

July 26, 1995

COMMITTEE ON EXECUTIVE BRANCH AND LOCAL GOVERNMENT

REPORT NO. 4: SECTION 17 OF ARTICLE III AND ARTICLE VI (LOCAL GOVERNMENT)

The Committee met on Tuesday, July 18, 1995, Wednesday, July 19, 1995, Thursday, July 20, 1995, Friday, July 21, 1995, Monday, July 24, 1995, Tuesday July 25, 1995, and Wednesday, July 26, 1995, to consider the issues raised with respect to Section 17 (Public Services) of Article III and Article VI (Local Government). The Committee considered 42 proposals referred to it by the Committee on Organization and Procedures that are listed in the attachment to this report. Some of the major issues discussed in this report were discussed in the Committee of the Whole on Monday, July 24, 1995. The Committee recommends for passage on first reading the proposed amendments to Section 17 of Article III and to Article VI attached to this report and discussed herein.

Introduction

The Committee recommends a substantial revision of Article VI to provide real local government for the citizens of the three senatorial districts through a mayor entrusted with executive authority and a municipal council assigned meaningful legislative authority over local matters. Local government has a long tradition in the Northern Marianas with active municipal governments in existence many years before the creation of the Marianas District Legislature in 1963. At the first Constitutional Convention in 1976 the delegates concluded that under the new Commonwealth efforts should be made to reduce multiple levels of government to the maximum extent possible, to consolidate executive authority in the Commonwealth governor, to abolish municipal councils and grant legislative authority over local matters to the delegations of the three senatorial districts, and to give the mayors important responsibilities in the delivery of Commonwealth public services. After some seven years of experience under this system, the 1985 Convention decided to resurrect the municipal councils and to require the governor to delegate responsibility for public services to the mayors of Rota and of Tinian and Aguiguan. By way of implementing this new responsibility for the mayors, Amendment 25 gave the mayors the responsibility to appoint the resident department heads in the Commonwealth departments providing decentralized services to Tinian and Aguiguan and to Rota.

Although for some years the Commonwealth government and the local governments appeared to coexist under this arrangement, in recent years controversy has developed over the scope of the delegation by the governor to the mayors, the uncertainty as to who exercised supervisory responsibility over the resident department heads, the responsiveness of the department heads in Saipan to the needs of the residents of the other islands, and the

responsibility for the execution of Commonwealth laws and regulations in Rota and in Tinian and Aguiguan.. Litigation resulted in the recent decision of the Commonwealth Superior Court in the case entitled Inos v. Tenorio dated June 14, 1995. In this thorough and thoughtful opinion the Superior Court reviewed the history of Amendment 25, addressed many issues regarding the responsibilities of the governor and mayors for the effective delivery of Commonwealth public services in the islands, and attempted to reconcile the intentions of the delegates in the 1985 and 1976 Conventions with the language that was adopted on each occasion.

The Committee has approached its task related to local government with two principal objectives. First, the Committee sought to clarify the relationship between the mayors and the governor with respect to the delivery of public services where the governor has delegated the responsibility for administering such services to the mayors. The Committee believes that more costly litigation on these issues is not in the public interest.

Second, the Committee has made a major effort to reconcile the competing interests at stake here: the Commonwealth-wide interest and responsibility for equitable and efficient public services throughout the Commonwealth and the local interest in Rota and Tinian to exercise meaningful control over the personnel actually delivering the public services on those islands. Accommodating these conflicting interests in light of the history of local government in the Commonwealth, the problems of administration that have developed, and the natural tensions between Commonwealth and local officials is difficult. The Committee has sought to do so, however, and proposes amendments to article VI and article III, section 17, that are aimed at achieving these two overriding objectives.

In this report the Committee explains its proposed revision of article III, section 17, that deals with the delegation of public services by the governor to the mayors. The Committee believes that it can be considered on its merits separate from consideration of article VI, relating to local government institutions and powers. Regardless of whether and how section 17 is amended, the Committee recommends a substantial revision of article VI as reflected in the attached draft and explained in this report.

