

July 25, 1995

REPORT OF THE COMMITTEE ON EXECUTIVE BRANCH AND  
LOCAL GOVERNMENT

ARTICLE III: EXECUTIVE BRANCH, SECOND READING

The Committee presents the following report to the delegates with respect to Article III, Executive Branch, on second reading. This report does not include or propose any action with respect to Section 17 (Public Services) which is under continued discussion within the Committee in light of the recent deliberations of the Committee of the Whole. In addition, Section 13 (Education) and Section 16 (Civil Service) will be reported on by another Committee in the course of discussion of Article III.

Delegate Proposals. The Committee's Report No. 2 regarding Article III was discussed in the Committee of the Whole on Saturday, July 15, 1995. Subsequently the Committee reconsidered the proposed amendments to the article and resubmitted its report with revisions for consideration on first reading. The Committee's recommendations were approved on first reading on Thursday, July 20, 1995. No delegate proposals were introduced that were not considered by the Committee.

Floor Discussion. During the consideration by the Committee of the Whole several suggestions were made that were considered by the Committee and, in some instances, were reflected in the report and proposed amendments that were approved on first reading.

Delegate Amendments. The Committee received and took action with respect to the following three delegate amendments.

The Committee considered Amendment No. 12 that proposed three changes in Section 18 relating to the Executive Assistant for Carolinian Affairs.

First, the Committee rejected the proposal that the Executive Assistant no longer serve on the Governor's Council, concluding that this was an important element of the Executive Assistant's responsibilities.

Second, the Committee accepted the amendment that would require the Executive Assistant to submit an annual report to the new Council for Indigenous Affairs. The Committee believed that this would help coordination between the two offices and enable the Executive Assistant to propose programs that warranted funding by the Council.

Third, the Committee agreed that current subsection (g) of Section 18 be deleted. This is the provision that guarantees that the salary of the Executive Assistant will not be less than that of the head of the department.

The Committee rejected Amendment No. 20 dealing with Section 19(Retirement System). This amendment would eliminate other service credits and retirement bonuses as of December 31, 1996. [The amendment says 1995 but that is probably not intended.] The Committee concluded that Section 19 should not include any more detailed provisions, notwithstanding the importance of the retirement system to Commonwealth citizens.

The Committee rejected Amendment No. 15 proposing a change in Section 20, relating to the new Council for Indigenous Affairs. The proposed amendment would require the Council to submit its budget on an annual basis to the legislature and the governor. The Committee concluded that this was inconsistent with the idea that the Council would be funded by the Marianas Public Land Trust. Of course, if the Council seeks additional funds from the legislature, it will have to justify the request like any other agency.

The Committee rejected Amendment No. 30 which seeks to eliminate one of the transitional provisions that accompany this article. In particular, this Amendment seeks to delete the provision that all annuitants would be taxed at the rates in place on December 31, 1994 until such time as the legislature acts to enact new tax legislation based on the tax task force currently working on the subject.

Committee Changes. The Committee has included certain changes in the attached draft that were the result of further review by counsel and the Committee.

First, the Committee recommended that the language of Section 7 be changed to standardize the reference to the "presiding officer" rather than the "president" of the Senate. More important, the Committee recommends that Section 7 be changed to make it consistent with Section 3 with respect to the governor's authority to appoint a lieutenant governor with the advice and consent of the Senate. In addition, if both the offices of governor and lieutenant governor are vacant, Section 7 would now provide that the presiding officer of the Senate and the speaker of the House would serve in an "acting" capacity only until a special election unless the term remaining is less than one year.

Second, the Committee has made some clarifying and editing changes to Section 9. No substantive changes are involved.

Third, there are some editing changes to Section 12 (Public Auditor).

Summary. The Committee recommends passage of the attached Article III (minus Section 17) on second reading.

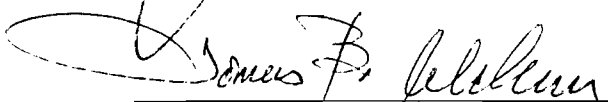
Respectfully submitted,



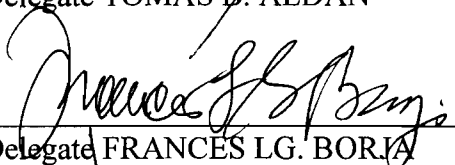
Delegate FELIX R. NOGIS, Chair



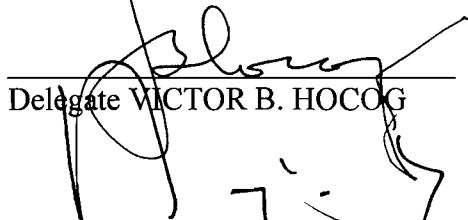
Delegate JAMES M. MENDIOLA, Vice Chair



Delegate TOMAS B. ALDAN

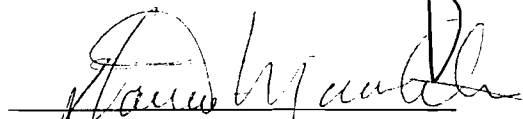


Delegate FRANCES LG. BORJA



Delegate VICTOR B. HOCOG

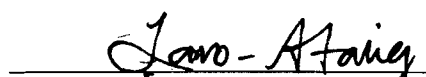
Delegate BENJAMIN T. MANGLONA



Delegate DAVID Q. MARATITA



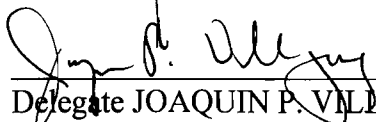
Delegate MARYLOU ADA SIROK



Delegate HELEN TARO-ATALIG



Delegate JUAN S. TENORIO



Delegate JOAQUIN P. VILLAGOMEZ

Revd 7/24

## **ARTICLE III: EXECUTIVE BRANCH**

### **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 seven 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 9, 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 shall appoint a successor with the advice and consent of the senate. If the offices of governor and lieutenant governor are both vacant, the presiding officer of the senate shall become acting governor and the speaker of the house shall become acting lieutenant governor until the offices are filled by a special election provided by law if more than one year of the term remains.

