THIRD NORTHERN MARIANA ISLANDS CONSTITUTIONAL CONVENTION

ANALYSIS OF THE CONSTITUTION OF THE NORTHERN MARIANA ISLANDS

SIXTIETH DAY
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ANALYSIS OF THE CONSTITUTION OF THE NORTHERN MARIANA ISLANDS

The purpose of this Analysis is to explain each new or amended section of the Constitution of the Commonwealth of the Northern Mariana Islands and to summarize the intent of the Third Northern Mariana Islands Constitutional Convention in approving each such section. This statement was approved by the Convention on August 2, 1995 with the direction that it be available to the people along with the Constitution for their consideration before the referendum on the Constitution.

PREAMBLE

No change.

ARTICLE I: PERSONAL RIGHTS

Section 1: Laws Prohibited.

No change.

Section 2: Freedom of Religion, Speech, Press and Assembly.

No change.

Section 3: Search and Seizure.

No change.

Section 4: Criminal Prosecutions.

No change.

Section 5: Due Process.

No change.

Section 6: Equal Protection.

No change.

Section 7: Quartering Armed Forces.

The term "soldiers" has been updated to refer to armed forces so that it will cover every kind of government armed force, even if not specifically called "soldiers." The governor has the responsibility to execute Commonwealth laws and, in time of war or civil emergency, the legislature may authorize armed police, militia or other temporary forces to be used to maintain order or to protect the Commonwealth. The expanded language updates this provision to cover all these contingencies.

The right to refuse occupancy is confined to the owner of the property. Tenants or other occupants are not covered by this section.

Section 8: Trial by Jury.

No change.

Section 9: Clean and Healthful Environment.

The 1976 Constitution provided that: "Each person has the right to a clean and healthful environment." No limitations or qualifications encumbered this right. The amendment adopted by the Convention returns to this original formulation.

The 1985 amendments were deleted. In their place, to make clear the determination of the people not to become a dumping ground for nuclear wastes, the amendment prohibits the legislature from taking any action to permit such dumping. The reference to harmful and unnecessary noise pollution was deleted, leaving the legislature free to regulate that area as was the case under the 1985 amendments.

Section 10: Privacy.

No change.

Former Section 11: Victims of Crime (repealed).

Section 11 has been deleted. The 1985 amendments added section 11 that provided that restitution to the crime victim shall be a condition of probation and parole in criminal cases except upon a showing of compelling interest. At the time that section 11 was added to article I, the legislature had already acted to provide the same protection (6 CMC § 4109).

At the present time, the prosecutor's office routinely requests restitution for all out-of-pocket losses by victims, and the court generally accepts the prosecutor's recommendation in whole or part. Victims who sustain other damages, such as pain and suffering, have available a civil action in which they can seek money damages for these losses. Because these claims usually

require extensive proof, the legislature has made the judgment that they should be left for individual lawsuits rather than being included in the statutory coverage. As circumstances change in the future, the legislature is in the best position to deal with this general subject.

In addition, the Convention recognized the inherent power of the Commonwealth courts to order restitution in cases that merit this action. The courts can tailor restitution to fit the circumstances of a particular case. This flexibility is important to the fairness of the outcome to both victims and persons convicted of crimes.

Section 11: Life.

It is the purpose of this section to honor and respect each individual's life from conception to the maximum extent possible. Some sections of the Constitution support a better life; some support a well-governed life; and others help ensure a peaceful life. This section supports life itself.

The Constitution does not provide regulation or controls in this area. Protection under section 11 is available only as a result of legislation enacted by the legislature. Section 11 does not create any cause of action. The law will change and develop over time. The legislature is in the best position to adjust periodically to take advantage of these changes. For that reason, this section is intended to state the fundamental respect and honor to be accorded each individual's life so that human affairs in the Commonwealth can be governed accordingly.

Former Section 12: Abortion (repealed).

The Convention received the advice of the Commonwealth Attorney General that former section 12, as it was placed in the Constitution by the 1985 amendments, was unconstitutional under the United States Constitution. Although the Attorney General's determination in this regard is not the final one, and the local courts have not acted, the Convention recognized the potential problem. Legal counsel advised the Convention that under United States constitutional law as declared by the United States Supreme Court, a prohibition on abortion, without taking account of all the exceptions and circumstances required under case law, cannot survive scrutiny in the courts.

As the Constitution of the Northern Mariana Islands must endure for many years, the Convention decided that the Commonwealth's fundamental support for the importance of each individual's life should be stated clearly in the Constitution but it should not be done in the traditional prohibitory way that causes constitutional problems.

ARTICLE II: LEGISLATIVE BRANCH

Section 1: Legislative Power.

No change.

Section 2: Composition of the Senate.

Section 2(a): The size of the senate is reduced from nine members to six, with two senators from each senatorial district. This is a major downsizing of the Commonwealth's legislative branch. Based on public hearings conducted by the Convention and other expressions of public sentiment on the subject, the Convention concluded that the present legislature is too large. Two senators from each senatorial district can provide essentially the same level of representation for constituents as the current number does. In order to achieve a reduction in cost to accompany the reduction in size, the Convention adopted amendments to former sections 16 and 17 (renumbered 15 and 16).

The Convention concluded that a fourth senatorial district should not be automatically created for the islands north of Saipan until they have one thousand resident United States citizens, a number larger than the one thousand "persons" presently required by the Constitution. The Convention recognized that many persons in these islands may not be full-time residents, either because of the nature of their work or because they maintain residences elsewhere. Furthermore, the current requirement of one thousand persons was selected at a time when it represented an intermediate figure between the populations of Rota and Tinian. The proposed requirement of one thousand resident citizens is much closer to, but still below, the citizen population of Rota or Tinian.

Section 2(b): Changing the number from nine to six creates the possibility that the senators might be evenly divided on an issue. Section 2(b) is a new provision. Borrowing from the experience in the United States Senate and many states, the Commonwealth's lieutenant governor is given the additional duties of presiding over the senate until it elects a presiding officer and voting only in the event of a tie. In order to maintain the separation of powers between the legislative and executive branches of the Commonwealth government, the lieutenant governor has no other duties with respect to the operations and deliberations of the senate other than these specific responsibilities, and that of helping to choose the director of the legislative bureau, discussed in section 16.

Section 2(c): This provision (formerly section 2(b)) deletes the transitional language in the 1976 Constitution that provided for staggered terms of the newly elected senators.

Section 2(d): Senatorial candidates must be United States citizens. The present provision permits United States nationals also to be candidates. By requiring United States citizenship, the Convention recognized that it was excluding a small number of Commonwealth residents who

elected to become nationals rather than citizens after the termination of the Trusteeship Agreement. In view of the importance of the position, United States citizenship, and the commitment to the community that it represents, is an appropriate qualification for senator. The previous section 2(d) has been added to this subsection so that all of the required qualifications for the position are set forth together.

Section 3: Composition of the House of Representatives.

Section 3(a): The house of representatives is reduced from eighteen members (with a constitutional cap of twenty) to thirteen (with a new cap of fifteen). Thirteen members, with eleven from Saipan, one from Rota, and one from Tinian, can provide adequate representation for the people. In order to achieve a reduction in cost to accompany the reduction in size, sections 15 and 16 contain new financial constraints.

The objective of this amendment is to achieve the maximum reduction in size consistent with the legal requirements imposed by the one person-one vote rule of the United States Constitution and the commitment to ensure that Rota and Tinian each have at least one representative in the house. This distribution (eleven members from Saipan, one from Rota, and one from Tinian) constitutes a good faith effort to reapportion the house so that each member represents approximately the same number of citizens while accomplishing a number of other important objectives -- most significantly, preserving for Rota and Tinian a separate representative each.

The recognized differences among the three major islands of the Northern Marianas are deeply rooted in their history. Because of their separation by ocean, each of the islands has developed differently. The population (and depopulation) of each island has varied over the centuries. Whereas both Saipan and Tinian were depopulated by the Spanish (and also by the Japanese in Tinian's case) and left uninhabited for many decades, Rota was continuously inhabited and its residents speak a dialect of Chamorro different from the residents of the other two islands. Unlike the other two islands, Saipan was populated by a substantial number of Carolinians in the middle of the last century. Tinian's Chamorro population did not return in number from Yap until after World War II. Of the three islands, Saipan was the most extensively colonialized by the Japanese. The islands have developed economically in different directions. Rota has always had a strong agricultural foundation, Saipan in recent decades has opted for development of tourist and commercial industries, and Tinian has recently elected to develop a legalized gambling attraction for tourists. The three islands were administered differently under successive colonial rulers: Rota, for example, remained a separate district under Trust Territory administration while Tinian and Saipan were administered by the United States Navy until 1962. As a result of these differences, Rota and Tinian to a lesser extent have strongly developed traditions of local government whereas Saipan, typically the seat of the central government, has developed strong institutions revolving around the central government.

These differences have been accommodated by Northern Marianas political institutions over the past several decades. When the Marianas District Legislature was created in 1963, care was taken to ensure that both Tinian and Rota had separate seats in the unicameral legislature. During the Covenant negotiations, Rota and Tinian urged that a bicameral legislature, in which each of the three islands would have equal representation in one house, was essential to ensure that their separate interests were adequately protected. This request was honored by a unanimous Marianas Political Status Commission and ultimately acceded to by the United States; it is now embodied in article 203(c) of the Covenant. The Constitutional Convention in 1976 also recognized the need for separate representation in the house of representatives for Tinian and Rota and provided so in section 3(a). In light of this history, the Convention concluded that it should not reduce the legislature to a size that would endanger separate representation for Tinian and Rota in order to comply with the one person-one vote constitutional requirement. The recommended size of thirteen accommodates the above concerns and still achieves a significant reduction in the size of the house.

The proposed cap of fifteen members (rather than the current twenty) is aimed at providing needed flexibility to deal with population growth that may vary from island to island. In the event, for example, that the citizen population on Saipan increases more than on the other two islands, the cap permits additional representatives to be added to the house to reflect this growth on Saipan. Without such flexibility, differential population growth would endanger the ability of the Commonwealth to continue to ensure separate representation in the house for both Rota and Tinian. Section 3(a) also permits the legislature to be decreased in size as a result of the reapportionment under section 4.

Section 3(b): This section provides for election districts for the house of representatives. Saipan and the islands north of it constitute a single district rather than the present six districts for purposes of election to the house of representatives. There are several advantages to this amendment. First, it eliminates most of the political and legal complexities that otherwise would result from the redistricting on Saipan required under section 4 to reflect population changes. Second, election at large on Saipan will tend to promote unity as each candidate seeks support from all elements of the community in order to gain office. Third, election at large will foster an island-wide perspective by the representatives and thereby tend to reduce to some extent the competition between separate districts for Commonwealth programs and services in times of limited financial resources.

Section 3(c): The Convention decided to extend the term for members of the house of representatives to four years. Longer terms will improve the political process. It will reduce the amount of time that a member must direct towards reelection and thereby provide more time for the member's legislative duties. This is especially important for first-time legislators.

The Convention perceived other advantages as well. By reducing the number of elections, the costs of holding elections will be lower and the taxpayers will benefit. The Convention also anticipated that the longer term and lower overall campaigning costs may also attract a larger

pool of qualified candidates for the house of representatives. The coordination of elections for the house and the governor every four years, as well as one senator from each district, may also produce a more consistent electoral result that will help the Commonwealth government to function more effectively than it has in the past.

In reaching this conclusion, the Convention also took into account its decision with respect to the recall procedures set forth in article IX, section 3. By reducing the number of signatures required on a recall petition from forty percent to twenty percent of the qualified voters, the Convention satisfied concerns that four-year terms might foster complacency among the legislators. The easier availability of the recall alternative may help the community deal effectively with the occasional member of the house who is delinquent in performing his or her responsibilities.

Section 3(d): The qualifications for the house of representatives are changed in the same way as the senate. Candidates are required to be United States citizens for the same reasons discussed above with respect to the senate. The word "district" is substituted for "precinct" in the last sentence of the subsection in order to reflect the proposed change for election of representatives on Saipan and the islands north of it. The last sentence, which was added by the 1985 Convention, has been combined with the previous subsection so that all of the qualifications for the position are in a single subsection.

Section 4: Reapportionment.

Section 4(a): The title of section 4 and the text of section 4(a) are amended to reflect the change to election at large from Saipan and the islands north of it. The amendment dealing with reapportionment of the house of representatives after the decennial census is designed to achieve the objective discussed above -- the maximum downsizing of the house of representatives consistent with legal requirements and the preservation of separate seats in the house for the district of Rota and the district of Tinian and Aguiguan. For example, if the citizen population of Rota or Tinian were to expand significantly more on a percentage basis than the population on Saipan, it might be possible to devise a reapportionment plan that would produce fewer representatives for Saipan while still complying with the one person-one vote requirement.

Section 4(a) is further amended to provide the Commonwealth with greater flexibility in the reapportionment process. Presently, apportionment must be based on total population. The courts have permitted reapportionment to be based on other data, such as the number of citizens, people of voting age or registered voters. Total population figures provide a distorted picture of the distribution of Commonwealth citizens and voters. In 1990, a majority of the total Commonwealth population were not United States citizens or nationals and thus not qualified to vote. About ninety percent of the aliens were temporary residents, who typically enter the Commonwealth under contract to work for a relatively short period. The Commonwealth also has a large number of tourists and other transients whose presence may affect the total population count. Tourists, transients and aliens are found disproportionately on Saipan. The goal of the

Convention was to assure as far as possible that a citizen's right to vote is not impaired or diluted by improperly apportioned districts. The Convention decided that could best be accomplished by basing apportionment on citizenship.

Section 4(b): The reference to redistricting is deleted and the Commonwealth Supreme Court is designated as the court that hears reapportionment matters. This reflects the establishment of the Commonwealth Supreme Court and the fact that these matters are within its jurisdiction.

Section 5: Enactment of Legislation.

Section 5(a): Section 5(a) is amended to require joint hearings by both houses on all appropriations bills, and on all bills involving public debt, taxation or revenue matters. Such joint hearings are currently held at the discretion of the legislature's leadership and appear to contribute significantly to the orderly and timely consideration of proposed legislation.

The amendment is limited to bills dealing with the financial aspects of the Commonwealth. Joint hearings on such proposals, together with the two-day reading rule discussed in section 5(c), provide further assurance that such legislation will receive careful and deliberate consideration by the legislature before its enactment. In addition, the use of joint hearings on such proposed legislation will eliminate duplicate hearings and thereby avoid the necessity for senior government officials and others with an interest in the matter to repeat their testimony at two separate hearings. After such joint hearings are held, each house of the legislature retains its prerogative to deliberate on the matter further and to vote pursuant to its own rules.

Section 5(a) is also amended to require every expenditure of public funds to be authorized in an appropriation bill. Any bill that authorizes public spending for any purpose is an appropriation bill. The Convention believes it is fiscally irresponsible for expenditures to be authorized by resolutions, executive orders or other devices that do not contain the safeguards built into the appropriation process. The legislature is also prohibited from enacting new, or expanding existing, programs that require public money to be spent without appropriating the necessary funds. The legislature has enacted programs such as a workers' compensation program and a tax task force without funding them. This unfortunately creates the impression that the legislature has responded to a public need when, in fact, the response has been symbolic only.

Section 5(b): No change.

Section 5(c): The amendment to section 5(c) requires two readings in each house on a proposed bill on two separate session days before the house votes on the bill. Under this provision neither house can suspend its rules to pass a bill on fewer than two readings. This ensures that legislators and the public, where appropriate, have an opportunity to study and comment on the proposed law.

Section 5(d): No change.

Former Section 6: Local Laws (repealed).

The Convention deleted this section in order to accomodate the changes in article VI. Local Government. Under amended article VI. the agencies of local government (mayors and municipal councils) will have the authority to enact municipal ordinances with respect to local matters.

Section 6: Action on Legislation by the Governor (Former Section 7).

Section 6(a): The amendment to subsection (a) requires the governor to transmit a vetoed bill to the legislature in five working days. This clarifies when the sixty days given the legislature to reconsider a vetoed bill begins to run.

Section 6(b): No change.

Section 6(c): No change.

Section 6(d): No change.

Section 7: Impeachment (Former Section 8).

All impeachment provisions in the Constitution are consolidated into section 7 of article II since the legislature is the impeaching body. This simplifies the Constitution by eliminating the references to impeachment of the specified officials that are now found in articles III, IV and V. The grounds for impeachment are the same as those presently set forth in these articles.

Section 8: Vacancy (Former Section 9).

This section is amended to require that, in the event of a vacancy in the legislature, the governor make the designated appointment as soon as possible and no later than twenty days after the vacancy occurs. An unfilled vacancy results in a lack of representation of constituents and adversely affects the operations of the legislature. A legislative vacancy should be filled as soon as possible and political concerns should be subordinated to the institutional needs of the government. If the governor fails to make a timely appointment, the unsuccessful candidate in the last election is deemed confirmed on the twenty-first day and may immediately take office. If the candidate is unable or unwilling to serve, the governor must appoint a qualified person from that district.

Section 9: Compensation (Former Section 10).

The reference to a specific annual salary is deleted and a specific reference is added to the United States Department of Commerce composite price index. This is the same index used in section 15.

Section 10: Other Government Employment (Former Section 11).

No change.

Section 11: Immunity (Former Section 12).

No change.

Section 12: Sessions (Former Section 13).

No change.

Section 13: Organization and Procedures (Former Section 14).

The only changes to this section are in section 13(a). First, a member may now be expelled from a house by a two-thirds vote. With a reduction in the size of each house, the Convention concluded that it would be impractical to require a three-fourths vote.

Second, any legislator who, after the effective date of this amendment, is convicted of a crime with a potential sentence of thirty days or more will be automatically expelled. A legislator occupies a position of the highest public trust and should be held strictly accountable for criminal misconduct. So long as the conviction is not for a felony (see article VII, section 3), the legislator is free in the future to seek election to any public office.

Section 14: Conduct of Members (Former Section 15).

No change.

Section 15: Budget Ceiling (Former Section 16).

Section 15 was substantially revised to reflect the Convention's judgment that Commonwealth citizens desired a less costly legislature. During the public hearings conducted by the Convention, this objective was endorsed during the deliberations of the Convention by every legislator who testified. However, through the use of legislative initiative, the legislature has obtained amendments to the Constitution that make the legislature more costly notwithstanding the clear intent of the 1985 Constitution to impose enforceable limitations. The same process was underway during the deliberations of the Convention. The legislature by House

Legislative Initiative 9-1 proposed to put before the voters at the November 4, 1995, general election, amendments to former sections 16 and 17 that would increase the overall cost of the legislature from about $4.8 million to about $8 million. The Convention recognized that reducing the number of legislators alone cannot meet the public's demand without corresponding limitations on legislative expenditures. The amendments to this section and section 16 impose such limitations and should be strictly construed.

Section 15(a): This subsection places an overall annual ceiling for all legislative expenditures. In order to avoid any uncertainty, the language expressly includes within the ceiling the salaries and personnel benefits of the members of the legislature. The funds authorized up to the ceiling level are to support all the operations of the legislature, including the legislative bureau established under section 16. Section 15(a) sets a ceiling; if the legislature can perform its responsibilities for less than the ceiling amount, it should do so. Requiring the legislature to fund its activities within a fixed amount makes it easier for the voters to understand the legislative budget and to hold the legislators accountable.

The all-inclusive ceiling on all expenditures of any kind for the administration and operation of the legislative branch is set at $4.5 million annually with inflation protection provided under section 15(e). This is a reduction of $300,000 from the current level of $4.8 million, consisting of the $2.8 million cap imposed by former section 16(a), about $1.2 million for salaries and benefits, and the $800,000 provided for the legislative bureau under former section 16(a).

The $4.5 million amount (with inflation protection) is sufficient for the effective operation of the legislature so long as the funds are used only for purposes related to the legislative duties of the members as set forth in article II. While the downsizing of the legislature from twenty-seven members to nineteen (six in the senate and thirteen in the house) could justify a corresponding reduction in the overall costs of the legislature, the Convention decided that additional funds were needed for professional support, technical and administrative operations and more frequent public hearings.

A fixed budget ceiling might interfere with the ability of the legislature to make major technological improvements, such as upgrading its computers or its telecommunications system, or to change or renovate its physical facilities in the decades ahead. Normal repair and upgrading expenditures should be met out of the annual budget and larger projects (for example, in the $50,000-$100,000 range) can be financed by creating a reserve and funding it incrementally from the annual budget. However, major capital improvements (above $100,000) should not be forestalled because of a fixed budget ceiling and should not be financed by, for example, interim staff reductions. Section 15(a) enables the legislature to fund major improvements through separate legislation. No funds appropriated for such major capital improvements may be used to increase the salaries, benefits or office expenses of any member, to pay the salaries of any employee of the legislature or legislative bureau, or to pay any consultant fees or travel expenses

except in support solely and directly of the capital improvement project. It is illegal to do otherwise.

Members shall receive only those personnel benefits regularly provided to other governmental employees.

Section 15(b): The allocation of $70.000 to each member for office expenses differs from the present system in two important respects. Whereas the current provision divides the legislative budget evenly between the senate and the house, it is more appropriate to allocate the funds equally to each member of the legislature. Each senator and representative has the same basic office expenses that need to be met, especially under a system where representatives are elected at large on Saipan.

In addition, the amendment draws no distinction between majority and minority members of the legislature. It is now the practice to allocate substantially more funds to the office expenses of members of the majority than to members of the minority. Such a practice is proposed to be continued by House Legislative Initiative 9-1 which specifies a "minimum allotment of 100 thousand dollars to each member of the Legislature, and 200 thousand dollars to each majority member of the legislature for the operations and activities of their individual offices." During public hearings minority members of the legislature testified regarding the current allocation of the legislature's funds. This differential treatment of majority and minority members cannot be justified; each member of the legislature has comparable legislative duties and office needs. Moreover, there should not be any financial inducement to switch from the minority to the majority, which leads to instability within the legislative branch and diminishes its effectiveness in enacting laws and exercising needed oversight with respect to the executive branch.

The funds for office expenses provided by section 15(b) are intended to cover all expenses of a member's office, including all staff salaries wherever the employees are located, organizational dues, necessary travel to conferences and meetings outside the Commonwealth, and ordinary administrative costs such as telephone and office supplies. The cost of inter-island travel and housing for legislators from Rota and Tinian will be paid out of the budget of the legislative bureau. The proposed section 15(f) makes clear that these funds are not to be used for personal or political purposes. It is illegal to do so.

Section 15(c): This section provides additional funds to the majority and minority leaders for the operations and activities of their offices arising from their leadership responsibilities. The funds may be used for hiring additional staff, paying travel expenses, and meeting other expenses necessary to enable these members to facilitate the operation of the legislature.

Section 15(d): This section allocates to the legislative bureau all funds that remain after allowing for the salaries, benefits and office expenses of each member and the additional funds for majority and minority leaders provided by section 15(c). The functions of the legislative bureau are expanded. Section 15(d) increases the bureau's budget so it can perform its expanded functions. About $2.15 million will be available for the bureau under the amendments to article

II. This is only slightly more than the budget of "at least two million dollars" proposed in House Legislative Initiative 9-1.

