# TITLE 1 GOVERNMENT

## LIST OF SECTIONS AFFECTED (WITH DATES)
## SEPT. 1, 2007 – DEC. 31, 2010

standard type: amended section; **bold** type: new or reenacted section;
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| 6219 renumbered to 6222 | | | |
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| 6220 renumbered to 6223 | | | |
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| 8356(a) | PL 15-98 | 1 | 10/4/07 |
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| **8362(e)** | | **9** | |
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# GENERAL PROVISIONS

## CHAPTER 4. HONORING SPECIAL PERSONS.

### Article 2. Naming of Public Buildings, Roads and Facilities: Saipan.

**§ 423. Saipan: Highways.**

(a) - (h) [unchanged]

(i) The portion of Hagoi Road where it intersects with Texas Road leading east to Susupe Lake, currently named Hagoi Road in Susupe, Saipan, is hereby renamed the "Tun Jesus 'Kabayu' Street."

The portion from the intersection of Texas Road and Hagoi Road westward to the Sugar Dock area shall remain as Hagoi Road.

**Source:** . . . (i) added by Saipan LL 17-1 § 2.

**Commission Comment:** . . .Subsection (i) honors and recognizes the late Jesus Guerrero for his generosity and contributions to the community, including maintaining Lake Susupe's beauty.

. . .

Saipan Local Law 17-1 took effect on April 8, 2010.

**§ 425. Saipan: Other Public Facilities.**

(a) - (q) [unchanged]

(r) The public beach park located near the PIC Hotel in San Antonio, Saipan (Lot No. 028I0l), is hereby named "Påkpåk Beach Park." The Division of Parks and Recreation shall install a sign bearing the new name.

**Source:** . . . (r) added by Saipan LL 16-3, § 2.

**Commission Comment:** . . .Saipan Local Law 16-3 took effect on June 5, 2008.

**Article 3. Naming of Public Buildings, Roads and Facilities: Rota.**

. . .

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|---|---|
| § 434. Rota: Schools. | [renamed section] |
| § 435. Rota: West Harbor Seaport. | [new section] |
| § 436. Rota: Public Parks, Fields and Other Facilities. | [new section] |

**§ 432. Rota: Library.**

The Rota Public Library Building and Annex shall be known as "Antonio Camacho Atalig Memorial Library."

**Source:** . . . amended by PL 17-25 § 3 (December 16, 2010).

**Commission Comment:** Public Law 17-25 (effective December 16, 2010) included the following:

Section 1. Short Title. This Act shall be known as the "Rota Public Library Amendment Act of 2010".

Section 2. The Legislature finds that Public Law 2-50 named the Rota Public Library building located in Songsong Village on the island of Rota, "Antonio Camacho Atalig Memorial Library" in honor of the late Mayor Antonio Camacho Atalig of Rota. The Legislature further finds that the Antonio Camacho Atalig Memorial Library has been moved from its original location in Songsong Village to the Rota Northern Marianas Campus in Tatachog Village.

The purpose of this Act is to assure the continuity in honoring the legacy of the late Antonio Camacho Atalig regardless of the location of the Antonio Camacho Atalig Memorial Library.

**§ 433. Rota: Highway.**

(a)-(b) unchanged.

(c) In recognition of the late Carlos Songsong Calvo's community service and conservation efforts on the island of Rota, the road from the west corner of Melchor S. Mendiola Plaza heading east along Route 100 to Malilok Point is hereby named the "Carlos Songsong Calvo Highway."

**Source:** . . . Local Law (Rota) 16-7 § 2.

**Commission Comment:** Rota Local Law 16-7 became effective May 22, 2009. RLL 16-7 included findings and purpose, dedication, severability and savings clause provisions.

### § 434. Rota: Schools.

(a) The number five classroom building at the Rota Elementary School campus is named the "Misael Hocog Ogo Building."

(b) The Rota Junior High School located in Songsong Village, Rota is hereby renamed as the "Dr. Rita Hocog Inos Junior High School" in recognition and appreciation of her untiring and outstanding contributions to the Public School System and to the people of the Commonwealth.

**Source:** . . . (b) added by Local Law (Rota) 17-6 § 2 (July 28, 2010), modified.

**Commission Comment:** The commission changed "Public Schools System" to "Public School System" to correct a manifest error in subsection (b) pursuant to 1 CMC § 3806(g). Subsection (b) honors and recognizes the late Dr. Rita Hocog Inos, former Commissioner of Education, for her outstanding accomplishments in the field of education and her hard work and dedication toward improving educational standards for Commonwealth students.

The commission renamed this section from "Rota: Classrooms" to the current title upon the codification of Rota Local Law 17-6. RLL 17-6 (effective July 28, 2010) included findings and purpose, dedication, transition period, severability and savings clause provisions.

### § 435. Rota: West Harbor Seaport.

The Rota West Harbor Seaport is hereby renamed as "Thomas C. Mendiola Commercial Seaport."

**Source:** PL 15-112, § 2.

**Commission Comment:** Public Law 15-112 took effect November 23, 2007, and contained the following findings and purpose and administering authority provisions in addition to severability and savings clauses:

Section 1. Findings and Purpose. Whereas, the late Thomas Camacho Mendiola, a native son from the island of Rota, passed away on December 29, 1984; and whereas, the late Thomas Camacho Mendiola worked hard during his lifetime to improve the lives of the people of Rota; and whereas, during the Japanese occupation of the Mariana Islands, the late Thomas Camacho Mendiola was trained in Palau in building design and construction and later became the first Chamorro from the Marianas to earn a degree in civil engineering in Japan; and whereas, in 1939 the Japanese authorities appointed the late Thomas Camacho Mendiola as transportation director for seaport and land transportation for Rota; and whereas, after World War I1 the late Thomas Camacho Mendiola continued in public service on Rota as Chief Commissioner from 1947 to 1952, Community Court Judge from 1949 to 1952, representative of the Acting District Administrator from 1950 to 1952, and member of the Rota Municipal Council from 1952 to 1956; and whereas, the late Thomas Camacho Mendiola, with the help and support of the able residents of Rota, designed and built the West Rota Harbor, including a dry dock facility; and whereas, in 1948 the late Thomas Camacho Mendiola, to address the lack of reliable shipping service to Rota, built a 54-foot ocean vessel, the Miss Rota and, in 1955 after the Miss Rota was destroyed in a severe typhoon, built another slightly larger ship, the 64-foot San Jose; and whereas, the late Thomas Camacho Mendiola was also the first Chamorro of the Northern Mariana Islands who was recognized by the United States Coast Guard as a ship captain; and whereas, the legacy of the late Thomas Camacho Mendiola should be permanently recognized for his outstanding accomplishments and untiring efforts to improve the lives of his fellow residents as a private individual and a public servant of Rota; now, therefore, be it enacted . . .

. . .

Section 3. Administering Authority. The Commonwealth Ports Authority shall commission and provide for signage, consistent with section 2 of this act, to be affixed permanently in a prominent location at the Rota West Harbor so that it can be seen, without obstruction, from a distance of 100 away. The signage shall be in place as prescribed herein within 60 days after the effective date of this act.

**§ 436. Rota: Public Parks, Fields and Other Facilities.**

(a) The baseball field in Sinapalo, Rota is hereby named "Joaquin Mesngon Ogo Baseball Field."

(b) The Rota Veteran Memorial Park is hereby renamed "the Corporal Joe G. Charfauros Jr. Rota Veteran Memorial Park."

**Source:** Local Law (Rota) 16-2; PL 16-16, § 2; (b) added by PL 16-40.

**Commission Comment:** Rota Local Law 16-2, effective June 22, 2008, named the Sinapalo baseball field in Rota the "Joaquin Mesngon Ogo Baseball Field." Public Law 16-16, effective September 9, 2008, likewise named the field. PL 16-16 contained the following findings and purpose and dedication provisions in addition to severability and savings clauses:

Section 1. Findings and Purpose. The Legislature finds that the baseball field in Sinapalo, Rota was developed through the joint effort and contribution, both in-kind and monetary, from government and private sectors of Rota as well as from the community. The Legislature further finds it fitting that this baseball field be named after a citizen of Rota whose service and generous contributions to the island of Rota are immeasurable.

Mr. Joaquin M. Ogo was born on November 18, 1929, on the island of Rota to the late Juan B. and Maria M. Ogo. Mr. Joaquin M. Ogo is married to Julita M. Ogo and are blessed with ten wonderful children: Pio, Agnes, Patrick, Lucas, Natividad, Maria, Joseph, Joaquin, David (deceased), and Abraham. Mr. Joaquin M. Ogo began his government service from 1965 to 1966 when he worked for A culture. From 1972 to 1984, Mr. Joaquin M. Ogo served the community of Rota as a bus driver. It was also during the period from 1965 to 1975, when Mr. Joaquin M. Ogo contributed his time and assistance to the community by volunteering as a baseball umpire. From 1985 to 1991, Mr. Joaquin M. Ogo began working for the Honorable Benjamin T. Manglona during his tenure as a Senator and Lieutenant Governor, where he provided various assistance and services to the people of Rota. In 1992, Mr. Joaquin M. Ogo retired from government service.

The Rota Legislative Delegation has recognized Mr. Joaquin M. Ogo for his outstanding citizenship and contributions to the people of Rota through Rota Legislative Delegation Resolution 16-02 and proposed to name the baseball field in Sinapalo, Rota, in his honor through Senate Local Bill 16-02. Although Mr. Joaquin M. Ogo has been recognized on the municipal level, the Legislature deems it appropriate that his efforts be recognized Commonwealth-wide. The Legislature, therefore finds it fitting that the baseball field in Sinapalo, Rota, be named after Mr. Joaquin M. Ogo in recognition of his contributions to the people of Rota.

. . .

Section 3. Dedication. The Mayor of Rota shall prepare a plan of dedication within thirty days from the effective date of this act.

Public Law 16-40 took effect May 12, 2009. PL 16-40 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Rota Veterans Memorial Park was created in honor of Rota's veterans to the United States of America Armed Forces. The Legislature further finds that the Rota Legislative Delegation passed Rota Legislative Delegation Commemorative Resolution No. 15-3, honoring "the late Specialist Joe Gougue Charfauros Jr. for making the courageous and ultimate sacrifice in our nation's struggle to bring peace and freedom to the people of Iraq." The

Legislature finds that the intent of this resolution was to "recognize and commend the late Specialist Joe Gougue Charfauros Jr.'s courage and valor (so) that (he) shall be forever remembered by the very grateful people of the Island of Rota and of the Commonwealth of the Northern Mariana Islands." Therefore, the Legislature finds that the park shall remain in honor of all Rota's military veterans, however, Corporal Joe G. Charfauros Jr.s' name shall be adjoined to the park's title in honor of his ultimate sacrifice for our country. Thus, it is the purpose of this Act to honor Corporal Joe G. Charfauros Jr. by renaming the Rota Veteran Memorial Park to "the Corporal Joe G. Charfauros Jr. Rota Veteran Memorial Park."

. . .

Section 3. Administering Authority. The Division of Parks and Recreation under the authority of the Department of Land and Natural Resources shall commission and provide for signage, consistent with Section 2 of this act, to be affixed permanently in a prominent location at the Rota Veteran Memorial park so that it can be seen, without obstruction, from a distance of no less than 100 feet away. The signage shall be in place as prescribed herein within 60 days after the effective date of this act.

**Article 4. Naming of Public Buildings, Roads and Facilities: Tinian.**

. . .

§ 442. Tinian: Naming of the Antonio Manglona Borja Amphitheater. [new section]

**§ 441. Tinian: Health Center.**

(a) The name “Tinian Health Center” in reference to the public medical facility on Tinian is changed to “Lucia ‘Chiang’ Villagomez Arizapa Memorial Health Center.” The new name shall be prominently affixed at the main entrance to the facility, the height of the letters not less than 10 inches.

(b) *Renaming of the Tinian Health Center*. The Lucia Villagomez "Chiang" Arizapa Health Center shall be renamed the Lucia Villagomez Arizapa Health Center.

**Source:** . . . (b) added by PL 17-18 § 3 (September 30, 2010).

**Commission Comment:** . . .

The commission designated subsection (a) and added subsection (b) to this section following the enactment of Public Law 17-18 on September 30, 2010. PL 17-18 included a section (§3) renaming the Tinian Health Center but contained no other reference to the Tinian Public Health Center and did not specifically amend or repeal this section. Consequently, the commission did not replace subsection (a) with subsection (b). For more information regarding PL 17-18, see comment to 2 CMC § 4851.

**§ 442. Tinian: Naming of the Antonio Manglona Borja Amphitheater. [new section]**

The amphitheater in Natibu Park in Tinian is hereby named “the Antonio Manglona Borja Amphitheater.”

**Source:** PL 17-15 § 2 (September 24, 2010).

**Commission Comment:** Public Law 17-15 took effect September 24, 2010. PL 17-15 included findings and purposes, administering authority, severability and savings clause provisions.

# DIVISION 1: LEGISLATIVE BRANCH

# CHAPTER 4. ENACTMENT OF LOCAL LAWS.

**§ 1403. Introduction of Local Bills.**

A local bill may be introduced by one or more senators or representatives from the senatorial district to which the bill is intended to apply. Local revenue or appropriation bills shall be introduced in the House of Representatives. Each bill shall lie on the desks of members in the house in which it was introduced for three legislative days during which time any member may move that the bill is not a local matter that may be the subject of laws enacted by members from the respective senatorial district. The objecting member shall state the reasons for the motion. In the event the motion is later adopted by the house in which the bill was introduced, the bill shall be treated as though it had been introduced in the form prescribed by the official rules of the house. In the event the motion is not adopted or no motion is made within the prescribed time, the bill shall be referred to the appropriate legislative delegation, as provided in 1 CMC § 1404. Provided, however, that the provisions of this section shall not apply to:

(a) Local appropriation bills from the senatorial districts appropriating local revenues defined in 1 CMC § 1402(c)(4) and (5);

(b) The Tinian & Aguiguan Legislative Delegation in enacting an appropriation of casino gaming revenues pursuant to section 50(5) of the Revised Tinian Casino Gaming Control Act of 1989; or

(c) The Rota Legislative Delegation enacting an appropriation of casino gaming revenues pursuant to the Rota Casino Gaming Act.

**Source:** . . . amended by PL 16-04, § 2, modified; repealed and reenacted by PL 17-02 § 3 (May 4, 2010).

**Commission Comment:** . . . The commission changed capitalization in this section pursuant to the authority granted by 1 CMC § 3806(f). Public Law 16-4 took effect May 8, 2008 and contained a savings provision and the following:

> Section 1. Findings and Purpose. The Commonwealth Legislature finds that the residents of the First Senatorial District have implemented casino gambling in their district pursuant to Article XXI of the Commonwealth Constitution. The Legislature finds it must clarify issues regarding the amendment of local laws enacted by initiative. Adjustments to the code are therefore necessary and proper. This Act is a proper use of the legislative power granted by Section 1 of Article II of the Commonwealth Constitution.