Section 17 of Article III

Subsection (a): This subsection states overall objectives for the delivery of public services in the Commonwealth -- that they be provided on an equitable and effective basis to the citizens. It incorporates the substance of present subsection (c) but adds the word "effective." The Committee concluded that efficiency and cost-effectiveness are goals that the Commonwealth should seek to achieve in the delivery of public services on all three major islands. The last two sentences in present subsection (c) have been deleted as legislative in nature.

The second sentence of this subsection reaffirms that the governor has the responsibility to ensure that all public services are provided in accordance with Commonwealth laws, policies,

standards, rules and regulations. Affirmation of this basic principle, anticipated by the Covenant and embodied in the current Constitution, will be considered especially important in light of the Court's opinion in the Inos case and in particular its discussion of the 1976 and 1985 Conventions.

Subsection (b): This subsection requires the governor to delegate to the mayors or Rota, and Tinian and Aguiguan, the responsibility for the delivery of certain Commonwealth public services. It does not extend to Saipan and the islands north of it, which are considered in subsection (e). In addition, this subsection does not deal with the enforcement of Commonwealth laws, policies, standards, rules and regulations. That subject is considered in subsection (c).

The services that the governor is required to delegate are specified in terms of subject areas rather than departments. The Committee rejected the concept of structuring the delegation in terms of certain Commonwealth departments; these can be changed over time as circumstances and governors change. The Committee also concluded that trying to ensure the continuation of decentralized public services that existed at any particular point in time as did both the 1976 and 1985 Conventions would deny needed flexibility to both the local government and the Commonwealth government. Such an approach would also not address the many issues raised in the Inos litigation that need to be clarified. Nothing in this subsection requires any action by the governor with respect to autonomous Commonwealth agencies or Commonwealth offices such as the Attorney General and Public Auditor.

The areas selected are those that are predominantly service-oriented, rather than enforcement-oriented, where the experience over the years indicates that programs and services can be delivered effectively and equitably at the local level. These areas of community and cultural affairs, commerce, public works, lands and natural resources are also those areas that naturally of great concern to the local residents of the islands and often are delegated to local government in other jurisdictions within the United States. In fact, the delegation of responsibility of these areas to local government is more extensive than is found in other island communities. In Hawaii, for example, responsibility for natural resources is assigned primarily to the state rather than to the individual islands or counties.

The Committee did not include in the areas subject to mandatory delegation those operations of government that have substantial law enforcement responsibilities. For example, the Committee did not include the areas of public safety, labor and immigration. The Committee recognized the difficulty that the Inos court had in trying to decide which programs and services within various departments were primarily concerned with the enforcement of Commonwealth law and those that were primarily concerned with the delivery of public services. This draft section seeks to reduce these difficulties, and potential for litigation, in several ways. First, it requires delegation only of activities that are primarily concerned with the delivery of public services. Second, it requires delegation only of specific programs and services in these areas rather than entire governmental departments. Third, the question of delegation of enforcement

responsibilities in these areas is addressed specifically in subsection (c).

There is nothing in this draft Section 17 that restricts the governor from making further delegation to the mayors of responsibility for the delivery of Commonwealth public services. The governor should be free to decide, based on the performance of the mayor involved, whether additional delegation would serve the overall objectives of equitable and effective delivery of public services.

Subsection (b) requires the governor to specify the programs and services in each of these areas that are to be delegated to the mayors. For example, the governor might well conclude that programs funded by the United States government should not (or cannot) be delegated because of the governor's responsibility under federal law for the expenditure of federal funds. It also requires the governor to set forth the "administrative and financial duties" that are included with the delegation. Such duties vary from area to area and there is no need for uniform delegation of such responsibilities where it seems neither required nor useful. Detailing the administrative and financial duties that are delegated to the mayors will avoid misunderstanding and possible litigation. The Committee expects that the governor will comply with the mandatory delegation required by this subsection and not impose unreasonable or unnecessary obligations on the mayor.