Section 15(e): This section provides for inflation adjustments every two years to the dollar amounts contained in this section and thereby seeks to cure one of the flaws of the present ceiling. Such inflation protection is necessary to ensure that the dollar amounts set forth in section 15 remain realistic and reasonable over time. The adjustment will be tied to the United States Department of Commerce composite price index using 1996 as the base year. As the index rises or falls, each amount provided in this section shall do the same. The current $2.8 million ceiling for the legislature (and $800,000 for the legislative bureau) will continue for fiscal year 1996 as set out in the transitional schedule. The proposed $4.5 million ceiling will be operational for three-fourths of fiscal year 1998, beginning on January 1, 1998, and no adjustment for inflation will be made until fiscal year 2000. At that time, the index for September 1999 will be compared with the index for September 1997 to determine what adjustment in the $4.5 million ceiling is required. The interaction of this provision with automatic salary increases to civil service employees is addressed in the Schedule on Transitional and Related Matters.

Section 15(f): This section makes explicit that the legislators are to use the funds they receive from the legislative budget (other than their salaries) only in furtherance of their duties as legislators. None of the funds are to be used for personal purposes or for any political activities. In recent years legislators have expended public funds (other than their salaries) for so-called "community workers" and to provide services and funds to constituents for such purposes as canopy rental, provision of picnic tables, and gifts to individuals or organizations. Members are free to use their own salaries for these charitable or political purposes. But section 15(f) makes clear that public funds made available for office expenses or the legislative bureau cannot be used for such personal or political purposes. It is illegal to do so.

Legislators who testified in the Convention's public hearings acknowledged that such practices have become widespread in the Commonwealth and, unless the Constitution expressly restricts such practices, the legislators will be unable to resist the pressures from their constituents to make such gifts or expenditures or provide such services. Office expenses are limited to $70,000 for each member (rather than the $100,000 or $200,000 recommended by House Legislative Initiative 9-1). This is intended to reduce some of these pressures and to provide only the amount that will enable the member to operate his or her office.

Each legislator has an obligation to represent constituents in dealing with the Commonwealth government, in investigating alleged grievances or wrongdoing by public officials, or in proposing legislation aimed at addressing community needs that are brought to the attention of the members by their constituents. These duties are those customarily associated with the legislator's functions under article II. Section 15(f) is designed to sharpen the distinction between legislative duties on the one hand and political activities on the other. Public funds made available to members under section 15(b) and section 15(c) may be spent only for the former purpose and not for the latter.

Section 15(g): Section 15(g) provides that obligations and expenditures for the operations and activities of the legislature for the period October 1 through the second Monday in January of a fiscal year in which there is a regular general election may not exceed twenty five percent of the annual spending authority provided by law. This guards against excessive spending during or immediately after elections, which could leave the legislators, or their successors in office, short of funds for the balance of the fiscal year.

Section 16: Legislative Bureau (Former Section 17).

The legislative bureau proposed by the 1985 Constitutional Convention and approved by the voters is continued. The Convention concluded that the legislature needs the professional support of the bureau to perform its duties effectively. The amendments to section 16 are designed to strengthen the bureau's professionalism, to expand its functions, and to ensure that the increased funds made available under section 15(d) are spent only for purposes directly related to the duties of the legislature under article II. Four subsections replace the present six.

Section 16(a): The amendment of section 16(a) changes the current procedure relating to the selection of the bureau director in three important respects. First, the director is chosen by a small group of three officials rather than the much larger group of presiding officers, vice presiding officers, floor leaders, and chairmen of the standing committees now provided by section 16(a). Reliance on this smaller group will minimize delay and the influence of political considerations in the selection of a qualified director. The involvement of the lieutenant governor in this process is designed to bring an outside perspective to bear on the selection process; the executive branch as well as the legislative branch has a strong interest in enhancing the professionalism and independence of the legislative bureau.

Second, a fixed term of four years and removal during the term only for cause increase the stature and independence of the director and ensure continuity in the bureau's work.

Third, qualifications are established for the position of director. Section 16(a) strengthens the legislative bureau by requiring its director to be a professional with relevant training and experience. Examples of relevant college degrees include public administration, public finance, economics, political science, accounting and business administration. Examples of relevant experience include experience in a legislative bureau or legislative analyst's office, work in the fields of public administration, public auditing or public finance, and the practice of public law with a public agency or a private firm. Applicants lacking college degrees may be considered if they have at least ten years of relevant experience, which is roughly equivalent to the time required to earn a college degree and gain five years of experience.

Section 16(b): This section specifies that the legislative bureau will provide all support services necessary for the orderly operation and administration of the legislature and its committees, subject to budget limitations. It expands the duties of the bureau beyond those

presently set forth. Under section 16(b), the bureau has responsibility for maintenance functions, clerical functions such as journal and sessions clerks, copying, archiving and other record retention functions, and staffing the committees of both houses. Relieving the members of responsibility for the legislature's day-to-day operations will allow them to concentrate on performing their legislative duties.

Section 16(c): This section makes clear that the legislative bureau employs all of the staff required to perform its expanded functions. Several legislators testified that they presently lacked competent staff to help them do research, draft legislation and analyze proposed legislation. The increased budget of the legislative bureau provided by section 15(d) should be used by the bureau to hire additional attorneys, legislative analysts, research assistants, economists and other professional staff. Their duties shall be limited to providing independent, non-partisan assistance to the legislators in executing their legislative responsibilities under article II, such as researching, drafting, reviewing and analyzing proposed legislation and assisting the legislative committees.

Section 16(d): This section assures that the legislative bureau is politically independent and non-partisan. Every member of the legislature, whether in the majority or the minority, should receive timely and responsive assistance from the bureau staff. The bureau must allocate its staff and financial resources to ensure impartiality. It is not intended that the bureau assign more staff or financial resources to majority members or to the proposals or ideas advanced by majority members. The amendment also makes clear that the bureau's staff should not engage in any political activity at the request of a legislator or otherwise.

ARTICLE III: EXECUTIVE BRANCH

Section 1: Executive Power.

No change.

Section 2: Qualifications of the Governor.

This section is amended to require that a candidate for governor be a United States citizen. The governor should be a person who, in addition to all the other required qualifications and attributes, shares in the goals and aspirations of all United States citizens. The Convention concluded 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 not consider themselves unfairly treated by this proposed amendment.

The last sentence of section 2 relating to felony convictions was deleted. An amendment to article VII applies the bar for felony convictions to all elected offices in the Constitution as well as those appointed offices subject to legislative confirmation.

Section 3: Lieutenant Governor.

Section 3 was amended to reflect the new duties of the lieutenant governor under the amendments to article II (Legislative Branch). This is 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 specific dollar amounts have been deleted from section 5. This is not a substantive change because the salary commission has already approved increases beyond the initial constitutional levels.

Section 6: Other Government Employment.

No change.

Section 7: Succession to the Governorship and Lieutenant Governorship.

The Convention changed this section to make it more consistent with other provisions of the article. As amended, the section now authorizes a lieutenant governor who becomes governor to appoint a lieutenant governor with the advice and consent of the senate rather than be required to have the presiding officer of the senate serve in that capacity. This is more consistent with section 4, which provides for a joint election of governor and lieutenant governor, and avoids the prospect of having the two highest executive branch positions occupied by persons of different political parties. The section also makes clear that under these circumstances the new governor and lieutenant governor can serve out the original term.

The section also was amended to address the issues of joint vacancies in a somewhat different manner. Under the amended section 7, the acting governor and acting lieutenant governor serve out the term only if one year or less of the term remains. Otherwise a special election is held as provided by law. The Convention concluded that, if more than one year remains, the people should be given an opportunity to fill these important positions.

For consistency purposes, the Convention used the term "presiding officer" to describe the elected leader of the senate who under this provision can become the acting governor under certain circumstances.

Section 8: Absence or Disability of the Governor.

The only amendments to section 8 are references in section 8(b) to the Commonwealth Supreme Court. The Commonwealth Supreme Court was created by law after the 1985 Convention and thus was not included in the 1985 amendments. The Supreme Court is given constitutional status under article IV. Section 8(b) expressly designates 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): The Commonwealth's failure to have a balanced budget in place at the beginning of the fiscal year is a serious problem. The Convention amended this section to deal with this problem in detail.

First, the governor is required to submit a proposed budget no less than ninety days in advance of the fiscal year involved or earlier as provided by law. Based on the Commonwealth's experience under current legislation governing the budgetary process, this mandated schedule does not impose an unreasonable burden on the governor. At the same time, however, the Convention 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 estimated revenues for the forthcoming fiscal year may be based only on revenues to be derived from legislation already enacted. 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. On the other hand, section 9(a) makes clear that the governor remains free to recommend any legislation that may affect the proposed budget -- either new revenue measures or laws aimed at reducing government costs or programs.

The Convention decided to modify the continuing resolution process in certain important respects if a budget is not enacted before the fiscal year begins. Under the circumstances where no budget has been enacted, 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 is set 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 is allocated on a proportionate basis to each activity funded during the last fiscal year. This marks a clear difference from the system currently in place under which expenditures can go forward at the same level as the estimted revenues for the past fiscal year irrespective of

the anticipated revenues for the current year. In making this calculation all extraordinary or non-recurring expenditures are first subtracted from the appropriations for the past fiscal year.

3) All persons authorized to expend public funds are responsible for operating within the level of funding authorized. They shall be held personally liable if they authorize expenditures without the necessary and proper certification that funds are available for the specified purposes.

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

This approach prevents any undue reliance on the continuing resolution mechanism and will facilitate accommodation between the governor and the legislature.

Section 9(b): This amendment requires the governor 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 amendment does not fix the date on which the governor must present the report but leaves that to the parties involved so that, if thought desirable, the governor's report and the reports of the resident representative, the chief justice of the supreme court or other important governmental entities could be coordinated in some useful manner.

The second sentence of this subsection is deleted. Added by the 1985 Convention, this sentence required 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. This technical discussion of the Commonwealth's finances does not belong in such an annual report and 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 substantive change.

Section 10: Emergency Powers.

The phrase "as provided by law" is deleted. This language was added at the recommendation of the 1985 Convention, but the legislature has failed to define the term "calamity." The term "calamity" should be defined in accordance with its customary meaning. The emergency powers granted the governor under this section should be used only in true emergencies that have already occurred and 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 governor is required to report to the legislature within thirty days after exercising emergency powers under section 10.

Section 11: Attorney General.

After hearing testimony at public hearings from several former attorneys general, the Convention 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 Convention made two changes.

First, the residency requirement added by the 1985 Convention was deleted. 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 Convention was concerned that the present residency requirement would 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 Convention added the requirement that the attorney general be a member of the Commonwealth bar. The governor should have the widest possible pool of eminently qualified candidates to choose from and the legislature in the process of confirmation can review whether the candidate nominated meets the professional and other needs of the position.

Second, the attorney general, once nominated and confirmed, can be removed only for cause. It is the intent of the Convention that each governor should be able to have an attorney general of the governor's own choosing. In effect, this recommendation means that each governor appoints an attorney general who then serves 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 submits a resignation at the conclusion of the governor's four year term which the governor may accept or reject. Providing this additional measure of security to the position may better enable the attorney general as the chief law enforcement officer of the Commonwealth 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 Convention deleted the guaranteed annual budget for the public auditor adopted as a result of the 1985 Convention. 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.

The public auditor should maximize the office's reliance on audits conducted by other private or public entities. 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 has important

investigative responsibilities as well, and the Convention intends that the public auditor attach the highest priority to these tasks.

No person should serve as "acting" public auditor for more than ninety days and the legislature is required to act on the governor's appointment of a candidate to fill the office on a permanent basis within sixty days after receiving the appointment. If the legislature fails to act within this period, the appointee is deemed confirmed. If the legislature rejects the appointee, the candidate for the office may not be renominated by the governor. The effect of these proposed amendments is to require the governor to submit an appointment to fill the position within thirty days after the vacancy occurs to give the legislature sixty days to consider the nomination. If the legislature turns down the nomination, the person serving in an "acting" capacity continues to do so, the governor submits another candidate within thirty days, and the legislature has another sixty days to vote on the appointment.

Section 13: Department of Education (Former Article XV).

Section 13(a): This subsection provides that education is compulsory within the age and levels provided by law. Because circumstances may change in the future, this matter was left to the judgment of the legislature.

The former provision with respect to "free" education was deleted. This permits the local school boards to levy fees as necessary. Charging fees is both necessary and proper, and this flexibility with respect to fees will be important in the future. Parents, teachers and school administrators testified that charging fees will help make students and parents more careful about school property and expand the resources available to schools for educational purposes.

The former provision contained three sentences stating various policy and administrative goals. These sentences are legislative in nature, and were deleted for that reason. The policy and administrative goals may change over time, and should be expressed in legislative or administrative documents, not in the Constitution. This deletion has no effect on the policies and administrative goals now in effect or that may be adopted in the future.

Section 13(b): This subsection places the responsibility for policy matters and standards with respect to the public schools with a secretary of education appointed by the governor. Both the 1976 Constitution and the 1985 Amendments included the position of superintendent. The title has been changed, but the responsibilities remain the same. In order to maintain high quality instruction and consistent policies, it is necessary to vest this responsibility in a single appointed official who holds a position in the Commonwealth government. The secretary of education is appointed for a term that is the same as that of the governor, and each succeeding governor may appoint his or her own secretary.

The secretary is in charge of establishing and administering the policies and standards for the educational system. This includes qualifications for principals, teachers, and other

professionals; standards for achievement in order to move up in grades and graduate; general requirements for instructional materials; compensation policies; procurement policies; and all similar matters.

The secretary is also responsible for enforcement of Commonwealth requirements. Local schools will receive Commonwealth funds only upon the certification of the secretary that the school is in compliance with Commonwealth requirements. The secretary may withhold part or all of the Commonwealth funds allocated to any school that is not in full compliance with Commonwealth requirements. This measure of central control is needed in the system.

The secretary is not responsible for the day-to-day administration of the schools. That has been decentralized to the local schools. Principals are responsible for the expenditure of funds for the school to which they have been appointed. Principals administer their schools in accordance with Commonwealth laws, regulations and rules, and in accordance with any local policies set by the local school boards.

Section 13(c): This subsection decentralizes administration and instruction in the public elementary and secondary schools. It provides for a locally-elected school board in each senatorial district: one in Saipan, one in Tinian, and one in Rota.

Each local school board is composed of five members. The qualifications for board member are U.S. citizenship, a minimum age of twenty-five years, and voter registration and residence in the senatorial district from which elected. These qualifications should allow a wide spectrum of candidates for this office.

Local school boards hire and fire school principals, make decisions with respect to the upkeep and expansion of school facilities, provide a forum for the airing of the grievances of parents and PTA organizations, and handle other aspects of the execution of Commonwealth laws at the local level. Local boards focus on methods for improving the quality of instruction, taking account of local conditions, and the incentives necessary to keep students in school until graduation. In exercising their powers, the local school boards must be faithful to the laws and policies of the Commonwealth.

The school boards have the authority to decide on and levy fees for various educational purposes, such as materials, uniforms, activities, use of facilities, and other matters. The school boards do not have taxing authority, and they do not have borrowing authority. The extent of the authority to levy fees may be controlled by the legislature or the secretary of education.

Local school boards do not make educational policy. That is the responsibility of the secretary. For example, the secretary sets qualifications and requirements for teachers of various specialties, and the principals hire teachers who meet those qualifications. The local school board provides oversight to ensure that the principals of the schools follow the required policies.

Local school boards do not make decisions about or participate in the day-to-day operation of the schools. That is the responsibility of the principal. The principal hires, promotes, disciplines, and fires teachers. The principal is in charge of administration and maintenance for the school and for involving parents in school matters.

There is no required compensation for local school board members. That is a responsibility of local government. School board members should serve because they are interested in good schools for children, not primarily for pay. This is a part-time office that would not detract in any way from members holding full-time jobs elsewhere. No prohibition on other government or private full-time or part-time employment applies to local school board members.

School board members serve four year terms. All school board members are elected at the same election, allowing candidates to form consolidated tickets and to urge voters to elect candidates who share the same philosophy. This provision requires non-partisan elections. School board elections are held as a part of general elections in order to minimize costs. However, school board candidates are not permitted to advertise any party affiliation.

Vacancies on the school board are filled by the school board itself. The school board appoints the next-highest vote getter. If there are none available, the school board appoints a person who has the qualifications spelled out in the constitutional provision. Those filling vacancies serve out the term of the board member being replaced. Because school board members are elected on a non-partisan basis, it is not appropriate to have vacancies filled by resort to the mayor or other arm of the political process.

To take care of the remote possibility of multiple vacancies on a school board, such as might occur with mass resignations or mass disaster, this section provides that if three or more vacancies exist at the same time, and more than one-half of the term remains, there will be a special election to fill the vacancies. If three vacancies occur, and the remaining two board members appoint a person who was the next highest vote-getter, or if no next-highest vote-getter is available and the remaining board members appoint a qualified person, then three vacancies no longer exist, and the three members can go ahead and appoint qualified persons to the remaining vacancies. Only if three vacancies occur and the remaining two board members are deadlocked would the secretary of education make the appointments (because less than half the term remained) or special election would be held (if more than half the term remained). The remaining two board members have thirty days in which to agree and make an appointment. There is no need to incur the expense of a special election if the remaining two board members can agree on an appropriate appointment. If there are four vacancies, then the remaining board member may appoint persons to fill the vacancies. So long as the persons appointed are qualified (that is, they meet the qualifications set out in the Constitution), then vacancies no longer exist and there is no need for the secretary to appoint or a special election to be held. If there are five vacancies, then the secretary would appoint or a special election would be held in all cases. In any situation in which the secretary is called on to appoint local school board members, the

secretary will solicit recommendations from the PTA's and other groups interested in the schools.

The constitutionally-mandated system of decentralization may be modified by the legislature after ten years of operation. This flexibility is necessary to improve the system and to adapt to future needs. Ten years after the local school boards are elected, the legislature may start making changes. If the legislature does not act, the constitutionally-mandated system remains in effect.

Section 13(d): This section provides for Commonwealth funds to be provided to local schools. This section makes clear that the decentralization intended by the Convention applies at the school level. Each school receives its share of the appropriation for instruction and the principal, as the executive head of the school, is responsible for the expenditure of that appropriation. This decentralization is intended to empower principals to do site-based management. They are allocated funds for their school and they are responsible for the best and wisest use of those funds. Principals are the key to the success of a decentralized system.

The legislature appropriates funds for instruction (actual classroom teaching and teaching materials and related student activities), for administration (procurement, research, teacher training, facilities maintenance, transportation, freight, communications, and related services), and for capital improvements (building schools and related facilities). The funds for instruction (but not other funds) must be divided among the local schools on a per enrolled student basis. For example, if the instructional appropriation is $30 million and there are 10,000 students enrolled in the elementary and secondary schools system, $3,000 per student would be allocated to each school on a timetable during the fiscal year as established by the legislature or by the secretary.

Local school boards will decide whether students should be allowed to transfer between schools, taking the per-student allocation with them. This flexibility to introduce competition between schools should allow educational development on an efficient basis. Local school boards, however, are not responsible for the day-to-day administration within the schools and are not responsible for the expenditure of funds allocated to individual schools. Those are functions of the school principals.

Section 13(e): This section provides generally for higher education, adult education and vocational education within the Commonwealth. The higher education system has been established by the legislature and is operating according to detailed laws passed by the legislature. This section of the Constitution continues this system. There is no effect on any existing institution of higher education. There is flexibility within this section for the legislature to establish additional institutions of higher education if that is useful in the future.

This section also provides for annual appropriations for postsecondary educational institutions as the legislature may decide to accomplish this goal. This provision does not require

that any specific percentage of the Commonwealth's revenue be devoted to higher education. The prior provision of a guaranteed one percent of Commonwealth general revenues has been specifically repealed. The Convention finds that any earmarking of funds for higher education detracts from the goal of having higher education institutions justify their annual budgets fully to the legislature and compete for scarce resources with the needs of health, safety and other vital Commonwealth services. The amount of funding for higher education is left to the discretion of the legislature. The Convention was informed that the legislature is mindful of the requirement for stability in funding imposed by the accrediting agencies, and the funding necessary to meet this requirement is best judged by the legislature. They can respond to annual needs and the special demands of accrediting agencies. A flat earmarking in the Constitution might not provide the necessary flexibility in this regard.

This provision also requires that institutions of higher education be governed by boards of regents, the details of which are to be provided by law. This was provided, as requested by the Northern Marianas College, in order to ensure the independence and autonomy that may be required for accreditation. Quality higher education is of great importance to the Commonwealth, and the Convention recognized the progress made by the College. Nothing in these amendments affects the independence and autonomy of the College in any way. The legislature has provided by statute for the governance of the College and that legislation, which has been satisfactory to the accrediting agencies, remains in place.

Section 14: Heads of Executive Departments.

The Convention concluded that some of the delays and problems with the appointment process justified amendment of section 14. First, the senate must act within sixty days to confirm or reject the governor's candidate as head of an executive branch department. If the senate fails to act within this period, the nominee is deemed confirmed. If the senate rejects the candidate, the governor is required to submit another nominee within thirty days and the process continues until the position is filled.

Second, a nominee may not serve in an "acting" capacity for more than ninety days. The governor submits the nomination within thirty days after the nominee is designated and begins to serve in an "acting" capacity; the legislature has to act within sixty days; and at the conclusion of that period the nominee is either confirmed by senatorial action or 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 thirty days. In order to avoid deadlock between the two branches of government, the name of 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 (Former Article XX).

Section 16(a): This subsection defines the civil service and requires that it be non-partisan, independent and merit-based. This language has remained basically unchanged since 1976.

The civil service covers all persons who are employed by the Commonwealth or whose salary is paid by the Commonwealth. This is a broad definition with a simple determining factor -- the entity employing the person or paying the person's salary. If that entity is the Commonwealth, then the position is covered.

The objective of a constitutionally-established civil service is to help ensure that government employees are treated equally and fairly, and that they receive procedural protections with respect to their employment rights. Placing all government employees in the civil service system, with the exceptions described below, allows employees uniform civil service protection. It provides stability and predictability in the workplace. Applicants are assessed fairly and impartially. Positions are classified and compensated systematically, and the work rules apply to all. Management can rely on a tested system of classification evaluation and discipline. Both the Civil Service Commission and the Office of Personnel Management agree that the civil service system should be broadly based to reach all entities of government in the Commonwealth.

There are exceptions to the definition. These are "excepted positions." They do not fall within the civil service. Because of the language used in the 1985 amendments some confusion has developed over which positions are included in the civil service and which are excepted. The new language is clear. Because the excepted positions are not in the civil service system, the Civil Service Commission has no jurisdiction over these positions. Under the definition in section 16(a), there are three classes of excepted positions.

First, all elected positions are excepted positions. This includes the elected offices under article II, article III, article V, and article VI. This also includes elected positions created by statute. Commonwealth elected officials and local government elected officials are covered by this automatic exception.

Second, all positions specified by the Constitution to be filled by appointment by the governor are excepted positions. This includes the executive branch positions under article III, the justices and judges provided for under article IV, the directors of the Marianas Land Bureau under article XI, and any other boards or commissions for which the governor has the power of appointment under the Constitution. This does not include positions filled by appointment by the

governor that are not included in the Constitution. If a position is created by statute, and authorizes appointment by the governor, this position is not within the automatic exclusions.

Third, all positions specified by the legislature as excepted positions are outside the civil service system, so long as they fall within the categories of professional, managerial, educational, overseas, or elected officials' personal staff positions. The limitation on the legislature's authority to create excepted positions is necessary to promote wide coverage of the system in the areas of administrative, secretarial, maintenance, and other normal functions where the fair and equitable treatment of employees who have the same essential functions is important.