Public Law 17-2 took effect May 4, 2010 and contained severability and savings clause provisions and the following:

> Section 1. Short Title. This Act may be referred to as the Local Law Act Amendment of 2010.
>
> Section 2. Findings and Purpose. The Commonwealth Legislature finds that the Local Law Act of 1983 requires that all bills other than gaming appropriations in Tinian & Aguiguan and Rota lie before the house of introduction for three legislative days before they may be acted upon by the local delegations. The Legislature finds that this requirement can delay critical appropriations of local revenues, which are entirely locally-generated and are used for medical referrals and other important purposes.
>
> The purpose of this Act is to remove the three legislative day requirement for appropriations of gambling amusement machine and revenue taxes and local poker and pachinko revenues only.
>
> . . .
>
> Section 4. Authorization. The CNMI Law Revision Commission shall have the authority to adjust subsections (a) to (c) in Section 3 of this Act to conform to previous codifications of 1 CMC § 1403.

**§ 1405. Review by Mayor.**

(a) No local bill or local appropriation or revenue bill may be enacted by a legislative delegation until the mayor from the respective senatorial district has had an opportunity to review and comment on it. The mayor or his designee shall have 30 days in which to review and comment on all local bills. If the mayor fails to comment with the applicable period, the legislative delegation may act on the matter without input from the mayor. Provided, however, that the provisions of this section shall not apply to the Tinian Legislative Delegation in enacting an appropriation of casino gaming revenues pursuant to section 50 (5) of the Revised Tinian Casino Gaming Control Act of 1989; provided further that the provisions of this section shall not apply to the Rota Legislative Delegation in enacting an appropriation of casino gaming revenues pursuant to the Rota Casino Act as it was enacted by popular initiative or as it may be amended.

(b) [unchanged]

**Source:** . . . amended by PL 16-04, § 5, modified.

**Commission Comment:** . . . The commission changed the instances of "subsection" to "section" in this section pursuant to the authority granted by 1 CMC § 3806(d).

**§ 1409. Amendment of Local Laws.**

Local laws, whether enacted by the Delegation or by initiative, may be amended, altered repealed, superceded or altered in any fashion by the enactment of a subsequent local law enacted by the Delegation.

**Source:** PL 16-04, § 3, modified.

**Commission Comment:** The commission modified this section pursuant to the authority granted by 1 CMC § 3806(f). The commission's authority does not extend to modifying the phrase "altered repealed."

## CHAPTER 5. REAPPORTIONMENT ACT OF 1991.

**§ 1501. Title.**

**Case Annotations:** *In re Pangelinan*, 2007 MP 14, 7 N.M.I. 461 (2007).

**§ 1504. Saipan Election District.**

**Case Annotations:** *In re Pangelinan*, 2007 MP 14, 7 N.M.I. 461 (2007).

## CHAPTER 6. NORTHERN MARIANA ISLANDS YOUTH CONGRESS.

§ 1601. Establishment.
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§ 1611. Organization and Qualification of Members.
§ 1612. Quorum.
§ 1613. Operations.
§ 1614. Expenditure Authority.
§ 1615. Expenditure Control.
§ 1616. Compensation.
§ 1617. Appointment as Non-Voting Honorary Members of Boards and Commissions.

**§ 1601. Establishment.**

There is hereby established a Commonwealth of the Northern Mariana Islands Youth Congress under the administrative supervision of the Legislative Bureau of the Northern Marianas Commonwealth Legislature.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1601) (October 15, 2010).

**Commission Comment:** . . .

Public Law 17-22 (effective October 15, 2010) contained severability and savings clause provisions and the following:

Section 1. Short Title. This Act may be referred to the "CNMI Youth Congress Reform Act of 2010."

Section 2. Findings. The Commonwealth Legislature finds that Public Law 8-27, as amended, established the CNMI Youth Congress under the administrative supervision of the Legislative Bureau of the Northern Marianas Commonwealth Legislature to provide a system which allows the youth to prepare to meet the challenges of the future and to make recommendations to the policy makers on youth programs. Currently, members of the Youth Congress, consist of youth representing private and public high schools, Northern Marianas College, and precinct election districts throughout the Commonwealth. Voter turnout, however, has been on the decline for precinct election districts for the last three elections years. The voter turnout of registered voters for precinct election districts during the 2006; 2007; 2008; and 2009 Youth Congress elections are 25%; 13%; 13%; and 84%, respectively. With respect to the Northern Marianas College, only two of three seats given to the Northern Marianas College were filled in the 2007 Youth Congress elections. Although there was a slight increase in voter turnout during the 2008 Youth Congress election, interest in the program is poor as evident in the decline of registered voters within the last three years. Additionally, the increase in precinct voter turnout for election year 2009 was due to a vast majority of school students who chose to register as precinct voters to support their fellow student seeking office as a precinct senator. The number of registered voters for the Northern Marianas College varied from 100 registered voters in 2006 to 30 in 2007,46 in 2008 and 105 in 2009. Moreover, members elected to represent the Northern Marianas College were elected by only 7; 3; 25; and 67 votes in 2006; 2007; 2008; and 2009, respectively. As a result, the Commonwealth Legislature finds it necessary to amend the existing statutes to reapportion Youth Congress membership throughout the private and public high schools of the CNMI and to remove the positions allotted to election precinct districts and the Northern Marianas College.

**§ 1602. Definitions.**

As used in this chapter:

(a) Executive director means the executive director of the Commonwealth Election Commission.

(b) Bureau means the Legislative Bureau of the Northern Marianas Commonwealth Legislature.

(c) Meetings means all meetings and sessions of the youth congress.

(d) Youth means a person between the ages of 14 and 18 years.

(e) Youth Congress means the Northern Mariana Islands Youth Congress.

(f) Enrolled student means any person who is enrolled in his/her respective school as a full-time student.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1602) (October 15, 2010).

**§ 1603. Functions.**

The youth congress shall act as a legislative body with the power to make its own rules, establish committees, hold hearings, pass resolutions and prepare and pass bills, which will be forwarded to the Governor and the presiding officers of the legislature for disposition. The youth congress represents the youth of the Commonwealth, their desires and aspirations, and shall serve as training for the Commonwealths future leaders. The youth congress shall hold a youth conference within the Commonwealth at least once a year to report and discuss essential matters pertaining to the youth of the Commonwealth.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1603) (October 15, 2010).

**§ 1604. Composition.**

The youth congress shall be composed of members to be known as senators, to be elected from private and public high schools as follows:

(a) Each private and public high school, with a student population of 20 or more that wishes to participate, shall have one senator.

**Source:** PL 8-27, § 7, modified; amended by PL 11-18, § 1(d); amended by PL 16-23, § 3; repealed and re-enacted by PL 17-22 § 3(1604) (October 15, 2010).

**Commission Comment:** Public Law 16-23 took effect on November 17, 2008, contained severability and savings clause provisions and the following:

Section 1. Short Title. This Act shall be known as "The CNMI Youth Congress Reorganization Act of 2008."

Section 2. Findings and Purpose. The Youth Congress finds that:

(a) Pursuant to P.L. 8-27 the Youth Congress shall have, in addition to others, three senators each from Precinct No. 1, Precinct No. 3, and the Northern Marianas College;

(b) Only two of three positions given to the Northern Marianas College were filled during the 10th CNMI Youth Congress;

(c) Precincts in the election for the 10th CNMI Youth Congress continued its trend and registered a low turnout of twelve percent;

(d) Public high schools on Saipan each have over seven hundred students, yet are represented by only one youth senator;

(e) Precincts No. 1 and No. 3 are allotted three seats regardless of the population of their constituents and registered voters;

(f) The Youth Congress aims to maximize efficiency regarding the representation and participation of their constituents.

Additionally, the Youth Congress election date needs to be deferred to a later date in order to accommodate new incoming students and to allow ample time for

registration, to collect signatures on petitions, and other organizing obligations.

Therefore, it is the purpose of this Act to ensure better representation to the Youth of the CNMI by allocating seats to schools with larger enrollment and population and taking from the precincts which have shown modest constituents and registered voters and moving the election date to a more appropriate date that is fair and reasonable.

**§ 1605. Eligibility of Senators and Voters.**

(a) A United States citizen residing in the CNMI between the age of fourteen and eighteen shall be eligible to vote for a candidate for senator provided that such person is duly registered to vote in his or her respective school and has not been convicted of a felony or crime involving moral turpitude unless he or she has received pardon restoring his or her civil rights.

(b) A candidate for senator of the youth congress must be a freshman, sophomore, or junior of his or her respective school, be a United States citizen residing in the CNMI, and be registered to vote in that respective school.

(c) All voters must be an enrolled student in their respective school in which they are registering to vote.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1605) (October 15, 2010), modified.

**Commission Comment:** The commission deleted numerical figures that repeated words pursuant 1 CMC § 3806(e).

**§ 1606. Term.**

(a) The term of each member shall be two years.

(b) Any member who graduates from high school may continue to serve the balance of his or her term. Any member who drops out of high school shall automatically forfeit the balance of his or her term.

(c) Any member who is outside of the Commonwealth for a total of 90 days shall forfeit the balance of his or her term.

**Source:** PL 8-27, § 7, modified; amended by PL 11-18, § 1(d); amended by PL 16-23, § 3; repealed and re-enacted by PL 17-22 § 3(1606) (October 15, 2010).

**Commission Comment:** Public Law 16-23 took effect on November 17, 2008, contained severability and savings clause provisions and the following:

Section 1. Short Title. This Act shall be known as "The CNMI Youth Congress Reorganization Act of 2008."

Section 2. Findings and Purpose. The Youth Congress finds that:

(a) Pursuant to P.L. 8-27 the Youth Congress shall have, in addition to others, three senators each from Precinct No. 1, Precinct No. 3, and the Northern Marianas College;

(b) Only two of three positions given to the Northern Marianas College were filled during the 10th CNMI Youth Congress;

(c) Precincts in the election for the 10th CNMI Youth Congress continued its trend and registered a low turnout of twelve percent;

(d) Public high schools on Saipan each have over seven hundred students, yet are represented by only one youth senator;

(e) Precincts No. 1 and No. 3 are allotted three seats regardless of the population of their constituents and registered voters;

(f) The Youth Congress aims to maximize efficiency regarding the representation and participation of their constituents.

Additionally, the Youth Congress election date needs to be deferred to a later date in order to accommodate new incoming students and to allow ample time for registration, to collect signatures on petitions, and other organizing obligations.

Therefore, it is the purpose of this Act to ensure better representation to the Youth of the CNMI by allocating seats to schools with larger enrollment and population and taking from the precincts which have shown modest constituents and registered voters and moving the election date to a more appropriate date that is fair and reasonable.

**§ 1607. Elections.**

(a) The general election for the youth congress shall be held on the first Monday in March, and every two years thereafter. The elections for school senators shall be conducted by the school principals at the schools the eligible voters attend, and at which the voters are officially enrolled. Each voter shall be entitled to vote for the number of candidates authorized for his or her school election as provided in 1 CMC § 1604. A voter shall only vote once.

(b) It shall be the responsibility of the school principal or the Legislative Bureau as appropriate to provide forms for petitions, ballots and tally sheets, the necessary ballot boxes and personnel to supervise the election, count and tally the ballots. The Commonwealth Election Commission shall cooperate and make available to the greatest extent practicable, the resources of the Commonwealth Election Commission to support the tasks and activities of the youth congress elections at no cost.

(c) Results of the election shall be verified by the respective school principals, then forwarded to the Floor Leader of the House of Representatives, for certification within three days after the election. The certified results shall be forwarded to the Governor, Commissioner of Education, the respective school principals, and the presiding officers of the Legislature.

(d) Any disputes resulting from the election shall be resolved by the chairman of the House Standing Committee on Judiciary and Governmental Operations or its successor.

**Source:** PL 8-27, § 10, modified; amended by PL 10-18, § 2, modified; subsection (a) amended by PL 11-18, § 1(f); subsection (a) amended by PL 16-23, § 4; repealed and re-enacted by PL 17-22 § 3(1607) (October 15, 2010).

**Commission Comment**: PL 16-23 § 4 provides for amendment to 1 CMC § 1607 but only included an amendment to subsection (a) in the content of PL 16-23 § 4. The commission left subsections (b)-(d) unchanged.

**§ 1608. Petitions.**

Candidates for election shall be nonpartisan and all candidates must obtain at least 15 signatures by petition in their schools from individuals qualified to vote under 1 CMC § 1605.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1608) (October 15, 2010).

**§ 1609. Vacancies.**

Each vacancy shall be filled by the candidate who received the next highest vote in that school, except that no person filling a vacancy shall hold office longer than the remainder of the term for which his or her predecessor was elected. If there is no candidate to fill a vacancy, the student body of the respective school where the vacancy exists shall appoint an individual qualified to be a senator under 1 CMC § 1605 to fill the remaining term of his or her predecessor.

**Source:** . . . repealed, renumbered and re-enacted by PL 17-22 § 3(1609) (October 15, 2010).

**§ 1610. Sessions.**

(a) Regular sessions of the youth congress shall be held every three months on the third

Saturday of the month, exclusive of holidays, for one day, commencing the third Saturday in April. Additional session days, but not more than three days, are permitted each year.

(b) For the first organizational meeting until a speaker is elected, the Speaker of the House of Representatives shall preside over the session. In the absence of the Speaker, the President of the Senate shall preside.

(c) Sessions shall be held in the legislative chamber of the House of Representatives of the Northern Marianas Commonwealth Legislature.

(d) The meetings of the youth congress and its committees shall be open to the public and notice of such meetings shall be given three days prior to the date scheduled.

**Source:** . . . subsection (a) amended by PL 16-23 § 5; repealed, renumbered and re-enacted by PL 17-22 § 3(1610) (October 15, 2010), modified.

**Commission Comment:** The commission deleted numerical figures that repeated words pursuant 1 CMC § 3806(e).

### § 1611. Organization and Qualification of Members.

The youth congress shall be the judge of the selection and qualification of its members. It shall elect officers, consisting of speaker, vice speaker, legislative secretary and floor leader. It shall establish standing and special committees essential to carry out its functions as set forth in 1 CMC § 1603. The youth congress shall adopt rules and procedures not inconsistent with this chapter or the rules of the House of Representatives of the Northern Marianas Commonwealth Legislature.

**Source:** . . . repealed, renumbered and re-enacted by PL 17-22 § 3(1611) (October 15, 2010).

~~**Commission Comment:** The commission corrected an incorrect cross-reference to 1 CMC § 1604 in the original codification of this section.~~

### § 1612. Quorum.

The quorum of the youth congress shall equal one-half of its members plus one. No bill or resolution shall be considered passed unless, a quorum being present, a majority of the members present and voting so indicate by affirmative vote.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1612) (October 15, 2010).

### § 1613. Operations.

The Legislative Bureau may provide staff services to the youth congress. The youth congress is authorized to employ on a full-time or part-time basis staff consisting of a secretary and other essential personnel subject to the availability of funds. The youth congress shall first consider utilizing the staff of the Legislative Bureau before hiring necessary personnel.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1613) (October 15, 2010).

