to work with other public and private entities interested in establishing a new cultural center in the Commonwealth. The Committee believes that such a center would serve as a focal point for educational and cultural programs that would foster interest in the indigenous cultures and traditions. The Committee expects that such a cultural center would also be a destination for tourists who visit the Commonwealth and have an interest in learning about the community's history and traditions.

Funding for the council will be provided from the interest revenue of the Marianas Public Land Trust. The council will prepare an annual budget for the expenditure of these funds and submit a copy to the legislature and the governor. To the extent that the council seeks additional funds from the legislature it would be required to follow the customary budgetary procedures within the executive branch and to justify its requests before the legislature.

Delegate FELIX R. NOGIS, Chair



Delegate JAMES M. MENDIOLA, Vice Chair

Delegate TOMAS B. ALDAN



Delegate FRANCES LG. BORJA

Defegate VICTOR B. HOCOG



Delegate BENJAMIN T. MANGLONA

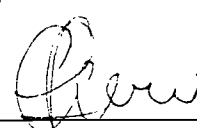
Delegate DAVID Q. MARATITA



Delegate MARYLOU ADA SIROK



Delegate HELEN TARO-ATALIG



Delegate JUAN S. TENORIO



Delegatè JOAQUIN P. VILLAGOMEZ

July 14, 1995

Delegate Proposals on Article III Referred by the
Committee on Organization and Procedures to the
Committee on Executive Branch and Local Government

No. 2	No. 210	No. 339	No. 470
No. 4	No. 215	No. 342	No. 471
No. 23	No. 216	No. 347	No. 472
No. 30	No. 217	No. 348	No. 477
No. 31	No. 218	No. 374	No. 483
No. 33	No. 230	No. 379	No. 484
No. 39	No. 231	No. 385	No. 485
No. 40	No. 234	No. 386	No. 486
No. 64	No. 235	No. 388	No. 488
No. 65	No. 236	No. 390	No. 489
No. 66	No. 238	No. 393	No. 490
No. 67	No. 239	No. 394	No. 492
No. 68	No. 240	No. 396	No. 494
No. 69	No. 242	No. 402	No. 505
No. 70	No. 269	No. 405	No. 513
No. 72	No. 271	No. 411	No. 516
No. 73	No. 272	No. 416	No. 517
No. 76	No. 281	No. 417	No. 521
No. 77	No. 282	No. 426	No. 525
No. 83	No. 283	No. 427	No. 527
No. 88	No. 286	No. 433	No. 528
No. 91	No. 287	No. 435	No. 532
No. 96	No. 288	No. 441	No. 549
No. 97	No. 297	No. 443	No. 564
No. 98	No. 299	No. 444	No. 592
No. 100	No. 300	No. 446	No. 600
No. 104	No. 308	No. 449	No. 605
No. 112	No. 309	No. 451	No. 609
No. 136	No. 310	No. 452	No. 610
No. 137	No. 311	No. 454	No. 611
No. 138	No. 314	No. 456	No. 612
No. 142	No. 316	No. 457	No. 613
No. 173	No. 317	No. 463	
No. 187	No. 318	No. 464	
No. 188	No. 323	No. 465	
No. 189	No. 324	No. 466	
No. 193	No. 325	No. 467	
No. 198	No. 326	No. 468	
No. 200	No. 338	No. 469	

ARTICLE III: EXECUTIVE BRANCH (Rev'd 7/14)

Section 1: Executive Power.

The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws.

Section 2: Qualifications of the Governor.

The governor shall be a United States citizen qualified to vote in the Commonwealth, at least thirty-five years of age, and a resident and domiciliary of the Commonwealth for at least ten years immediately preceding the date on which the governor takes office. A different period of residence and domicile may be provided by law.

Section 3: Lieutenant Governor.

The lieutenant governor shall have the same qualifications as required for the office of governor and shall perform those duties specified in this Constitution and those assigned by the governor or provided by law. Whenever the office of lieutenant governor is vacant, the governor shall appoint a successor with the advice and consent of the senate.

Section 4: Joint Election of the Governor and Lieutenant Governor.