The categories of professional and managerial positions allow the legislature the flexibility to create excepted positions where the needs of the government require that salary and other compensation and the rules on hiring and firing be more flexible than is permitted under the civil service system. Positions that do not qualify as professional and managerial, for example administrative, secretarial and maintenance positions, cannot be put within this category of excepted positions.

The category of educational personnel allows the legislature to create excepted positions for the teachers at the Northern Marianas College and in the public school system, and any other position in any area of the education system where an exception is required for purposes of obtaining or retaining accreditation. This permits the educational institutions to meet accreditation requirements for independent personnel systems and to have flexibility in the hiring of teachers where necessary. Positions that do not qualify as educational because they are not directly involved in teaching students or required to be excepted from the civil service system for accreditation would be covered by civil service. This would include, for example, administrative, secretarial and maintenance positions at the College or in the public school system.

The category of overseas positions allows the legislature to create excepted positions for the staff of the resident representative, the liaison offices in Guam, Hawaii, the Phillipines, and elsewhere, and any other positions where the person works outside the Commonwealth on a permanent basis. Administrative, secretarial and maintenance positions in overseas posts are allowed within this category.

The category of elected officials' personal staff positions covers the Commonwealth legislators, the governor, the resident representative's staff in the Commonwealth, the mayors, the municipal council, and any other elected office at any level of government. This category does not cover justices and judges of the Commonwealth courts under the new article IV. They do not run in contested elections.

This category permits the legislature to make a judgment as to the number of personal staff positions that should be allowed under this category. The Convention was mindful of the criticisms of the large staffs in the mayors' office. The legislature will make the judgment as to

how many of these positions are to be excepted and whether the costs of these positions are justified. The legislature is in the best position to determine whether the interests of continuity and stability are being furthered in the offices of the mayors by continuing to have large numbers of employees categorized as personal staff. Otherwise, if the legislature does not create excepted positions, any local government employee paid in whole or in part with Commonwealth funds is within the civil service system. Local government employees paid by local funds (and not paid with Commonwealth funds) are not within the civil service system under any circumstances.

The staffs of the autonomous and independent agencies are included within the civil service. The legislature may create excepted professional and managerial positions in the autonomous agencies at its discretion. Having the autonomous agencies follow the policies and standards applicable to all other government agencies is not a threat to their independence. These agencies will maintain their own personnel offices and will continue to make their own personnel decisions with respect to individual employees. In making those decisions, however, they will be required to conform to the policies and standards applicable throughout the government. This promotes uniformity of treatment of employees who are similarly situated and cuts down on the costs inherent in having parallel classification systems.

The legislative bureau is included in the civil service. The reorganization of the legislative bureau under article II separates all the permanent employees of the legislature from the personal staffs of the members. The legislature may create excepted professional and managerial positions within the legislative bureau in its discretion.

The staff positions in the judicial branch are within the civil service. The legislature may create excepted professional and managerial positions within the judicial branch in its discretion.

Including the legislative bureau and the staff positions in the judicial branch will not compromise the independence of those branches of government. Imposing a system that treats employees fairly and equitably does not pose any threat to the independence of the co-equal branches. There are a number of points at which the co-equal branches interact. The legislature acts on the budget of the executive and judicial branches. The governor appoints the justices and judges in the judicial branch. The courts are called upon to adjudicate disputes involving legislation passed by the legislature and actions taken by the executive branch. The interaction of the civil service system with the administrative, secretarial, maintenance, and other routine employment matters at the legislative bureau and the courts will promote fairness within the overall government system, and decrease the costs of independent and separate personnel systems. The application of the civil service system to the legislative bureau and the courts does not affect the day-to-day operation of the personnel offices in those branches. The personnel offices are only obligated to follow civil service policies and standards.

Some contracts with government employees or consultants specify that the person is "excepted" from the civil service system. Under this constitutional provision, there is no power

to create an excepted position by contract. Only the legislature has this power, and the legislature may act only within the five categories specified above. Other contracts with government employees or consultants specify that the person is "exempted" from the civil service requirements. Under this constitutional provision, there is no power to create an exempted position by contract. Only the Civil Service Commission has this power.

The provisions with respect to the civil service do not affect a decision to privatize any agency or function. There is no right to have any governmental agency or function continue in the public sector if the legislature and the governor decide that it is in the public interest to put it in the private sector. Civil service rights terminate with the decision to terminate a government agency or function, although the legislature may decide to provide for a transition.

The positions that report to the resident department heads on Rota and Tinian are within the civil service unless they are specified by the legislature as excepted positions because they are professional or managerial positions, or unless they are exempted by the civil service commission. Regardless of whether positions that report to the resident department head (or to another Commonwealth official) are excepted by the legislature or exempted by the commission, these positions cannot be included on the personal staffs of the mayor. The function of the personal staff of an elected official under section 16 must be differentiated from the function of delivering Commonwealth services through the Commonwealth departments and agencies.

The standards applicable to the civil service system are set out in the last two sentences in section 16(a). They are the same standards as were included in the 1976 Constitution. They were not changed by the 1985 amendments that moved the language to article XX.

Section 16(b): This section establishes the Civil Service Commission and gives it jurisdiction over the personnel policies and standards for the civil service.

The commission is composed of five members appointed by the governor and confirmed by the senate. This is a downsizing of the commission, which currently has seven members. The downsizing is accomplished by a provision in the Schedule on Transitional Matters that would allow the terms of two of the current members to expire without appointing successors. The downsizing was included in order to contribute to the effort to decrease the size of the government.

The members serve five-year terms. The 1976 Constitution provided for a four-year term, and the 1985 amendments provided for a six-year term. A five year term is close to the cycle of gubernatorial elections but does not coincide with it. In this way, the Civil Service Commission can be made responsive to the governor but not subservient to the political process. The five year terms are staggered so that one term expires each year. Thus, a governor could expect to appoint four of the five members of the commission over the governor's four years in office, although these appointments would be made one each year. These staggered terms would provide stability and continuity for the commission without preventing the governor from appointing people in

whom the governor has confidence. Under the current system, six of the members serve six-year terms and one member serves a four-year term. The Civil Service Commission recommended that this system be changed.

The qualifications of the members are left to the legislature, except that all five members must be from the private sector. Retired government employees who are not currently in any temporary government position are eligible to be members of the commission. Having members from the private sector is necessary to guard against the potential biases of government employees. The compensation of the members is left to the legislature.

Current law requires that one member be from Rota, one member be from Tinian, and imposes other requirements for representation of various constituencies. The transition provisions would not affect these requirements. The representation from Rota, Tinian and other constituencies would be maintained on the five-person commission.

The members of the commission may be removed only for cause. This provides the governor with the capability to rid the commission of members who fail to show up for meetings or otherwise neglect their duties, but does not allow replacements for political reasons.

The Civil Service Commission is responsible for the development, administration and adjudication of personnel policies and standards for the civil service. The Convention used the language from the 1985 amendments with respect to the power to "develop and administer" policies and standards, and added the word "adjudicate." The "development" of policies and standards includes the drafting, consultation with experts and others, and publication of policies and standards. The "administration" of policies and standards includes setting salary schedules, educating departments and agencies about civil service requirements, and reporting to the public. The adjudication of disputes that arise under civil service requirements is an important aspect of making the system operate effectively, and the Civil Service Commission must resolve these matters promptly.

The Convention considered the relationships between the Civil Service Commission and the Office of Personnel Management. Executive Order 94-3 eliminated the position of Personnel Officer, who was in effect the executive director of the Civil Service Commission, and placed a Director of Personnel in the governor's office. The Constitution should leave the governor considerable flexibility in managing routine personnel matters in the executive branch. The Civil Service Commission is responsible for setting standards and policies that must be followed in managing these activities, and for hearing and deciding grievances arising out of them, but it is not responsible for managing personnel in the executive branch on a daily basis.

Section 16(c): This section provides that the Civil Service Commission shall establish position classifications for all positions for which it has jurisdiction. This power allows the commission to set policies and establish and enforce standards.

This section also allows the commission to exempt certain positions from the classification system or from any other requirements imposed by the standards or policies administered by the commission. Exempted positions are within the civil service and are subject to the jurisdiction of the commission. A position that is exempted may later be reclassified by the commission. Only the commission may exempt positions. The legislature may not act in this regard. This is the result reached by the Commonwealth Supreme Court in interpreting the 1985 amendments in Manglona v. Civil Service System, 3 N.M.I. 243 (1992) so this does not change the current system.

Section 16(c) also provides the mechanism for setting salaries for civil service positions. The commission is given the function of recommending salary increases. When the commission sends a recommended salary schedule to the legislature, the legislature may approve it, decrease it, or reject it altogether. The legislature may not increase any aspect of any schedule on salaries, nor may the legislature act to set or affect salary increases within the civil service in any other manner.

The Commission members will be drawn from the private sector. It is their responsibility to keep civil service salaries in line with the market value or prevailing standard in the Commonwealth. The civil service should be competitive with private enterprise, but civil service positions should not be compensated substantially above comparable positions in private enterprise. The commission is in the best position to make these judgments.

The commission must, of course, defer to the legislature as to whether there is enough money in the budget to pay for salary increases. If the legislature decides that funds are inadequate or rejects pay increases for any other reason, then no pay increases will go into effect. Similarly, the legislature may in its discretion determine that an existing or proposed salary schedule or any part of it should be decreased. The legislature will send its enactments in these regards to the governor who may, of course, veto what the legislature has done. The determination whether salaries should be increased is made a part of the commission's functions in order to insulate this process, to the extent possible, from the political process. Candidates for seats in the legislature should not be in a position to deliver on promises to increase civil service salaries if elected. That potential influence on the votes of civil service workers is contrary to the fundamental policy of an independent civil service.

The provisions in the Schedule on Transitional and Related Matters spell out how the downsizing is to be effected, require that the requirements for representation of Rota and Tinian and other constituencies be maintained, and provide the transition for positions that will be treated differently under this amendment. The transition provisions also take account of the fact that individual contracts may use the terms "excepted" and "exempted" in different ways, and provide that the meaning of these contracts shall not change.

Section 17: Public Services.

No change.

The Convention deliberated regarding the provisions of section 17, its interpretation on June 14, 1995, by the superior court in the case entitled Inos v. Tenorio, (C. A. No. 94-1289) and various proposed amendments. The Convention was concerned by the prospect of continued and expensive litigation over section 17 and considered alternative ways to provide more clarity and certainty. Notwithstanding their shared objective in this regard, the delegates were divided as to how best to amend section 17 regarding the delegation by the governor to the mayors of Rota, and Tinian and Aguiguan, of responsibility for the administration of public services and the execution of Commonwealth laws. The Convention concluded, therefore, that the most appropriate compromise of these different views was to leave section 17 as it presently is in the Constitution. The Convention was mindful that subsection (c) of section 17 provides that the legislature may address the subject of decentralized administrative arrangements for the delivery of public services and the governor may submit recommendations to the legislature in order to accomplish this objective.

Section 18: Executive Assistant for Carolinian Affairs.

The Convention made two changes in section 18. First, the Convention added a requirement that the executive assistant submit an annual report to the new council for indigenous affairs created under section 20 of this article. In this report the executive assistant sets out the activities of the office and proposes programs that could be funded by money available to the council appropriated by the legislature or directly from the legislature. The Convention expected that such a report would help coordination between the two offices with respect to matters affecting the Carolinian community.

Second, the Convention deleted the requirement that the executive assistant's salary not be less than the annual salary of a head of an executive department. The Convention did not intend to diminish the role or significance of this office in any way by this action. The Convention was aware that department heads are compensated at different levels and concluded that this was a matter best left to the legislature.

Former Section 19: Impeachment (repealed).

This provision is deleted because all impeachment provisions in the Constitution are consolidated in article II, section 7.

Section 19: Retirement System (Former Section 20).

Section 19(a): No change.

Section 19(b): The Convention decided that the legislature needed to retain the power to change the retirement system for government employees in the Commonwealth. But the Convention concluded that any repeal or amendment of the Northern Mariana Islands Retirement Fund Act should be undertaken by the legislature only after considering the views of the retirement fund's board of trustees. This leaves the legislature free to take such action as it deems appropriate after considering the views of the board.

Section 19(c): This section is new and affirms the fiduciary responsibility of the fund's board of trustees. It imposes a limitation on both the legislature and the executive branch. The section confines the appropriation authority of the legislature and the reprogramming authority of the governor with respect to the fund's assets to only that portion of the assets declared excess by the board of trustees. The Convention was concerned that without such a limitation the assets needed to meet the fund's obligations to its members would be diminished.

Former Section 21: Boards and Commissions (repealed).

This provision was deleted from the Constitution. The section was added in 1985 and sought to prescribe a general rule applicable to all boards and commissions in the Commonwealth appointed by the governor with certain exceptions. The Convention concluded that this is a matter best left to the legislature and the governor to work out on a case by case basis. Rules that seem necessary or appropriate for one kind of board or commission may not be appropriate in a different context.

Former Section 22: Special Assistant for Women's Affairs (repealed).

This provision was deleted from the Constitution. The objectives of this office are worthy but its organization and duties are best left to the legislature and the governor.

Former Section 23: Resident Executive for Indigenous Affairs (repealed).

This provision was deleted from the Constitution. The objectives of this office are best accomplished by the council for indigenous affairs established by the Convention.

Section 20: Council for Indigenous Affairs.

A five person council for indigenous affairs is created to advance and promote programs aimed at preserving Chamorro and Carolinian language, culture and traditions. The council members are 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 executive assistant for Carolinian affairs will work closely with the council, and may be considered for appointment to the council.

The council members and its executive director and deputy director are required to have a background and capability in Carolinian or Chamorro language, culture and traditions. The chair of the council for indigenous affairs is a member of the governor's council created under article VI, section 6.

The council's functions include those now assigned to the resident executive for indigenous affairs, the Chamorro-Carolinian Language Policy Commission and the Council for Arts and Culture. Any programs funded by federal agencies will be administered by the council in accordance with applicable United States laws and regulations. The amendment identifies several specific functions relating to educational and cultural programs. In addition, the council has 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. Such a center would serve as a focal point for educational and cultural programs that would foster interest in the indigenous cultures and traditions. 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.

One source of funding for the council will be from the interest revenue of the Marianas Public Land Trust. The council will prepare an annual budget for the expenditure of these funds to be submitted to the governor for transmittal to the legislature. Funds coming to the council from the Marianas Public Land Trust must be appropriated by the legislature pursuant to article XI, section 8(c), in order for the council to have any expenditure authority over these funds. Once the legislature appropriates funds coming from the trust, then these funds are within the jurisdiction of the council and may not be reprogrammed away from the council. To the extent that the council seeks additional funds from the legislature other than interest income from the trust, it would be required to follow the customary budgetary procedures within the executive branch and to justify its requests before the legislature.

ARTICLE IV: JUDICIAL BRANCH

The article IV drafted in 1976 has been deleted in its entirety and a new article IV has been substituted. The new article IV recognizes that the judicial branch is co-equal with and independent of the executive and legislative branches. Establishment of the judiciary in the Constitution assures its independence. The constitutionally established courts cannot be abolished by legislation.

Section 1: Judicial Power.

This section establishes the supreme court and the superior court under the Constitution. All judicial power is vested in these courts.

Section 2: Supreme Court (Former Section 3).

This section provides for the justices and jurisdiction of the supreme court. It establishes a chief justice and at least two associate justices. This section permits the legislature to expand the number of associate justices should that become necessary. However, the number may not fall below two. The supreme court is given all of its current jurisdiction over appellate matters and the jurisdiction to issue any necessary writs and orders. These include writs of mandamus, certioriari, prohibition, and habeas corpus, together with any other writs or orders appropriate to the full exercise of the court's jurisdiction. The jurisdiction with respect to writs and orders is original but not exclusive jurisdiction.

The chief justice and associate justices are appointed for an initial term by the governor and are confirmed by the senate. The Convention considered the alternatives of confirmation by both houses of the legislature and confirmation by a joint session of the legislature proceeding by majority vote. These alternatives were rejected because the Convention concluded that the senate's equal representation of the interests of each of the senatorial districts would adequately protect the people from unqualified candidates. Subjecting candidates to approval of both houses would not provide any significantly better or increased protection and could delay appointments unnecessarily. The Convention noted that the house, in its proposed constitutional article, also endorsed confirmation by the senate alone. The Convention also considered the alternative of confirmation by the senate by super-majority of a two-thirds or three-quarters vote. The Convention rejected this alternative because it might delay appointments or subject appointments to additional political pressures. Requiring more legislators to approve an appointment increases the risk of political considerations intruding ino the confirmation process.

Section 3: Superior Court (Former Section 2).

This section provides for the judges and jurisdiction of the superior court. It establishes a presiding judge and at least three associate judges. This section permits the legislature to expand the number of associate judges should that become necessary. However, the number will not fall below three. The superior court is given all of its current jurisdiction over civil and criminal matters and, like the supreme court, is given the jurisdiction to issue any necessary writs and orders in aid of its jurisdiction.

The presiding judge and associate judges are appointed by the governor and confirmed by the senate. For the reasons explained with respect to section 2 above, the Convention rejected an alternative of confirmation by both houses of the legislature.

When the legislature enacts legislation it may create new causes of action. These new causes of action would automatically be included in the jurisdiction of the superior court for trials and in the jurisdiction of the supreme court for appeals. The legislature may not, however, change the basic functions of these courts. It may not direct trial matters to be tried in the supreme court and it may not direct appellate matters to be decided in the superior court.

Section 4: Term of Office.

A new method has been provided for determining whether a justice or judge should continue to serve after the initial term. This new method is a non-competitive election in which the people determine whether the justice or judge should be retained for an additional term. If a majority of the votes are in the affirmative, then the justice or judge is retained. In the type of election specified by section 4, the judge runs against his or her own record. The candidate does not run against another individual. The voters' choice is between retaining or discharging the justice or judge. This new method was proposed by the courts and was endorsed by the house in Legislative Initiative 9-11 which passed the house in December 1994. This method has been used for many years in several states within the United States.

Allowing the people to determine whether a judge should be retained serves important interests in the Commonwealth. In a democracy, the voters should have a say in the choice of all of the officials who make important decisions affecting the public welfare. Elections offer the chance to remove an incompetent judge. Elections also foster the independence of the judiciary because judges who are retained by the people are not obligated in any way to officials of the executive branch or the legislature.

In moving from a system in which all decisions about judges are made by appointment to a system in which some decisions are made by elections, the Convention was mindful of the concerns that election of judges may not produce the best result for the community. Political skill is not necessarily indicative of judicial ability. Those who are successful in a political contest are not necessarily fit to serve in a judicial role. The best qualified candidates may not seek judicial office if they are subjected to the strain of an election campaign. By providing for a non-partisan election in which judges may not engage in any campaign activities whatsoever, the Convention sought to avoid these risks involved in election of judges while retaining the benefits to the public.

Section 4 provides an initial term of office of twelve years for supreme court justices and an initial term of office of six years for superior court judges. Stability is very important in the supreme court; continuity in office serves the interests of the community; and consistency in the rule and law is desirable. The longer initial term should provide better decisions overall because of the nature of the work of the supreme court. Subjecting superior court judges to a decision on retention after six years also serves important interests. Six years is sufficient time for a trial judge to establish himself or herself and to handle a case load large enough to provide a balanced view of the judge's capabilities. The current constitutional provision, in effect since 1976, provides for a six year term of office.

The process for appointment by the governor and confirmation by the senate that has been used since the 1976 Constitution and approved by the people remains unchanged with respect to the initial appointment.

Section 4 provides for terms of twelve years for both justices and judges after the initial term. Both courts will benefit from the stability and continuity of a term of this length after the approval of the voters had been given. The current constitutional provision, in effect since 1976, allows the legislature to increase the term of office from six years to twelve years after the initial term. The Convention considered whether the retirement benefits of judges would be affected by the combination of an initial six-year term and a subsequent twelve-year term, and decided to leave this matter to the legislature to regulate through legislation on the retirement system.

The provisions for election govern all terms after the first term. For example, if an associate judge of the superior court was appointed by the governor and confirmed by the senate at the age of thirty-five, that judge would serve an initial six-year term, until the age of forty-one. At the general election closest to the expiration of that six-year term, the question would be put to the voters whether the judge should be retained. If a majority of the votes are cast in the negative, the judge does not get another term. A vacancy exists, and the governor appoints a replacement who would be required to be confirmed by the senate. The governor may not appoint a judge rejected by the people. If a majority of the votes are cast in the affirmative, then this judge would serve a twelve-year term until the age of fifty-three. At the general election closest to the expiration of that twelve-year term, the question would be put on the ballot whether the judge should be retained. If a majority of the votes cast are in the affirmative, the judge would serve another twelve-year term until the age of sixty-five. The same process would be repeated until the judge voluntarily retires, or reaches a term limit or age limit set by the legislature. The Convention discussed an age limit of seventy years and expected that the legislature would act to set this or perhaps a lower age limit. There are no term limits or retirement requirements in the Constitution. And there are no limits on the legislature's power to enact term limits or retirement requirements as the legislature sees fit.

Each time the governor appoints a justice or judge, that appointee gets a full term. This is important because of the election requirement imposed at the end of the first term. Each appointee should have the same opportunity to establish his or her credentials with the electorate. When an associate justice or associate judge moves up to become chief justice or presiding judge, that associate justice or associate judge is still serving, and continues to serve that term. No additional or fewer years in office occur because of the change. For example, a lawyer is appointed as an associate judge of the superior court. The initial term of the judge is six years. After two years, there is a vacancy in the position of presiding judge and the associate judge is appointed to the position. After sitting as presiding judge for four years, the initial term of six years has been completed and the presiding judge must submit to approval at an election.

All of the restrictions of section 8 apply when the question whether to retain a justice or judge is on the ballot. The judge may not make a direct or indirect financial contribution to a political organization, or participate in a political campaign. No campaign activities whatsoever are permitted on the part of the justice or judge. In the event that an organized group opposes the justice's or judge's retention, those who favor the retention will likely organize themselves for

that purpose. The justice or judge, however, may not participate in any manner in the activities of a group organized to promote his or her retention.

Section 5: Qualifications (Former Section 4).

Section 5 provides for the qualifications of office. Section 5 retains the age requirement of thirty-five years currently in the Constitution. This age requirement is desirable to help assure that candidates have the wisdom and experience to contribute to an effective judiciary.

Section 5 requires that justices and judges be United States citizens. Under the current Constitution, United States. nationals are also eligible. The Convention concluded that the important role of justices and judges in the community justified this change in qualifications.

The Convention added a residency requirement of five years. The Convention recognized that this requirement is quite long, but concluded that it balances the need of the community to have justices and judges who are familiar with and sensitive to local customs and traditions with the interest in maintaining a large pool of qualified candidates. The section does not impose the residency requirement immediately before appointment. Someone who resided in the Commonwealth, but left to go to school or to work in a position off-island, would be eligible for appointment under this provision so long as that person had resided in the Commonwealth for a total of five years, at some point in his or her life, and thus had the necessary local knowledge and background that is the basic qualification for office. Residence in the Commonwealth is currently defined by statute and, under this provision, would continue to be governed by statute.

The Convention added a requirement that justices and judges be members of the Commonwealth bar. This helps ensure a familiarity with the law and rules peculiar to the Commonwealth, and provides additional standards that are helpful in qualifying able justices and judges to make wise decisions.