### § 1614. Expenditure Authority.

The Director of the Legislative Bureau shall be the expenditure authority of the funds appropriated to the Youth Congress in consultation with the Speaker of the Youth Congress.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1614) (October 15, 2010).

**Commission Comment:** According to PL 8-27, § 18: "There is hereby authorized to be appropriated from the Northern Marianas General Fund the sum of One Hundred Thousand Dollars ($100,000.00) to fund the

operations and activities of the Youth Congress."

With respect to the reference to the "Director of Finance," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

**§ 1615. Expenditure Control.**

Except as provided for under 1 CMC § 1616, under no circumstances shall any funds appropriated to the youth congress be expended for car rentals; hotel room and/or facility rentals; floral and/or all other decorative items; and food catering in connection with youth congress meetings, elections, and inaugurations, except for an amount not to exceed $1,000.00 of food expenses for the youth congress annual youth conference. Travel expenses shall only be authorized for activities required for the youth congress elections, inaugurations, sessions, and annual youth conferences.

**Source:** PL 17-22 § 3(1615) (October 15, 2010).

**§ 1616. Compensation.**

Members of the youth congress shall not be compensated for each regular session meeting they attend. Members from Rota and Tinian shall be provided air transportation and subsistence allowance at the established Commonwealth government rates.

**Source:** . . . amended by PL 15-128, § 2; repealed and re-enacted by PL 17-22 § 3(1616) (October 15, 2010).

**Commission Comment:** Public Law 15-128 was enacted into law on February 5, 2008, and contained the following findings and purpose in addition to severability and savings clause provisions:

Section 1. Findings and Purpose. The Youth Congress finds and declares all of the following:

(a) Pursuant to PL 8-27 the CNMI Youth Congress Senators are lawfully owed $25 per session;

(b) The CNMI government has not been able to pay the money due to Youth Senators since the 8th CNMI Youth Congress;

(c) The CNMI is in a state of great financial need and ought to limit its expenditures to those that are most necessary;

(d) Relieving the CNMI government of the burden of paying Youth Senators will benefit the government's economic state and as well as lessen the risk of the Youth Congress being terminated as an austerity measure;

(e) Senators who are serving their terms as volunteers will be able to embrace a deeper commitment to service and dedication to our community; and

(f) Senators who are serving their terms as volunteers will still receive a great educational experience and essential exposure to Legislative workings still be equipped to perform all the functions they currently perform, and still be able to contribute vitally to the youth of the CNMI.

**§ 1617. Appointment as Non-Voting Honorary Members of Boards and Commissions.**

Notwithstanding the requirements of 1 CMC § 2901(a), the Speaker of the Youth Congress shall appoint individual members of the Youth Congress to serve as non-voting honorary members of each Commonwealth board and commission except those boards and commissions whose membership is provided for in the Commonwealth Constitution. Membership on a board or commission shall expire when the members Youth Congress term expires. Participation by these members shall be limited to those meetings in which the general public has access pursuant to Public Law 8-41, codified as 1 CMC § 9901 *et seq.*, the Open Government Act. Participation by Youth Congress members shall be limited to meetings held on the islands of the Commonwealth in which the members reside. Youth Congress members serving in an honorary position are not

authorized to travel in connection with their service on boards and commissions. Youth Congress members serving in an honorary position shall not receive compensation in any form for attendance at meetings of the board nor any other compensation such as subsistence or out-of-pocket expenses incurred in the discharge of their responsibilities.

**Source:** . . . repealed and re-enacted by PL 17-22 § 3(1617) (October 15, 2010).

**Commission Comment: . . .**

# DIVISION 2: EXECUTIVE BRANCH

## PART 1. ORGANIZATION OF THE EXECUTIVE BRANCH.

### CHAPTER 1. OFFICE OF THE GOVERNOR.

#### Article 8. Office of Homeland Security.

**§ 20141. Organization.**

(a) -(b) [unchanged]

(c) In the Office of Homeland Security, there will also be a Terrorism Task Force. The task force shall consist of one representative from the CNMI EMO, DPS Police Division, DPS Fire Division, Division of Environmental Quality, Commonwealth Ports Authority Police and Airport Fire Rescue, Department of Public Health, Division of Customs, ~~CNMI Immigration,~~ CNMI Labor and an Assistant Attorney General from the Attorney General's Office. Each representative shall be assigned to the Office Homeland Security by their respective Department and shall be under the direct supervision of the Special Assistant for Homeland Security or designee.

(d) -(f) [unchanged]

**Source:** . . . (c) amended by PL 17-1 § 3(A) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 (approved by the Governor on March 22, 2010) contains an effective date provision (§ 12) which provides that the law "shall be retroactive to November 28, 2009 except as otherwise specifically provided herein." For more information regarding PL 17-1, see comment to 3 CMC § 4511.

### CHAPTER 3. OFFICE OF THE ATTORNEY GENERAL.

#### Article 1. Attorney General.

**§ 2153. Attorney General: Duties.**

**Case Annotations:** *Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14, 6 N.M.I. 146 (2000).

## Article 2. Immigration. [REPEALED by PL 17-1 § 3(B)]

§ 2171. Office of Attorney General: Division of Immigration. [Repealed by PL 17-1 § 3(B)]
§ 2172. Director of Immigration: Duties. [Repealed by PL 17-1 § 3(B)]
§ 2173. Attorney General: Duties. [Repealed by PL 17-1 § 3(B)]

### § 2171. Office of Attorney General: Division of Immigration. [REPEALED by PL 17-1 § 3(B)]

**Source:** . . . repealed by PL 17-1 § 3(B) (March 22, 2010).*

**Commission Comment:** . . .

Public Law 17-1 § 3(B) provides: " Division 2 (Executive Branch), Part 1 (Organization of the Executive Branch), Chapter 2 (Attorney General), Article 2 (Immigration) is repealed." This statement contains a typographical error because Chapter 3, not chapter 2, is entitled the Office of the Attorney General. The commission, therefore, corrected this manifest error pursuant to 1 CMC § 3806(g) by codifying the repeal of Article 2 of Chapter 3 (Office of the Attorney General).

*PL 17-1 (approved by the Governor on March 22, 2010) contains an effective date provision (§ 12) which provides that the law "shall be retroactive to November 28, 2009 except as otherwise specifically provided herein." For more information regarding PL 17-1, see comment to 3 CMC § 4511.

### § 2172. Director of Immigration: Duties. [REPEALED by PL 17-1 § 3(B)]

**Source:** . . . repealed by PL 17-1 § 3(B) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 (approved by the Governor on March 22, 2010) contains an effective date provision (§ 12) which provides that the law "shall be retroactive to November 28, 2009 except as otherwise specifically provided herein." For more information regarding PL 17-1, see comment to 3 CMC § 4511.

### § 2173. Attorney General: Duties. [REPEALED by PL 17-1 § 3(B)]

**Source:** . . . repealed by PL 17-1 § 3(B) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 (approved by the Governor on March 22, 2010) contains an effective date provision (§ 12) which provides that the law "shall be retroactive to November 28, 2009 except as otherwise specifically provided herein." For more information regarding PL 17-1, see comment to 3 CMC § 4511.

# CHAPTER 4. OFFICE OF PUBLIC DEFENDER.

### § 2204. Public Defender: Eligibility.

The Public Defender shall establish eligibility criteria and may promulgate rules and regulations regarding eligibility criteria, to take effect upon their approval by the Governor. The determination as to whether a defendant be indigent or whether a person is unable to afford a private attorney, however, shall be at the discretion of the judge before whom such person is appearing.

**Source:** . . . amended by PL 16-42 § 2(a).

**Commission Comment:** . . .
See the comment to 6 CMC § 4104 for information regarding PL 16-42, which became law on

July 13, 2009.

## CHAPTER 5. PUBLIC SCHOOL SYSTEM.

### Article 4. Public School Funding.

**§ 2282. Technical Education Program Fund.**

(a) A Technical Education Program Fund is hereby created as a dedicated fund within the CNMI Treasury and the Secretary of Finance shall make all disbursements from the Fund only to the Public School System upon the establishment of a technical education program by the Board of Education. All funds collected pursuant to this section shall be reserved for the technical education program of the Public School System and may not be reprogrammed for other uses. The expenditure authority of the technical education program fund shall be the Commissioner of Education.

The following shall be deposited into the Technical Education Program Fund:

(1) 10% of the revenues collected from the jackpot winnings tax under 4 CMC § 1505;

(2) The sum of $25.00 from every initial application fee and from every renewal fee paid for a ~~nonresident~~ foreign national worker certificate under 3 CMC § 4424;*

(3)- (4) [unchanged]

(b) [unchanged]

**Source:** . . . (a)(2) amended by global amendment PL 15-108, § 5.

* 3 CMC § 4424 was repealed by PL 15-108.

## CHAPTER 6. OFFICE OF THE PUBLIC AUDITOR.

**§ 2305. Public Auditor: Staff.**

(a)-(b) [unchanged]

(c) [Expired September 22, 2009]

(d)-(f) [unchanged]

**Source:** . . . (c) amended by PL 14-30, § 2; (c) amended by global amendment PL 15-108, § 5.

**Commission Comment:** . . . PL 14-30 was enacted on September 22, 2004, and contained findings and purpose, sunset, severability, and savings clause provisions. While the commission is charged with codifying only permanent laws of the CNMI, it would be remiss in its duties to not codify a temporary provision with a somewhat lengthy effective period. Of particular interest is the following sunset provision:

> Section 3. Sunset. The authorization provided under this Act shall expire five years after the effective date of this Act.

## CHAPTER 7. DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS.

**Article 2. Division of Youth Services.**

**§ 2373. Division of Youth Services: Definitions.**

**Case Annotations:** *Nakatsukasa v. Superior Ct.,* 1999 MP 25, 6 N.M.I. 59 (1999); *In re N.T.M.*, 1999 MP 24, 6 N.M.I. 53 (1999).

## CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY.

**Article 1. Department of Public Safety.**

**§ 2504. Department of Public Safety: Duties and Responsibilities.**
The duties of the Department of Public Safety include but are not limited to the following:
(a)-(j) [unchanged]
(k) To enforce the Safe Diving Act of 1990, as amended.

**Source:** . . . subsection (k) added by PL 16-6.

**Commission Comment:** . . . See the commission comment to 3 CMC § 5603 regarding PL 16-6, which took effect July 11, 2008.

**§ 2507. Department of Public Safety: Rules and Regulations.**
(a) [unchanged]
(b) The Department of Public Safety, in consultation with the Department of Finance, shall promulgate regulations for the implementation of its responsibilities under 1 CMC § 2504(k). Such regulations may include violations and corresponding civil penalties.

**Source:** PL 1-8, tit. 1, ch. 10, § 7; subsection (b) added by PL 16-6 § 4, modified.

**Commission Comment:** With respect to the reference to the "Department of Public Safety," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001; see also the comment to 1 CMC § 2501. In subsection (b), the commission changed "Section 3(a) of this Act" to "1 CMC § 2504(k)" pursuant to the authority granted by 1 CMC § 3806(c). See commission comment to 3 CMC § 5603 for more information regarding PL 16-6, which took effect July 11, 2008.

## CHAPTER 11. DEPARTMENT OF FINANCE.

**Article 1. General.**

**§ 2553. Department of Finance: Duties and Responsibilities.**

**Case Annotations:** *Estate of Muna v. Commonwealth,* 2007 MP 16, 7 N.M.I. 473 (2007).

# CHAPTER 12. DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENTAL SERVICES.

## Article 4. Professional Boards.

### § 2641. Medical Profession Licensing Board. [Repealed by PL 15-105.]

**Source:** . . . repealed by PL 15-105, § 3.

**Commission Comment:** . . . PL 15-105 was enacted into law on November 7, 2007, and contained the following short title and purpose in addition other amendments and severability and savings provisions:

Section 1. Short Title. This Act may be cited as the "Health Care Professions Licensing Act of 2007."

Section 2. Purpose. The Legislature finds that, as stated in the Act's section on Purpose and Findings, this Act is required to protect the health, safety and welfare of the people of the Commonwealth.

### § 2642. Medical Professional Licensing Board: Procedures. [Repealed by PL 15-105.]

**Source:** . . . repealed by PL 15-105, § 3.

# CHAPTER 14. DEPARTMENT OF PUBLIC LANDS.

§ 2801. Department of Public Lands.
§ 2802. The Secretary.
§ 2803. Powers and Duties of Department of Public Lands.
§ 2804. Advisory Board to the Secretary.
§ 2805. Consultation with Mayor.
§ 2806. Public Lands: Fundamental Policies.
§ 2807. Public Lands: Additional Policies and Procedures.
§ 2808. Public Lands: Lease Enforcement and Other Requirements.
§ 2809. Homesteads.
§ 2810. Audit.

### § 2801. Department of Public Lands.

. . .

**Commission Comment:** . . .

Public Law 16-8, which took effect on July 30, 2008, amended Public Law 15-2. PL 15-2, in pertinent part, provides:

Section 2. Amendments to Public Law 15-2:

(a) The introductory clause to Section 3 is amended to read as follows:

"Section 3. Repeal. Public Laws 10-57, 12-33, and 12-71 to the extent they are applicable to public lands, are hereby repealed and re-enacted as a new Chapter 14 ~~Article 3~~ under Title 1, Division 2, Part 1, ~~Chapter 13~~ as follows:"

(b) A new Section 105 under Section 3 shall read as follows, and the

existing Section 105 and subsequent sections shall be renumbered as Section 106 and so forth:

The new section 105 is codified in 1 CMC § 2805. See the commission comment to 1 CMC § 2805 for more information regarding PL 16-8.

**§ 2803. Powers and Duties of Department of Public Lands.**

(a)-(b) [unchanged]

(c) There is hereby established a fund to be known as the "DPL Operations Fund" which shall be maintained by the Department of Finance. The bank account(s) for the DPL Operations Fund shall be separate and apart from the General Fund Bank Account(s) and other funds of the Commonwealth Government. All records and accounts shall be maintained in connection herewith.

(1)-(2) [unchanged]

(3) All debts, liabilities, obligations and operational expenses of the Department including land compensation judgments shall be paid from the DPL Operations Fund bank account(s).

(4)-(5) [unchanged]

(d)-(f) [unchanged]

**Source:** . . . subsection (c)(3) amended by PL 16-31.

**Commission Comment:** . . .

Public Law 16-31 was enacted into law by override on March 10, 2009. PL 16-31 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Department of Public Lands is tasked with the responsibility of administering the Commonwealth's land exchange program, which includes land compensation in cases where land exchange is not a viable or desirable option. The Legislature further finds that the Department of Public Lands is a party to land compensation cases filed in court and should be responsible for paying final judgments, if any, to land compensation claimants. Land compensation judgments usually include interest which is compounded until the judgment is paid in full thereby making it imperative that the judgments are paid as soon as possible. The Legislature finds that the Department of Public Lands has the ability to satisfy land compensation judgments. Accordingly, the purpose of this legislation is to authorize the Department of Public Lands to pay for final land compensation judgments using its operations fund bank accounts.