The governor and lieutenant governor shall be elected at large within the Commonwealth for a term of office of four years. The governor and lieutenant governor shall be elected jointly with each voter casting a single vote applicable to both offices. No person may be elected governor more than twice.

Section 5: Compensation.

The governor and lieutenant governor shall each receive an annual salary and reasonable allowances for expenses as provided by law. Upon the recommendation of the advisory committee on compensation provided for by Article II, section 10, the

legislature may change the salary of the governor or lieutenant governor. Neither salary may be changed during a term of office.

Section 6: Other Government Employment

The governor or lieutenant governor may not serve in another Commonwealth position or receive compensation for performance of official duties or from any governmental body except as provided by Section 5.

Section 7: Succession to the Governorship and Lieutenant Governorship

In case of the removal, death or resignation of the governor, the lieutenant governor shall become governor and the president of the senate shall become lieutenant governor. If the offices of governor and lieutenant governor are both vacant, the president of the senate shall become acting governor and the speaker of the house shall become acting lieutenant governor. An acting governor or lieutenant governor who assumes office when more than one year remains in the term may serve only until a governor or lieutenant governor is chosen in a special election provided by law.

Section 8: Absence or Disability of the Governor.

a) When the governor is physically absent from the Commonwealth, the lieutenant governor shall be acting governor. If the lieutenant governor is also absent or is otherwise unavailable, the presiding officer of the senate shall be acting governor.

b) When the governor is unable to discharge the duties of the office by reason of physical or mental disability, the lieutenant governor shall be acting governor. If the lieutenant governor is unavailable, the presiding officer of the senate shall be acting governor. If the person next in succession to the governor has reason to believe that the governor is unable to discharge the duties of the office, that person shall file a petition to declare a vacancy with the Commonwealth supreme court. The

supreme court has original and exclusive jurisdiction to determine all questions regarding the disability of the governor and the existence of a vacancy in the office of the governor.

Section 9: Executive Functions.

a) The governor shall submit to the legislature a proposed annual balanced budget for the following fiscal year no later than ninety days before the start of the fiscal year. The proposed balanced budget shall described anticipated revenues of the Commonwealth based on existing revenue generating laws and recommend expenditures not to exceed anticipated revenues. The anticipated revenues may not be increased by the legislature without the consent of the governor. In preparing the proposed balanced budget, the governor shall consider submissions made by the mayors of Rota, Saipan and Tinian and Aguiguan, and the islands north of Saipan as to the budgetary needs of those islands and by the executive assistant appointed under section 18 of this article. The governor's submission to the legislature with respect to the budget shall state the governor's disposition of the budgetary request contained in these submissions and may included recommended tax legislation. If a balanced budget is approved by the legislature, the governor may not reallocate appropriated funds except as provided by law. In the absence of a budget enacted by the legislature and approved by the governor, government operations will be funded as follows:

1) If the projected revenues for the new fiscal year are equal to or greater than the projected revenues for the fiscal year just ended, each agency receiving an appropriation during the past year shall receive the same appropriation for the new fiscal year.

2) If the projected revenues for the new fiscal year are less than the projected revenues for the fiscal year just ended, all extraordinary or non-recurring expenditures shall be subtracted from the appropriations for the past fiscal year and the remainder shall be proportionally allocated to each agency funded during the past fiscal year.

3) Each person authorized to expend public funds shall be responsible for operating within the level of funding authorized and shall be held personally liable if such person authorizes expenditures without the appropriate certification that funds are available for the specified purpose.

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

b) The governor shall report in person at least annually to the people through a joint session of the legislature regarding the affairs of the Commonwealth and new measures that are necessary or desirable.

c) The governor shall have the power to grant reprieves, commutations and pardons after conviction for offenses after consultation with a board of parole to be established by law. This power shall not apply to impeachment.

Section 10: Emergency Powers.

The governor may declare a state of emergency in the case of invasion, civil disturbance, natural disaster or other calamity and may mobilize available resources to respond to that emergency. Within thirty days after acting under this section the governor shall report to the legislature regarding the exercise of emergency powers and recommend appropriate legislation.

Section 11: Attorney General.