**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 or earlier if provided by law. The proposed balanced budget shall describe 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 budgetary requests made by the members of the governor's council created under article VI, section 6. The governor's submission to the legislature with respect to the budget shall state the governor's disposition of these budgetary requests and may include recommended legislation that affects the current budget submission. 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 necessary and proper 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 parole authority 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 who is a member of the Commonwealth bar 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 during the governor's term 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, instrumentalities of the Commonwealth or agencies 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 an appointee for public auditor to the legislature. If the legislature does not act on the appointment within sixty days after receiving it, the appointee shall be deemed confirmed. An appointee rejected by the legislature may not be renominated by the governor for the office.

### **Section 13: Education.**

Education is a shared responsibility of the Commonwealth and local governments and the parents of children working together.

a) Education is compulsory within the age and levels provided by law.

b) Policy and standards for the public elementary and secondary education system in the Commonwealth shall be the responsibility of a secretary of education appointed by the governor with the advice and consent of the senate. The secretary shall have at least five years residence in the Commonwealth. Other qualifications and salary shall be as provided by law. The term of office shall be the same as the appointing authority.

c) Administration and instruction for the public elementary and secondary education system in the Commonwealth shall be the responsibility of an elected school board in each senatorial district. Each school board shall be composed of five members who shall serve for four-year terms. School board members shall be United States citizens qualified to vote in the Commonwealth, resident in the senatorial district from which elected, and at least twenty five years of age. Elections shall be non-partisan. Vacancies shall be filled within thirty days by the next highest vote-getter or, if none, a qualified person appointed by the remaining members of the school board. If three or more vacancies exist and more than one-half of the term remains, a special election to fill the vacancies shall be scheduled by the Commonwealth election authority within thirty days. If less than one-half of the term remains, the vacancies shall be filled by the secretary of education. The requirements of this subsection (c) shall continue in force for at least ten years from the election of the first school boards and after ten years as provided by law.

d) The legislature shall make an annual appropriation for instruction in the public elementary and secondary education system. This appropriation shall be allocated to the local schools on a per enrolled student basis upon certification by the secretary of education that the school is in compliance with Commonwealth requirements.

e) Higher education, adult continuing education, and vocational education that is available in postsecondary educational institutions within the Commonwealth shall be consistent with the needs and resources of the people as provided by law.

### **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 fifteen 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.**

a) The civil service shall include all persons who are employed by or whose salary is paid by the Commonwealth except persons holding positions filled by election, appointed by the governor under this Constitution, or designated by law as excepted professional, managerial, educational, overseas, and elected officials' personal staff positions. The civil service shall be non-partisan and independent. Appointment and promotion within the civil service shall be based on merit and fitness as demonstrated by examination or other evidence of competence.

b) There is hereby established a civil service commission to develop, administer, and adjudicate personnel policies and standards for the civil service. The commission shall be composed of five members appointed by the governor with the advice and consent of the senate. At least one member shall be a resident of each senatorial district and no member may hold any other government position. Other qualifications and compensation shall be as provided by law. Members shall serve five year terms, with one term expiring each year, and may be removed during a term of office only for cause.

c) The civil service commission shall establish a classification for each position for which it has jurisdiction, but may exempt positions from classification where necessary to serve



important government interests. The civil service commission shall establish policies for the compensation for civil service positions and may submit to the legislature salary schedules based on such policies. The legislature may accept, reject or reduce a salary schedule submitted by the commission, but may not increase any salary or take any other action with respect to salaries for civil service positions.

**Section 17: Public Services.**

[Deferred until consideration of article VI (Local Government)].

**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 6, 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.]

[g) The executive assistant shall submit an annual report to the council for indigenous affairs on matters affecting the Carolinian community within the Commonwealth.]

**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) The Northern Mariana Islands Retirement Fund Act may be amended or repealed by the legislature only after obtaining the views of the retirement fund's board of trustees regarding the cost and administrative impact on the fund of the proposed action.

c) The board of trustees has the exclusive fiduciary responsibility to invest fund assets. The legislature and the executive branch can appropriate or reprogram only those fund assets declared excess by the board of trustees.

d) The additional five year credit for retirement eligibility given fund members with twenty years service shall expire on December 31, 1996, except for those fund members who have accumulated at least three years of vested service credit.

e) All former governors shall receive an annuity in the same amount and all former lieutenant governors shall receive an annuity in the same amount notwithstanding any other pension or annuity the former governor or lieutenant governor is entitled to receive. The additional benefits currently awarded to former elected officials and judges shall not be paid out of fund assets.

**Section 20: Council for Indigenous Affairs.**

a) There is hereby established the council for 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) 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.

e) 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.

## 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.

Section ---: The Office of the Special Assistant for Women's Affairs shall continue its present operations for twelve months after the effective date of the amendment to Article III deleting Section 22 and until such time as the legislature or the governor decides otherwise.

Section ---: All annuitants shall be taxed at the rate in effect on December 31, 1994, until the legislature enacts tax legislation based on the recommendations of the tax task force currently in existence.