Under the current statute, government employees who are lawyers are permitted to practice without qualifying for the Commonwealth bar by examination (or as other lawyers coming from distant jurisdictions are required to qualify) and such lawyers continue to be exempt from these requirements after they enter private practice. The Convention urged the supreme court to reconsider this practice (1 CMC, Section 3603) and to impose by rule the same requirements on all lawyers in private practice who have qualified in other jurisdictions. If the supreme court acts in this respect, the statute will no longer be in effect.

Section 6: Compensation (Former Section 5).

This provision with respect to salary is the same as the current Constitution. The salary of a justice or judge may not be decreased during a term of office. This provision was included in the 1976 Constitution and is maintained in these amendments in order to help protect the independence of the judiciary. If a justice or judge makes a decision that is unpopular with the

legislature, the legislature will not be able to punish that justice or judge by lowering or abolishing his or her salary. The salary commission established under article II, section 9, may recommend to justices and judges that they take a specified reduction in salary on a voluntary basis if all other government employees are being required to take salary cuts in periods of budgetary emergency. The sitting justices and judges may voluntarily agree to such salary cuts. The salary commission may, of course, impose salary cuts on any vacant position or on any justice or judge selected after the salary cuts go into effect.

Section 7: Sanctions (Former Section 6).

This provision with respect to sanctions is the same as the current Constitution with one exception. There has been a problem in the past because the legislature has allowed appointments to the advisory commission to lapse. The advisory commission has the responsibility of dealing with complaints against justices and judges, so the chief justice in recent years has not had any body to which these complaints could be sent. The Convention decided to remedy this problem by providing that, in the event that vacancies on the commission remain for more than ninety days, the chief justice may make temporary appointments. If the chief justice makes appointments under this provision, those members would serve until the legislature acts or until they are removed by a subsequent action of the chief justice.

Section 8: Limitation on Activities (Former Section 7).

This provision with respect to limitations on the activities of justices and judges is the same as the current Constitution with one exception. A justice or judge who becomes a candidate for political office must declare his or her candidacy at least six months before the election, and must resign upon such declaration of candidacy. Some elected positions, such as governor, require the candidates to declare a year or more before the election. With respect to other offices, a candidate might wait until the statutory limit of forty-five days before the election to declare candidacy. For that reason, the Convention decided it would serve the public interest to require justices and judges to declare early enough that there can be no suggestion of conflicts of interest. The Convention decided not to rely solely on the occasion of the declaration of candidacy, but imposed the six-month limitation. A justice or judge who becomes a candidate may declare earlier than six months before the election and be required to resign at that point. But a justice or judge may wait no longer than six months before election to declare candidacy. Thus the public would have the protection of a substantial period of time separating the end of judicial duties and the election.

The courts recommended that the provision in the current Constitution that a justice or judge who wants to become a political candidate must resign at least six months "before becoming a candidate" should be changed to six months "before the next election." The courts suggested that under the current provision, if a justice or judge plans to become a candidate six months before an election then, in practice, the justice or judge has to resign a year before the election; and that nothing is served by requiring such a long period of time. In addition, it may

place a great financial burden on a prospective candidate. The house of representatives also recommended this change. The Convention decided that the six-month requirement, standing alone, was not sufficient. If a justice or judge became a candidate for governor, under the rule proposed by the courts, the candidate could continue to sit on the court until six months before the election.

The Convention understood that the recusal rules protect the public from conflicts of interest if a declared political candidate remains on the bench because lawyers representing the parties in a dispute may challenge the justice's or judge's impartiality and request the justice or judge to recuse himself or herself from the case. The Convention also understood that the other protections in this constitutional provision limiting financial contributions to political organizations and participating in political campaigns were designed to deter announced candidates from remaining on the bench. However, the Convention believed that the public perception of the courts as neutral and impartial bodies removed from politics was so important to the community that there should be extra protection added to this section. No announced candidate should remain on the bench; and all candidates who are judges should be required to announce at least six months prior to the election.

This provision does not affect the election at which the question of retaining the justice or judge is put on the ballot. That is not included in the phrase "candidate for public office" as used in the provision because the justices and judges may not campaign or align themselves with any political party, and there is no contest between two or more persons for the office.

The Convention recognized that justices and judges in the Commonwealth are governed by codes of ethics and rules of judicial conduct. This provision does not supplant any of those codes or rules. It states the minimum protections needed to ensure the impartiality and proper conduct of the judiciary in the Commonwealth.

Section 9: Administration (Former Section 8).

This provision expands on section 8 in the current Constitution. It updated the Constitution by providing for rule-making power vested in the supreme court. At the time the 1976 Constitution was written, the supreme court was not in existence. This provision makes the chief justice the administrative head of the judiciary. It is the chief justice's responsibility to ensure that the courts run efficiently.

Subsection (a): The chief justice is responsible for making an annual report to the people. This is a new requirement. This requirement is a necessary adjunct of the decision to provide for elections in the judicial system. The public needs to be informed about the courts in order to make good decisions at the polls. This language requires that the chief justice make a report in person and that a written version of the report also be issued. The Convention considered whether the annual report of the chief justice should be coordinated with the annual report of the governor and the annual report of the Washington Representative. Rather than specify any

particular order in which these reports should be presented to the public, the Convention has left this to the discretion of the chief justice to select the time of year most effective for educating the public about the work of the judicial branch. The language specifies, however, that the report shall be delivered to a joint session of the legislature. It is important to draw the attention of the legislators to any problems the judicial branch may wish to raise and to provide an occasion on which the press and other interested persons can listen to the chief justice present the report in person.

Subsection (b): The chief justice is responsible for the annual judicial branch budget. The courts provided in their legislative initiative that the judicial branch budget would be presented directly to the legislature. The legislative initiative passed by the house also adopted this approach. The advantage of this approach is that the governor does not cut the judicial branch budget in order to allocate funds to the executive branch, and the status of the judicial branch as a co-equal branch of government is respected. On the other hand, the Convention recognized that the chief justice should send an information copy of the judicial branch budget to the governor so that the overall Commonwealth balanced budget could take into account the needs of the judicial branch. The governor need not agree with this budget request of the judicial branch and may recommend to the legislature a lesser amount. The legislature will take into account the governor's recommendation with respect to the judicial branch as it does for all other departments and agencies. The legislature may decide to accept the budget recommended by the chief justice, or to accept the budget recommended by the governor, or to substitute its own judgment for the recommendations of both. The budget of the judicial branch, once enacted by the legislature, is sent to the governor as is any other appropriations measure where it is treated the same as any other such measure.

Subsection (c): The supreme court is given rule-making authority over all aspects of the administration of the judicial branch. Both the proposal advanced by the courts and the legislative initiative endorsed by the house adopted this approach. Neither the courts nor the house proposed to continue the current practice by which rules issued by the supreme court become effective only if the legislature takes no action for sixty days after the rules are submitted. This section does not continue that practice. The rules issued by the supreme court are effective when published. The legislature has no role in or power to legislate in areas that are the province of the court's rule-making. The Convention expected that, as a matter of course, the supreme court would provide an opportunity for comment by the bar and other interested parties prior to the issuance of new rules. This would provide adequate public input now arguably provided by the legislative review period.

The supreme court must provide in its rules for the assignment of judges to Rota and Tinian for the effective delivery of judicial services to those islands.

Because all judicial power is vested in the supreme court and the superior court (section 1), if other courts are to be created in the future, such as municipal courts, traffic courts, family courts, or land courts, they would be created as divisions or sections of the superior court, and

they would be created by court rule. The legislature may not create additional courts. This power to organize the judiciary should be left with the judiciary as an independent branch of government. The courts have the power to establish special branches, divisions, or sections to accommodate special areas where expert capability or continuity would be in the public interest. The balance of power among the branches of government would be preserved, however, because the legislature would be required to approve any additional judicial positions. The courts also have the power to use mediation, arbitration and other forms of alternative dispute resolution as may be useful to keep the docket clear or to discourage unnecessary litigation.

In providing the power for the supreme court to issue rules with respect to attorneys, the delegates expressed their desire that the court focus on the difficult and divisive problems for the Commonwealth that occur when lawyers cause violations of article XII. Lawyers are the principal means of enforcement of article XII and it is very important to the entire system that they take seriously their responsibilities to uphold article XII. The supreme court should provide appropriate penalties, including suspension and disbarment, for lawyers who intentionally violate article XII. When the supreme court acts to regulate the conduct of lawyers or legal fees, the legislature may not enact requirements that are in an area occupied by the court's rules. Statutes with respect to attorneys fees, for example, may be replaced by court rules or attorney fees. After the court acts on the subject of attorney fees, statutes on the subject are no longer in effect.

Subsection (d): When additional judges are needed on a temporary basis, the chief justice (or the presiding judge by delegation from the chief justice) may appoint to sit with the Commonwealth courts active or retired full-time judges from Guam, the United States federal or state courts, Puerto Rico, the Virgin Islands, Samoa, and any other jurisdiction that qualifies as a commonwealth, territory, or freely associated state of the United States. This wide range of potentially qualified judges has been included in the Constitution in order to provide future flexibility. Even though some of these jurisdictions do not now send judges to the Commonwealth, there may be qualified judges from these courts in the future that the chief justice may wish to appoint. The chief justice will presumably be hesitant to use judges from judicial systems that depart substantially from the jurisprudence of the United States, however, and should take this into account with respect to the temporary use of judges from the freely associated states. The extensive power of the chief justice to use active and retired judges from other courts, and to have justices of the supreme court sit with the trial court or have judges of the superior court sit with the supreme court provides sufficient flexibility to meet the Commonwealth's needs. The chief justice is in the best position to assure that qualified judges are used to meet these temporary needs. Impartial and experienced full-time judges are preferable to part-time judges who are lawyers in private practice or in business in the Commonwealth or elsewhere. Upon approval of amended article IV, the existing appointments and terms of office of special judges will expire. Under this Constitution there are no special judges other than the full-time or retired judges described in the Constitution; and the statutes that provide for special judges are no longer in effect.

Section 10: Succession.

This is a new provision with respect to succession when there is a vacancy in the office of chief justice or presiding judge. It serves the public interest to have candidates chosen for those positions who have the extra administrative and leadership capabilities needed to enable the judiciary to operate effectively. The Convention was also mindful, however, of the public interest in prompt filling of vacancies. To balance these interests, the Convention provided an alternative if the governor does not act promptly or the legislature delays its approval. When a vacancy occurs, the next senior justice or judge on that court becomes acting chief justice or acting presiding judge. The next senior judge is determined by length of service on the bench, not by age. The length of service on the bench is measured by service on the particular court, not by total service as a judge.

If a successor is not appointed within ninety days, this succession becomes permanent. If the governor appoints the next senior justice or judge, then the appointment will become final in any event because, if the legislature does not act to confirm, the operation of section 10 will reach the same result. If the governor has confidence in the next most senior justice or judge, then this is likely to be the best candidate.

When a vacancy occurs and the governor makes an appointment, the justice or judge filling the vacancy will serve a full term as is the case now. The remaining amount of time in the term of the justice or judge who vacated the office would be irrelevant. The Convention considered this necessary because of the election system that has been substituted for political re-appointment. Every justice or judge should have the full term provided in the Constitution to win the approval of the people so that he or she will be retained when the question is put on the ballot.

If a vacancy occurs in the position of associate justice or associate judge, the chief justice can use the appointment powers under the rule-making authority to provide a temporary replacement or replacements from among the active full-time judges from other jurisdictions or from among the retired former full-time judges or justices from the Commonwealth or other jurisdictions until the governor makes a new appointment.

Section 11: Advisory Opinions.

This provision is new. It requires elected and appointed officials in the Commonwealth who have disputes with other elected or appointed officials, perhaps in another branch or level of government, to submit those disputes to the supreme court in the first instance for an advisory opinion.

This provision is necessary to resolve government disputes quickly and finally, so the government can act more efficiently. Disputes between mayors and governors, between governors and the legislature, and between majorities and minorities in the legislature are

depleting the energy and financial resources of the government and adversely affecting the public. It is not in the public interest to have these disputes litigated through the long and procedurally complicated processes normally applied in the trial courts.

The language covers all elected officials and all officials who are appointed by the governor. This reaches the heads of all autonomous agencies who are appointed by the governor and the heads of all executive branch departments who are appointed by the governor. Any lower official who had a dispute with another lower official would have to channel the dispute through the appointed head of the department or agency in order to use the advisory opinion remedy. This will assure that only important disputes are sent to the supreme court.

The disputes that may be submitted to the supreme court for an advisory opinion are limited to those about the exercise of powers, duties or responsibilities under the Constitution or any statute. This provision is not intended to reach each and every dispute that may arise between officials. It is limited to the most important disputes which, in the Convention's judgment, are the fundamental disputes about powers, duties and responsibilities of public officials. These disputes, in the experience of the Commonwealth thus far, have caused the most difficulties and delays in the operation of the Commonwealth government.

Officials covered by this section are not required to submit their disputes to the supreme court. They may resolve them informally as they have on occasion in the past. They may not, however, go to the courts and sue one another in the usual fashion. They must go first to the supreme court. Only if the supreme court finds that litigation in the usual fashion would be preferable, and issues a decision to that effect, may the parties sue one another in the courts.

The language places with the supreme court the responsibility to promulgate rules detailing how this advisory opinion provision is to be used. This flexibility is necessary with a new process. The supreme court might determine from its review of the dispute sent to it for an advisory opinion that there was not an adequate record on which it could act. In those instances, the supreme court could send the matter to the trial court either through the normal litigation process or through an expedited process. Most issues about the powers, duties and responsibilities of public officials are matters of constitutional or statutory interpretation which the supreme court can accomplish without an extensive factual record. There may be cases where a factual record is necessary to a fair determination of the issues and, in those cases, the supreme court has the flexibility to rely on the trial courts. The court may decide that a dispute does not fall under the constitutional classification of powers, duties and responsibilities and reject an application on that ground. The supreme court may provide by rule for the form and content of applications, and may decide that a particular application does not meet the requirements of the rule and reject the application on that ground.

The decision of the supreme court is final and binding. This means that the elected and appointed officials involved in the dispute may not re-litigate the matter in any other court. It also means that if some other person litigates the same issue, the decision of the supreme court

would have the same precedential force as any other supreme court decision. Once the dispute is presented to the supreme court, the officials involved in the dispute may not bring any lawsuit in any court until the supreme court acts. If the supreme court decides to issue an advisory opinion, that opinion is binding. If the supreme court decides not to act and expressly permits a further litigation remedy, then the elected official is free to pursue other remedies in the courts if they are available.

No time limits are included in the constitutional provision. The supreme court will give prompt attention and priority to resolving these disputes.

This provision does not apply to contested elections. The provisions of article II, section 13(a), are applicable to those disputes.

This provision does not apply to actions brought by office holders in their individual capacities. It applies only to office holders in their official capacities.

This provision does not apply to taxpayer actions. The provisions of article X, section 9, are applicable to those disputes.

ARTICLE V: REPRESENTATION IN THE UNITED STATES

Article V has been revised in order to better serve the interests of the Commonwealth. The former article V did not express the fundamental importance of permanent representation in the United States Congress and did not provide for a self-executing transition to permanent representation when that is granted by Congress.

Section 901 of the Covenant provides the authority for representation of the Commonwealth in the United States. It says:

> The Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a certificate of selection from the governor. The Representative must be a citizen and resident of the Northern Marianas Islands, at least 25 years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States.

Section 901 does not restrict the Commonwealth from seeking permanent representation in the United States Congress or from consolidating the office of resident representative with the

office of permanent member or delegate to the United States Congress should that status be granted.

Section 1: Permanent Representation in the United States Congress.

This section states the fundamental importance to the people of the Commonwealth of permanent representation in the United States Congress. Only the Congress can grant member or delegate status for a representative from the Commonwealth. The Constitution should state that this is a matter of high priority for the people of the Commonwealth.

The 1985 amendments contained some provisions with respect to a permanent member or delegate but inserted them into the existing language with respect to the Resident Representative. The Convention decided that it was important to provide for this office separately from the current Resident Representative and to avoid any possible confusion arising from the current provision in the Constitution. Congress should understand that the current Resident Representative, who does not have non-voting status in the Congress, cannot fully serve the interests of the people of the Commonwealth in the Congress. Only a member or delegate can provide the participation in the committees and floor actions of the Congress that is so critical to the preservation and enhancement of the Commonwealth's political relationship with the United States.

If member or delegate status were provided by the Congress, a new election will be held promptly upon the passage of the legislation. That legislation normally would contain provisions governing the transition to elected member or delegate status. If the Congress does not provide otherwise, the election for the Commonwealth's member or delegate will be held within ninety days of the enactment of the legislation and the elected member or delegate will serve the remainder of the term until members of Congress are next elected.

The term of office of the member or delegate will be two years, as is provided for the House of Representatives where the member or delegate would serve. The rules of the House specify whether non-voting delegates can speak and vote in Congressional committees, introduce legislation, and speak on the floor of the House.

The qualifications for office are the same as those currently specified for the Washington Representative, and this section recognizes that Congress may provide additional qualifications.

The annual report to the people is useful and will be continued if Congress grants member or delegate status. This section provides for an annual report in the same way that the Resident Representative currently reports to a joint session of the Commonwealth legislature. The report is not required to be given on any particular date. This is left to the discretion of the member or delegate. The report may be best given at the close of a Congressional session, at the point at which critical legislation is being considered, or at some other point during the year.

The method for filling vacancies may be specified by the Congress. If not, then the vacancy in the position of member or delegate will be filled in the same manner as has been used since 1976 for the Resident Representative: appointment by the governor with the advice and consent of the senate.

A member or delegate will have the same compensation, allowances and benefits as other members of the House of Representatives. Should Congress not provide compensation, however, this section allows the Commonwealth legislature to act.

Section 2: Resident Representative to the United States (Former Section 1).

This section provides for the current elected Resident Representative. It is a consolidation of the current provisions with respect to the Resident Representative and makes no changes.

The Convention took note of the testimony and reports that it heard about the confusion and difficulty between the governor and the Resident Representative in presenting their respective views in Washington. The revision of article V will assist in making a clearer delineation.

The Resident Representative is elected by the people and speaks for the people, not for the government of the Commonwealth or any of its branches or agencies. The Resident Representative does not speak for the governor and the executive branch of the Commonwealth government unless the governor authorizes the Washington Representative to do so. The Governor may appoint a liaison officer in Washington, as has been done in Hawaii and at other locations, to represent the governor and the executive branch. Nothing in article V has in the past or now restricted the governor in this respect.

The functions of an elected representative of the people are different from the functions of the envoy of the governor, who is also elected by the people. The elected representative keeps track of legislation that might affect the Northern Marianas and provides input to fellow elected legislators about the interests of the people of the Commonwealth. The elected representative also pursues the interests of individual constituents with federal executive branch agencies. The governor's representative pursues the governor's program with the federal government and with state governments. The governor must implement Commonwealth laws, and this requires, in some instances, work with the federal government and a legislative program in the Congress.

The legislative functions carried out by the Resident Representative are important. Section 105 of the Covenant permits the United States to:

> enact legislation ... applicable to the Northern Marianas Islands, but if such legislation cannot be made applicable to the several states the Northern Mariana

Islands must be specifically named therein for it to become effective in the Northern Mariana Islands.

The legislative duties include encouraging Congress to make favorable legislation specifically applicable to the Commonwealth. It is also the representative's duty to persuade Congress that legislation adversely affecting the Northern Marianas should not be made applicable.

A prime responsibility of the Resident Representative under this section is to gain permanent member or delegate status in the Congress. The representative should be focused on this important responsibility and carry the message to Congress as effectively as possible that this is the desire of the people. This is consistent with the historical pattern of how territories that became states and overseas territories gained official status in the Congress -- they sent their elected representatives to the Congress to lobby for their admission. Guam has maintained an elected representative in Washington since 1965 and gained non-voting delegate status in 1972. The Virgin Islands sent an elected representative to Washington in 1968 and gained non-voting delegate status in 1972. The District of Columbia also has a non-voting delegate who was first accorded this status in 1971.

This section provides the same qualifications, term of office and method for filling vacancies for the Resident Representative as are contained in the current constitutional provision. The requirement for an annual report was retained but the specific timing requirements were deleted as unnecessary. The Resident Representative should be given flexibility to determine when is the best time to report to the people.

The disqualification with respect to felony convictions was deleted in deference to the general provision in article VII that applies here.

The provision with respect to the civil service status of the employees in the office of the Resident Representative was deleted because of the civil service provision contained in article III.

The provision with respect to impeachment was deleted in deference to the omnibus impeachment provision that applies here.

ARTICLE VI: LOCAL GOVERNMENT

Section 1: Local Government.

This section expressly establishes local government for the three existing senatorial districts and for the fourth district when it is created under article II, section 2, after the population in the islands north of Saipan exceeds one thousand resident United States citizens.

The Convention concluded that the current office of the mayor of the northern islands should be terminated until such time as the fourth senatorial district is created. Although the interests of the residents of the northern islands are in many respects different from those on Saipan, the Convention was concerned by the substantial cost associated with this office in view of the relatively few residents involved. The Convention in sections 3 and 4 of this article adopted measures to ensure that the interests of these Commonwealth citizens are represented at the local level.

Section 2: Mayor (Former Sections 2, 4).

This section describes the process by which each senatorial district selects its mayor. The amendment provides uniform requirements for the senatorial districts.

Section 2(a): The Convention decided that the qualifications for mayor should follow those proposed for governor. This subsection specifies that the mayor be a United States citizen and thirty-five years of age. The Convention concluded that with the increased responsibilities of the mayor under article VI the previous age requirement of twenty-five years was not sufficient to ensure that the position would be occupied by someone of mature judgement and proven experience. The Convention set a three-year Commonwealth residence requirement, eliminated 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 in view of the general provision on this subject contained in article VII.

Section 2(b): The only change in this subsection adds 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 establish 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 Convention 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 addressed in section 7 of this article. The Convention decided 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.

This section outlines the powers of the mayor under the revised article VI. Nothing in this section is intended to diminish or enlarge in any way the authority or responsibilities of the

mayor under section 17, article III, with respect to the delivery of public services and the execution of Commonwealth law in the senatorial district served by the mayor.

Section 3(a): This subsection provides the grant of local 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 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 may enact laws that override the authority of the local government.

The system contemplated here is neither original nor unusual. It tracks the form of local government found throughout the United States. As questions arise regarding the authority of local government, the Convention 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 Convention decided to specify the veto power in the Constitution rather than leave this important matter to be worked out by each local government. The Convention concluded 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 Convention 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 former 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 any 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 to the governor for his consideration.

Section 3(g): This subsection combines the responsibilities given to the mayor by current subsections (e) and (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 is identical to current subsection (b). Retention of this language further confirms the Convention's decision that no change was appropriate with respect to the relationship between the mayors and the governor regarding the administration of government programs, public services and appropriations provided by law.

Section 3(i): This subsection sets forth the procedures whereby the mayors appoint resident department heads pursuant to 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.

Section 3(j): This is a new subsection. It requires the mayor of Saipan and the islands north of it to appoint an executive assistant to promote the interests of the residents of the northern islands. The mayor shall consult with residents of the northern islands before appointing the executive assistant to ensure that the person appointed is acceptable to the residents and has the necessary qualifications for the job. The executive assistant should address those problems of importance to the residents of the northern islands, such as economic development and resettlement efforts, and serve as an advocate for the residents within the local and Commonwealth governments.

Section 3(k): 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 (Former Section 6).