The last sentence of subsection (b) makes clear that the governor can revoke the mandatory delegation of responsibility to the mayors only for cause. This ensures that the governor cannot act arbitrarily or without justification for withdrawing such responsibility from the mayors. The Committee concluded that the mandatory delegation directed by subsection (b) should be treated seriously by all government officials, including the governor, and political differences or personality conflicts should not be allowed to influence the decisions of either the mayors or the governor. The Committee believes that the justification for the revocation of mandatory delegation must be assessed in light of these and similar questions: (1) Have the services been delivered effectively, equitably and in accordance with all applicable Commonwealth laws and regulations? (2) Has the mayor exercised the authority delegated to him responsibly and been given an opportunity to cure any problems within a reasonable period of time after they have been brought to the mayor's attention? (3) Have the responsible parties attempted to resolve their differences through discussion and means less drastic than complete revocation of the delegated authority?

Subsection (c): This subsection provides for the mandatory delegation of certain enforcement authority to the mayor relating to those programs and services delegated to them under subsection (b). The Committee recognized that assigning such responsibility to the mayors serves certain important purposes. First, it makes clear that the mayor does have such enforcement responsibility and thereby avoids confusion and ensures the local residents that they have an elected official to help enforce the applicable rules and regulations. Second, such delegation avoids the need to segregate enforcement responsibility from the other delegated authority to the mayor for the delivery of public services. As reflected in the Inos decision, such

an effort is often difficult. The Committee concluded that it was better to have the mayor given the full range of responsibilities in the delegated areas so as to enable the mayor to do a better job, serve his citizens more effectively, and be able to deal with the Commonwealth department heads on a more effective basis.

This delegation of enforcement responsibility to the mayor is not exclusive in nature. The responsible Commonwealth authorities retain their power and responsibility to investigate possible violations of Commonwealth laws, rules and regulations and to prosecute where appropriate. The mayor also has the duty to investigate such matters and, when appropriate, to refer the matter to the Commonwealth authorities for further investigation or prosecution. The mayor does not have the authority to promulgate new rules and regulations with respect to the delivery of the public services delegated to the mayor by the governor; the mayor must adhere to, and enforce, the existing laws and regulations of the Commonwealth. The Committee recognizes that this delegation may invite duplication of effort. The Committee believes that this delegation does not entitle the mayor to establish his own investigative resources; it authorizes him to receive complaints about potential violations, to look into the matter, and then refer it if appropriate to the responsible Commonwealth enforcement official.

The delegation of enforcement responsibility shall take place at the beginning of the mayor's term. Under the present election timetable this coincides with the beginning of a new gubernatorial term. This means that the delegation of enforcement responsibility will occur when both the mayor and the governor have some considerable incentive to make the system work and, indeed, under such a system candidates for the mayor's and the governor's offices may have a mutual interest in emphasizing their readiness to work together to ensure the effective and equitable delivery of public services on the particular island or islands involved.

Subsection (c) makes clear that the delegation of enforcement responsibility can be revoked at any time by the governor for any reason whatsoever. The Committee recognized that the grant of this enforcement authority was not required under current Section 17 as interpreted by the Inos decision, where the court held that Section 17 as drafted by the 1985 Convention meant that the governor did not have to delegate responsibility for the execution of Commonwealth laws to the mayors. In deciding to require such delegation by the governor, the Committee wanted to make certain that no mayor, litigant or court could reasonably conclude that this meant any reduction whatsoever of the governor's authority to enforce Commonwealth laws, policies, standards, rules and regulations.

The Committee was aware that the mayors under this system would be exercising their enforcement authority with the constant awareness that the delegation could be revoked at any time by the governor if the governor were dissatisfied with the mayor's performance of these enforcement responsibilities. Whereas the mandatory delegation of responsibility for the delivery of specified programs and services can be revoked only for cause, that is not the case with respect to revocation of enforcement responsibility. Although the prospect of possible revocation may engender some measure of uncertainty, it may also maximize the incentives on

the mayor to collaborate with the governor and his department heads in a joint effort to improve the delivery of public services on the local level. Here as elsewhere, the governor is free to delegate more authority than he is required under the Constitution to delegate. Where the mayor and the governor have a shared vision of how best to deliver public services at the local level, the Committee expects that the delegation may well exceed any that has taken place in the past.

Subsection (d): This subsection confirms the power of the mayors to appoint resident department heads. The procedures for so doing are set forth in Article VI. The second and third sentences are the same as are found in the current Section 17. The last sentence imposes on the mayors the responsibility of ensuring that the resident department heads execute their duties in accordance with the laws, policies, standards, rules and regulations of the Commonwealth. If the resident department heads fail to do so, this subsection authorizes the mayors to discipline or dismiss them.