**§ 2805. Consultation with Mayor.**

Prior to the execution of a proposed, final action by the department, other than action requiring or subject to legislative approval, with respect to the lease, homestead, transfer of an interest or other disposition of public lands, the secretary of the Department of Public Lands shall advise, in writing, the respective mayor of the proposed, final action, who shall have 20 days thereafter to submit, in writing, to the department the mayor's position advocating the best interest of the municipality. The secretary shall give due consideration to the mayor's position and, for good cause shown by the mayor, modify, to the extent feasible, the proposed final action to address the mayor's concerns, while preserving the general intent of the proposed final action.

**Source:** PL 16-8 § 2(b)(105).

**Commission Comment:** Public Law 16-8 took effect on July 30, 2008. PL 16-8 contained severability and savings provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that: (1) a technical

amendment is necessary to codify the provisions of Public Law 15-2, establishing a new Department of Public Lands, under its own separate chapter under Part 1, Division 2, of Title 1 of the Commonwealth Code, as other departments have been so codified; (2) an amendment to Public Law 15-2 to require the Department of Public Lands to give due consideration to the position of each of the municipalities of Saipan, Rota, Tinian and Aguiguan, and the Northern Islands with respect to proposed action affecting public lands in the respective municipality.

### § 2806. Public Lands: Fundamental Policies.

. . .

**Source:** . . . renumbered by PL 16-8 § 2(b).

### § 2807. Public Lands: Additional Policies and Procedures.

(a)-(b) [unchanged]

(c) *Environmental Sampling and Consultation*. Notwithstanding any law to the contrary, the Department of Public Lands shall fund an independent study to conduct environmental samplings and consultations on areas possibly contaminated with chemicals of concern throughout the CNMI.

**Source:** . . . renumbered by PL 16-8 § 2(b); (c) added by PL 17-05 § 2 (June 17, 2010).

**Commission Comment:** . . .

Public Law 17-5 (effective June 17, 2010) contained the following findings and purpose section:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that sometime in the 1960's, the United States Department of Defense stored an unknown quantity of electrical capacitors in Tanapag in addition to the abandoned forty-two (42) known tanks formerly used to store aviation fuel, gasoline, and heavy oil and the two military dumpsites. These capacitors contained polychlorinated biphenyl (PCB's) and when burned release dioxins, both of which are extremely hazardous chemicals. Both PCB's and dioxins have been found in dangerous concentrations throughout Tanapag Village, clear evidence of widespread contamination and as a result, the United States Department of Defense accepted responsibility for the clean up of the PCB and dioxin contamination in 1992. However, environmental sampling associated with soil removal actions by the United States Army Corp of Engineers had predominantly focused solely on the PCB contamination soils at source areas within the village on public lands and has not addressed other chemicals such as Dioxin, Vinyl Chloride, Benzene, Ethylbenzene, Dichloroethylene, Mercury, Nitrites, Lead, and other heavy metals and chemicals of concern. Additional environmental sampling and consultation is necessary to determine the extent of the contamination due to harmful substances, the exposure to the public, the associated risks of adverse health effects and to protect the rights due to the citizens.

The Commonwealth Legislature further finds that Tanapag Village consists primarily of public lands and lots formerly public lands, deeded as homesteads lots to the public from the Commonwealth. The Commonwealth Legislature finds that the failure of federal government to address the environmental concerns of the public and homesteads lots does not relinquish the responsibility of the Commonwealth in the protection of its citizens' rights once aware of such failure by the federal government. Additionally, nothing noted herein shall be construed as a waiver of the Commonwealth's right to seek and obtain reimbursement from the Federal Government for any and all funds so expended by the Commonwealth by any and all legal proceedings or actions.

In accordance with House Joint Resolution No. 11-57, the Office of the Attorney General has expended the sum of Two Hundred and Fifty Thousand Dollars for environmental and consultation services. Information was obtained and reported to the Legislature noting several areas of concern impacting the environment and public health were outlined, including the potential presence of other chemicals of concern,

contamination of food sources by PCB's and other chemicals of concern, transport of contaminated sediment within the village, contamination of water sources, and the potential risk to the local ecology. The presence of such harmful chemicals of concern would constitute a possible imminent and immediate danger to the environment and the health and welfare of the people of Tanapag and the entire CNMI.

The Commonwealth Legislature further finds that there are other fuel farms within the Commonwealth where possible contaminations have occurred due to the United States Department of Defense's storage of fuels in these areas. Because of the potential hazards, the Commonwealth Legislature finds that it is necessary that other areas of concern be tested for the potential presence of polychlorinated biphenyls (PCB), Dioxin, Vinyl Chloride, Benzene, Ethylbenzene, Dichloroethylene, Mercury, Nitrites, Lead, other heavy metals and chemicals of concern.

The Commonwealth Legislature further finds that Article 11, Section 5(g) notes that the Marianas Public Land Corporation, whose rights, duties and responsibilities have been transferred in accordance with Executive Order 94-3, Section 306, with the provision of duties and responsibilities by law noted in Public Law 15-2, shall follow certain fundamental policies in the performance of its responsibilities within the framework of the Constitution, stating that: "The corporation shall receive all money from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), and shall transfer these moneys after the end of the fiscal year to meet reasonable expenses of administration and management, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of its functions." The environmental contamination has been identified as being located on both public and homestead lots administered under the former Marianas Public Land Corporation. The Commonwealth Legislature also notes that these homesteads lots were distributed by the former Marianas Public Land Corporation without conducting an environmental assessment pertaining to such contamination. Furthermore, Article 1, Section 9 of the Constitution of the Commonwealth of the Northern Marianas Island states that "Each person has the right to a clean and healthful public environment in all areas, including the land, air, and water. Harmful and unnecessary noise pollution, and the storage of nuclear or radioactive material and the dumping or storage of any type of nuclear waste within the surface or submerged lands and water of the Northern Marianas Islands, are prohibited except as provided by law."

The Commonwealth Legislature therefore finds that because harmful substances have been released into the environment of the village of Tanapag and other possible areas within the CNMI, and threaten public health and safety and the quality of the environment, it is necessary to authorize and mandate the Department of Public Lands to conduct an environmental sampling and consultation of areas possibly contaminated.

### § 2808. Public Lands: Lease Enforcement and Other Requirements.

(a) The Department shall strictly enforce all terms of every lease and all requirements imposed as a condition of legislative approval of a lease or lease extension under 1 CMC § 2806.

(b)- (d) [unchanged]

**Source:** . . . renumbered by PL 16-8 § 2(b), modified.

**Commission Comment:** . . . The commission changed the reference to “Section 105" in subsection (a) above to “1 CMC § 2806" pursuant to the authority granted by 1 CMC § 3806(c). The commission inserted a period at the end of subsection (c)(8) to correct a manifest clerical error pursuant to the authority granted by 1 CMC § 3806(g).

### § 2809. Homesteads.

. . .

**Source:** . . . renumbered by PL 16-8 § 2(b).

**§ 2810. Audit.**

. . .

**Source:** renumbered by PL 16-8 § 2(b).

## CHAPTER 17. OFFICE OF GRANTS MANAGEMENT. [New added chapter]

§ 2891. Office of Grants Management.
§ 2892. Office of Grants Management: Duties and Responsibilities.

**§ 2891. Office of Grants Management.**

There is established an Office of Grants Management within the Office of the Governor. The office shall be headed by an administrator who shall have at least a bachelor's degree from a U.S.-accredited college or university, and at least five years experience in grant writing or grants management. The administrator shall report directly to the Governor or to another government official the Governor has delegated his supervisory responsibility.

**Source:** PL 16-48, § 3.

**Commission Comment:** Public Law 16-48, effective December 14, 2009, contained severability and savings clause provisions and the following:

Section 1. Title. This Act may be cited as the "Grants Management Act."

Section 2. Purpose. The Legislature finds that significant finding is available from federal grants. The Legislature also finds that it is in the public's interest to take full advantage of the federal grant funding that the Commonwealth is eligible to receive. The Legislature further finds that there is a corresponding need to establish an Office of Grants Management within the Office of the Governor. The Office would be responsible for the following: (1) establishment of a database of those federal grants currently received; (2) research of all federal grants which the CNMI is eligible to receive but has not applied for; (3) development of grant applications for those federal grants which the CNMI has not previously submitted grant applications but is eligible to receive; (4) research of those federal grants which the CNMI is not currently eligible to receive but might reasonably be made eligible through the application of § 502(a)(l) of the Covenant, which makes applicable to the CNMI "those laws which provide federal services and financial assistance programs as they apply to Guam, and (5) development of training programs for government staff in grant writing, grant management and compliance, training on federal regulations and requirements, and practices and trends in federal grant implementation.

**§ 2892. Office of Grants Management: Duties and Responsibilities.**

The Office of Grants Management shall have the following duties and responsibilities:

(a) Coordinate Commonwealth agency activity to identify and win competitive federal grants.

(b) Review federal grant formulae at the time of the reauthorization of continuing federal grants by the U.S. Congress to ensure the Commonwealth receives an optimized share of funding.

(c) Assist local governments and community-based organizations in identifying federal grant opportunities as well as private foundation grants.

(d) To develop and maintain a database on all grants received by the CNMI government; the database shall include at a minimum, the subject area of the grant, the fiscal year in which the grant

applies, the program title, the type of grant (e.g., formula or discretionary), the amount of the grant, the recipient department, the grantor agency, any local cash or in-kind matching requirements, any special conditions or restrictions, and the name, title, and contact number of all persons responsible for grant management and administration, both for the CNMI and for the grantor agency.

(e) Identify all grants that the CNMI is eligible to receive but has not applied for, and to determine whether the CNMI should submit a future application.

(f) Identify all grants that the CNMI is not presently eligible to receive and could reasonably become eligible to receive, and, to coordinate with appropriate CNMI agency or department or U.S. federal agency or department to secure eligibility for the CNMI.

(g) Provide training to government agency staff in grant writing and grant management and administration and other technical assistance to agency staff and other interested organizations.

(h) Serve as the central point coordinator of federal grants, disseminating grant information and training government staff about the full range of federal assistance that the CNMI is eligible to receive.

(i) Provide an annual report to the legislature on federal grants received by the CNMI by grant, by fiscal year, by amount received, by amount expended from each grant and total federal assistance and grant expenditures computed on a per capita basis.

(j) Assist small businesses in identifying federal procurement opportunities and assist individuals in identifying federal employment opportunities.

**Source:** PL 16-48, § 4.

# DIVISION 2: EXECUTIVE BRANCH

## PART 2. ADMINISTRATIVE PROVISIONS~~: GENERAL APPOINTMENT PROCEDURES~~.

### CHAPTER 1. ~~ADMINISTRATIVE PROVISIONS:~~ GENERAL APPOINTMENT PROCEDURES.

**§ 2904. Appointments: Failure to Confirm.**

If the appointment is not confirmed by the Senate, or House, or by a majority of members from the senatorial district within 90 consecutive calendar days from the date the person was appointed, the appointment is deemed rejected and shall automatically terminate, the position shall become vacant, and the person nominated shall not be renominated. Nothing in this section shall preclude the Governor from submitting an appointment to a special session of the legislature. This section shall apply to an appointment to any position that requires advice and consent pursuant to the Constitution or statute.

**Source:** . . . amended by PL 15-84, § 2, modified.

**Commission Comment:** The commission changed "subsection" to "section" in this section pursuant to the authority granted by 1 CMC § 3806(d). PL 15-84 was enacted on September 19, 2007,

and contained the following findings in addition to severability and savings provisions:

Section 1. Findings. Sections 2901 *et seq.* of Title 1 of the Commonwealth Code address the matter of executive appointments requiring the advice and consent of a legislative body. The Legislature finds that 1 CMC § 2904 arguably can be construed to distinguish between a person who was appointed temporarily and a person who was appointed to permanently fill a vacant position. The purpose of this act is to eliminate this ambiguity by making § 2904 apply to all appointments requiring the advice and consent of the respective confirming body, regardless whether one is appointed to fill a vacancy temporarily or permanently.

**Case Annotations:** *Tudela v. Superior Ct.,* 2006 MP 7, 7 N.M.I. 279 (2006).

## CHAPTER 2. VARIOUS GOVERNMENT SERVICES FEES. [new chapter]

### § 2951. Various Government Services Fees.

(a) Notwithstanding any law, rule, or regulation to the contrary, fees for the following government services shall be increased by one hundred percent:

(1) Renewal of vehicle operator's license, taxicab driver's license, chauffeur's license, and learner's permits, including but not limited to, replacement for duplicate, lost, or stolen licenses.

(2) Vehicle registration fees, including but not limited to, replacement for lost registration, lost license plates, customized license plates, stolen license plates, and certificate of ownership.

(3) Boat registration fees, including but not limited to boat trailers.

(4) Firearms licenses.

(5) Firearms registration fees per firearm.

(6) Fingerprinting fees per set.

(7) Police report fees based on the number of pages.

(8) Safety sticker fees.

(9) Copies of any public records maintained by the Department of Public Safety.

(10) Marriage license fees.

(b) The Department of Public Safety shall promulgate rules and regulations necessary to establish the appropriate fees for subsections (a)(1) through (9) and (b) as listed in this section; provided that the said fees shall not be decreased below the one hundred percent increase as set forth in this section.

(c) The Office of the Governor in consultation with the Department of Finance shall establish the appropriate fees for subsection (a)(10) of this section; provided that the said fees shall not be decreased below the one hundred percent increase as set forth in this section.

**Source:** PL 16-2, § 8(a)-(c), modified.

**Commission Comment:** The commission modified this section pursuant 1 CMC § 3806(d), (e) and (g). The commission removed numerals that duplicated words and replaced all occurrences of "Section 8 of this Act" with "this section." The commission also changed "increased" to "increase" to correct a manifest error in subsections (b) and (c). For more information regarding PL 16-2, see comment to 4 CMC § 8143. See also 9 CMC § 2104 for fees for registration of vehicles.

# DIVISION 3: JUDICIAL BRANCH

### § 3001. Short Title.

**Case Annotations:** *Villagomez v. MICO,* 2006 MP 21, 7 N.M.I. 363 (2006).

## CHAPTER 1. COMMONWEALTH SUPREME COURT.

### § 3101. Establishment of Supreme Court.

**Case Annotations:**

**APPEAL AND ERROR**

– **Evidence at Trial**
The N.M.I. Supreme Court may not re-weigh evidence presented to the trial court. 1 CMC § 3101. *Arriola v. Arriola*, 1999 MP 13 ¶ 18, 6 N.M.I. 1, 4 (1999).