The governor shall appoint an attorney general with the advice and consent of the senate. The attorney general shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law. The attorney general may be removed only for cause.

Section 12: Public Auditor.

The governor shall appoint a public auditor with the advice and consent of each house of the legislature. The public auditor shall ensure that proper audits have been conducted of the receipt, possession and disbursement of public funds by the executive, legislative and judicial branches of the government, an instrumentality of the Commonwealth or an agency of local government and shall perform other duties provided by law. The public auditor shall not duplicate professionally acceptable audits performed by private auditing firms or other governmental auditors. The public auditor shall report to the legislature and the governor at least once every year and this report shall be made public promptly. The public auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the legislature. In the event that there is a vacancy in the office of the public auditor, the governor shall appoint a temporary public auditor to serve for no more than ninety days. Within thirty days after the vacancy occurs in the office the governor shall submit a nominee for public auditor to the legislature. If the legislature does not act on the confirmation within sixty days after receipt of the nomination, the nominee shall be deemed confirmed. A nominee rejected by the legislature may not be renominated by the governor for the office.

Section 13: Department of Education.

[Repealed in 1985. A new version is being considered now by another Convention committee for inclusion here.]

Section 14: Heads of Executive Departments.

Each principal department shall be under the supervision of the governor and, unless otherwise provided by law, shall be headed by a single executive. No person shall serve as acting head of an executive department for more than ninety days. The governor shall appoint the heads of executive departments with the advice and consent of the senate. If the senate fails to act within sixty days after receiving the governor's nomination, the nominee shall be deemed confirmed by the senate. A nominee

rejected by the senate may not be renominated by the governor for the same office. The governor may remove the heads of executive departments. The governor may at any time require information in writing or otherwise from the head of any administrative department, office or agency of the Commonwealth.

Section 15: Executive Branch Departments.

Executive branch offices, agencies and instrumentalities of the Commonwealth government and their respective functions and duties shall be allocated by law among and within not more than 15 principal departments so as to group them so far as practicable according to major purposes. Regulatory, quasi-judicial and temporary agencies need not be a part of a principal department. The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law. The legislature may reallocate offices, agencies and instrumentalities among the principal departments and may change their functions and duties. The governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration. If these 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.

Section 16: Civil Service.

[Repealed in 1985. Recently approved version of former Article XX will go here.]

Section 17: Public Services.

a) The governor shall delegate to a mayor elected under the provisions of article VI, section 2, responsibility for the execution of Commonwealth laws as deemed appropriate, and the administration of public services in the island or islands in which the mayor has been elected. Services being provided on a decentralized basis on Rota, and Tinian and Aguiguan, on the effective

date of this provision shall continue. In furtherance of this section, the mayor shall have the responsibility for ensuring that the resident department heads faithfully execute their duties under the law and in accordance with the policies of the Commonwealth government for the administration of public services, in the island or islands in which the mayor has been elected.

b) Public services on Rota, and Tinian and Aguiguan, shall be headed by a resident department head in the departments providing the services. A resident department head shall submit a budget to the mayor pursuant to the budget instructions. No resident department head may be appointed to serve in any Commonwealth-wide board, commission, or authority. These arrangements shall apply to the islands north of Saipan when the population of these islands exceeds one thousand persons.

c) Public services shall be provided on an equitable basis to the citizens of the Commonwealth. The legislature may require that these services be provided through decentralized administrative arrangements. The governor shall make any necessary recommendations to the legislature in order to accomplish this objective.

Section 18: Executive Assistant for Carolinian Affairs.

a) The governor shall appoint an executive assistant for Carolinian affairs who is acceptable to the Carolinian community within the Commonwealth.

b) The executive assistant shall be a member of the governor's council created under article VI, section 5, and shall advise the governor on matters affecting persons of Carolinian descent within the Commonwealth.

c) The executive assistant shall review the application of government policies to and the availability and quality of government services for persons of Carolinian descent and may report findings or recommendations on these matters to the governor.

d) The executive assistant may investigate complaints and conduct public hearings regarding matters affecting persons of Carolinian descent. The executive assistant may report findings or recommendations on these matters to the governor.

e) The executive assistant may recommend items for inclusion in the proposed annual budget, review the budget before its submission by the governor to the legislature, and recommend amendments to the budget relating to matters affecting persons of Carolinian descent.

f) The executive assistant may at any time require information in writing or otherwise with respect to matters affecting persons of Carolinian descent from the officers of any administrative department, office or agency of the Commonwealth.

g) The annual salary of the executive assistant for Carolinian affairs may not be less than the annual salary of a head of an executive department.