Section 4(a): This subsection describes the municipal council that will serve the citizens in each senatorial district. The Convention 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 Convention 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 Convention 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 Convention concluded that striving for a non-partisan election was worth the effort. Where local matters are concerned, the Convention believed that residents may get better representation and service from council members elected on this basis.

The Convention 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 Convention concluded that some special arrangement was necessary to ensure that the interests of these constituents should be represented in the municipal council for Saipan and the islands north of it.

The Convention decided to add 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 position would be

available at such time in the future when service on the council becomes full-time. This accommodation gives the northern islands a meaningful voice in the municipal council serving them, and will serve to supplement the efforts of the executive assistant appointed by the mayor.

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 article 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 (Former Section 7).

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. The elimination of the authority of the legislative delegations to enact local laws for the individual districts under former section 6 of article II was predicated upon giving such power to the municipal councils. This section in effect transfers that authority from the legislative delegations to the councils.

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 Convention anticipated 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 Convention expected 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 Convention expected that the local government will consider taxes on commercial real estate, sales taxes, license fees and other such taxes as 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 Convention recognized 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 Convention saw 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 Convention anticipated that these requirements would 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 Convention expected 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 Convention'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 Convention was 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 the 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 (Former Section 5).

This is essentially the same provision that has been in the Constitution since the beginning. The Convention added as a council member 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 Convention 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 Convention decided 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 Convention 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 Convention's concern was 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 Convention was 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 Convention recognized that this practice was long-standing and could be attributed in part to the lack of significant economic development on Tinian and Rota. The provisions of this article were an effort to limit the expenditure 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 the amount of revenues raised locally as certified by the public auditor. In view of the uncertainty regarding the continuation of Commonwealth funding after these five years, the Convention concluded that the local governments would begin promptly to develop local sources of revenues. The duration of time over which these adjustments in funding 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 annual 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. The Convention was convinced that Commonwealth taxpayers want and deserve a 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 Convention decided that the legislature at the end of the five year period should have some discretion to extend Commonwealth funding if the need existed. 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 tourists, 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 likely 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 cost-effective and well-managed local government is entitled to more Commonwealth support than one that is not so managed.

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 years to develop a meaningful private sector that provides job opportunities for 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 economies 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 Convention expected that the governor would participate in this budgetary process in the same way that other annual appropriations are handled under provisions of the 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 regarding 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 Convention 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 Convention chose the date of June 5, 1995, and provided 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 who are providing Commonwealth public services delegated to the mayor by the governor.

Former Section 8: Agencies of Local Government (repealed).

This section has been repealed.

ARTICLE VII: ELIGIBILITY TO VOTE AND HOLD OFFICE

Section 1: Qualifications of Voters.

No change.

Section 2: Prohibition of Literacy Requirements.

No change.

Former Section 3: Domicile and Residence (repealed).

Section 3, which directed the legislature to provide criteria for determining domicile and residence for voting purposes, was enacted in 1976 to meet the need for voting qualifications so that Commonwealth citizens could exercise their fundamental right to vote. The legislature enacted a comprehensive statutory scheme on the subject. There being no further need for section 3, it has been repealed.

Section 3: Felony Conviction.

This amendment permits the deletion of many references to the effect of a felony conviction elsewhere in the Constitution. A no contest plea is the equivalent of a conviction within the meaning of this bar. The section makes clear that the disqualification is not lifted if the person receives a pardon. Although a pardon restores many civil rights to a convicted person, holding public office requires a high degree of trust and the Convention concluded that a pardoned felon should continue to be disqualified.

Although the amendment is confined to felony convictions in the Commonwealth or in any area under the jurisdiction of the United States, the Convention recognized that conviction for serious crime in other countries might also bear directly on a person's eligibility to hold elective or appointed office in the Commonwealth. The appointing official, or the legislature in the process of confirmation, will determine whether any such conviction provides sufficient ground for rejecting the candidate for Commonwealth office.

ARTICLE VIII: ELECTIONS

Section 1: Regular General Election.

No change.

Section 2: Other Elections.

No change

Former Section 3: Election Procedures (repealed).

Former section 3 stated that the legislature may provide for a variety of election procedures. It was enacted in 1976 to address the need for a mechanism for Commonwealth citizens to exercise their fundamental right to vote. The legislature acted, enacting a comprehensive statutory scheme governing elections. There being no further need for this section, section 3 was repealed.

Section 3: Taking Office After Election (Former Section 4).

No change.

Section 4: Resignation From Public Office (Former Section 5).

No change.

ARTICLE IX: INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative.

No substantive change.

Section 2: Referendum.

No substantive change.

Section 3: Recall.

Section 3(a): The Convention amended this subsection to reduce the number of signatures required for a recall petition from forty percent to twenty percent of the persons qualified to vote for the office occupied by the public official. During the course of Convention debate, concern was expressed about the difficulty of recalling elected officials who were performing poorly or not at all. The Convention decided to make the initial hurdle somewhat easier and adopted the twenty percent figure because it is the same as the percent required to sign an initiative petition and a referendum petition.

Section 3(b): No change.

Section 3(c): The Convention decided to amend this subsection to ensure that a recall petition was acted on promptly after it had been properly certified by the attorney general. It was generally recognized that it is bad policy to leave an elected official in office for a protracted period of time with a recall petition pending. At the same time, the Convention wanted to treat all elected officials equally. The Convention recognized that the amendment might require special elections to consider recall petitions but concluded that, given the infrequent use of this recall remedy, the extra expense associated with a special election would not be a significant burden.

Section 3(d): The Convention decided to reduce the number of votes required to recall an elected official from two-thirds to a majority of the votes cast. The Convention concluded that a recall petition is more like a referendum than an initiative and that the same percentage of votes should be required to recall an official as to reject a law. If it takes only a majority of the voters to place the official in office, no more should be required to eject the official from office.

ARTICLE X: TAXATION AND PUBLIC FINANCE

Section 1: Public Purpose.

The last sentence of section 1, added in 1985, directing the legislature to define "public purpose" was deleted by the Convention. The legislature failed to enact a definition. To assist in determining whether taxes or expenditures are for a public purpose, the Convention defined public purpose as one that directly related to the functions of government and benefited the people as a whole. The phrase was broadly stated because it will have to be defined and to evolve in response to changing circumstances. A bill that directly relates to the functions of government but applies only to one person may still be for a public purpose if the purpose of the bill benefits the people as a whole as well as that one person. For example, a bill taking a person's property by eminent domain and paying her a million dollars is for a public purpose if the property is taken for a public road and is not for a public purpose if taken for a department head's vacation home.

Former Section 2: Report on Tax Exemptions (repealed).

This section, which required the governor to report every five years on the impact of tax exemptions, was deleted. No such report has ever been made. In any event, a constitutional need for such a report does not exist since tax exemptions are granted by the legislature and are published in the Commonwealth Code.

Section 2: Public Debt Authorization (Former Section 3).

There are no changes to this section.

Section 3: Public Debt Limitation (Former Section 4).

Incurring public debt for the sole purpose of retiring a deficit is now prohibited by this section. Incurring debt for such a purpose perpetuates the poor fiscal management that caused the deficit.

Section 4: Real Property Taxes (Former Section 5).

Section 4 was changed to reduce the popular vote requirement from three-fourths to a simple majority in order to approve non commercial real estate property taxes. Municipalities increasingly will have to rely on local revenues to fund local services. The Convention concluded that if a majority of the voters in any senatorial district are willing to impose real property taxes on themselves, they should have that right. A three-fourths majority would make it virtually impossible for the voters in any senatorial district to use real property taxes to raise local revenues.

Section 5: Deficit Retirement (Former Section 6).

Two major changes are made to this section. The first two sentences, which related to the reduction of the deficit that existed in 1985, were deleted because there no longer was a need for them.

The second change strengthens the deficit retirement program. The Convention was concerned about the large deficits that have been incurred in recent years. Deficits reflect poor fiscal management and have the undesirable effect of mortgaging the Commonwealth's future. The Convention concluded that the best way to deal with deficits was to prevent them from occurring and adopted the amendments to article III, section 9, to accomplish this.

To deal with the existing deficit and any deficit that may occur, the governor and the legislature are required under the amended section 5 to retire all deficits within two years of their occurrence. If the deficit exceeds ten percent of the Commonwealth's projected revenues during the fiscal year in which the deficit is to be retired, the government may take an extra year to retire the deficit. To illustrate, the extent of a deficit in fiscal year (FY) 1, will obviously not be known until after the time the governor submits a proposed balanced budget for FY2 to the legislature. The Convention expected the governor and the legislature to do all they could do to retire the deficit from FY1 during FY2 and to review the proposed budget accordingly. If that does not occur, the governor must submit as part of the budget submission for FY3 a plan to reduce the deficit from FY1 and any other deficit that may remain. If the outstanding deficit exceeds ten percent of the projected revenues for FY 3, the deficit may be retired in FY3 and must be retired by the end of FY4. The Convention wanted to avoid a situation in which so much of the annual budget was applied to deficit reduction that essential governmental services had to be curtailed.

Under amended section 5, general salary and hiring freezes go into effect as soon as a deficit is identified, even in the middle of a fiscal year and even if the personnel costs have

already been allocated, and continue until the deficit is retired. Excessive personnel costs at all levels of government are a principal contributor to deficit spending in the Commonwealth, and salary and hiring freezes will assure that the deficit is retired as quickly as possible. The freezes cannot be evaded by indirect action, such as by contracting for services that would have been performed by employees in the frozen positions. However, the hiring freeze is not intended to apply to the renewal of the comparatively few positions that have been filled on a contract basis. For example, if a position has been filled by an employee working under a one-year contract and a freeze is in effect at the expiration of the contract, that contract may be renewed or the position may be filled by another person who is given a similar contract.

To enable the government to function effectively during the freezes, positions subject to legislative confirmation, division directors, and positions that the governor and two-thirds of the legislature agree are essential to public health and safety are exempted from operation of the hiring freeze. The exception for vacancies that jeopardize public health and safety is not limited to positions in the hospital or the police or fire departments. For example, if the only engineer in the Commonwealth Utilities Corporation qualified to maintain the generators retires, failure to fill that vacancy could jeopardize public health.

Given the existing deficit, the Convention recognized that the freezes required by this amendment would immediately go into effect upon ratification. The Convention concluded that the freezes can be best implemented following a short planning period that would coincide with the preparation of the annual budget, and provided a short grace period until the start of the fiscal year following ratification.

Section 6: Government Employment (Former Section 7).

The amendment deleted the second sentence in this section, which permitted employment ceilings to be changed by joint resolution. The legislature and the governor, working together, should set employment ceilings in the annual appropriation acts. Raising employment ceilings after the budget has been enacted is poor fiscal management and leads to deficit spending. Spending public funds for personnel in excess of the employment ceiling set by the legislature remains prohibited. No public official is authorized to spend public funds that have not been appropriated. Under article 3, section 9, any official who so acts shall be held personally liable for the unauthorized expenditure.

Section 7: Control of Public Finance (Former Section 8).

The amendment deleted the last sentence of the existing section, dealing with departmental regulations. The direction to the Department of Finance to promulgate regulations was legislative in nature and has been accomplished. The amendment added a new sentence providing that the Secretary of Finance may be removed for cause only. This safeguard is designed to emphasize the independence of this position and to enable the secretary to control government spending consistent with good management practices and procedures. It is not intended to eliminate the right of the incoming governor to appoint a new secretary.

Section 8: Tax Rebate Trust Fund.

The Tax Reform Act of 1995 deleted the requirement that tax rebate funds be deposited in a trust account. Although the rebate funds continue to be deposited in a separate bank account, the Convention concluded it was important to safeguard these funds as much as possible by keeping them in a trust account and preventing them from being used for any purpose other than rebates. The legislature can provide for the creation and administration of the rebate trust account. If the legislature concludes that there is a similar need to safeguard funds necessary for tax refunds, it may create two accounts. Income earned by the trust account shall go into the general fund.

Section 9: Taxpayer's Right of Action.

The former language of the section, which permitted suits to enjoin public spending "for other than public purposes or for a breach of fiduciary duty" lacked the desirable clarity. Permitting a taxpayer suit to enjoin any unconstitutional expenditure provides a clear standard for the public and the courts. The Convention is aware that taxpayer suits were recognized and sanctioned by Commonwealth courts before section 9 was added in 1985. See, for example, Manglona v. Camacho, 1 CR 820 (1983); Romisher v. Marianas Public Land Corporation, 1 CR 843 (1983). In recommending this change to section 9, the Convention did not intend in any way to affect the law as declared in those and other cases. The Convention simply wanted to clarify that <u>any</u> expenditure of public funds in violation of the Constitution may be enjoined in a taxpayer action filed under this section. For example, if the bureau created under article XI leased public land without complying with the procedural safeguards set forth in the article, a taxpayer could file suit under this section. Taxpayer suits to enjoin spending not alleged to violate this Constitution, such as to stop spending alleged to breach a statute or ordinance, may continue to be filed as permitted by Commonwealth statutes and court decisions. The Convention did not intend this amendment to affect any pending taxpayer suit filed under section 9.

ARTICLE XI: COMMONWEALTH LANDS

The Convention decided that the constitutional structure for administering the land programs adopted in 1976, but removed in 1985, should be restored and revised. The 1985 amendments allowed this structure to be changed, and a change was effected by the governor in 1994 by Executive Order 94-3. The title of this section has been changed from "Public Lands" to "Commonwealth Lands" to accommodate the change in the scope of coverage as explained below.

Section 1: Public Lands.

This section identifies the public lands. It is the same as the 1976 version.

Section 2: Submerged Lands.

This section deals with submerged lands. It is the same as the 1976 version.

Section 3: Other Public Lands.

This section deals with all public lands except the submerged lands. It is the same as the 1976 version.

Section 4: Marianas Land Bureau.

This section restores the former section 4 in the 1976 Constitution, and renames the Marianas Public Land Corporation as the Marianas Land Bureau. The new section contains some different provisions, and it might be confusing to use the old name for the new entity.

Section 4(a): This provision deals with the governance of the bureau. The bureau has five directors who are appointed by the governor with the advice and consent of the senate. The directors serve five-year terms, with one term expiring every year so that the governor will have an opportunity to appoint four of the five members during his first term of office. A limit of two terms is imposed. The term limit does not affect the new bureau because, as a new agency, there will be no directors who have served two terms. The requirement with respect to strict standards of fiduciary duty that was added in 1985 is retained.

Section 4(b): This provision deals with the qualifications of the directors. It retains the requirements of the 1976 Constitution with respect to representation of the three islands and the Carolinian community. It also retains the requirement, added in 1985, with respect to a woman member. It retains the requirement of U.S. citizenship, but deletes U.S. national status. It retains the five-year residency requirement. The requirement with respect to felony convictions was deleted because there is now a general provision in article VII.

Under the bureau's general structures and practices, it should not act without the presence of directors from Rota and Tinian who are absent for very short medical emergencies because there are relatively few actions as to land on Rota and Tinian that are taken up for the first and last time at a single meeting. The bureau is not required, however, to hold up actions for the presence of directors from Rota and Tinian. It is the responsibility of these directors to get to meetings and participate in the bureau's deliberations.

This section requires that the directors be persons who are qualified by virtue of their familiarity with landholding practices, customs and traditions of the Commonwealth. The Convention concluded that persons of Northern Mariana Islands descent would be best qualified for the director positions, although it recognized the possibility that someone not of Northern Mariana Islands descent who has had long exposure to and strong ties with the Marianas might also qualify.

The conditions with respect to the availability and priority of uses of public lands differ among the senatorial districts. For this reason, the representatives of the three senatorial districts on the board of directors likely will want to involve advisory councils from their respective senatorial districts in order to obtain public input with respect to land decisions.

A new requirement was added that all directors must come from the private sector. This requirement was seen as a balance against the views of senior government employees who staff the bureau and as a means of infusing the necessary top management talent into the bureau.

Section 4(c): This section is the same as section 4(d) of the 1976 Constitution.

Section 4(d): This section is the same as section 4(e) of the 1976 Constitution, with the added proviso that the annual report must be delivered by the chair in person to a joint session of the legislature.

Section 5: Fundamental Policies.

Section 5(a): This section provides for the homestead program. It broadens the authority of the homestead program to include a homestead housing component. This broader bureau authority is a practical way to meet the shortage of land that will ultimately end the homestead program.

When the Commonwealth was founded, nearly eighty percent of the land in the Commonwealth was public land. The homestead program was begun as a way to get this public land into the hands of the people and to create a stable class of landowners with a stake in the future of the Commonwealth. In the intervening twenty years, much of that public land has been transferred to homesteaders or to commercial lessees.

By empowering the bureau to provide homesteads that are essentially condominium interests in buildings on public lands, the Constitution allows the bureau to have the flexibility to meet the demand for homesteads and thereby continue the basic underlying purpose of the homestead program. The constitutional provision does not require the bureau to get into the housing business in any particular way. It provides the authority and allows the bureau to implement the program in the manner most responsive to community needs.

In the past the homestead program allowed for two grants to each person, one village homestead and one agricultural homestead. The Convention concluded that there no longer was enough land to allow two homesteads per person. The provision continuing the limitation has been deleted so that the bureau can deal with changing needs by relevant regulations.

The purpose of providing homesteads is not to enrich the homesteader, but to provide a stable place for the homesteader to live and an incentive for persons of Northern Marianas descent to continue to live and prosper in the Commonwealth. For that reason, the requirement of three years before title vests was retained. This requirement was included in the 1976 Constitution. The requirement that ten years pass before the homesteader may sell or lease the homestead was increased to twenty-five years for the same reason. Homesteads may be transferred by inheritance at any time, but the inheriting person must continue to fulfill the original homestead requirements. For example, if a homesteader dies six years after title was granted, the inheriting person may not sell or lease the homestead for nineteen years which, when combined with the initial six years, reaches the total of twenty-five years.

The provisions of section 5(a) with respect to mortgages in the 1976 Constitution have been deleted. Because of the title restrictions on homestead grants, it was usually not possible to get a commercial mortgage. For this reason, Marianas Public Land Trust funds have been made available to fund or guarantee homestead mortgages.

The governance of the homestead program was left to the bureau. Section 5(a) provides for requirements relating to the program by issuing rules and regulations. The legislature may not pass laws imposing priorities, qualifications, requirements, waivers, or any other conditions with respect to the homestead program.

All public land functions together with land title and survey functions have been consolidated in the bureau. This should permit the bureau to avoid conflicts between the homestead program and other public land activities. The Convention heard testimony at public hearings on Rota about difficulties with conflicting land policies that affect homesteaders. The bureau should give priority to resolving these conflicts and to preserving homesteads where consistent with the bureau's land use plan and policies.

Section 5(b): This section allows the bureau to transfer a freehold interest in public lands to another agency of the Commonwealth government for use for a public purpose. This kind of transfer may be done only after reasonable notice and a public hearing.

The Convention took note of the public dissatisfaction with the current land exchange program. The pending land exchanges could absorb a significant portion of the remaining public lands. The Convention provided for a two-year limitation period on land exchange applications and a change in the way land exchanges are done.

The bureau may make public land available to other government agencies under section 5(b) and those government agencies may use such public land for the land exchanges they need to accomplish their public purposes. Under this provision, the government agency that needs the land exchange would request land from the bureau. If the bureau decided that the request could be accommodated within the bureau's comprehensive land use plan, and that the request was a reasonable use of the land, the bureau could exercise its discretion to provide the necessary land to the requesting agency. That agency would be responsible for all details of the actual exchange with the private landowner. The bureau would be permitted to require payment by the requesting agency for the land to be transferred. If the bureau decided against the transfer, the public agency would then have to use the eminent domain power. A determination by the bureau not to transfer public land is sufficient under article XIII for a finding that public lands are not available.

The bureau would not have the authority to deal with private individuals in land exchanges. Those dealings would be done by the public agency that needs the private land that is the subject of the proposed land exchange.

Once an agency makes a request for public land for a land exchange, the bureau would have two years to act. After two years, the bureau would no longer have any jurisdiction and the case would be closed. This is necessary to prevent the accumulation of unresolved land exchanges. When the landowner offers an exchange of private land but asks for too much public land in return, the exchange process simply stops. Neither party goes ahead. The public blames the government agency responsible for land matters for a failure to clear up land exchange matters. But the public agency cannot do so responsibly if the private owners are asking for too much public land in their proposed exchanges. Under this provision, the process would have to be finished within two years, or the landowner would know that the exchange had been denied. Any proposed exchange not completed in two years is closed, and no exchange may be made.

The government agencies and the bureau will give pending land exchanges priority and get them resolved. All pending land exchange matters will be subject to the two-year limitation. If they are not resolved within two years of the approval of these amendments, they will be deemed to be denied and may not be revived. This will give both the government agencies and the landowners an incentive to get the backlog cleared up.

While the land exchange backlog is pending, there is substantial uncertainty as to the amount of public land that will be available for homesteads and commercial leases. The amendments seek to reduce the backlog before commercial leases consume large additional amounts of the public lands. It is for this reason that the two-year limitation period was adopted. With a concerted effort, the government agencies that need private land, and the bureau which is

in charge of making public land available for exchanges when that is warranted, can get together and dispose of the backlog. The bureau may also hire private contractors to handle the paperwork involved in land exchanges, to do the necessary investigation and fact-finding, and to provide other support.

When a proposed land exchange has been disposed of, either by the bureau's denial or by the lapse of two years, the landowner can go to court to get compensation from any government agency that is using the landowner's private land or the government agency can use its eminent domain powers to pay the landowner for the fair value of the land.

There are old land exchange cases pending from various military confiscations and Trust Territory administration. If these cannot be resolved within the two year time period, the bureau would send the claimant a notice to that effect, and the claimant would then have to pursue his or her rights in the courts. The sending of a notice is not a requirement, however, for a claimant to pursue these land claims in the courts. Nor would any land exchange request, pending at the time of the approval of these amendments, be extended beyond two years.

It was the intent of the Convention and it is inherent in the two-year limitation period that the land exchange problems be resolved before commercial leases are granted. After the two-year period ends and all pending land exchanges are either resolved or expire, then the bureau can make reasonable judgments about what public lands should be available for leases to private developers.

Section 5(c): This section governs all leases of public lands.

This section requires that before a lease is approved by the bureau a public notice be issued by it stating the precise terms of the proposed lease and identifying the parties to the proposed lease. The notice shall solicit and provide a reasonable opportunity for competing bids. If a better bid is received, the bureau may not go ahead with the original lease. To do so would violate the fiduciary responsibilities of the directors. This new policy is an effective means of preventing leases at concessionary terms.

The term of the lease on public lands is increased to forty years. The current constitutional provision allows a term of twenty-five years with a renewal for fifteen years with the approval of a three-fourths vote of the legislature.

The Convention was advised of the problems that occur when foreign investors get leases, do not develop them, and hold the land for speculation. The bureau is required under the amendment to put in all leases a provision defining the expiration of the lease in three years if the commercial purpose has not been accomplished.

The Convention noted the extensive revisions of major leases that are required by the legislature. This practice is undesirable. For this reason, section 5(c) requires the legislature to

vote only to approve or reject a lease with no alterations or additional conditions allowed. Under this subsection, any additions or changes by the legislature would be of no effect.