Subsection (e): This subsection provides that the governor has complete discretion with respect to the delegation of responsibility for public services to the mayor of Saipan and the northern islands. It is generally recognized that the situation in Saipan is far different from that on Rota and Tinian, although Saipan residents too have many complaints about the quality of public services. Section 17 leaves the governor free to decide what delegation to make, if any. As local government on Saipan grows with the new powers under Article VI, it may be that additional public services will be offered by the local government that supplement those provided by the Commonwealth government and may warrant some meaningful delegation by the governor.

Article VI

Section 1: Local Government

This section makes clear that the article provides local government for the three existing senatorial districts and for the fourth district when it is created under article II, section 2. That section of article II is proposed to be amended to provide that a fourth senatorial district will be created when the population in the islands north of Saipan exceeds 1000 resident United States citizens.

The Committee concluded after public hearings that the current office of the mayor of the northern islands should be terminated. Although the interests of the residents of the northern islands are in many respects different from those on Saipan, the Committee was concerned by the substantial cost associated with this office when evaluated against the less than 100 residents involved. The Committee has proposed a method for representing the interests of this group of Commonwealth citizens at the local level in Section 4(a).

Section 2: Mayor

This section describes the process by which each senatorial district selects its mayor. The proposed amendment provides uniform qualifications and procedures for each of the senatorial districts.

Section 2(a): The Committee proposes that the qualifications for mayor be patterned after those proposed for governor. This subsection therefore specifies that the mayor be a United States citizen and thirty-five years of age. The Committee concluded that with the increased responsibilities of the mayor under Article VI the previous age requirement of twenty-five was not sufficient to ensure that the position would be occupied by someone of mature judgement and proven experience. For clarity the Committee settled on a three-year residence requirement, eliminating the reference to domicile, and continued the current requirement that the mayor live on the island or islands served after election to the position. The sentence regarding the barring effect of a felony conviction was eliminated because of the general provision on this subject proposed in another article.

Section 2(b): The only change proposed in this subsection is to add the words “or ordinance” at the end of the sentence. This recognizes that under Article VI the local governments will have the authority to enact ordinances to define and regulate their own governmental structure and procedures consistent with the Constitution and Commonwealth law.

Section 2(c): The mayor’s compensation was previously provided by section 4 of this article. The Committee included it here so that all the formalities with respect to the mayor’s position would be in one section as is the case elsewhere in the Constitution. The source of the funds for the mayor’s compensation and expenses, along with other expenses of local government, is treated by the Committee in new section 7 of this article. The Committee believes that the mayor, like other elected officials in the Commonwealth, should have a salary based on the recommendation of the advisory commission on compensation and that the legislature or municipal council cannot award a salary that exceeds the amount recommended.

Section 3: Responsibilities and Duties of the Mayor

Section 3(a): This subsection provides the basic grant to executive authority to the mayor with respect to local government under this article. The grant of local authority is limited in two important respects.

First, it is limited only to those matters that affect only the island or islands served by the mayor. This would include those powers exercised for decades in the Commonwealth by local government, such as control over permitted forms of gambling and over certain fees and licenses. The local laws presently in force suggest the wide range of matters that fall within this grant of authority, dealing with such subjects as animal and plant control, zoning, issuance of business licenses, local streets and roads, and vehicle regulation.

Second, local authority must be exercised in a manner that is consistent with

Commonwealth law. It remains the responsibility of the Commonwealth government to decide what subjects affecting all the citizens of the Commonwealth should be regulated by Commonwealth law and not by three (or four) different local governments within the Commonwealth. Having set general standards and requirements, the legislature remains free to delegate responsibility to the local governments to implement such laws and regulations or to pass their own ordinances within those areas specified by the legislature as more appropriate for local decision-making. If action taken by a local government appears to the legislature to exceed this grant of authority the legislature is free to enact laws that preempt the authority of the local government.