### § 3102. Jurisdiction.

**Case Annotations:** *Bank of Saipan v. Martens*, 2007 MP 5, 7 N.M.I. 419 (2007); *Chen's Corp. v. Hambros*, 2007 MP 4, 7 N.M.I. 417 (2007); *Commonwealth v. Perez*, 2006 MP 24, 7 N.M.I. 372 (2006); *Villagomez v. MICO*, 2006 MP 21, 7 N.M.I. 363 (2006); *Commonwealth v. Kumagai*, 2006 MP 20, 7 N.M.I. 357 (2006); *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006); *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17, 7 N.M.I. 334 (2006); *Waibel v. Farber*, 2006 MP 15, 7 N.M.I. 322 (2006); *Commonwealth v. Chen*, 2006 MP 14, 7 N.M.I. 318 (2006); *Aplus Co. Ltd. v. Niizeki Int'l Saipan Co. Ltd.*, 2006 MP 13, 7 N.M.I. 313 (2006); *Sullivan v. Tarope*, 2006 MP 11, 7 N.M.I. 303 (2006); *Century Ins. Co. Ltd. v. TAC Int'l Constructors, Inc.*, 2006 MP 10, 7 N.M.I. 297 (2006); *Tudela v. Superior Ct.*, 2006 MP 7, 7 N.M.I. 286 (2006); *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006); *Liu v. Commonwealth*, 2006 MP 5, 7 N.M.I. 262 (2006); *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4, 7 N.M.I. 256 (2006); *Kevin Int'l Corp. v. Superior Ct.*, 2006 MP 3, 7 N.M.I. 251 (2006); *In Sik Chang v. Estate of Norita*, 2006 MP 2, 7 N.M.I. 240 (2006); *Commonwealth v. Taitano*, 2005 MP 20, 7 N.M.I. 227 (2005); *Commonwealth v. Crisostimo*, 2005 MP 18, 7 N.M.I. 216 (2005); *Commonwealth v. Manila*, 2005 MP 17, 7 N.M.I. 209 (2005); *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005); *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11, 7 N.M.I. 178 (2005); *Merci Corp. v. World Int'l Corp.*, 2005 MP 10, 7 N.M.I. 170 (2005); *Commonwealth v. Taisacan*, 2005 MP 9, 7 N.M.I. 162 (2005); *Falcon v. McCue*, 2005 MP 7, 7 N.M.I. 149 (2005); *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 (2005), 7 N.M.I. 140; *Santos v. STS Enters., Inc.*, 2005 MP 4, 7 N.M.I. 131 (2005); *Bank of Saipan v. Atalig*, 2005 MP 3, 7 N.M.I. 126 (2005); *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2, 7 N.M.I. 121 (2005); *Health Prof'l Corp. v. Superior Ct.*, 2004 MP 25, 7 N.M.I. 114 (2004); *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004); *Office of the Attorney Gen. v. Estel*, 2004 MP 20, 7 N.M.I. 89 (2004); *Commonwealth v. Superior Ct. (Ada)*, 2004 MP 14, 7 N.M.I. 67 (2004); *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004); *Paulis v. Superior Ct.*, 2004 MP 10, 7 N.M.I. 48 (2004); *Commonwealth v. Jai Hoon Yao*, 2004 MP 5, 7 N.M.I. 30 (2004); *Island Leisure Corp. v. Rasa*, 2004 MP 4, 7 N.M.I. 27 (2004); *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004); *KTT Corp. v. Tomokane*, 2003 MP 17, 6 N.M.I. 627 (2003); *Commonwealth v. Diaz*, 2003 MP 14, 6 N.M.I. 605 (2003); *Rayphand v. Tenorio*, 2003 MP 12, 6 N.M.I. 575 (2003); *In re Macaranas*, 2003 MP 11, 6 N.M.I. 571 (2003); *Commonwealth v. Lucas*, 2003 MP 9, 6 N.M.I. 564 (2003); *Commonwealth v. Palacios*, 2003 MP 6, 6 N.M.I. 546 (2003); *Highsmith & O'Mallan, P.C. v. Leon Guerrero*, 2003 MP 4, 6 N.M.I. 539 (2003); *Qiong He v. Commonwealth*, 2003 MP 3, 6 N.M.I. 535 (2003); *Town House, Inc. v. Saburo*, 2003 MP 2, 6 N.M.I. 529 (2003); *Commonwealth v. Repeki*, 2003 MP 1, 6 N.M.I. 523 (2003); *Ramos v. Magusa, Inc.*, 2002 MP 25, 6 N.M.I. 520 (2002); *Young Jo Cho v. Min Wan Cho*, 2002 MP 24, 6 N.M.I. 516 (2002); *Commonwealth v. Camacho*, 2002 MP 22, 6 N.M.I. 505 (2002); *Commonwealth v. Camacho*, 2002 MP 21, 6 N.M.I. 498 (2002); *Bisom v. Commonwealth*, 2002 MP 19, 6 N.M.I. 475 (2002); *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002 MP 15, 6 N.M.I. 446 (2002); *Commonwealth v. Castro*, 2002 MP 13, 6 N.M.I. 434 (2002); *Santos*

*v. Public Sch. Sys.*, 2002 MP 12, 6 N.M.I. 422 (2002); *Triple J Saipan, Inc. v. Agulto*, 2002 MP 11, 6 N.M.I. 419 (2002); *In re Estate of Lairopi*, 2002 MP 10, 6 N.M.I. 417 (2002); *Commonwealth v. Sibetang*, 2002 MP 9, 6 N.M.I. 414 (2002); *Manglona v. Commonwealth*, 2002 MP 7, 6 N.M.I. 407 (2002); *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002); *Furuoka v. Dai-Ichi Hotel (Saipan) Inc.*, 2002 MP 5, 6 N.M.I. 374 (2002); *Commonwealth v. Saburo*, 2002 MP 3, 6 N.M.I. 355 (2002); *Villanueva v. City Trust Bank*, 2002 MP 1, 6 N.M.I. 346 (2002); *In re Estate of Yong Kyun Kim*, 2001 MP 22, 6 N.M.I. 343 (2001); *Isla Fin. Servs. v. Sablan*, 2001 MP 21, 6 N.M.I. 338 (2001); *Cabrera v. Young*, 2001 MP 19, 6 N.M.I. 330 (2001); *Olupomar v. Mahora*, 2001 MP 17, 6 N.M.I. 318 (2001); *Commonwealth v. Reyes*, 2001 MP 14, 6 N.M.I. 305 (2001); *Reyes v. Reyes*, 2001 MP 13, 6 N.M.I. 299 (2001); *Santos v. Santos*, 2001 MP 12, 6 N.M.I. 295 (2001); *Matsunaga v. Matsunaga*, 2001 MP 11, 6 N.M.I. 285 (2001); *Fitial v. Kim Kyung Duk*, 2001 MP 9, 6 N.M.I. 276 (2001); *Commonwealth v. Abuy*, 2001 MP 8, 6 N.M.I. 271 (2001); *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7, 6 N.M.I. 264 (2001); *Bank of Saipan v. Superior Ct (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5, 6 N.M.I. 242 (2001); *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4, 6 N.M.I. 233 (2001); *Del Rosario v. Camacho*, 2001 MP 3, 6 N.M.I. 213 (2001); *Bank of Saipan v. Superior Ct. (Connell)*, 2001 MP 1, 6 N.M.I. 179 (2001); *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 16, 6 N.M.I. 158 (2000); *Commonwealth v. O'Connor*, 2000 MP 11, 6 N.M.I. 125 (2000); *Pille v. Sanders*, 2000 MP 10, 6 N.M.I. 119 (2000); *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113 (2000); *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6, 6 N.M.I. 92 (2000); *Commonwealth v. Martinez*, 2000 MP 5, 6 N.M.I. 85 (2000); *Commonwealth v. Scragg*, 2000 MP 4, 6 N.M.I. 80 (2000); *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999); *Nakatsukasa v. Superior Ct.*, 1999 MP 25, 6 N.M.I. 59 (1999). . . .

*[Replace current annotations by topic with the following]*

**ADMINISTRATIVE LAW**

**Judicial Review**

– **Jurisdiction**

— **Generally**
NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of trial court dismissal of action challenging administrative agency decision. 1 CMC § 3102(a). *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

NMI Supreme Court had jurisdiction to review Coastal Resource Management Office Appeals Board decision initially appealed to NMI Superior Court pursuant to Supreme Court's appellate jurisdiction over Superior Court judgments and orders. 1 CMC § 3102. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

**CIVIL PROCEDURE**

**Final Judgments**

– **Appealable Orders**
The denial of a motion for summary judgment is not a final order, and therefore the N.M.I. Supreme Court does not have jurisdiction to hear an appeal of the order pursuant to 1 CMC § 3102(a). Moreover, an attempt by the Superior Court to certify an order denying summary judgment as a final judgment pursuant to Commonwealth Rule of Civil Procedure 54(b) is improper. 1 CMC § 3102(a), Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 18, 6 N.M.I. 542, 545 (2003).

Neither Commonwealth Rule of Appellate Procedure 4, nor 1 CMC § 3102(a) provide the N.M.I. Supreme Court with any grounds for exercising jurisdiction over an interlocutory appeal, therefore the N.M.I. Supreme Court has no jurisdiction to review the appeal of an order denying a motion for summary Judgment, where such order is not a final judgment. Com. R. App. P. 4, 1 CMC § 3102(a). *Chan v. Chan*, 2003 MP 5 ¶ 20, 6 N.M.I. 542, 546 (2003).

The N.M.I. Supreme Courts appellate jurisdiction over Superior Court proceedings permits it to hear appeals only from judgments and orders which are final, except as otherwise provided by law. A decision is not final unless it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. 1 CMC § 3102(a). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13, 6 N.M.I. 285, 290 (2001).

**CONTRACTS**

NMI Supreme Court had jurisdiction over appeal in contract enforcement action pursuant to general jurisdictional statute. 1 CMC § 3102(a). *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

**CRIMINAL LAW**

**Drug Trafficking**

– **Jurisdiction**

— **Particular Cases**
NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from drug trafficking conviction and sentence. 1 CMC § 3102(a). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

**Driving Under Influence of Alcohol or Other Drug**

– **Jurisdiction**

— **Particular Cases**
NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from conviction for driving motor vehicle under the influence of alcohol. 1 CMC § 3102(a). *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from prosecution for driving motor vehicle under the influence of alcohol. 1 CMC § 3102(a). *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

NMI Supreme Court had jurisdiction, pursuant 1 CMC § 3102, over appeal by government of order dismissing prosecution for driving under the influence of alcohol or other drug. 9 CMC § 7105. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

**CRIMINAL PROCEDURE**

**Sentencing**

– **Generally**
The sentence in a criminal case is the punishment imposed orally by a sentencing judge in a defendant's presence. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

– **Jurisdiction**

— **Particular Cases**
NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from sentence imposed in prosecution for bribery. 1 CMC § 3102(a). *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of Superior Court order revoking probationer's probation. 1 CMC § 3102(a). *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of Superior Court order revoking probationer's probation. 1 CMC § 3102(a). *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from drug trafficking conviction and sentence. 1 CMC § 3102(a). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

**EXTRAORDINARY WRITS**

**Appellate Court Supervisory Jurisdiction**

– **Generally**
The NMI Supreme Court has jurisdiction to issue extraordinary writs pursuant to its general supervisory powers. N.M.I. Const. art. IV, 3; 1 CMC § 3102(b). *Office of the Attorney Gen. v. Superior Ct. (Fabricante)*, 1999 MP 14 ¶ 1, 6 N.M.I. 7, 9

(1999).

### § 3103. Appeals: Powers of the Supreme Court.

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 24, 7 N.M.I. 111 (2004); *Commonwealth v. Rabauliman,* 2004 MP 16, 7 N.M.I. 73 (2004); *Office of the Attorney Gen. v. Senido,* 2004 MP 6, 7 N.M.I. 35 (2004); *Commonwealth v. Deleon Guerrero,* 2004 MP 3, 7 N.M.I. 26 (2004); *Commonwealth v. Atalig,* 2002 MP 20, 6 N.M.I. 487 (2002); *Fitial v. Kim Kyung Duk,* 2001 MP 9, 6 N.M.I. 276 (2001).

*[insert the following at the end of the current annotations]*

**COURTS**

**Appellate Power**
This NMI Supreme Court is guided by the letter of the law and the limitations of its appellate power, provided at 1 CMC § 3103, when reviewing lower court findings of fact. 1 CMC § 3103. *Commonwealth v. Seman*, 2001 MP 20 ¶ 9, 6 N.M.I. 334, 336 (2001).

### § 3107. Appeals Determined by Three Justices.

**Case Annotations:**

**STATUTES**

**Interpretation and Construction**

**– Generally**
The concurrence of two justices is necessary to establish a majority opinion under 1 CMC § 3107. Thus, where the appeal was determined by the entire panel consisting of three justices and the opinion was signed by two justices, it is consistent with Commonwealth law. *Commonwealth v. Repeki*, 2004 MP 8 ¶ 9, 7 N.M.I. 40, 43 (2004).

### § 3108. Supreme Court Jurisdiction; Pending Cases.

**Case Annotations:** *Commonwealth v. Yi Xiou Zhen,* 2002 MP 4, 6 N.M.I. 361 (2002).

## CHAPTER 2. COMMONWEALTH SUPERIOR COURT.

## Article 1. General.

### § 3204. Presiding Judge.

**Case Annotations:** *Tudela, et al. v. Superior Ct.,* 2007 MP 18, 7 N.M.I. 482 (2007).

## CHAPTER 3. THE JUDICIARY.

### § 3308. Disqualification of Judges.

**Case Annotations:** *Tudela, et al. v. Superior Ct.,* 2007 MP 18, 7 N.M.I. 482 (2007); *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26, 7 N.M.I. 388 (2006); *Commonwealth v. Repeki,* 2004 MP 8, 7 N.M.I. 40 (2004); *Commonwealth v. Caja,* 2001 MP 6, 6 N.M.I. 255 (2001).

**JUDGES**

**Disqualification**

– **Generally**
The standard for a judge to disqualify him or herself pursuant to 1 CMC § 3308(a), is an objective one which focuses on whether a person with knowledge of all the circumstances would doubt the judges impartiality. 1 CMC § 3308(a). *Commonwealth v. Camacho*, 2002 MP 22 ¶ 18, 6 N.M.I. 498, 507 (2002).

The grounds for disqualification of a justice are set forth identically in 1 CMC § 3308 and Canon 3(C) of the Commonwealth Code of Judicial Conduct. 1 CMC § 3308; Com. C. Judic. Cond., Canon 3(C). *Bank of Saipan v. Superior Ct. (Disqualification of Lamorena)*, 2002 MP 17 ¶ 5, 6 N.M.I. 464, 466 (2002); *Bank of Saipan v. Superior Ct. (Disqualification of Castro),* 2002 MP 16 ¶ 5, 6 N.M.I. 453, 456-7 (2002).

Section 3308 of Title 1 of the Commonwealth Code and Canon 3(C) of the Commonwealth Code of Judicial Conduct both model the language of the federal recusal statute, codified as 28 U.S.C. 455. 1 CMC § 3308; Com. C. Judic. Cond., Canon 3(C); 28 U.S.C. § 455. *Bank of Saipan v. Superior Ct. (Disqualification of Lamorena)*, 2002 MP 16 ¶ 7, 6 N.M.I. 464, 467 (2002); *Bank of Saipan v. Superior Ct. (Disqualification of Castro)*, 2002 MP 16 ¶ 7, 6 N.M.I. 453, 457 (2002).