No leases of more than twenty-five years or more than five hectares may be entered into by the bureau without the legislature's approval. The Convention has taken note of the possible evasion of the five-hectare requirement that might occur if developers acquired separate parcels of less than five hectares in size and then joined them. The fiduciary responsibility of the directors requires that they investigate this possibility and require, as a lease term, that if any parcels are subsequently joined, in fact or in practical effect, to a lease of less than five hectares that would make the total parcel greater than five hectares, then the lease shall automatically expire and the legislature's approval must be sought.

The Convention was also informed of the complaints by developers that their projects are often held hostage by the legislature. In order to avoid delay, the amendment contains a provision that the lease is deemed approved if the legislature does not act within sixty session days. The Convention is mindful that approval of leases can take up a considerable amount of the legislature's time. For that reason, the amendment requires that the legislature act in joint session when it approves leases.

The 1976 Constitution contained a requirement of a three-fourths vote of the legislature to approve an extension of a lease from twenty-five to forty years. Due to the downsizing of the legislature and the safeguards explained above, this super-majority requirement has been deleted.

The bureau should involve the office of the public auditor, the attorney general, and other law enforcement agencies as necessary to investigate compliance with lease terms. If leases require that commercial activity begin within a specified time period and the necessary level of activity has not begun, the bureau should take action to cancel the lease. The bureau should provide sufficient monitoring and enforcement of lease terms to ensure that land is not held for speculation.

Nothing in this section 5(c) affects leases of public land that were completed and executed before August 4, 1995. Specifically, existing leases to developers on Rota are not affected.

Section 5(d): This section covers the comprehensive land use plan that sets forth the bureau's objectives and priorities. A requirement for such a plan has been in the Constitution since 1976, but has not been effective. The Convention strengthened it in two ways. First, the bureau is required to act only in accordance with a plan. Second, the bureau may adopt or amend the plan only after reasonable notice and public hearings.

Section 5(e): This section provides for the disposition of any proceeds from the leases or sale (to other government agencies) of public lands. As in the 1976 Constitution, the moneys are deposited with the Marianas Public Land Trust.

The bureau is required to submit a budget to the governor for inclusion in the budget submitted to the legislature, and may spend money for its administration or programs only as authorized by this budget. Once authorized, the bureau may retain funds for administration, for the maintenance of the preserves authorized under section 3, or for the homestead programs authorized under section 5(a).

Section 6: Permanent Preserves.

This section is new. Some lands on each of the islands are set aside in permanent preserves. The Convention concluded that this is the only way that land will be available for the enjoyment of future generations.

Section 6(a): Permanent preserves are those public lands that cannot be sold or dedicated to private use in any way. They are to be used for a range of public purposes that are included in recreational and cultural uses, preservation of wildlife, preservation of medicinal and plant life, and conservation of water resources. An example of a cultural use is the traditional use of the Sabana lands in Rota as community farmlands.

There is flexibility under this provision with respect to short-term leases on the permanent preserves to provide visitor services and to promote recreational uses. The intent is that these lands be permanently set aside and not be in danger of being leased for private purposes or sold for land exchanges. They could, of course, be affected by subsequent constitutional amendment.

Section 6(b): This section incorporates the section protecting Isleta Managaha (Managaha Island) that was formerly in article 14, section 2. (That section now deals only with the islands in the Northern Islands that are permanently set aside as wildlife refuges.) This section also covers Isleta Maigo (Bird Island) and Isleta Maigo Luao (Forbidden Island) adjacent to Saipan. It requires that these islands be maintained as uninhabited places, but permits cultural and recreational uses.

Section 6(c): This section covers the sandy beaches already protected by former section 5(e) of article 11. This section does not change the status of the sandy beaches. It covers:

> (1) Saipan: Puntan Susupe (Susupe Regional Park), Unai Chalan Kanoa (Chalan Kanoa District #4 San Isidro Beach Park), Puntan Afetna (Afetna Beach Park, San Antonio south of Pacific Island Club Resort), Unai Chalan Kiya (Civic Center Beach, Vietnam Memorial Monument, Kilili Beach), Tanapag Beach Park, Unai Makpe (Wing Beach), Unai Halaihai (Marine Beach), Unai Laolao Kattan (Tank Beach), Unai Peo (Ladder Beach), Unai Dangkolu and Unai Dikike (Denikuio and Coral Ocean Point), and Puntan Muchot (Micro Beach), Unai Fanhang (Jeffries Beach), Unai Talufofo (Talufofo Beach), Unai Hasngot (Old Man By The Sea), Unai Nanasu (Hidden Beach), Unai Pau Pau (Pau

Pau Beach), Unai Obyan (Obyan Beach), Unai Laggua (Laggua Beach), beach properties occupied by public schools and other sandy beaches.

(2) Tinian: Kammer Beach, Taga Beach, Tachogna Beach, Unai Dankulu, Unai Babui, Unai Chulu, Lasarino, and Masaolog. Tinian beaches included in the military leased lands are included in the preserves and will be protected under this section at the end of the military lease.

(3) Rota: Tatachog Beach, Taipingot Peninsula, Teteto Beach, Guata Beach, Swimming Hole Beach, and Mochong Beach.

The bureau has jurisdiction over land surveying and therefore has the necessary capability to complete the required surveys to define the beach areas to be preserved. Sandy beach areas under lease are a part of the permanent preserves subject to the lease. When the lease expires, these areas will become part of the preserves. Because they are part of the preserves, when the existing lease expires, it may not be renewed. The 150 feet of public lands on sandy beaches that have been leased are a part of the preserves.

Section 6(d): This section covers public land directly contiguous to any beach, whether sandy or not. If public land is connected to a beach, it will become a part of the permanent preserves unless the Marianas Land Bureau acts to exempt all or part of this land from the preserves. The bureau would likely make these determinations in connection with its comprehensive land use plan. This requires an affirmative action on the part of the bureau to take land out of the preserves. If no action is taken by December 31, 1997, then the land is committed to the preserves. The bureau may allow such playground and recreational facilities on these lands as are suitable for public purposes in its judgment.

Section 6(e): This section covers public land that is five hundred feet or more above sea level and thus affects the ecology and scenic quality of the islands. This public land is included in the permanent preserves unless the Marianas Land Bureau acts to exempt all or part of this land from the preserves. This is similar to section 3(d). The bureau would establish the appropriate uses of these preserves in its rules and regulations.

Section 6(f): This section covers three wildlife areas that have been set aside, and protects them permanently. These are the Kagman wildlife conservation area, the Naftan wildlife conservation area on Saipan; and the Chenchun bird sanctuary and Katan Afato wildlife conservation area on Rota, and no permanent structures may be built in these preserves and no leases may be made.

Section 6(g): This section covers the Sabana lands in Rota, which are set aside for community farming, conservation, bird and wildlife preservation, recreation, and village homesteads under section 6(a). The views of the people of Rota could be obtained by the bureau

through a local initiative in the event that a part of the Sabana lands were to be used for homesteads.

Section 6(h): This section provides that when the military lands are returned on Tinian, at least one hundred hectares will be set aside for a permanent preserve on Tinian. The bureau is given flexibility in dealing with this part of the preserves.

Section 6(i): This section permits the bureau to set aside additional lands as part of the preserves. This covers:

Saipan: Garapan Central Park, Garapan Regional Park/Sugar King Park, Kagman Homestead Park, Maddock (Grotto), Navy Hill Softball Field, As Matuis Public Park, Dandan Homestead Park

Tinian: Taga House Park

Rota: Tetnon Park (Old Japanese Cannon Park), Veteran Memorial Park, Tonga Cave Park, and As Nieves Latte Quarry.

Section 7: Land Titles.

This section combines all the land survey and land title agencies under the bureau. The governor's reorganization effected this consolidation, and it is preserved here. The functions of the Land Commission and the functions of surveying lands are consolidated within the bureau. This has no effect on the jurisdiction of the superior court to hear land cases. The adjudication function of the bureau is an administrative one.

Section 8: Marianas Public Land Trust (Former Section 6).

This section provides for the Marianas Public Land Trust in essentially the same way as the 1976 Constitution.

Section 8(a): This section maintains the current Marianas Public Land Trust. The trust has five directors, with representation from the senatorial districts, the Carolinian community, and the women's constituency. The only substantive change made to this section is a term limit of two terms. The term limit applies retroactively, so that any current trustee who has served two terms would not be eligible to serve a third term.

Section 8(b): This section controls the kinds of investments that the trustees may make with the principal of the trust.

This section provides that up to forty percent of the assets must be in bonds purchased in the United States market. The trustees may not speculate in foreign markets. The bonds must be

of high quality. This requires the trustees to purchase only bonds of A grade or better under the current rating system.

This section also provides that when the trustees buy stocks up to sixty percent of the assets they must purchase shares of companies listed on the stock exchange in the United States that has the highest qualifications for listing. At present, that is the New York Stock Exchange. This means that the trustees will be investing in companies that have a relatively high asset value. The trustees may not speculate in commodities, stocks listed on other exchanges, or foreign stocks. In addition, the trustees have the discretion to invest in cash or cash equivalents when they conclude that market conditions make it prudent not to be fully invested in bonds and stocks.

This section also provides that the trustees have the sole power to approve investment of trust assets. The trustees have a fiduciary responsibility, and in order not to be placed in a situation where they are forced to take actions that are not prudent, the trustees need to have exclusive control of decisions about investments to be made with funds that belong to the trust.

Section 8(c): The trustees may retain the interest earned on the principal of the trust if they elect to invest in mortgages or loans permitted under section 6(a) which covers the homestead and homestead housing program. Up to forty of the interest earned in any year may be allocated to this purpose. If the trustees do not allocate interest proceeds to this purpose, they are turned over to the general fund to be appropriated by the legislature for the council on indigenous affairs and capital improvement projects as deemed appropriate..

Section 8(d): This section is the same as section 6(d) of the 1976 Constitution.

Section 8(e): This section is the same as section 6(e) of the 1976 Constitution.

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Article XII contains six sections. The Convention amended five of the six sections. The Convention's amendments do not affect the fundamental purpose of article XII. The amendments are for the purpose of strengthening article 12 so that its purposes can be achieved with a minimum of disputes, litigation, and expense.

Section 1: Alienation of Land.

No change.

There is no change to the fundamental requirement that the acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent. Nothing in the amendments to article XII affects the scope of or underlying policy served by article XII. The public hearings, comments and comprehensive

analysis of article XII issues at the Convention confirmed the importance of the ownership of land for the culture and traditions of the Northern Mariana Islands.

Section 2: Acquisition.

Section 2 defines the term "acquisition" as used in section 1. The changes to this section do not disturb the current jurisprudence about what constitutes an acquisition other than to revise the exceptions. The structure of the section has been changed to make clear that there are only three exceptions. All other acquisitions are subject to the restrictions of section 1.

Transfer by inheritance to a child or grandchild. A transfer by testate or intestate succession or by gift to a child or grandchild is not an acquisition. Children may inherit land through either parent. If the child or grandchild does not qualify as a person of Northern Marianas descent because he or she is not twenty-five percent Northern Marianas Chamorro or Carolinian as defined in section 4, that child or grandchild can still acquire permanent and long-term interests in real property in the Commonwealth, so long as the transfer is by inheritance or gift. The terms "inheritance" and "gift" have the normal meaning.

A child or grandchild who takes title under this exception may also make a gift or leave this land to his or her children or grandchildren, regardless of whether they qualify as persons of Northern Marianas descent. The intent of this exception is that persons of Northern Marianas descent as of the date of this amendment may provide that their land remains in their family regardless of whether their children or grandchildren decide to marry persons who are not of Northern Marianas descent.

Children may sell to a qualified buyer any land that they have been given or inherited from their parents. Qualified parents may buy land to give or leave to their children.

This exception does not cover brothers, sisters, nieces, nephews, aunts, uncles, or any relatives other than children and grandchildren. A person of Northern Marianas descent may transfer land by gift or by will to a brother, sister, niece, nephew, aunt, uncle or other relative, but those persons must qualify as persons of Northern Marianas descent under section 4 in order to own the land. A transfer to one of these relatives who is not of Northern Marianas descent would be of no effect.

Transfer by gift or inheritance to an adopted child: A child adopted before the age of six years is treated the same for purposes of this exception as a natural child. An adopted child who is not a person of Northern Marianas descent does not become a person of Northern Marianas descent by virtue of the adoption. However, adopted children and grandchildren who are not persons of Northern Marianas descent may obtain land by gift or inheritance under this exception. As is the case with natural children, no other relatives are included in the exception.

Transfer by inheritance to a spouse: A spouse who is not a person of Northern Marianas descent may inherit real property as provided by law.

The 1976 Constitution allowed spouses to inherit permanent and long-term interests in real property. The 1985 amendments to the Constitution changed the rule so that spouses could not inherit unless there were no children qualified to inherit. The rule adopted by the 1985 amendments worked a hardship. If the spouse who is not of Northern Marianas descent does not inherit anything, then he or she can be removed from the land by one of the children who may be acting for personal reasons unrelated to anything that supports this result as a matter of public policy. The language added by the 1985 amendments was as follows: "if the owner dies without issue or with issue not eligible to own land in the Northern Marianas Islands." That language has been deleted.

The Convention recognized that there may be abuses. A spouse who is not of Northern Marianas descent may marry just to gain access to valuable land and may have been married only a short time before the spouse who is of Northern Marianas descent dies. A spouse who is not of Northern Marianas descent may not get along with children and grandchildren because of past unfairness to those children and grandchildren.

In order to achieve the best result under circumstances of these conflicting possibilities, the Convention provided that the surviving spouse who is not of Northern Marianas descent may take whatever the legislature permits under the general laws on inheritance. That might be a permanent interest; it might be a life estate, that is, the use of the property for life, but not title; and it might be nothing at all. This provision simply follows whatever policy the legislature has found appropriate.

Transfer by foreclosure on a mortgage: The provisions for transfer by foreclosure on a mortgage were in the 1976 Constitution and were amended by the 1985 amendments. The only change in 1985 was to substitute the phrase "for more than 10 years after foreclosure" for the phrase "for more than 10 years beyond the term of the mortgage." Foreclosure is an event that has a date certain. The period of ten years beyond that date certain is easy to measure. It is likely that the event of foreclosure was the marker date for measuring the ten-year period under the 1985 amendments, but this is not entirely clear and, for that reason, the substitute language should be better.

None of these exceptions, which permit permanent and long-term interests in real property to be owned by persons who are not qualified under section 4, are contrary to the requirements of the Covenant. Section 805 of the Covenant permits the Northern Marianas people to define the term "acquisition" and these carefully crafted exceptions are a reasonable exercise of that power.

Other means: All other acquisitions by sale, lease, gift, inheritance or other means are prohibited by section 2. The phrase "other means" is intended, in this connection, to cover any

other way to transfer permanent and long-term interests in real property. Over time, the forms of commercial transactions change. The phrase "other means" means that the Constitution is flexible enough to embrace any instrument or other device that may be used in the future.

Effect of laws: The legislature's actions with respect to the inheritance laws, particularly those affecting spouses, will alter the scope of section 2; this does not give the legislature any power to legislate with respect to article XII itself.

Retroactive effect: The exceptions provided in section 2 have retroactive effect. (See Schedule on Transitional and Related Matters, Section 7(b).) They affirm past gifts and transfers by wills currently in existence executed by persons not yet deceased. These exceptions do not affect pending litigation or inheritance from persons deceased before the effective date of these amendments. No impairment of any contract right is intended.

Section 3: Permanent and Long-Term Interests in Land.

This section defines the term "permanent and long-term interests in real property" used in section 1. This section deals with two general kinds of interests -- freehold interests and leasehold interests. These are common law terms.

Freehold interest: One matter raised frequently during the Convention's deliberations in connection with section 2 above was the problem perceived by some to arise if one person acts for another. If one person obtains title to property at the request of another, some have asserted that the person making the request is the real owner. If a person who is not of Northern Marianas descent has an enforceable legal right to compel a person of Northern Marianas descent to transfer a freehold interest in real property, then the person who is not of Northern Marianas descent is the real owner of the property. An unrecorded deed, a power of attorney, a power of appointment, a power of substitution or succession (allowing a qualified person to take title in place of the lessee), a lien in favor of the lessee that may be foreclosed to force a sale of the landowner's interest, a joint venture or other side agreement may give this power. In these cases, transfers violate article XII. If a person who is not of Northern Marianas descent cannot compel directly or use enforceable obligations to compel indirectly a person who is of Northern Marianas descent to dispose of real property in a certain way, then the person of Northern Marianas descent who acts at the request of a person who is not of Northern Marianas descent is still the owner and the person who is not of Northern Marianas descent does not become the owner. This is the result under current law.

Arguments have been made that because article XII made transfers to persons who are not of Northern Marianas descent void ab initio, that the transfer never happened, and therefore the legally enforceable power to compel the person of Northern Marianas descent is inoperative. That argument is contrary to the intent and underlying policy of article XII.

For example, if a U.S. citizen, who is not a person of Northern Marianas descent, requests a person of Northern Marianas descent to buy land and grant the U.S. citizen a lease, and the person of Northern Marianas descent buys the land, the Northern Marianas person is the owner. If the U.S. citizen asks the Northern Marianas person to transfer the land to someone else, but cannot compel the Northern Marianas person to do so, then the Northern Marianas person is still the owner. If the U.S. citizen provides a loan to the Northern Marianas person, and asks the Northern Marianas person to transfer the land to someone else providing that if the Northern Marianas person does not do what is asked then the loan will become due, then the U.S. citizen is the owner because the U.S. citizen has a legally enforceable means to pressure the Northern Marianas person to transfer the land. The transfer by the seller to the Northern Marianas person violates article XII.

If, however, the Northern Marianas person acts on a consensual basis and the U.S. citizen has no legally enforceable means to compel or pressure the Northern Marianas person to act or not act, then the Northern Marianas person is the real owner and the U.S. citizen is not the owner, no matter how the Northern Marianas person decides to act.

Leasehold interests: The only change with respect to section 3 applies to leasehold interests and adds the phrase "and related obligations" to the definition of the fifty-five year lease term.

The 1976 Constitution provided for a forty year lease term including renewal rights. The 1985 amendments provided for a fifty-five year lease term including renewal rights. The phrase "and related obligations" has been added to cover any contractual or other obligations that might be used to compel or pressure the landowner to extend the lease. The intent is to cover any and every kind of obligation.

From 1978 through 1985 there were a number of clauses used in lease agreements that had the practical effect of extending the term of the lease. These included buy-back clauses requiring the landowner to buy the improvements on the property made during the term of the lease; change of law provisions requiring the landowner automatically to surrender title if the law changed to permit persons who are not of Northern Marianas descent to own land in the Commonwealth; and other similar measures. These are all efforts to extend the lease and therefore fall within the term "renewal rights." They are rights that the lessee has that are intended to force or persuade the landowner to go beyond the fifty-five year term of the lease. They are all violations of section 3 as it stood, without amendment. And to the extent these types of lease clauses are not violations of the "renewal rights" provision, they certainly are violations of the "related obligations" standard.

The intent is to reach all unrecorded deeds, powers of attorney, agreements, contracts, or arrangements that could be or are used to get beyond the fifty-five year term. The constitutional rule is very simple. A lease agreement may have a term of up to fifty-five years. The landowner may not grant more than that, and the lessee may not take more than that. After fifty-five years,

the land must be returned to an owner who is a person of Northern Marianas descent or a child or grandchild of a person of Northern Marianas descent or their direct lineal descendants. Those persons, after the fifty-five years are up, must have an unfettered opportunity to decide what they want to do with the land. They must not be obligated in any way, by the lease agreement or by any other contract or enforceable form of agreement, to make a particular decision about keeping or disposing of their interests in the land.

For example, a landowner and a United States corporation that does not qualify as a person of Northern Marianas descent enter into a lease for fifty-five years. The lease agreement requires that the landowner buy back all improvements at fair market value at the end of the lease and requires the landowner to mortgage the fee interest for the lessee to obtain construction financing. A contract, entered at the same time, requires the landowner to leave the land by will to a second son under condition that the second son maintain all improvements on the property. Another contract, entered at the same time, is an agreement to employ the second son for life at a certain monthly salary. The landowner dies two years after the lease is signed and there has been nothing done with the land as yet because the corporation acquired the land for speculation. The first son claims that the transaction violates article XII.

This transaction violates article XII in several respects. First, the lease clause that requires a buy back of improvements is a violation because it falls under the "renewal rights" clause and is an attempt to get beyond the fifty-five years. If the landowner has to buy back the improvements and does not have the means to do so, then it is likely the landowner will grant another lease. Otherwise, the lessee could sue to get the value of the improvements and, if successful, attach the landowner's property and force another lease for a time period commensurate with the value of the improvements.

Second, the lease clause that requires the landowner to mortgage the fee interest to finance construction costs is a violation because it involves a permanent interest. If the mortgage is foreclosed, the mortgagee can take title and hold it for ten years after the foreclosure. This also involves renewal rights. A bank that held the mortgage would have an opportunity to foreclose, hold title, lease the property for another fifty-five-year term while holding title, and then dispose of title to a person of Northern Marianas descent subject to the lease. Under some circumstances, the most likely recipient of the second lease would be the corporation that held the first lease, albeit after reorganization due to the financial difficulties that caused the foreclosure in the first place.

Third, the side agreement about the will is a violation of the "related obligations" clause. The purpose of the limit on the lease term is to ensure that after the fifty-five years are over, the land goes back to a person of Northern Marianas descent under circumstances that give the landowner an unfettered, unrestricted and unobstructed opportunity to use the land or dispose of the land as the landowner sees fit. Requiring the landowner to dispose of the property by will in a certain way imposes restrictions on the use of the land after the fifty-five years are up, and these restrictions are in a contract that is "related" to the lease.

Lease clauses that are completed within the fifty-five year maximum term and do not affect the landowner's decisions upon return of the land do not violate section 3. For example, provisions that assign to the lessee any compensation for improvements or the value of the remaining leasehold taken by eminent domain do not violate section 3. Provisions that permit insurance proceeds to be paid to the lessee in the event of damage to the improvements by fire or natural disasters do not violate section 3. Provisions that require a subsequent lease for the remainder of the fifty-five-year term in the event that the lessor breaches the lease agreement do not violate section 3 because this provision will be accomplished within the fifty-five-year term and will not extend it.

A lessee who is not of Northern Marianas descent can have no claim upon the reversionary interest of the landowner. The purpose of article XII is to allow the landowner and his or her heirs to obtain complete control of the land after the fifty-five-year maximum lease term is over and to be able to make an independent and unfettered decision about what to do with the land at that time.

Successive leases may be an evasion of the fifty-five-year limit and as such may violate section 3. If the lessee regularly enters into successive leases with the landowner, for example every year or every five years, each of which is fifty-five years long, then the true nature of the transaction is a not a fifty-five-year lease. It is a longer lease and it violates section 3. On the other hand, changes to lease agreements produce income for persons who are lessors and are useful for the productive use of the land by lessees. Successive leases should be permitted if they are infrequent, the result of separate negotiation, for a consideration that is commensurate with the value of the lease, and the lease term does not exceed fifty-five years. In contrast, the tacking of successive leases is a violation of article XII. This occurs when two leases are executed at or near the same time for back-to-back terms of fifty-five years, and one of the lessees is under the control of the other lessee. The result is a lease of more than fifty-five years. Under this amendment, the courts would scrutinize successive leases to determine whether there is a necessary business purpose or other circumstances to support a conclusion that the practice is not an evasion of article XII.

Condominiums: The 1985 amendments added the following language to section 3: "except an interest acquired above the first floor of a condominium building. Any interests acquired above the first floor of a condominium building is restricted to private lands. Any land transaction in violation of this provision shall be void. This amendment does not apply to existing leasehold agreements."