The system contemplated here is neither original or unusual. It tracks the form of local government found throughout the United States. As questions arise as to the authority of local government, the Committee expects that the Commonwealth courts will be asked on a case by case basis to decide what municipal ordinances “affect only the island or islands served by the mayor” and what ordinances are “not inconsistent with Commonwealth law.” This is a traditional function of the courts and there is ample precedent within other jurisdictions in the United States to enable the courts over time to interpret these constitutional provisions so as to best accommodate the interests of the Commonwealth and local governments.

Section 3(b): This provision assigns the mayor the traditional executive function of proposing ordinances for consideration of the municipal council. Of course, proposed ordinances can also be suggested by the council itself, the public or Commonwealth officials.

The Committee decided to specify the veto power in the Constitution rather than leave this important matter to be worked out by each local government. The Committee believed that uniformity on this issue was important and that constitutional treatment would eliminate the possibility of deadlock between the mayor and the council on the definition of the veto power. The subsection sets forth procedures for the exercise of the veto power that are essentially the same as the procedures that apply at the Commonwealth level of government.

Section 3(c): This subsection defines the mayor’s authority to administer the agencies of local government established by municipal ordinance and appoint their heads subject to confirmation by the council. The Committee does not want local government offices to be created that duplicate the functions of Commonwealth agencies or departments. That is not permitted by this provision. The agencies or departments contemplated here are only to implement new responsibilities of local government in the future as defined by municipal ordinance.

Section 3(d): This subsection represents no change from the current Section 3(a).

Section 3(e): This subsection is essentially the same as current subsection 3(c). It adds the municipal council to those entitled to receive the mayor’s findings or recommendations and provides that the mayor can require information with respect to government operations as well as

local matters. Nothing here is intended to limit the authority of Commonwealth agencies to investigate matters in the senatorial district that fall within their jurisdiction.

Section 3(f): This subsection is an enlargement of the mayor's responsibilities with respect to the budget. The current provision refers only to the mayor's responsibilities to submit items for inclusion in the governor's budget before its submission to the legislature. With the establishment of real local government and the prospect over time of substantial local revenues, this provision contemplates a budget process similar to that followed by the governor. It requires the mayor to divide the budget into two separate sections -- one dealing with Commonwealth funds and the other dealing with locally raised revenues. Once the council approves the local funding component of the proposed budget, relating both to the obtaining and to the spending of local revenues, the budget pertaining to the local government goes into effect. After the council reviews the Commonwealth funding components proposed by the mayor, it goes forward to the governor for his consideration.

Section 3(g): This subsection combines the responsibilities given to the mayor by current section 3(e) and 3(f). No change in substance is intended by this combination. These functions are those traditionally exercised by the chief executive officer of a governmental entity.

Section 3(h): This subsection lists among the functions of the mayor those have been delegated to the mayor by the governor under Section 17 of Article III. This will include not only those responsibilities that are required under Section 17 but also those that are delegated by the governor as a matter of discretion. The requirement of quarterly reports is contained in current Section 3(b) and will be only one of several methods whereby the governor and the mayor communicate regarding their shared duties with respect to the delivery of public services in the Commonwealth.

Section 3(I): This subsection sets forth the procedures whereby the mayors appoint resident department heads pursuant to the authority granted them by Section 17 of Article III. The mayors are required to consult with the respective department heads and the appointments must be confirmed by the municipal council. The Committee concluded that resident department heads should have the minimum qualifications prescribed for the position by the relevant department head, in order to avoid appointees without any of the necessary educational or experience qualifications as has occurred in the past. In addition, the subsection requires that any acting resident department head must be selected from within the relevant department, in order to avoid wholly inexperienced acting officials, and shall not serve for more than ninety days. If the mayor does not fill the position within ninety days, he would not be exercising his delegated responsibilities properly and would be subject to having those duties revoked by the governor. If the mayor has not filled a vacancy within ninety days, the respective department head would have the responsibility of filling the position with a qualified person until the mayor is able to appoint and secure council confirmation for a qualified replacement.

Section 3(j): This catch-all subsection anticipates that the mayor over time may be

assigned other duties and responsibilities by the legislature or the municipal council.