Federal cases interpreting the federal recusal statutes may be relied upon in deciding motions based on the Commonwealth Code and the Commonwealth Code of Judicial Conduct. 1 CMC § 3308; Com. C. Judic. Cond., Canon 3(C); 28 U.S.C. § 455; Com. C. Judic. Cond., Canon 3(D)(c); 28 U.S.C.§ 144. *Bank of Saipan v. Superior Ct. (Disqualification of Lamorena)*, 2002 MP 16 ¶ 7, 6 N.M.I. 464, 467 (2002); *Bank of Saipan v. Superior Ct. (Disqualification of Castro)*, 2002 MP 16 ¶ 7, 6 N.M.I. 453, 457 (2002).

The language of 1 CMC § 3308(a) and Com. C. Judic. Cond. Canon 3(C)(a) is nearly identical to the federal disqualification statute, 28 U.S.C. 455(a), and thus CNMI Courts look to the federal case law for guidance on the issue of a judges disqualification. 1 CMC § 3308(a); Com. C. Judic. Cond. Canon 3(C)(a); 28 U.S.C. 455(a). *Commonwealth v. Caja*, 2001 MP 6 ¶ 18, 6 N.M.I. 255, 259 (2001).

– **Motion to Recuse**
If a party cites 1 CMC § 3308(b)(1) as grounds for disqualifying a justice, because that section requires a showing of personal bias or prejudice, a plain reading of the statute reveals that the party must follow the affidavit requirement set forth in Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct. 1 CMC § 3309(b)(1); Com. C. Judic. Cond., Canon 3(D)(c). *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 14, 6 N.M.I. 453, 468 (2002).

If an affidavit filed under Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct is signed by an attorney and not a party, then the motion made under 1 CMC § 3308(b)(1) fails. Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1). *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 16, 6 N.M.I. 453, 468 (2002).

Unlike the federal procedure, a failure to comply with the affidavit requirement under Canon 3(D)(c) precludes further analysis under 1 CMC § 3308(b)(1). Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1); 28 U.S.C. § 144; 28 U.S.C. § 455. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 17, 6 N.M.I. 453, 468 (2002).

Notwithstanding a defect in the affidavit required by Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct to accompany a motion to disqualify a justice under 1 CMC § 3308(b)(1), a court is not precluded from determining whether the facts raised in the affidavit warrant disqualification under 1 CMC § 3308(a). Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1); 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 18, 6 N.M.I. 453, 469 (2002).

Because the affidavit requirement of Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct is only specifically applicable to motions alleging bias or prejudice under 1 CMC § 3308(b)(1) and not to motions alleging partiality under 1 CMC § 3308(a), the court may analyze whether disqualification is necessary under section 3308(a), notwithstanding that the motion fails under section 3308(b)(1). Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1); 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 18, 6 N.M.I. 453, 469 (2002).

The timeliness of a motion to disqualify a justice under 1 CMC § 3308(a) is determined on a case-by-case basis, considering

the following factors: the extent of movant's involvement in the proceeding; whether recusal would result in waste of judicial resources; whether the motion was made after entry of judgment; and whether movant can demonstrate good cause for delay. 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Castro),* 2002 MP 16 ¶ 18, 6 N.M.I. 453, 458 (2002).

The restriction contained in Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct, that a party may only file one affidavit accompanying a motion to disqualify a justice, applies only to motions to disqualify based on the ground of bias or prejudice brought pursuant to 1 CMC § 3308(b)(1) and not to motions to disqualify based on lack of impartiality brought pursuant to 1 CMC § 3308(a). Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1); 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 25, 6 N.M.I. 453, 459 (2002).

A court may analyze the merits of a disqualification motion on lack of impartiality grounds pursuant to 1 CMC § 3308(a), notwithstanding a party's non-compliance with the one affidavit rule of Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct. 1 CMC § 3308(a); Com. C. Judic. Cond., Canon 3(D)(c). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 25, 6 N.M.I. 453, 459 (2002).

Disqualification of a justice pursuant to 1 CMC § 3308(a) is necessary if a reasonable person with knowledge of all of the facts would conclude that the justices impartiality might be questioned. 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 29, 6 N.M.I. 453, 460 (2002).

The standard for determining that a justice has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding requiring disqualification pursuant to 1 CMC § 3308(b)(1) is an objective standard. The bias or prejudice against a party must derive from an extra- judicial source. 1 CMC § 3308(b)(1). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30, 6 N.M.I. 453, 460 (2002).

A justice should be disqualified if alleged bias or prejudice against a party, pursuant to 1 CMC § 3308(b)(1), is derived from an extra-judicial source. 1 CMC § 3308(b)(1). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30, 6 N.M.I. 453, 460 (2002).

Because motions made under 1 CMC § 3308(b)(1) must comply with the affidavit requirement of Canon 3 (D)(c) of the Commonwealth Code of Judicial Conduct, the affiant must state facts with particularity and the facts must be such that, if true they would convince a reasonable man that a bias exists and that bias is personal, as opposed to judicial in nature. 1 CMC § 3308(b)(1); Com. C. Judic. Cond., Canon 3(D)(c). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30, 6 N.M.I. 453, 460 (2002).

Mere speculation about the motives for a justice's actions is not sufficient to satisfy disqualification under either subsections 3308(a) or 3308(b)(1) of Title 1 of the Commonwealth Code. 1 CMC § 3308(a); 1 CMC § 3308(b)(1). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 35, 6 N.M.I. 453, 462 (2002).

When a litigant moves for recusal under 1 CMC § 3308, a trial judge is required to recuse himself or herself when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might be questioned. 1 CMC § 3308. *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 12 ¶ 5, 6 N.M.I. 132, 134 (2000).

Contrary to the affidavit procedure required under Commonwealth Code of Judicial Conduct, Canon 3(D)(c), with a motion for disqualification under 1 CMC § 3308, there are no strict procedural requirements for bringing the matter before the court and the motion is not strictly construed against recusal. Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308. *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 12 ¶ 5, 6 N.M.I. 132, 134 (2000).

— **Motion to Recuse - Judges - Impartiality, Requirement of**
Allegations of friendship between a justice and a party, witness, or counsel do not generally form grounds for recusal under either the bias or prejudice test under 1 CMC § 3308(b)(1) or the impartiality test under 1 CMC § 3308(a). 1 CMC § 3308(b)(1); 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 32, 6 N.M.I. 453, 461 (2002).

– **Impartiality, Requirement of**
Disqualification of a justice pursuant to 1 CMC § 3308(a) is necessary if a reasonable person with knowledge of all of the facts would conclude that the justices impartiality might be questioned. 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Lamorena),* 2002 MP 17 ¶ 24, 6 N.M.I. 464, 470 (2002).

A claim that friendship exists between a justice and counsel do not support disqualification under 1 CMC § 3308(a). 1 CMC § 3308(a). *Bank of Saipan v. Superior Court (Disqualification of Lamorena),* 2002 MP 17 ¶ 26, 6 N.M.I. 464, 470 (2002).

Recusal is clearly warranted under 1 CMC § 3308(b)(4) if the judge has an ownership interest in a party to the case or subject matter of the proceeding. 1 CMC § 3308(b)(4). *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 37, 6 N.M.I. 464, 472 (2002).

Under the general impartiality standard of 1 CMC § 3308(a), a judge might consider himself disqualified if he had a long association with a party as counsel, even on matters not involved in the proceedings. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 33, 6 N.M.I. 453, 461 (2002).

**— Generally**
When disqualification is based on the appearance of impropriety under 1 CMC § 3308, a judge must recuse himself or herself when others would have reasonable cause to question the judges impartiality. 1 CMC § 3308. *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 15 ¶ 15, 6 N.M.I. 153, 157 (2000).

The test for recusal under 1 CMC § 3308(a) is whether a reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned. 1 CMC § 3308(a). *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas),* 2000 MP 15 ¶ 15, 6 N.M.I. 153, 157 (2000).

### § 3309. Disqualification Procedure.

**Case Annotations:** *Commonwealth v. Repeki,* 2004 MP 8, 7 N.M.I. 40 (2004).

**JUDGES**

**Disqualification**

**– Motion to Recuse**
Section 3309(b) of Title 1 of the Commonwealth Code and Canon 3(D)(b) of the Commonwealth Code of Judicial Conduct allow a party to any proceeding to file a motion for disqualification of a judge or justice, thus, under the plain language of the rule, only parties are allowed to seek disqualification of a judge or justice. 1 CMC § 3309(b); Com. C. Judic. Cond., Canon 3(D)(b). *Bank of Saipan v. Superior Ct. (Disqualification of Castro)*, 2002 MP 16 ¶ 12, 6 N.M.I. 453, 457 (2002).

## CHAPTER 4. JUDICIAL ADMINISTRATION.

### § 3404. Written Opinions.

**Case Annotations:** *Reyes v. Reyes,* 2004 MP 1, 7 N.M.I. 1 (2004).

**COURTS**

**Time for Decision**
Decisions by Commonwealth courts must be rendered within one year from the time the case is taken under submission. 1 CMC § 3404. *Office of the Attorney Gen. v. Superior Ct. (Fabricante)*, 1999 MP 14 ¶ 25, 6 N.M.I. 7, 12 (1999).

The purpose behind the one year rule of 1 CMC § 3404 is to allow sufficient time for research and writing. For example, if the case involves complex issues or if the court's docket is overburdened, then the one year rule applies. The one year period was not intended to allow judges to delay issuing decisions arbitrarily. 1 CMC § 3404. *Office of the Attorney Gen. v. Superior Ct. (Fabricante)*, 1999 MP 14 ¶ 27, 6 N.M.I. 7, 13 (1999).

Section 3404 of Title 1 of the Commonwealth Code explicitly grants the court up to one year to issue its decision. 1 CMC § 3404. *Office of the Attorney Gen. v. Superior Ct. (Fabricante)*, 1999 MP 14 ¶ 28, 6 N.M.I. 7, 13 (1999).

## CHAPTER 6. ADMISSION TO PRACTICE.

### § 3601. Admission to Practice: Persons Previously Admitted to Practice.

**Case Annotations:** *Matsunaga v. Matsunaga,* 2006 MP 25, 7 N.M.I. 379 (2006).

**ATTORNEY AND CLIENT**

. . .

# DIVISION 4: OFFICE OF THE REPRESENTATIVE TO THE UNITED STATES [Repealed by PL 16-13]

## CHAPTER 1. THE REPRESENTATIVE TO THE UNITED STATES [*repealed by PL 16-13*].

### § 4101. Representative to the United States [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4102. Representative to the United States: Qualifications; Vacancy [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4103. Representative to the United States: Compensation and Expenses [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4104. Representative to the United States: Compliance with Code of Conduct [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

## CHAPTER 2. WASHINGTON OFFICE [*repealed by PL 16-13*].

### § 4201. Office of the Representative: Washington Office [*repealed by PL 16-13; text left for historical purposes]*.

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4202. Office of the Representative: Duties *[repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4203. Office of the Representative: United Nations Appearances [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4204. Office of the Representative: Duty of Others to Coordinate [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

### § 4205. Office of the Representative: Other Activities [*repealed by PL 16-13; text left for historical purposes*].

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

**§ 4206. Office of the Representative: Staff and Other Employees [*repealed by PL 16-13; text left for historical purposes]*.**

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

**§ 4207. Office of the Resident Representative: Annual Report *[repealed by PL 16-13; text left for historical purposes*].**

**Source: . . .** repealed by Public Law 16-13 § 3(a).

**Commission Comment:** . . . Public Law 16-13 § 3(a), which took effect on August 25, 2008, repealed Division 4 of Title 1 of the Commonwealth Code in its entirety. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13.

# DIVISION 6: ELECTIONS

## PART 1. NORTHERN MARIANA ISLANDS ELECTION LAW.

### CHAPTER 1. ELECTION COMMISSION.

**§ 6103. Election Commission: Term of Appointment.**

(a) Members shall serve a term of four years, except that of the members first appointed, two shall serve for a term of one year, two shall serve for two years, two shall serve for three years, and three shall serve for four years. Upon the expiration of the term of a member of the Commission, such person shall cease to be a member unless reappointed in the manner prescribed by law. No appointee may act as a Commission member until confirmed by the Senate.

(b) [unchanged]

**Source:** . . . subsection (a) amended by PL 16-29 § 1, modified.

**Commission Comment:** . . . The commission modified this section pursuant to 1 CMC § 3806(e) and (f). PL 16-29 became effective February 18, 2009 and contained severability and savings clause provisions.

**§ 6104. Election Commission: Election of Chairperson.**

The Commission shall annually elect one of its members as Chairperson and one of its members as Vice-Chairperson, by a majority vote.

**Source:** . . . amended by PL 17-11 § 2 (August 12, 2010).

**§ 6106. Election Commission: Quorum.**

**Case Annotations:** *Atalig v. Inos,* 2006 MP 1, 7 N.M.I. 236 (2006).

## CHAPTER 2. REGISTRATION AND VOTING PROCEDURES.

. . .

§ 6215. Challenge by Voters; Grounds; Procedure. [new sections]
§ 6216. Federal Write-in Absentee Ballot /Federal Postcard Application.
§ 6217. Early Voting: Criteria for Early Voting.
§ 6218. Early Voting: Photo Identification.
§ 6219. Early Voting: Ballot Box.
§ 6220. Early Voting: Issuance of Ballots; Voting Booths.
§ 6221. Early Voting: Permanent Polling Places for Early Voting.
§ 6222. Early Voting: Period for Early Voting; Hours.
§ 6223. Temporary Branch Polling Places.
§ 6224. Schedule of Locations and Times for Early Voting.

**§ 6205. Registration Procedures.**

(a) Any person qualified to vote in a general, primary, local or special election may register to vote not less than sixty days before the day of the election.

(b) When registering to vote, the person shall sign an affidavit of registration on a form prepared and furnished by the Commission stating that he meets the qualifications established by the Constitution and by this part for voting in the elections in the Commonwealth.

(1) Except as provided in 1 CMC § 6214, no person may register to vote or vote in an election district other than that in which he is a resident. A person has a residence in, or is a resident of, the election district where that person is factually living and has an abode.

(2) No person may vote in any election or be listed in any general register who fails to register according to the requirements of this part.

(3) Persons who are domiciled in the Commonwealth as provided in 1 CMC §§ 6202-6204, but who are temporarily out of the Commonwealth for any reason such as business, employment, service in the Armed Forces, or Merchant Marines of the United States, education, training, or medical treatment are considered residents for purposes of this part.

(c) Any person desiring to register to vote in an election district may register with a registration clerk or other person authorized by the Commission or, if a person registers by mail, provide a picture identification form as part of the election registration packet. The Commission shall authorize one or more registration clerks for Rota and for Tinian and Aguiguan, which may be the Clerk of Court on the respective islands or other persons, and who shall be available to register voters at registrant shall be examined under oath as to his or her qualification and it may be attested to in the form of a mark. The affidavit shall contain the following information:

(1) Full legal name;

(2) Last four digits of the individual's social security number;

(3) Date and place of birth;

(4) Residence, including mailing address;

(5) That the residence stated in the affidavit is not simply because of the person's presence in the Commonwealth but that the residence was acquired with the intent to make the

Northern Mariana Islands the person's legal residence with all the accompanying obligations therein;

(6) That the person is a citizen of the United States;

(7) Any other information as may be required by the Commission;

(8) That the person meets the requirements of the Commonwealth Constitution and this part.