It is unclear why the delegates to the 1985 Convention concluded that an interest above the first floor would be useful if the owner of the land and the ground floor decided to deny access, or whether they had in mind permanent transfers of easements that would protect the owners above the first floor. This amendment apparently was urged on behalf of those who wanted to develop condominiums and thought that they would be more marketable to persons who are not of Northern Marianas descent if this provision were included in the Constitution.

This language has been deleted. Condominium units can be marketed and sold under article XII without this exception, and the exception probably is not workable.

This deletion does not affect rights obtained in condominium units above the first floor after the effective date of the 1985 amendments and prior to the effective date of these provisions, if those rights exist or have any value under Commonwealth law.

Prospective effect: This section has prospective effect only. The related obligations to lease agreements entered after the effective date of this amendment will be covered by this provision. Nothing in the amendment to this section is intended to give the legislature any power to legislate with respect to article XII.

Section 4: Persons of Northern Marianas Descent.

The 1976 Constitution provided that an adopted child, if adopted under the age of eighteen years, could become a person of Northern Marianas descent. That language has been deleted.

Adopted children are provided inheritance rights under section 2 if they are adopted under the age of six years. Those rights are explained under section 2 above.

The deletion of the language with respect to adopted children in section 4 means that they are not eligible for homesteads and they do not acquire any rights accorded under the Constitution to persons of Northern Marianas descent.

Prospective effect: This deletion is prospective only, and does not affect the rights of adopted children that existed before the effective date of this amendment.

Section 5: Corporations.

Section 5 permits corporations to qualify as persons of Northern Marianas descent so that they are able to hold title to permanent and long-term interests in real property.

Corporate location: Under the 1976 Constitution, in order to qualify, a corporation had to be incorporated in the Commonwealth and have its principal place of business in the Commonwealth. This subjects the corporation to the Commonwealth's laws and regulations. This requirement was not changed in the 1985 amendments, and is not changed here.

Corporate ownership: Corporate ownership is accomplished through the ownership of shares. Shares may be voting or nonvoting. Voting shares govern the corporation. The owners of voting shares are entitled to cast one vote for every share when questions are put to the shareholders. Nonvoting shares often have equity interests. For example, if the corporation earns

money, dividends may be paid to nonvoting shares. If the corporation sells assets, such as its equipment or patents or trademarks, and the proceeds of the sale are distributed to shareholders, the nonvoting shareholders may receive shares in these proceeds. The way that these voting and nonvoting shares are structured is set out in the incorporation papers. The incorporation papers must be filed in the Commonwealth and therefore the information about voting and nonvoting shares is available within the Commonwealth.

Percentage of shares: The 1976 Constitution required the owners of fifty-one percent of the voting shares to be persons of Northern Marianas descent. The 1985 amendments changed this to one hundred percent. The Convention decided to return to fifty-one percent.

The issuance of voting shares is one of the important ways that corporations raise capital to expand their facilities or their business. It is not the only way to raise money. An alternative to "equity" interests, which are the ownership of voting or nonvoting shares, is "debt" financing which usually means borrowing from a bank or private sources.

The one hundred percent requirement enacted in 1985 works well for persons of Northern Marianas descent who have ample cash resources, because they generally do not need to raise money by selling shares. The one hundred percent requirement does not work well, however, for persons of Northern Marianas descent who have limited cash resources. When one hundred percent of the voting shares of the corporation must be held by persons of Northern Marianas descent, then the people to whom corporations may turn for additional investments in return for voting shares are other persons of Northern Marianas descent. One alternative is to offer non-voting shares, which may not be attractive to potential investors. Another alternative is to get a bank loan or some other debt financing.

The fifty-one percent requirement allows some leeway, up to forty-nine percent, for investment by persons who are not of Northern Marianas descent. This means that the persons of Northern Marianas descent who want to expand their corporations have a larger pool of potential investors. They can raise capital by selling some shares to persons or corporations who are not of Northern Marianas descent. The Convention concluded that this additional opportunity for investment will benefit individual entrepreneurs of Northern Marianas descent and will also benefit the overall economic development of the islands.

An important factor in this determination is the ease with which well-financed foreign corporations can compete with local corporations owned by persons of Northern Marianas descent. These foreign corporations are not hampered by the one hundred percent restriction. They take their leases from individual landowners who are of Northern Marianas descent. The real impact of the one hundred percent restriction falls on local owners who want to expand their corporate activities by attracting investment from persons who are not of Northern Marianas descent. In order to do that, under the current restrictions, they have to divest the corporation of any land so that the corporation does not fall under article XII at all.

Degree of "ownership:" The 1976 Constitution required that the voting shares had to be "owned" by persons of Northern Marianas descent. The 1985 amendments required that the voting shares be "actually owned" by persons of Northern Marianas descent.

The 1985 amendments provided further that "trusts or voting by proxy by persons not of Northern Marianas descent" were not permitted. Trusts are devices in which the owners of shares put their shares in a legal entity, and empower it to vote the shares. Then the directors of the trust, who may or may not be persons of Northern Marianas descent, vote the shares. Proxies are agreements under which a person who owns the shares allows another person to vote in his or her place. Under the 1976 Constitution, persons not of Northern Marianas descent could vote through the trust or proxy device, only up to the level of forty-nine percent of the votes. The delegates to the 1985 convention, however, thought that it would be useful to provide a flat rule on trusts and proxies.

The 1985 amendments also provided that "beneficial title shall not be severed from legal title." This amendment was addressed to a variety of arrangements under which those who owned the voting shares were under obligations to others to vote them in a particular way.

This amendment deletes the language added by the 1985 amendments and substitutes new language. The new language requires that fifty-one percent of the shares be actually, completely, and directly owned and voted by persons of Northern Marianas descent. This is a "control" test. It applies only to fifty-one percent of the voting shares. The intent of the fifty-one percent requirement is to put control in the hands of the persons of Northern Marianas descent if they choose to exercise it by voting together. As to the remaining forty-nine percent of the voting shares, many other ownership arrangements are permitted. Trust arrangements and proxy votes are not permitted within the fifty-one percent, although they are permitted within the forty-nine percent ownership.

The intent of this amendment is that actual, complete, and direct control of fifty-one percent of the shares be with persons of Northern Marianas descent. Control of the shares is different from control of the outcome. On any question put to the shareholders, some of those in the fifty-one percent Northern Marianas descent group may vote with or against those in the forty-nine percent group not subject to the Northern Marianas descent requirement. The decision of the shareholders is valid either way.

For example, the question put to the shareholders may be whether to approve a lease of part of the corporation's land. If the corporation has one hundred shares, then the ownership of fifty-one shares must be held by persons of Northern Marianas descent. And the ownership of forty-nine shares may be held by others. There are five persons who hold the fifty-one shares, four of whom own ten shares each and one of whom owns eleven shares; and there are seven persons who own the forty-nine shares, each of whom owns seven shares. When the question of the lease approval is voted on, all the shareholders attend the meeting, two of the five persons of Northern Marianas descent, holding ten shares each, vote for the lease; and all seven of the

others, holding seven shares each, vote for the lease. So the proponents win, because sixty-nine shares out of one hundred shares voted for the lease. Even though only two of the five persons of Northern Marianas descent voted for the lease, which is not a majority within that group, that approval of the lease is effective.

Corporate governance: The governance of corporations may be vested in the same persons who own the shares or in different persons. The highest level of corporate governance is the voting power of the shareholders. But most corporate actions are not subjected to a shareholder vote. The next highest level of corporate governance is the directors. A corporation that owns land in the Commonwealth must be governed by a board of directors. There may be other ways to govern corporations that do not own land, but there is no option for a corporation that qualifies as a person of Northern Marianas descent. In most corporations, the shareholders elect the board of directors who govern under the corporate bylaws. If a corporation is to be qualified as a person of Northern Marianas descent, then at least fifty-one percent of its directors must be individual natural persons who are of Northern Marianas descent. The other forty-nine percent of its directors may be other persons who do not qualify as persons of Northern Marianas descent. Each director may have only one vote because the intent of section 5 is that fifty-one percent of the directors and fifty-one percent of the voting power be with persons of Northern Marianas descent.

The 1976 Constitutional Convention selected the fifty-one percent requirement to allow leeway for locally-owned corporations to have persons who are not of Northern Marianas descent as directors in order to get special expertise or special knowledge that is important to the success of the corporation.

For example, if a corporation is formed to develop a mining operation and the corporation is to own the land where the mining operation is conducted, then the corporation must qualify as Northern Marianas descent. In order to make informed decisions about investing in mining equipment and hiring a knowledgeable president and operating officers, the board of directors needs to know a lot about the mining business. But because this mining opportunity is new, there is no one of Northern Marianas descent who has the necessary knowledge. The leeway allowed by the fifty-one percent limitation would permit the owners to put on the board of this company a mining expert from Utah who has excellent credentials and who is also serving on the board of directors of Anaconda Inc., one of the world's largest mining corporations. This mining expert would have one vote as a director. So long as there are three or more directors, there is compliance with section 5 of article XII. Although the mining expert is not a person of Northern Marianas descent, at least fifty-one percent of the director positions and at least fifty-one percent of the votes on matters within the powers of the directors are in the hands of persons of Northern Marianas descent.

In the example given above, the question before the board of directors may be whether to lease part of the corporation's land to another corporation that is not of Northern Marianas descent as a part of the development of the mining operation. If there are nine members of the

Board, at least five must be persons of Northern Marianas descent and four may be persons who are not of Northern Marianas descent. Commonwealth law requires adequate notice of meetings. The corporation's bylaws provide that a majority is a sufficient quorum. At the meeting to consider the question of the lease, one of the five directors of Northern Marianas descent attends and votes no, and all four of the other directors attend and vote yes. Five directors are present, which constitutes a quorum, and four of the five voted yes, which constitutes a majority of the quorum. The lease is approved. That operation of the board is consistent with the intent of section 5. A corporation operates under Commonwealth law as a participatory democracy. If those who hold voting power fail to use it, then their votes do not count.

Corporate officers: The requirements of Northern Marianas descent apply to directors not to officers. The normal functions of officers and directors under corporate law are not affected by article XII.

Age limits: The directors who are of Northern Marianas descent must be at least twenty-one years of age. The owners of shares, however, may be persons under the age of twenty-one. The person who acts for a shareholder under the age of twenty-one must be a person of Northern Marianas descent unless the voting power of the owner under the age of twenty-one is to be considered a part of the forty-nine percent that may be held by others.

Conditions imposed by commercial lenders: Lenders who are financial institutions may impose conditions on a corporation in order to lend the corporation money. Those conditions, if made as a part of normal commercial lending procedures, should not be construed to take complete control out of the hands of the persons of Northern Marianas descent so as to have the effect of disqualifying the corporation. Normal lending procedures are not affected by article XII. Article XII specifically allows transfers in foreclosure of mortgages, and that exception has been maintained since 1976.

Paper records: The Convention heard a great deal of testimony and received comments about the paper records of corporate transactions and reliance on the paper record rather than allowing a court to look behind the paper record and assess the facts. If the corporation abides by article XII, then the fact record and the paper record should be the same and the corporation will have no problem. If the fact record and the paper record are different, then the corporation should not be permitted to rely on a correct paper record. The purpose of article XII is not to create perfect paper records; it is to keep the ownership of land with persons of Northern Marianas descent. It is evident that while paper records may say that a shareholder who owns and votes his or her shares is a person of Marianas descent, that may not be the case in fact. The Northern Marianas descent shareholder may be required, by legally enforceable obligations, to follow the wishes of a person who is not of Northern Marianas descent. In that case, the person who has legally enforceable control is the real owner.

The Convention recognized that allowing plaintiffs to go behind the corporate paper record may involve additional costs for corporations. The balance of interests between those who

want to save money and rely on the paper record and those who want to enforce article XII should be made in favor of enforcement of article XII. The amendments to section 5 permit a court to examine how the corporation actually works in order to make a fair determination. The court will control discovery and will be sensitive to costs in this regard, but will have the flexibility to allow whatever discovery is reasonably necessary to assist in the presentation of relevant facts so that the decision to be made by the court will be an informed one. This is a constitutional requirement.

For example, a corporation has three shareholders. One is a United States citizen who is not a person of Northern Marianas descent who owns thirty-four of one hundred shares. Two are persons who are of Northern Marianas descent each of whom owns thirty-three shares. Each of the three shareholders pays one dollar for each share he or she owns. The corporation is formed to purchase land, develop the land, and perhaps lease a portion of the land to others. The United States citizen provides all of the money to purchase the land. The United States citizen has no control over the two shareholders who are persons of Northern Marianas descent. They may vote their shares in any way that they determine is appropriate. The two persons of Northern Marianas descent respect the wishes of the United States citizen, and generally vote to do what she wants because she has put up all the money. The corporation buys land and develops it. This transaction is permitted under article XII.

If, however, the United States citizen has side agreements, powers of attorney or other legally enforceable mechanisms to require or pressure the two persons of Northern Marianas descent to vote the way the U.S. citizen wants, then the U.S. citizen is the owner of those shares and the transaction violates article XII because more than forty-nine percent of the shares is held by a person who is not of Northern Marianas descent.

The constitutional requirements with respect to ownership and governance of corporations that seek to qualify to own land in the Commonwealth may not be varied by statute. No statutory provision with respect to corporations may impose any lesser or different test than the constitutional standard for compliance with article XII. Statutory provisions with respect to the qualification of corporations under article XII to hold permanent or long-term interests in land are of no effect.

Northern Marianas descent qualifications: The Convention considered a number of proposed changes to the definition of "Northern Marianas descent" which were supported by those who are concerned about persons born here, raised as Chamorros or Carolinians, and who honestly believed they were persons of Northern Marianas descent but, because one or both of their parents were moved by the Japanese from Saipan and did not make it back to the Northern Marianas by 1950, are not within the constitutional definition.

For example, if some of those persons serve on the boards of corporations or own shares when the true facts of the date on which their parents returned to the Marianas come to light, they will be disqualified from being a part of the fifty-one percent (formerly one hundred percent) that

is required to be of Northern Marianas descent. If an honest mistake has been made about qualification, the acts of the corporation that were done while this person was a shareholder or director are voidable by the corporation itself and can be rescinded and done over again when a person who does qualify replaces the person who does not qualify. The subsequent ratification by a group of shareholders or board of directors that does qualify under section 5 satisfies article XII in the case of an honest mistake.

Subsequent changes in ownership: Some delegates were concerned about a situation in which a corporation is set up with fifty-one percent of the owners and directors who are persons of Northern Marianas descent, so that the corporation can own land. Then, after the land is acquired and subsequently leased out for fifty-five years, the forty-nine percent shareholders who are not of Northern Marianas descent somehow get rid of the Northern Marianas descent persons and take over the corporation. In that event, when the corporation is in the hands of persons who are not of Northern Marianas descent, the corporation ceases to be qualified by deliberate effort and the corporation's interests in the land would be forfeited to the Commonwealth.

Sham corporations: The voidable standard incorporated in section 6 requires the courts to be vigilant in dealing with corporations to ensure that the corporate form is not hiding transactions that otherwise would violate article XII. If the directors and shareholders are not persons of Northern Marianas descent and there is no honest mistake involved, then section 6 requires that the courts use the strictest standard and make the actions of the corporation void ab initio. The corporate lands would be returned to the Commonwealth. The directors and shareholders of Northern Marianas descent must be able to exercise independent judgment in acting or voting, and must have done so. If persons who are not of Northern Marianas descent are using a corporation in order to accomplish land transactions and the actions of directors and shareholders have been predetermined or controlled in a legally enforceable way for this purpose, then the corporate form will not shield the transaction from enforcement under section 6 and the courts will return the lands of such a corporation to the Commonwealth.

Prospective effect: Section 5 is given effect prospectively, not retroactively. Corporations and corporate transactions in the period from the effective date of the 1976 Constitution through the 1985 amendments would continue to be governed by the rules in the 1976 Constitution; and corporations and corporate transactions in the period from the effective date of the 1985 amendments through the effective date of these amendments would be governed by the rules in the 1985 amendments. Corporations and corporate transactions in the period after these amendments are ratified would be governed by these rules. The legislature's actions with respect to the laws governing corporations may affect the scope of section 5. This does not give the legislature any power to legislate with respect to article XII itself, and nothing in these amendments has that effect.

Section 6: Enforcement.

This section deals with enforcement of the requirements of section 1. The new language has three parts, each of which is explained below.

Remedy: Transactions that violate section 1 are voidable. This means a court that finds a violation of section 1 has a range of remedies that may be applied. The remedy to be applied is determined in large part by the circumstances of the parties. If the transaction between seller and buyer causes a transfer of land that violates article XII and, at the time the cause of action is brought, the land remains in the hands of the buyer or related entities, then the transfer is void ab initio and the land is put back in the hands of the seller. The voidable standard includes the prior standard of void ab initio and this would be applied by the court in cases where that remedy was appropriate.

If at the time the cause of action is brought, the land has passed out of the hands of the buyer or related entities and into the hands of a bona fide purchaser, one who had no knowledge or reason to know of the article XII violation, then the court has available other remedies that would not divest a subsequent purchaser of the land. One available remedy is to declare parts of the transaction void and to uphold other parts. Restitution may be ordered in connection with any remedy. The courts may reform the transaction to make it comply with section 1, for example, by severing a non-qualified joint owner from a qualified joint owner. Or the courts may elect to divest the person who violated article XII of the profits brought about by the violation and require payments to plaintiffs or others. The voidable standard includes all prior remedies with respect to corporations, including the return to the government of land owned by a corporation that violates article XII. These are some examples. Under the voidable standard, the courts may exercise the full range of their powers to achieve an effective and fair enforcement of article XII.

Nothing in the changes to section 6 in any way authorize the courts to allow persons who are not of Northern Marianas descent to own land in the Commonwealth. No remedy can reach that result, as that is prohibited by the Covenant and by section 1. Under no circumstances may the land be left in the hands of an owner who is not a person of Northern Marianas descent under section 4 or a corporation that qualifies under section 5. In the event that no private action is initiated, because of the important public interests at stake, the Attorney General may act.

No particular remedy is required under the Constitution. The constitutional grant of power to the court may not be diminished by the legislature. No particular result may be commanded by statute. The courts are given flexibility in the Constitution to weigh the facts and come up with a remedy that enforces article XII in a manner that is fair, appropriate, and effective under the circumstances. That flexibility may not be circumscribed by statute.

The 1976 Constitution required that if the court found a violation of section 1, then the only remedy available was to declare the transaction void ab initio. The void ab initio remedy provided certainty of outcome when article XII first came into existence. There had been only seven years of experience with land transactions under article XII, and there had been no article

XII cases prior to the Second Constitutional Convention. The 1985 amendments left this single remedy in place. From 1985 through 1995, over thirty article XII cases were brought. The number varies depending on whether one counts article XII defenses and counterclaims. When the void ab initio rule was applied, it typically unraveled several layers of transactions.

After 1985, there were instances in which a bona fide purchaser took title after the first transaction. This might be the second, third, or fourth layer of transactions. The original landowner might have sold to a corporation which did not qualify under section 5, and that corporation subsequently sold all or part of the land acquired from the original landowner to others who did qualify as persons of Northern Marianas descent, and they in turn had sold the land to yet other people. None of the people after the initial transaction knew that the buyer in the first transaction was not a person of Northern Marianas descent. Yet when the transaction was challenged and the void ab initio rule was applied, every layer of transaction after the first one was undone and bona fide purchasers of Northern Marianas descent stood to lose their land and their investment.

The voidable standard places the responsibility for effective and fair enforcement of article XII with the Commonwealth courts. It allows the court to use the void ab initio standard when that is appropriate; and it allows the court to fashion other remedies when it is not.

Transfers to cure defects: Because there may be honest mistakes made about the status of Northern Marianas descent, and because the policy underlying article XII is to keep land in the hands of persons of Northern Marianas descent, transfers to cure defects should be allowed if the court finds they are not part of any scheme to evade the requirements of article XII. Northern Marianas descent is defined under section 4, in part, by reference to the date by which a person was born or domiciled in the Northern Marianas. World War II caused significant disruption of families on Saipan, some of whom had been living on the island for a very long time. Family members were dispersed to Guam, Palau and other places in the Pacific. Some persons who think of themselves as being within the class of Northern Marianas descent actually are not, because their parents or grandparents did not make it back to Saipan by 1950. A person whose status as Northern Marianas descent is questioned should be permitted to transfer land to a person whose status as Northern Marianas descent is not questioned, thus keeping the land in the hands of persons with the required status.

Severance: The Convention noted that under current decisions, lease provisions that violate article XII can be severed if the provision is not material to the lease and the lease contains a severance clause. Diamond Hotel v. Matsunaga, 93-023 (N.M.I. Jan. 19, 1995.) The same result would occur under the voidable remedy made available in section 6. Under the voidable standard, clauses in existing leases that violate article XII are void and may be severed from the rest of the lease. The court may sever prior to determining whether the interest is a permanent or long-term interest. The lessee may sever these clauses by adequate notice to the lessor.

The control of the maximum term of a lease of land in the Commonwealth is very important. The Covenant requires protection with respect to permanent and long-term interests in land. If the fifty-five year term is not strictly enforced, longer terms would get into the protected area of "long-term interests" and article XII itself would not be consistent with the Covenant. Therefore, although severance of lease clauses has been allowed by the courts as the jurisprudence grew, it is vitally important to the policy underpinnings of Article 12 that, in the future, severance be used sparingly by the courts. A lawyer who includes in a lease any clause that is intended to get beyond 55 years, after the clear rule enunciated by this Constitution, has a heavy burden to demonstrate that the violation of article XII was not intentional. The courts should not countenance intentional violations and should not spare leases that incorporate these intentional violations accompanied by a severability clause.

This constitutional provision places the responsibility with the courts for determining whether a severability remedy should be available. No statute may impinge upon this responsibility by setting out standards or requirements by which the courts must act in determining questions of severability.

No severance clause should defeat a deliberate attempt to get around the requirements of article XII. The courts may apply the full range of remedies made available under the voidable standard regardless of whether the lease at issue or any statute contains a severance provision. Lawyers are the primary enforcers of article XII. It is very important that lawyers have an incentive to live up to the requirements of article XII. If lawyers are required to draft documents that comply completely with article XII, then the enforcement process will be much less expensive, time consuming, and difficult for all concerned. In order that the incentives be in the right place, lawyers must be aware that a severance clause in a lease agreement will not necessarily save the lease agreement. A severance clause written after 1995 should not be given effect, under the voidable standard, when it protects clauses that were plain violations when written. This is not intended to be applied with respect to honest mistakes or genuine questions as to the state of the law.

Forfeiture of land held by corporations: In the event that a corporation is divested of land for violation of section 1, that land is forfeited to the government. A provision for forfeiture to the government has been in the Constitution since 1976. If a corporation that is ineligible to own land actually manages to acquire a permanent or long-term interest in land, and the court divests the corporation of that land, then the land is returned to the government. The same result occurs if a corporation buys land while it is eligible to do so and then becomes ineligible because persons who are not of Northern Marianas descent push out the persons of Northern Marianas descent or persuade them to leave. Title should not go back to the original owner of the land because the purchase was legal when it was made. Therefore, since 1976, the Constitution has provided that title to the land should pass to the government. These amendments do not affect this long-standing rule that when corporations are divested of land, the land goes to the government.