Section 4: Municipal Council

Section 4(a): This subsection describes the municipal council that will serve the citizens in each senatorial district. The Committee decided to increase the size from three to five in light of the increased responsibilities of local government. The other requirements are similar to those of the mayor and other elected officials authorized by the Constitution.

The Committee decided to keep the term at two years but to have no limitation on the number of terms served. The shorter term compared with the mayor's is designed to make the council responsive to the needs of their constituents and, in the smaller areas of these islands, will enable the council to function more effectively.

The Committee decided to require that the election of council members be a non-partisan one as defined and enforced by Commonwealth law. With the council members running every two years, as will be the case with candidates for the Commonwealth legislature, the Committee concluded that striving for a non-partisan election was worth the effort. Where local matters are concerned, the Committee believed that residents may get better representation and service from council members elected on this basis.

The Committee decided that council members in each senatorial district should be elected at large. With the abolition of the mayor's office for the northern islands, however, the Committee concluded that some special arrangement was necessary to ensure that the very particular interests of these constituents should be represented in the municipal council for Saipan and the islands north of it. Because of their small numbers, however, and the legal requirements imposed by the one person-one vote rule, the Committee did not believe that efforts to ensure the residents of the northern islands one seat on the municipal council would be either productive or lawful.

The Committee recommends adding an ex officio member to the council elected by the residents of the northern islands who shall be entitled to vote on matters directly affecting the northern islands pursuant to rules adopted by the municipal council. This accommodation gives the northern islands a meaningful voice in the municipal council serving them and an elected advocate who can otherwise represent them in negotiations with the Commonwealth and local government to pursue their settlement and development objectives.

Section 4(b): This subsection provides a method for filling vacancies on the municipal council. There is no substantive change from the comparable provision in the current constitution except to substitute the municipal council as the confirming authority rather than the legislative delegation from the senatorial district.

Section 4(c): This provision deals with the compensation of the council members. So

long as members serve part-time they will be compensated for attending meetings as provided by law or ordinance. Once the council requires full-time service of its members, council members will be compensated in accordance with the recommendations of the advisory commission on compensation that deals with such matters. When the position becomes full-time, the compensation of council members must come entirely from locally raised revenues.

Section 5: Responsibilities and Duties of the Municipal Council

Section 5(a): This subsection grants the council the basic legislative authority for the senatorial district with respect to local matters. The subject matters that are appropriate for the enactment of municipal ordinances are those described above with respect to the mayor's authority under section 3. With respect to those matters the council can enact municipal ordinances that are then approved by the mayor in accordance with the procedures agreed to by the mayor and council and in accordance with the veto power granted the mayor under section 3.

Section 5(b): This subsection sets forth the procedures to be followed in the event that the mayor vetoes an ordinance. The council has thirty days to consider the matter and, upon the vote of two-thirds of the members, may override the veto.

Section 5(c): This subsection grants the council the power to confirm resident department heads of Commonwealth departments and the heads of local departments, agencies, boards and commissions nominated by the mayor. The Committee expects that the council will examine the qualifications of the nominee and, where appropriate, hold hearings to consider the nomination.

Section 5(d): This subsection grants the authority to levy fines, fees and taxes in the senatorial district. As provided by section 7 of this article, the Committee expects that within a fairly short period of time local government within all three senatorial districts will be supported entirely by locally raised revenues. To accomplish this objective, and support services and programs desired by their constituents, the council and mayor will have to develop considerably more revenue than is presently the case.

It is intended that all types of fines, fees and taxes can be used by the municipal council to raise revenues, not just those that have traditionally in the Commonwealth been left to municipal governments. For example, the Committee expects that the local government will consider taxes on commercial real estate, sales taxes, license fees and other such taxes that support local government throughout the United States. The general objective of local government is to provide services and programs desired by the local residents that supplement those provided by the central government; if the services are truly desired, the citizens should be prepared to pay the necessary taxes to support them.

The Committee recognizes that the Commonwealth currently imposes and collects taxes that might be made available to local government. During the transitional period contemplated

under section 7, the mayors and councils should ascertain the willingness of the legislature to return certain taxing authority to local government or to allocate a fixed percentage of such taxes collected to the senatorial district from which they originated. The legislature will have to make the ultimate decision as to the extent to which Commonwealth revenues should be used to fund local government and the means available to local government to support their own institutions of local government and local programs and services. The Committee sees no reason why local government in the Commonwealth should not be financed in the same manner as is done throughout the United States -- by supplemental income taxes, sales taxes, property taxes or various kinds of fees for service provided by the local government.