(d) If a registration clerk administering an oath or the Election Commission staff upon reviewing the application has any question regarding the propriety of an affidavit of registration, the clerk or staff member shall forward the affidavit to the Commission for final decision as to its propriety. In case of a questionable affidavit, residency or any question regarding the qualifications of the voter, the Commission shall conduct a formal or informal hearing to determine the correct facts. The registrant has the right to present evidence to the board regarding his or her qualifications to vote and the registrant's proper election district.

(e) Any voter may change election districts by re-registering in the general, primary, or special election register in the manner prescribed by this section. The Commission shall cancel the existing registration and re-register the voter in the new election district. No registration may be allowed due to a change of residency within sixty days before an election. No change in residency during the forty days before an election shall affect the eligibility of the voter to vote in the precinct where registered.

(f) Notwithstanding any other registration requirements provided for in this part, a registered voter need not register again unless it is necessary due to a change of identification or residency or unless the voter has been removed from the register pursuant to 1 CMC § 6206 of this part or disqualifications enumerated by this part have intervened. If voting records have been destroyed or lost, the Commission nevertheless may require re-registration of voters.

(g) Registration of voters shall continue indefinitely, except during the sixty days prior to an election day.

**Source:** . . . amended by PL 17-11 § 3 (August 12, 2010), modified.

**Commission Comment:** The commission changed references to agree with codified section numbers pursuant to 1 CMC § 3806(c). Public Law 17-11 was enacted by override on August 12, 2010. PL 17-11 included severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that Senate Legislative Initiative 16-11 was passed, moving the local elections to even numbered years so that they would be aligned with federal elections. Accordingly, during each local election, the voters will not only vote on local issues but also for the Federal Non-Voting Delegate. Federal elections have their own set of requirements that must be followed by both the government and all candidates. Consequently, in order to simplify the process and not have two different sets of rules for each election, the Legislature finds it necessary to amend election statutes that differ from federal election law.

Furthermore, the Legislature finds that by amending the local election statutes to conform to federal requirements, issues that arose during the 2009 General Election will no longer occur. By creating a "Voter Challenge" process, the Court will no longer have to question whether a voter is telling the truth about who they voted for under oath. Instead, Commonwealth Election Commission, an agency that specializes in elections will be able to handle this process prior to an individual voting. This will save the Commonwealth both time and money, by ensuring that lengthy court processes are unnecessary. The Legislature notes that, as of late March 2010, the contest for Mayor of the Northern Islands was still unsettled, and the various challenges arising out of the First Senatorial District have yet to become final.

Moreover, the Legislature finds that these amendments not only comply with federal requirements, but also empower the Commonwealth Election Commission to continue conducting elections in a fair and democratic manner.

The Legislature finds and declares that these amendments are necessary, and are a proper use of the legislative authority granted by section 1 of Article II of the Commonwealth Constitution.

. . .

Section 27. Rules and Regulations. The Commonwealth Election Commission shall promulgate rules and regulations to carryout the provisions of this Act.

Public Law 17-16 (effective September 24, 2010) amended PL 17-11. PL 17-16 included severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that there is a need to amend the new early voting law set forth in Public Law 17-11 to address some issues raised including voter intimidation, fraud, and increased cost of elections. One of the amendments includes extending the 300 foot radius prohibition of campaign activity to early voting polling places. Another amendment is to set a list of criteria for registered voters to use when requesting to vote early at any election. The last amendment involves extending the early voting time period for the Northern Islands to give the Commonwealth Election Commission (CEC) time to coordinate transportation to the Northern Islands with other government agencies at little or no cost.

The Legislature finds that the early voting process will not cost more money because the CEC will utilize its staff and offices to conduct the early voting except that the polling places on Tinian and Rota will be at the Department of Public Safety where all the election ballots will be stored and secured during the early voting period. Accordingly, the purpose of this legislation is to amend Public Law 17-11 to address early voting concerns.

**§ 6206. Removal of Names from Register; When; Re-registration.**

(a) The Commission shall remove the name of a registered voter from the register in the following cases:

(1)-(6) [unchanged]

(7) ~~If the person did not vote in the preceding general election, provided however, that failure to vote in a general election that gives rise to a run-off election shall not preclude the person from participating in a run-off election related to that same general election; A person who votes in a run-off election shall remain a registered voter unless otherwise disqualified under 1 CMC §§ 6201 to 6214.~~ If the person did not vote in the preceding two general elections, provided however, that failure to vote in a general election that gives rise to a run-off election shall not preclude the person from participating in a run-off election related to that same general election; A person who votes in a run-off election shall remain a registered voter unless otherwise disqualified under 1 CMC §§ 6201 to 6214.

**Source:** . . . subsection (a)(7) amended by PL 16-43, § 2(d); subsection (a)(7) amended by PL 17-11 § 4 (August 12, 2010), modified.

**Commission Comment:** The commission, pursuant to 1 CMC § 3806(g), corrected a manifest error by changing a semi-colon to a period at the end of the first sentence in subsection (a)(7). Public Law 16-43 was enacted on July 24, 2009. PL 16-43 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that House Legislative Initiative 15-16, SD1 was placed before the people for ratification during the 2007 general election. This initiative proposed to amend Article III, Section 4 of the Constitution of the Northern Mariana Islands to require a runoff election for governor and lieutenant governor if no candidate receives a majority of the votes cast and counted for that office. Approximately 73% of total votes cast during the 2007 general election were in support of this initiative. As a result, a runoff election for governor and lieutenant governor is required if no candidate receives a majority of the votes cast and counted for that office. Additionally, runoff election procedures shall be established by law. The Legislature therefore finds it necessary to establish runoff election procedures as mandated by the ratification of House Legislative Initiative 15- 16, SD 1.

The Legislature further finds that current election statutes provide a period of no later than fourteen days after the election date for absentee ballots to arrive on Saipan and be considered valid. The Commonwealth Election Commission shall then

tabulate the absentee ballots and subsequently certify the election results. If no candidate receives a majority of the votes cast and counted for the office of governor and lieutenant governor, then a runoff election shall be held on the fourteenth day thereafter. An additional fourteen days would also be allotted for the arrival of absentee ballots for the runoff election. These additional days drastically reduce the transitional period provided for the governor-elect and lieutenant governor-elect to assume office. The Legislature therefore finds it necessary to mandate the counting of absentee ballots received on or prior to election day to allow for more time for the transitional period of the governor-elect and lieutenant governor-elect.

**§ 6207. Transfers, Name Changes; Initiated by Executive Director.**

(a)-(b) [unchanged]

(c) A voter may contest the transfer or change up to forty days before election day by presenting evidence that the voter actually resides at the old address or that the transfer or change was otherwise erroneous or inappropriate, which, if found valid by the executive director or the Commission, shall entitle the voter to be returned to the old voting list or previous registration.

**Source:** . . . subsection (c) amended by PL 17-11 § 5 (August 12, 2010).

**§ 6208. Voting Procedures.**

(a) The Commission shall distribute to each polling place a list of the eligible voters for that polling place. Not less than 15 days before the day of election, a copy of the list shall be posted at the office of the Commission and Mayors for examination by the public. Only those voters whose names appear on the list may vote at that polling place. Any name which does not appear on the list due to an error may be inserted by the Commission any time prior to the closing of the polls.

(b) All elections held in accordance with this part shall be held by official ballot. The Commission shall print copies of each official ballot for each polling place. The Commission shall also print a specimen ballot to be posted conspicuously near the entrance to each polling place where it may be easily seen by the voters prior to voting and in the office of the Commission at least seven days before the election for viewing by the general public. Further samples may be made available to the public.

(c) A ballot shall contain the names of candidates in an order identifying party affiliation or nonpartisanship for Board of Education and municipal council, as established by the Commission, and the office to be sought.

(d) If a voter indicates the choice of more candidates than there are offices to be filled or if for any reason it is impossible to determine the voter's choice for any office, the ballot shall not be counted for that office or offices. The rest of the ballot, if properly marked, shall be counted.

(e) The ballot may include questions concerning proposed Commonwealth constitutional amendments or proposed initiative or referendum issues. When such matters are to be printed on the ballot, the question shall be phrased as simply and as clearly as possible to address the issue and require a yes or no response by the voter, yes to be in favor of the question and no to be against.

(f) The Commission shall establish a method of marking and identifying each person who has completed voting.

(g) Each voter shall be required to show photo identification at the poll in order to receive a ballot; if the voter does not have or refuses to produce photo identification, the voter shall fill out an affidavit that includes their name, address and their signature swearing under penalty of perjury as to the truth of the affidavit.

(h) If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in the election, but the name of the individual does not appear on the official list of eligible voters for the polling place, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of an affidavit under penalty of perjury by the individual before an election official at the polling place stating that the individual is:

(i) a registered voter in the jurisdiction in which the individual desires to vote; and

(ii) eligible to vote in that election.

(3) An election official at the polling place shall seal the ballot cast by the individual and the voter information the ballot cast by the individual and the voter information and transmit it to the Commission for prompt verification/disposition.

(4) The Commission shall review all provisional ballots cast information to determine the validity of such ballot and render a decision no later than five calendar days after the date of election.

(5) If the Commission determines that the individual is eligible to vote, the individual's provisional ballot shall be counted in that election.

(6) At the time that an individual casts a provisional ballot, the election official shall give the individual written information that states that any individual who casts a provisional ballot will be notified whether their ballot was counted and if their ballot was not counted, the reason that the ballot was not counted.

**Source:** . . . amended by PL 17-11 § 6 (August 12, 2010).

**Commission Comment:** ~~Subsection (f) above was also designated as subsection (e) in the final version of PL 12-18, therefore, the Commission made the necessary correction~~. The commission removed figures that repeated words pursuant to 1 CMC § 3806(e).

**§ 6209. Absentee Voting.**

(a) Subject to the procedures set forth in this chapter, any registered voter at any election may request and cast an absentee ballot with the Commission. The Commission shall compile and keep immediately current a list of persons requesting an absentee ballot pursuant to 1 CMC §§ 6210 and 6211, including the date such request was made; shall make and keep immediately current a list of persons to whom an absentee ballot was personally delivered or mailed, including the dates the ballots were delivered or mailed; and shall make each list immediately available for public inspection:

(1) At one government building in each senatorial district which maintains regular business hours; and

(2) On a website accessible without requiring user registration or the use of a password.

(b) For the purposes of this section, "keep immediately current" and "make each list immediately available" mean the information is updated and published to the public as soon as practical after the information is received, and in no case later than 48 hours after the receipt of the information.

(c) If on the day of the election, the registered absentee voter is within the Commonwealth and has not received his or her ballot, he or she may vote at a polling place designated by the Commonwealth Election Commission where his or her ballot will be treated as an absentee ballot, until it can be confirmed that another ballot was not received for him or her.

**Source:** . . . amended by PL 16-38, § 7; (c) added by PL 17-11 § 7 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(f). Public Law 16-38 was enacted on April 29, 2009. PL 16-38 contained severability and savings clause

provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Northern Mariana Islands Election Law, as amended, requires further amendments to establish a clear policy governing elections in the Northern Mariana Islands and to set forth procedures that would allow the Commonwealth Election Commission to more effectively and efficiently administer absentee voting, and other matters.

The Legislature finds that, currently the election law of the CNMI requires voters to proffer an excuse to vote by absentee ballot. This requirement is outdated and an unnecessary barrier to the exercise of the franchise. Thirty one (31) states allow no-excuse pre-Election Day in-person voting – either early voting on a voting machine or in-person absentee voting. Twenty nine (29) states allow no-excuse absentee voting by mail. The Legislature finds that the Commonwealth should join this majority of jurisdictions who have removed impediments such that more people are likely to exercise their rights to vote.

The Legislature further finds that other amendments proposed in this Act serve to establish uniformity in the processing of absentee voting and to further clarify ambiguities in the Northern Mariana Islands Election Law. For example, voters have noted disparate treatment when they wish to obtain absentee ballots because they will be within the CNMI but outside the senatorial district in which they are to vote on election day. The Legislature finds that, to the greatest extent possible, voters exercising the franchise by absentee ballot should be treated similarly. Absentee ballots in the possession of the Commission on election day should be counted on election day; so doing will remove a great deal of uncertainty regarding the outcome of elections and allows for a speedy transition of powers between outgoing and incoming officeholders. This Act amends current election law to the benefit of the voters wishing to participate in the political process. This Act is intended to promote fair, honest, and transparent elections in the Commonwealth, and is therefore necessary and a proper use of the legislative power granted by Section 1 of Article II of the Commonwealth Constitution.

**§ 6211. Absentee Voting: Absence from the District in Which Voter is Registered.**

(a) Any registered voter of the Commonwealth may, as provided in this part and subject to the conditions of this section, may vote at any election by absentee ballot if he or she feels it likely he or she will be prevented from personally going to the polls in the senatorial district in which he or she is registered to vote and voting on election day because of:

(1) The conduct of his or her business;

(2) The necessity of travel;

(3) Attendance at an institution of learning;

(4) Serving in the United States Armed Forces or the Merchant Marine;

(5) Employment;

(6) Training;

(7) Receiving treatment at a medical institution;

(8) Government representation; or

(9) Accompanying a member of the household who is engaged in an activity listed above.

(b) Any registered voter, under the circumstances specified in subsection (a)(1-9), inclusive, may make an application to the Commission for an official ballot to be voted at such election. Such application if made by mail or by facsimile or by other electronic means approved by the Commission shall be made not more than seventy-five days nor less than twenty-five days before the election, or if the application is made in person, not later than during regular office hours of the day prior to the election. Any such application shall be made in writing on a form furnished by the Commission and shall indicate the applicant's name, last four digits of their social security number, the applicant's

election district, the reason for requesting an absentee ballot, any other information required by the Commission, and the address to which the applicant wishes the ballot forwarded if the applicant is not picking up the ballot in person.

(c) Beginning not less than one week before the day of election, the Commission shall establish a mailbox in each senatorial district at which a voter eligible to cast an absentee ballot may, cast and deliver their ballot into the custody of the Commission to be processed and counted in the Third Senatorial District as provided in this chapter.

**Source:** . . . (a) and (c) amended by PL 16-38, § 2-3; (b) and (c) amended by PL 16-43, § 2(a); (b) and (c) amended by PL 17-11 § 8 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(f) and (e).

**§ 6212. Absentee Voting: Marking and Mailing Ballots.**

(a) The Commission shall provide to any registered voter entitled to vote by absentee ballot and who applied for one, an official ballot, a ballot envelope, an affidavit prescribed by the Commission, and a reply envelope. The absentee voter shall mark the ballot in the usual manner provided by law and in a manner such that no other person can know how the ballot is marked. The absentee voter shall then deposit the ballot in the to ballot envelope and securely seal it. The absentee voter shall then complete and execute the affidavit. The ballot envelope and the affidavit shall then be enclosed and sealed in the covering reply envelope and mailed or sent by commercial courier service to the Commission. Such ballots and affidavits will not be counted by the Commission unless mailed. For the purpose of this part, the word "mailed" includes ballots and affidavits sent through the postal or courier services.