If a corporation knowingly and intentionally becomes ineligible to own land by forcing out the owners and directors who are persons of Northern Marianas descent or allowing them to voluntarily resign without replacing them with other qualified persons of Northern Marianas descent who actually, completely, and directly govern the affairs of the corporation, then the government has standing to bring an action to obtain the land that the corporation owns because that land will be forfeited to the government if the corporation has intentionally acted illegally. No amount of good works in the community, payment of taxes, or contribution to the economic development of the Commonwealth would allow such a corporation to continue to hold its land.

Attorney General: Section 6 requires the Attorney General to set up an office to assist landowners, to monitor land transfers, and to assist in enforcement.

Landowner assistance: The intent of this amendment is that landowners have an office where they can go to get free legal advice with respect to land transactions affected by article XII. Many of the current problems in litigation could have been avoided if landowners had had competent legal advice before entering the transaction. The staff available to this office must speak Chamorro and Carolinian. Landowners should be able to bring sale documents and lease documents to be analyzed and explained. Because the Attorney General's office has no stake in land transactions between one owner and another under article XII, the advice will be neutral and informed. The Attorney General's office may give advice to landowners, but may not represent any private landowner in any transaction. If the Attorney General becomes involved in subsequent litigation over a matter on which the Attorney General's office has advised, then independent counsel must be retained to prosecute the action in order to avoid the appearance or reality of a conflict of interest.

Monitoring land transfers: The Attorney General's office would monitor land transfers occurring in the Commonwealth, from public records and other sources, to determine whether there were legal problems that might affect the effective and efficient enforcement of the intent of article XII. The Attorney General's office may publish such handbooks or guidelines as it believes might be helpful for those involved in land transactions.

Assisting in enforcement: The government has an interest in land transactions because the policy underlying article XII is important to the economic well-being of the Commonwealth and its people. If transactions result in the holding of land by persons who are not of Northern Marianas descent, the Attorney General should take action to void the transaction and ensure that land holdings are proper under article XII. The government is also the landowner of last resort. If there is no one to inherit or a corporation that owns land fails to qualify in a way that brings with it the result that its land is lost, then land is forfeited or escheats to the Commonwealth. The Attorney General's office would act in cases where the government has this kind of interest to protect those interests. The Attorney General may seek leave to intervene in pending actions, may appear as amicus curiae in trial or appellate matters, and may bring declaratory judgment actions as permitted under court rules or Commonwealth law. The Attorney General's office does not replace private rights of action in any way. Any landowner

who has a cause of action under article XII may pursue that action with the lawyer of his or her choice.

Statute of limitations: This section provides a six year statute of limitations for article XII actions. The purpose of constitutionalizing the statute of limitations is to import common law considerations of fairness into this aspect of article XII enforcement. The constitutional statute of limitations is self-executing and may not be circumscribed by statute. No common law principles with respect to enforcement of statutes of limitations may be cut off by any law enacted by the legislature.

Fraud exception: If there has been fraud in a transaction, the statute of limitations does not start to run until the fraud has been discovered or reasonably could have been discovered. The common law exception includes, but is not limited to, fraudulent concealment.

Disability exception: If a party who has a cause of action under article XII is disabled in a way that prevents bringing the cause of action through no fault of that party, the statute of limitations does not run during the period of disability. For example, if a seller involved in a transaction affected by fraud on the part of the buyer, a few days after the transaction is hit by an automobile and falls into a coma, the six year statute would be tolled for the period during which the seller was under this mental disability.

The Commonwealth courts would apply existing and future common law to determine the exact limitations under article XII.

Retroactive effect: The amendments to Section 6 apply to all pending proceedings. Proceedings in which a final judgment has been entered are not pending proceedings if the final judgment is not subject to further appeal. The retroactive effect is not intended to disturb judicial decisions already made; nor does it require any rehearings on any judicial determination in any case. The intention of the Convention is to minimize litigation, not to create any additional workload for the judiciary.

ARTICLE XIII: EMINENT DOMAIN

Section 1: Eminent Domain Power.

No change.

Section 2: Limitations.

No change.

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources.

The only change to section 1 is to delete the phrase "under United States law." This is not a substantive change. It is analogous to the amendment made to article XI, section 1 by the 1993 Legislative Initiative 7-3. The intent of this section is to extend the claim of the Commonwealth as far as possible. The Commonwealth has always claimed all of the jurisdiction available to it now or in the future. This claim includes the two hundred mile exclusive economic zone, and extends beyond two hundred miles if that becomes available. This claim includes everything available under United Nations provisions for jurisdiction over area waters, and again, will extend beyond the United Nations provisions where available. The obligations of the Commonwealth to act consistently with the United States Constitution and United States laws are provided in the Covenant. This change does not affect those obligations.

Section 2: Uninhabited Islands.

Section 2 has been changed by deleting the first sentence which covers Managaha Island and preserves it as an uninhabited island to be used only for cultural and recreational purposes. These purposes are fundamentally different from the uninhabited islands that are to be used only for preservation and protection of wildlife. Managaha Island is better dealt with in article XI.

Section 3: Places and Things of Cultural and Historical Significance.

No change.

Section 4: Natural Resources.

This is a new section. It parallels section 1 which preserves marine resources in the waters under the jurisdiction of the Commonwealth. Section 4 covers the natural resources located on or under public lands. This section requires that these mineral, water and other resources on public lands be protected and preserved for the benefit of the public, but leaves the details of the program to the legislature. This section declares that the public natural resources of the Commonwealth are the common property of all the people, including the generations to come. The Commonwealth shall, as trustee for these resources, conserve and maintain them for the benefit of the people.

Section 5: Royalties and Fees.

This is a new section. Sections 1 through 4 of article 14 place responsibilities on the Commonwealth to protect and preserve certain natural resources. The Commonwealth may grant licenses, collect fees, or negotiate for royalties in connection with various uses that are made of these natural resources. Section 5 acknowledges that the municipalities should share in these revenues. A five percent set-aside for municipalities has been established. The five percent

share is to be paid, upon collection by the Commonwealth, to the municipality nearest to the natural resource that is generating the revenue.

ARTICLE XV: GAMBLING (Former Article XXI)

In considering whether to recommend an amendment that would prohibit gambling entirely, the Convention necessarily had to consider and assess the recent history of gambling in the Commonwealth. The Convention recognized that some forms of gambling are legal in the CNMI, such as raffles, bingo, batu, cockfighting, poker machines and pachinko machines. The amendment does not interfere with any form of gambling to the extent that it was legal on June 5, 1995. For more than fifteen years, however, the Commonwealth has debated whether to authorize casino gambling. The issue has been considered in the legislature on several occasions and has been the subject of three popular initiatives and two referenda. Most recently, the Second Senatorial District (Tinian and Aquiguan) in 1989 by popular initiative decided to authorize casino gambling and investors have now made a substantial investment in a gambling facility on Tinian. The people of Rota have reached a different conclusion regarding legalized casino gambling; they rejected local initiatives to permit such gambling by substantial margins in 1991 and 1993. A majority of the voters in both Rota and Saipan voted against legalized casino gambling in 1989 while the majority of Tinian voters supported it.

In light of this history, the amendment does not prohibit gambling entirely. That decision would adversely affect the people of Tinian, who have consistently supported legalized gambling as an important component of the long-desired economic development of that island. Furthermore, in reliance on the 1989 popular initiative in Tinian, a program to develop and promote legalized gambling is well underway and it would be unfair both to the investors and to the people of Tinian if this course were reversed without a popular vote on Tinian.

The amendment to article XV permits gambling only in those senatorial districts whose voters so decided in a popular initiative. The amendment denies authority to the legislature to enact legislation permitting casino or other new forms of gambling and provides also that a Commonwealth-wide initiative is not available to accomplish the same objective. The Convention was aware of the potential economic benefits to the Commonwealth that might result from the legalization of casino gambling in the CNMI. The Convention was also aware of the social, cultural and political consequences that might follow legalized gambling to these small, family-oriented, and religious islands. What the history of the last fifteen years has demonstrated is that the people of Rota, Tinian and Saipan have widely different views on this subject and have assessed the potential risks and benefits differently. Accordingly, the Convention concluded that each senatorial district should be allowed to make this decision for its own inhabitants only by popular initiative. Such a resolution of the matter also serves to provide a measure of economic and political stability to the issue that will be welcomed both by investors and the people.

The vote required to legalize gambling is two-thirds in a popular initiative. Although this is the supermajority vote currently required in article IX, section 1, this requirement is specified in article XV.

No moratorium is imposed on legalization of casino gambling in the senatorial districts other than Tinian. In view of the past history on Rota and Saipan with respect to sentiments on this issue, a moratorium is not necessary. In addition, it would be unfair to deny the citizens in any senatorial district the right to exercise their free choice on this question at any time.

Because certain gambling activities are presently authorized by law, the amendment includes a provision that exempts such activities from the prohibition contained in the proposed article XV. This language prohibits the legislature from increasing the extent of gambling permitted on June 5, 1995, such as by authorizing more pachinko machines.

ARTICLE XVI: CORPORATIONS

No change.

ARTICLE XVII: ETHICAL STANDARDS (Former Article XIX)

The Convention deleted the former article on this subject from the Constitution because the legislature had acted to pass appropriate legislation. The Convention concluded, however, that the subject deserved some attention in the Constitution as a reminder of the obligations of all public servants in the Commonwealth. The brief statement in article XVII is designed to do exactly that.

ARTICLE XVIII: CONSTITUTIONAL AMENDMENT AND MUTUAL CONSENT

Section 1: Initiative Petitions (Former Section 4).

Under this section, the voters may amend a single provision of the Constitution (or a single provision plus the necessary conforming changes in other provisions) by a popular initiative. If persons want to proceed by popular initiative for one provision, they need to get the signatures of thirty percent of the qualified voters Commonwealth-wide, and at least twenty-five percent of the qualified voters in each senatorial district.

The Convention reduced the number of signatures for the petition, just to put the question on the ballot, from fifty percent to thirty percent of the persons qualified to vote in the Commonwealth. The fifty percent number had been put in the Constitution in 1976 when the Constitution also provided for amendment by action of the legislature. For the reasons explained

below, the provisions for amending the Constitution by action of the legislature have been deleted. Therefore, the Convention believed it would be appropriate to make it slightly easier for a petition to get put on the ballot.

Section 2: Constitutional Convention.

This article also makes provision for a constitutional convention. This would generally be used for a review and amendment of a number of different, unrelated provisions of the Constitution. The voters may call a constitutional convention by initiative petition. If someone wants to proceed by popular initiative to amend the whole constitution, he or she needs to wait until the year 2021, and then get the signatures of thirty percent of the qualified voters Commonwealth-wide and at least twenty-five percent of the qualified voters in each senatorial district.

The Convention provided that a constitutional convention cannot be called for twenty-five years after the approval by the voters of the amendments from this Constitutional Convention. The 1976 Constitution allowed for a constitutional convention after the Trusteeship had been terminated. At the time the 1976 Constitution was written, the Trusteeship Agreement was still in place and it was uncertain exactly when it would be terminated. The delegates to that convention wanted to be sure that there was an opportunity to re-write the constitution, if necessary, after the Trusteeship was terminated. The 1985 amendments allowed for a convention after ten years. The Convention believed this time period was too short. The Convention believed that the revisions to the Constitution recommended by it will endure, and need not be revisited in ten years. Rewriting the Constitution on a frequent basis brings instability to the government.

Former Section 3: Legislative Initiative (repealed).

The legislative initiative process that allowed the legislature to amend one provision in the Constitution or to call a constitutional convention is deleted. The Convention concluded that the popular initiative and the occasional constitutional convention are better methods to amend the Constitution. These are the only methods that should be used in the future to amend the Constitution and any effort to use the legislative initiative process to subvert this objective should be rejected by the courts.

The Convention was aware of the legislative initiative on the ballot for November 1995 to increase the legislature's budget to 8 million dollars. This was passed in the legislature without any public hearings or notice; and the legislature intended that it go on the ballot without any public education. If the voters approved it on the ballot, then the legislature's budget ceiling will be 8 million dollars -- far higher than what the Convention has recommended.

This example illustrates one of the principal deficiencies of allowing the legislature to propose amendments to the Constitution. The more fundamental problem is that amendment by

legislative initiative is simply too easy. In light of the readiness of the voters to approve amendments proposed by their elected leaders, amendment by legislative initiative engenders instability and uncertainty regarding the Commonwealth's Constitution.

Section 3: Mutual Consent.

The Covenant is the fundamental document that defines the relationship between the United States and the Commonwealth. It took more than two years to negotiate and was eventually ratified by a vote of seventy-eight percent of the Northern Marianas people. The most important provisions of the Covenant are protected by mutual consent, which means that neither the United States or the Commonwealth can change these provisions unilaterally. Among the provisions protected are articles I, II and III, sections 501 and 805 of the Covenant, dealing with the basic rights of self-government, the grant of United States citizenship, and restraints on land alienation.

The Covenant did not provide how the Commonwealth could express its consent to a change in one of these fundamental provisions and that is what this proposed amendment is designed to provide. The Covenant is too important to let any individual governor or any legislature make this decision for the Northern Marianas people. Such a change should go through the same process as was followed when the Covenant was approved. Only the people can agree to a change in the fundamental provisions of the Covenant.

There may be intermediate steps to any approval of a specific change in the Covenant and the people may express their wishes in a variety of ways. For example, those who advocate a change in the Covenant could call for an expression of support from the people that the change would be of great benefit to the people. This kind of expression of wishes and views could be used by the negotiators to influence views in the United States. But the proposers of such a resolution might want to leave negotiating room for their representatives in the United States by providing a general declaration rather than specific language.

Changes to the Covenant sometimes are included at the initiative of the governor in the discussions between the United States and the Commonwealth under article 902 of the Covenant. The Northern Marianas people may not be aware of these discussions and what changes are being considered--whether they are lawful, beneficial to the people and likely to win the support of the Executive Branch of the United States or the United States Congress. Changes to these Covenant provisions would require action by the United States Congress.

If there is a specific change in the language of the Covenant to be approved in the process of mutual consent between the Commonwealth and the United States, this section provides a three-step process:

First, the legislature will consider the proposed change. In this process, the legislature will provide for public hearings and will inform the public about the position of the United States

as to its consent. The legislature is not bound by any position taken by the United States -- it may elect to go ahead with the approval process regardless of the position of the United States. However, it is important that the people be informed whether the United States will consent to the change being proposed. If it is the position of the United States that it will not consent, and mutual consent is required, it may not be the best choice to go ahead with the approval of consent on the part of the Commonwealth. That is a decision for the legislature. This provision requires only that information be made available to the public as to the position of the United States. This will ensure that the Northern Marianas people are not wrongly encouraged to believe that an amendment to the Covenant is achievable and in their interests.

The position of the United States can be set out in any official communication from the Executive Branch of the United States that it agrees with the proposed change and will support it before Congress if the Northern Marianas people want the change in the Covenant or that it disagrees with the proposed change and will not support it before Congress.

The legislature must approve the proposed change by a three-fourths vote in each house. This means that the interests of Tinian and Rota will be protected in the senate; and the interests of Saipan will be protected in the house. If the legislature does not approve, then the process stops.

If the proposed change is presented by the governor, the legislature must act within sixty days. If the legislature does not act within this period, the proposed amendment is deemed approved and the process continues.

Second: after the legislature approves, the bill is sent to the governor. If the governor approves, the process moves to the third step. If the governor does not approve, the process stops. It is important that the executive branch, which negotiates any changes in the Covenant on behalf of the people, approve the change. If the governor withholds approval without justification, he or she can be held accountable at the polls in the next election.

Third: after the legislature and the governor approve, the text of the proposed change is submitted to the people at the next regular general election that is more than 90 days from the date of the governor's approval or in a special election provided by law. This allows the legislature to exercise its judgment about a fair period of time for public education. The consent of the Commonwealth is authorized if the text is approved by at least two-thirds of the votes cast and at least a majority of the votes cast in each of two senatorial districts.

Section 4: Ratification (Former Section 5).

Section 4(a): Each initiative petition proposing amendment of a single constitutional provision or a legislative petition proposing mutual consent to a change to the Covenant must be submitted to the attorney general for review. There is no time limit for submission of the petition. The attorney general reviews initiative petitions to determine if the signatures are genuine and if

they total thirty percent of the persons entitled to vote in the Commonwealth and twenty-five percent of the persons entitled to vote in each of two senatorial districts. The attorney general also determines whether the petition states the full text of the proposed amendment.

In addition, the attorney general would review the petition to determine whether the proposed constitutional amendment would conflict with other provisions of the Constitution that are not being amended. If there were direct conflicts, the attorney general would reject the petition and send it back so that the conflicts could be cured. In fact, it is likely that anyone proposing a petition would seek the advice of the attorney general ahead of time, before collecting signatures, that the text was appropriate. It is the intention of the Convention that the attorney general would provide such advice. This provision has been added to prevent direct conflicts from being introduced into the Constitution by means of petitions.

The attorney general reviews legislative petitions to consent to changes in the Covenant to determine if they state the specific change to be approved.

The attorney general reviews initiative petitions to call a constitutional convention to ensure that the required number of signatures has been collected and that the question is stated properly.

The attorney general does not approve the substance of the proposed language. That is not the attorney general's function. A petition could propose language that is entirely unconstitutional. It is the function of the courts to take care of that problem. Either a taxpayer could sue to prevent the election on the ground that it would be a waste of taxpayer money to put something on the ballot and go to the expense of the election process for a proposed amendment that cannot survive. Or someone affected by the amendment could sue after the election to challenge the constitutionality of the provision in the traditional way.

Once a petition is approved by the attorney general, it goes on the ballot at the next regular election, so long as that election is more than ninety days from the date the petition is certified. This language was in the 1976 Constitution and the time period was changed from sixty days to ninety days by the 1985 amendments.

Section 4(b): This subsection provides that a proposed constitutional amendment by initiative petition or a proposed consent to a change in the Covenant will be voted on at the next general election so long as at least 90 days remains from the date on which it was certified. The Convention was convinced that at least this amount of time is necessary for the public education that should be undertaken with respect to any such fundamental changes in the basic government structure of the Commonwealth. Otherwise, a special election should be conducted for this purpose.

The subsection also provides that the amendment or consent is approved if sixty percent of the votes are cast in support of the proposal. This marked a change from the previously

applicable provision, which required a majority of the votes cast in the Commonwealth and at least two-thirds of the votes cast in each of two senatorial districts. The Convention concluded that no two senatorial districts should be able to control the outcome of a vote on such an important matter when sixty percent or more of the Commonwealth's citizens voted in favor of the amendment or consent.

Section 4(c): This subsection deals with the convening of a constitutional convention to consider amendments to the Constitution. The Convention continued the same rules with respect to the number of delegates and their election on a non-partisan basis. The Convention added the requirement that no one holding an elected office can be a delegate.

The Convention adopted the same timetable here for the scheduling of a vote on the amendments that the Convention did for consideration of popular initiatives and proposed consents to the Covenant.

As to ratification requirements, the Convention adopted a new rule. It decided that amendments recommended by a constitutional convention should be ratified if approved by a majority of the votes cast or such higher requirement as provided by the convention itself. This departs from the present rule under which ratification requires a majority vote overall in the Commonwealth and two-thirds vote in two of the three senatorial districts. The Convention concluded that the principle of majority rule should apply unless the Convention itself determines otherwise and intended to deny the legislature the authority to establish a more stringent standard for the ratification of amendments emerging from a Convention in the future. The intention of this amendment would preclude the legislature from establishing quorum or other requirements in the enabling statutes authorizing a constitutional convention that would operate to limit in any way the Convention's ability to make an independent judgment regarding the vote necessary to ratify its proposed amendments.

Section 4(d): This subsection provides when the amendment or consent become effective. It is a new section.

ARTICLE XIX: COMMONWEALTH UNITY

This is a new article XIX entitled Commonwealth Unity. This article combines the provisions presently found in articles XVII and XXII and adds a new subsection. The new title of the article, which is the last article in the Constitution, reaffirms the concept of Commonwealth unity.

Section 1: Oath of Office (Former Article XVII).

The former article XVII contained a single section setting forth the Oath of Office that public officials and employees in the Commonwealth must take before assuming office. This oath of office has been placed in section 1 of article XIX without change.

Section 2: Official Seal (Former Article XXII, Section 1).

Former article XXII was added in 1985 and contained three sections dealing with the official seal, flag and languages. This section 2 contains the former section 1 of article XXII unchanged except that the reference to "flores de mayo" was changed to "flores mayo" which is the correct term. In addition, the Convention added the modifier "Marianas Trench" to describe the color blue to be used and added the date "1978" to indicate the date on which self-government began in the Commonwealth.

Section 3: Official Flag (Former Article XXII, Section 2).

This is the former section 2 of article XXII.

Section 4: Official Languages (Former Article XXII, Section 3).

This is the former section 3 of article XXII.

Section 5: Capital.

This is a new section declaring that the island of Saipan is the capital of the Commonwealth. The Convention concluded that the Commonwealth should have a formally declared capital like all the states, territories and commonwealths within the United States. Saipan has always been so regarded within and outside the Commonwealth and its formal recognition as the capital in the Constitution was deemed appropriate.

Constitutional Convention Resolution No. 15

Offered by Delegate: Herman T. Guerrero

THIRD CONSTITUTIONAL CONVENTION
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

A Constitutional Convention Resolution

To adopt the Analysis of the Constitution of the Northern Mariana Islands with respect to the Constitution of the Commonwealth of the Northern Mariana Islands proposed by the Third Northern Mariana Islands Constitutional Convention.

WHEREAS, the legal consultants to the Third Northern Mariana Islands Constitutional Convention ("Convention") have prepared the Analysis of the Constitution of the Northern Marianas Islands ("Analysis") with respect to the amendments to the Constitution proposed by the Convention; and

WHEREAS, the Analysis was based on the reports prepared by the Convention's committees and the recorded deliberations of the Convention and summarizes the intention of the Convention in adopting proposed amendments to be submitted to the people of the Northern Mariana Islands; and

WHEREAS, the Convention delegates received a draft of the Analysis on July 30, 1995, considered it during the session of August 2, 1995, and have agreed that the Analysis accurately and completely sets forth their collective intention with respect to the amendments proposed by the Convention; now, therefore

BE IT RESOLVED, that the Third Northern Mariana Islands Constitutional Convention approves and adopts the Analysis of the Constitution of the Northern Marianas Islands with respect to the amendments to the Constitution being proposed by the Convention, and directs that the Analysis be made available to the voters of the Commonwealth of the Northern Mariana Islands, along with the proposed amendments to the Constitution, for their consideration in determining whether to approve the proposed amendments; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be attached to the Analysis of the Constitution of the Northern Marianas Islands with respect to the amendments to the Constitution being proposed by this Third Northern Mariana Islands Constitutional Convention; and

BE IT FURTHER RESOLVED, that the President of the Convention shall certify and the Secretary of the Convention shall attest to the adoption of this resolution and thereafter transmit copies to the Governor of the Commonwealth of the Northern Mariana Islands, the Honorable Froilan C. Tenorio; to the Attorney General; to the Chairman of the Board and to the Executive Director of the Board of Elections; and to the Chairman of the Board and to the Executive Director of the Law Revision Commission.

Adopted by the Third Constitutional Convention on August 3, 1995

CERTIFIED BY:

HERMAN T. GUERRERO
President

ATTESTED BY:

JOHN OLIVER DLR. GONZALES
Secretary