Section 19: Retirement System.

a) Membership in an employee retirement system of the Commonwealth shall constitute a contractual relationship. Accrued benefits of this system shall be neither diminished nor impaired.

b) There is hereby established a Commonwealth retirement fund that shall be an autonomous public corporation of the Commonwealth government. The fund shall be administered by a board of seven trustees appointed by the governor with the advice and consent of the senate. The board shall have such powers and duties as provided by law.

1) The board of trustees shall have a fiduciary duty of maintaining and operating the retirement fund solely for the benefit of the public employees of the Commonwealth. It shall employ such professional, actuarial and other services as deemed necessary. The board of trustees shall manage fund assets to ensure that members of the retirement system

will receive the benefits they are entitled to.

2) No action shall be taken by the legislature or the executive branch that increases fund liability, or uses or reduces fund assets, unless the legislature or the executive branch first obtains comments from the board of trustees regarding the cost and administrative impact on the fund of a proposed action.

3) No new special retirement benefit or credit may be authorized by legislation for any fund member or for any category of fund membership unless it is otherwise available to all members. The additional five year credit for retirement eligibility given members with twenty years service shall expire on December 31, 1996, except for those members of the fund who have accumulated at least three years of vesting service credit. The special benefits given judges and elected officials under existing legislation shall be paid out of appropriations from the general fund for judges and elected officials that take office after the effective date of this provision.

4) Fund members shall not receive pension benefits while reemployed by the government and shall not be entitled to increased benefits based upon that reemployment. The legislature may authorize exceptions to this prohibition to meet critical education and public health manpower needs of the Commonwealth after public hearings and consideration of the recommendation of the board of trustees. Retirees who later assume elected office shall choose whether to receive either the compensation for the elected office or to retain one's pension.

5) All past governors and lieutenant governors shall be entitled to a special annuity from the retirement fund calculated at the rate of sixty five per centum of the annual salary of the present governor and lieutenant governor in addition to any other annuity the past governor or lieutenant governor is entitled to. All such annuities shall be terminated if the covered official is convicted of a felony.

Section 20: Council for Indigenous Affairs

a) There is hereby established the council of indigenous affairs with the duties and responsibilities set forth in this section and otherwise as provided by law.

b) The governor shall appoint the five members of the council with the advice and consent of the senate for terms of four years. Each member shall be a United States citizen qualified to vote in the Commonwealth with background and capability in Chamorro or Carolinian language, customs and traditions.

c) The council shall appoint an executive director and a deputy director with background and capability in Chamorro or Carolinian language, customs and traditions. The chair of the council shall be a member of the governor's council created under article VI, section 5.

d) Within ninety days of the effective date of this provision the duties and responsibilities of the resident executive for indigenous affairs, the language commission and the council for arts and culture shall be transferred to the council for indigenous affairs as well as their personnel, office space, furniture and fixtures, and funding.

e) The council shall develop and promote educational and cultural programs to advance the knowledge and practice of Chamorro and Carolinian language, culture and traditions; coordinate the translation and distribution of official and historic documents; serve as an advocate for the indigenous population; and perform such other duties as may be provided by law or assigned by the governor.

f) The council shall be provided the funding necessary to implement these responsibilities from the interest revenue of the Marianas Public Land Trust. The annual budget of the council for the expenditure of these funds shall be submitted to the governor and the legislature for their information. To the extent funds are available from the Trust the council may allocate such funds to existing scholarship, medical referral and housing programs for the benefit of the local population.

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TRANSITIONAL PROVISIONS

Section ---: Two of the first five members of the council for indigenous affairs provided under article III, section 20, shall be selected by lot to serve terms of two years.