This subsection requires the council to hold public hearings on all appropriation ordinances and all ordinances involving taxation or revenue. This is to ensure that on such an important matter the affected members of the public can be heard. The subsection also requires the council to follow certain procedures that also are imposed on the Commonwealth legislature. The Committee expects that these requirements will be construed in tandem with those applicable to the legislature.

Once such revenues are generated by the local government, this subsection makes clear that the disposition of the funds is left entirely to the local government. This provision prohibits the appropriation of this revenue by the legislature or its reprogramming by the governor.

Section 5(e): This subsection sets forth the role of the council in reviewing the budget proposed by the mayor, both with respect to its local funding components and its Commonwealth aspects as discussed above regarding Section 3(f).

Section 5(f): This subsection grants the authority to the mayor and municipal council to define the size and structure of local government through the ordinance process. The Committee expects that the legislature would intervene in this process only if the size (and expense) of local government adversely affected Commonwealth funding, its relationship with the United States, or other critical aspects of Commonwealth governance. The Committee's concern in this regard is evidenced by the requirement in this subsection that no local departments or agencies shall duplicate or supervise Commonwealth departments or agencies providing services in the senatorial district. The Committee is well aware of the tendency to use local government as a source of employment of local residents, paid out of Commonwealth funds, even though there is no need for the services of such employees.

Section 5(g): This subsection sets forth the procedures for filling the mayor's position when the mayor is traveling outside the Commonwealth or is unable to discharge the duties of the office because of physical or mental disability. This is essentially the same as provided by current section 7, but does provide that under certain circumstances the council can declare a vacancy that will prompt a new election of a mayor.

Section 5(h): The catch-all provision anticipates that the council will be assigned

additional duties over time either by Commonwealth law or municipal ordinance.

Section 6: Governor's Council

This is essentially the same provision that has been in the Constitution since the beginning. The Committee added to the council the chair of the council for indigenous affairs created under Article III, Section 20, and deleted from its members the chairs of the municipal councils who had been added in 1985. The Committee concluded that the mayors were the most appropriate representatives of local government who should participate in the meetings and deliberations of the governor's council.

Section 7: Funding of Local Government

The Committee believes that some limitations on the size and cost of local government should be included in this article. Although the matter is a complicated one, the Committee has concluded that a major effort must be undertaken to restrain the growth of local government employees funded by Commonwealth funds for purely local purposes. The Committee's concern is not with the expenditure of Commonwealth funds in the three senatorial districts for public services that have been delegated by the governor to the mayors. The Committee is concerned with the widespread practice of using funds appropriated by the legislature to pay the salaries of employees of the mayor, municipal council or legislators in the senatorial districts who do not have any meaningful job responsibilities. The Committee recognizes that this practice is long-standing and can be attributed in part to the lack of significant economic development on the islands of Tinian and Rota. The provisions of this article are an effort to limit the expenditures of Commonwealth funds over time to support local government institutions that the local residents are either unable or unwilling to support from locally raised revenues.

Section 7(a): This subsection provides that the salaries of local government officials and the funding of local programs and services will continue to be funded as provided by law or ordinance. To the extent that other subsections of Section 7 impose limitations on the expenditure of Commonwealth funds for these purposes, the cost of local government must be borne by the local residents through taxes or other revenue generating methods enacted by the municipal council. This provision makes clear that, so long as local government officials and employees are paid in whole or part from Commonwealth funds, they are to be considered as Commonwealth employees for civil service and all other purposes.

Section 7(b): This subsection provides for a transitional period until the local government becomes more self-sufficient. It proposes a five year period after a grace period during which Commonwealth funding of local government will be reduced by ten percent in each of five years. The duration of time over which this reduction must take place is sufficient for the local government to adopt and enforce new local taxes, to negotiate with the legislature, to define those additional local services and programs that the local residents are willing to pay

for, and to expedite development of a private sector that will offer employment opportunities to local residents so as to reduce the demand that local government provide jobs for those who cannot find employment elsewhere.

The grace period extends from the effective date of Section 7(b) until January 1, 1998. The subsection provides that during this period Commonwealth funding for local government cannot exceed that appropriated during fiscal year 1996. In effect, this grace period plus the five year period affords local government nearly seven years to reduce their dependence on Commonwealth funding by fifty percent. The Committee is convinced that Commonwealth taxpayers want and deserve some such substantial effort at the local level to reduce overall government expenditures.

Because of the uncertainty of what the future holds, especially with respect to private development on Rota and Tinian, the Committee decided that the legislature at the end of the five year period should have some discretion to extend Commonwealth funding if the need exists. This subsection grants such discretion to the legislature but requires that the decision be made after public hearings and only if certain findings can be made by the legislature.

First, the legislature must be able to conclude that the local government in question has made all feasible efforts to raise revenues from local sources. A local government that has adopted new taxes that the residents or commercial concerns must pay is entitled to more serious consideration when requesting continued Commonwealth funding than a local government that has made no such effort.

Second, the legislature must look at the reductions in government employment that the local government has achieved over the years. With an effective civil service system in place and mandatory reductions in funding over the past five years, the local government should be able to demonstrate the extent to which its current personnel needs can be justified under Commonwealth-wide standards in terms of their number, their salary levels and their job descriptions. A more cost-effective and well-managed local government is entitled to more Commonwealth support than one that continues to waste the taxpayer's money.

Third, the legislature must look at the documentation provided to support the request. The Commonwealth funding provided to the local governments cannot be used as a means of circumventing the financial limitations imposed on the legislature by Section 15 of Article II. All Commonwealth funding for local government must be spent for local government personnel and services, not to staff the offices of Commonwealth legislators. In addition, the legislature should evaluate the efforts of the local government over the past nearly seven years to develop a meaningful private sector that provides job opportunities for the local residents. More consideration needs to be given by the legislature to the economic needs of Rota and Tinian and well planned efforts by Rota and Tinian leaders to develop their economics should be enthusiastically supported by the legislature and the governor.

If the legislature concludes after such a process that continued funding by the Commonwealth is needed, it can provide such funding only to the extent of matching locally raised revenues in each senatorial district. This provides still further incentive for the local governments to develop such revenues over the next several years. The Committee expects that the governor will participate in this budgetary process in the same way that other annual appropriations are handled under provisions of this Constitution and applicable law. Representatives of the executive branch should be free to participate in the public hearings contemplated by this provision and offer their own assessment of the entitlement of individual local governments to continued Commonwealth funding for local government personnel and services.

Section 7(c): The last subsection deals with limiting the size of local government. The Committee decided to set a cap for the number of employees who work for the mayor and municipal council in the three senatorial districts. Any funds appropriated by the legislature to pay the salaries of local residents working for members of the legislature must comply with the separate requirements imposed by article II. The Committee picked the date of June 5, 1995 and provides that any local government employees above this number in the future would have to be paid from locally raised revenues. The provision makes clear, however, that this cap does not apply to those local residents paid from Commonwealth funds because they are providing public services delegated to the mayor by the governor.

Conclusion

The Committee recommends that the Convention approve the proposed amendments to Section 17 of Article III and Article VI.

Respectfully submitted,



Delegate FELIX R. NOGIS, Chair



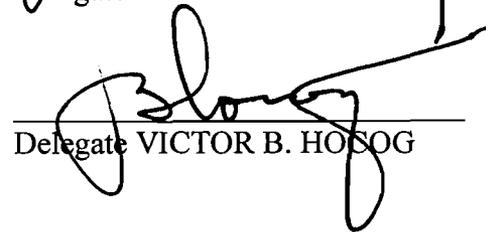
Delegate JAMES M. MENDIOLA, Vice Chair



Delegate TOMAS B. ALDAN

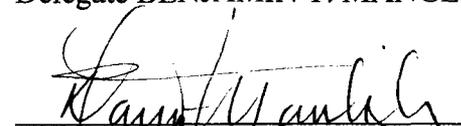


Delegate FRANCES L.G. BORJA



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