(b) The Executive Director of the Commission shall coordinate with the Public Auditor on the proper procedure of mailing absentee ballots to voters to ensure that the absentee ballots are unmarked, sealed and mailed accordingly.

**Source:** (b) added by PL 17-11 § 25 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(f).

**§ 6213. Absentee Voting: Counting Ballots.**

(a) To be eligible to be counted, an absentee ballot shall be received by the Commission not later than the date of election; provided that in the case of a runoff election an absentee ballot shall be postmarked not later than the day of the runoff election and shall be received by the Commission no later than fourteen days after the date of the runoff election. If the Commission is using a post office box for the receipt of absentee ballots, it shall remove all absentee ballots contained in the post office box as follows for such ballots to be deemed to have been received within the deadline:

(1) No less than two persons, one of whom shall be designated by the Commission Chairperson and the other of whom shall be designated by the Executive Director, shall go to the designated post office in each senatorial district to collect absentee ballots on the day they are to be counted:

(i) after the official closing time of the polling places on the day of the general or runoff election; and

(ii) until 5:00 p.m. on the fourteenth day after a runoff election.

(2) The reply envelopes shall not be opened but shall be postmarked as provided in subsection (b) and shall be deposited in a locked ballot box until processed by the Commission pursuant to subsection (c) through (i).

(b) The date and time of receipt shall be noted on each return envelope.

(c) The Commission shall compare this signature of the voter on the application for absentee ballot with that on the affidavit and the registration. If the signatures appear to be by the same person, if the affidavit is properly completed, and if the envelope is sealed and it does not appear to have been tampered with, the notation OK shall be placed on the return envelope and shall be initialed by no less than five members of the Commission.

(d) An absentee ballot may be rejected if:

(1) After comparing the signature of the voter on the application for absentee ballot with that on the affidavit and registration, it appears the signatures were not made by the same person; or

(2) The affidavit is not properly completed; or

(3) The return envelope is not sealed; or

(4) The seal appears to have been tampered with; or

(5) The Commission has already received an absentee ballot from that person; or

(6) The absentee voter has died or has otherwise become ineligible to vote on the election day; or

(7) The ballot has been received after the deadline; or

(8) The voter has not complied with 1 CMC § 6212 of this part.

(e) If any of the conditions in subsection (d) of this section apply, then the word rejected shall be printed on the return envelope along with a short statement of the reason for rejection. Five signatures of the Commission members constitute a verification of the discrepancy noted as the cause for rejection. The rejected ballot may not be delivered to the accounting and tabulation committee, but shall be maintained in a secure place by the Commission for at least six months after the election.

(f) The application for absentee ballot shall be attached to the corresponding ballot envelope and the envelope shall not be opened.

(g) A duplicate list shall be prepared in each election district of the names and addresses of the absentee voters as shown on return envelopes. The Commission shall maintain one copy of the list for at least one year from the election date.

(h) The returned envelopes marked "OK," together with the application attached shall be delivered by the Commission to the accounting and tabulation committee the day of the general election, or in the case of a runoff election absentee ballots shall be postmarked no later than the date of the run off election and be received by the Commission no later than fourteen days following the runoff election date, to be tabulated by the accounting and tabulation committee.

(i) Absentee ballots in the possession of the Commission on a runoff election day shall be processed, counted and tabulated on election day, and reported pursuant to 1 CMC § 6524. Other runoff election absentee ballots shall be postmarked, received and counted as provided in this section.

**Source:** . . . (a)(2) amended and (i) added by PL 16-38, § 5-6; subsections (a), (h) and (i) amended by PL 16-43, § 2(b),(c) and (g), respectively; amended by PL 17-11 § 9 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806 (c), (f) and (e). . . .

**Case Annotations:**

**ELECTIONS**

**Contests**

– **Generally**

Pursuant to 1 CMC § 6213(a), the Commonwealth Election Commission should retrieve absentee ballots on election day.

These ballots clearly were mailed by the deadline and should be counted. Absentee ballots retrieved after election day, and up until the fourteenth day after the election must display proof of their mailing by the deadline in order to be counted. 1 CMC § 6213(a). *Atalig v. Inos*, 2006 MP 1 ¶ 32, 7 N.M.I. 236, 240 (2006).

**§ 6214. Voting in Another Polling Place. [Repealed by PL 17-11 § 10].**

~~(a)-(c) [unchanged]~~

~~(d) Voters requesting an absentee ballot due to an expected inability to vote at the polls on election day shall be subject to the same deadlines and requirements without regard as to whether they shall be outside their home senatorial district or outside the Commonwealth.~~

**Source:** . . . subsection (d) was added by PL 16-38, § 4; repealed by PL 17-11 § 10 (August 12, 2010).

**§ 6215. Challenge by Voters; Grounds; Procedure.**

(a) *Challenge prior to election day*. Any registered voter may challenge the right of a person to be or to remain registered as a voter in any district. The challenge shall be made in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge under penalty of perjury. The challenge shall be delivered to the Commonwealth Election Commission Executive Director who shall forthwith serve notice thereof on the person challenged. The Executive Director shall, as soon as possible, investigate and rule on the challenge. If the Executive Director does not rule prior to election day, the challenged voter will be given a provisional ballot on election day or the
voter's ballot will be set aside if the voter voted during the early voting period. After the Executive Director has ruled, the decision can be appealed following subsections (c)-(e) of this section.

(b) *Challenge on election day*. Any voter rightfully in the polling place may challenge the right to vote of any person who comes to the election officials for voting purposes. The challenge shall be on the grounds that the voter is not the person the voter alleges to be, that the voter is not entitled to vote in that election district or that the voter does not meet the CNMI residency and domiciliary requirements. No other challenge shall be allowed. Any person thus challenged shall first be given the opportunity to make the relevant correction. The challenge shall be considered and decided immediately by a Commonwealth Election Commission staff member and the ruling shall be announced.

(c) If neither the challenger nor the challenged voter shall immediately appeal the ruling of the Commonwealth Election Commission, then the challenged voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is immediately taken to the Commonwealth Election Commission, the challenged voter shall be allowed to vote; provided that the ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal.

(d) Appeals of the staff member's ruling must be made immediately to the Commonwealth Election Commission. The notice of appeal must be in writing but need not take any particular form, though forms may be provided by the Commonwealth Election Commission. Any notice of appeal not actually received by the Election Commission staff member prior to either the challenged voter being allowed to vote or the closing of the polls, whichever first occurs will be considered untimely.

(e) This appeal will be heard by a panel of three consisting of the Chair or a Commissioner of the Commonwealth Election Commission designated by the Chair from an island other than the challenged voter, the Public Auditor, and the Attorney General. This appeal must be heard within five calendar days of the election, at which point both the appellant and appellee may provide evidence to prove their case. The appellant and appellee may be represented by counsel. During all portions of the appeal to include any discussions the panel may have about each case the panel will not enter into executive session. The panel will issue a decision within two calendar days. A party to the appeal may

appeal the panel's ruling within five calendar days to the Commonwealth Superior Court which will review the panel's legal conclusions de novo but will overturn the Commission's factual determinations only upon a showing of clear error.

(f) *Voter Eligibility Challenges: Costs*. If, for any reason, the proceedings terminate in such a fashion that the challenged voter was deemed eligible to vote, judgment shall be rendered against the challenger, for costs and reasonable attorney's fees, in favor of the challenged voter. If, for any reason, the proceedings terminate in such a fashion that the challenged voter was deemed ineligible, judgment shall be rendered against the challenged voter, for costs and reasonable attorney's fees, in favor of the challenger. If the decision of the Election Commission is not appealed to the Superior Court, the prevailing party shall apply to the Superior Court for an order and entry of judgment rendered against the losing party, for costs and reasonable attorney's fees, in favor of the prevailing party.

**Source:** PL 17-11 § 23 (August 12, 2010), modified.

**Commission Comment:** The commission changed capitalization for consistency and changed "attorneys fees" to "attorney's fees" in the first two sentences of subsection (f) pursuant to 1 CMC § 3806(f) and (g).

**§ 6216. Federal Write-in Absentee Ballot / Federal Postcard Application.**

In lieu of using an absentee registration form, any overseas uniformed services voter, or person who is a spouse or dependent of such person, and any person who temporarily resides outside the territorial limits of the United States and is territories, may apply for registration and enrollment on the Federal postcard application form provided pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (100 Stat. 924; 42 U.S.C. 1973 F.F. *et seq.*, as amended) or any other applicable law. The failure of an applicant to take the elector's oath on such federal postcard application will not invalidate such application.

**Source:** PL 17-11 § 24 (August 12, 2010), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 6217. Early Voting: Criteria for Early Voting.**

(a) Any registered voter of the Commonwealth may vote early at any election if he/she will be prevented from personally going to the polls and voting on election day because of:

(1) The conduct of his/her business;

(2) The necessity of travel;

(3) Serving in the United States Armed Forces or the Merchant Marine;

(4) Receiving treatment at a medical institution;

(5) Government representation; or

(6) Accompanying a member of the household who is engaged in an activity listed above.

**Source:** PL 17-16 § 3 (September 24, 2010).

**§ 6218. Early Voting: Photo Identification.**

(a) Each voter shall be required to show photo identification at the poll in order to receive a ballot; if the voter does not have or refuses to produce photo identification, the voter shall fill out an affidavit that includes their name, address and their signature swearing under penalty of perjury as to the truth of the affidavit.

(b) Each voter shall be required to bring a copy of their photo identification to include in their early voting packet; if the voter does not have or refuses to produce photo identification, the voter shall

fill out an affidavit that includes their name, address and their signature swearing under penalty of perjury as to the truth of the affidavit.

**Source:** PL 17-16 § 3 (September 24, 2010).

**§ 6219. Early Voting: Ballot Box.**

(a) During the period of early voting, the keys to the ballot box used at each early voting polling place will be kept at the Office of the Public Auditor in Saipan.

(b) During the period of early voting, DPS must be stationed at the polling place at all hours that the polling place is opened.

**Source:** PL 17-16 § 3 (September 24, 2010).

**§ 6220. Early Voting: Issuance of Ballots; Voting Booths.**

(a) If a request is made to vote early by a registered voter in person, the Commission shall issue a ballot for early voting to the voter. The ballot must be voted on the premises of the Commission, except as otherwise provided in this chapter, and returned to the Commission. Early voting is subject to a challenge by a voter.

(b) On the dates for early voting, the Commission shall provide voting booths, with suitable equipment for voting, on the premises of the Commission and any other designated early voting polling place for use by registered voters who are issued ballots for early voting.

(c) The Commission must maintain a list for each election of the voters to whom it has issued early ballots. The list must be maintained for each precinct of the Commonwealth. Before the opening of the polls on election day, the Commission shall deliver to the election official in each precinct the list of registered voters who have voted by early ballot.

**Source:** PL 17-11 § 26 (August 12, 2010); (b) amended by PL 17-16 § 4 (September 24, 2010).

**Commission Comment:** The commission inserted proper code references and changed capitalization pursuant to 1 CMC § 3806(c) and (f).

**§ 6221. Early Voting: Permanent Polling Places for Early Voting.**

(a) The Commission may establish permanent polling places for early voting by personal appearance at locations throughout the Commonwealth. Any person entitled to vote early by personal appearance may do so at any polling place established for early voting.

(b) If the early voting polling place does not have the correct ballot form for a person seeking to vote early, the election official conducting early voting at that polling place shall inform the person of that fact, give the person the appropriate telephone number of the Commission in order to locate an early voting polling place with the correct ballot form for use in that person's assigned precinct, and instruct the person to go to the proper early voting polling place to vote early.

**Source:** PL 17-11 § 26 (August 12, 2010).

**§ 6222. Early Voting: Period for Early Voting; Hours.**

(a) The period for early voting by personal appearance begins the 11th day preceding an election and extends through the last day before election day; provided that the period for early voting for the Northern Islands begins on the 46th day preceding the election and extends through the last day before the election at 4:00 p.m.

(b) A permanent polling place for early voting must remain open during the hours of 8:00 a.m. to 4:00 p.m. on weekdays and 8:00 a.m. to 4:00 p.m. on Saturdays, Sundays, and holidays; except that the Commission may extend the voting hours as necessary to accommodate emergency early voting.

**Source:** PL 17-11 § 26 (August 12, 2010); (a) amended by PL 17-16 § 5 (September 24, 2010).

**§ 6223. Temporary Branch Polling Places.**

(a) In addition to permanent polling places for early voting, the Commission may establish temporary branch polling places for early voting.

(b) Voting at a temporary branch polling place may be conducted on any one or more days and during any hours within the period for early voting by personal appearance that are determined by the Commission.

**Source:** PL 17-11 § 26 (August 12, 2010).

**§ 6224. Schedule of Locations and Times for Early Voting.**

(a) The Commission shall publish during the week before the period for early voting and at least once each week during the period for early voting in a newspaper of general circulation in the Commonwealth a schedule stating:

(1) the location of each permanent and temporary polling place for early voting and the precincts served by each location; and

(2) the dates and hours that early voting will be conducted at each location.

(b) The election authority shall post a copy of the schedule at any office or other location that is to be used as a polling place for early voting. The schedule must be posted continuously for a period beginning not later than the 5th day before the first day of the period for early voting by personal appearance and ending on the last day of that period.

(c) If the Commission maintains a website, it shall make the schedule available on its website.

(d) No additional polling places for early voting may be established after the schedule is published under this section.

**Source:** PL 17-11 § 26 (August 12, 2010), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

## CHAPTER 3. ELECTION TO PUBLIC OFFICE.

### Article 1. Eligibility for Public Office.

**§ 6304. Delegate to the United States House of Representatives.**

A candidate for Delegate to the United States House of Representatives shall be qualified to vote in the Commonwealth, a citizen of the United States, at least twenty-five years of age, and a resident and a domiciliary of the Commonwealth for at least seven years immediately preceding the date on which the resident representative takes office. No person convicted of a felony in the Commonwealth or in any area under jurisdiction of the United States may be eligible for this office unless a full pardon has been granted.

**Source:** PL 12-18, § 2 (6304); repealed and reserved by PL 16-13 § 3(b); enacted by PL 17-11 § 11 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(e). This section was entitled "Resident Representative to the United States" before it was repealed by PL 16-13. See commission comment to 1 CMC § 6360 for more information regarding PL 16-13. PL 17-11 provided the current title of this section. For more information regarding PL 17-11, see comment to 1 CMC § 6205.

**Article 4. Nomination of Candidates to Other Offices.**

**§ 6341. Nominations – Delegate to the United States House of Representatives.**

The nomination of candidates for Delegate to the United States House of Representatives is made by petition of any political party or any independent candidate. The procedures for political party nominations and for independent nominations for Governor and Lieutenant Governor set forth in articles 2 and 3 of this chapter shall apply with respect to the nomination of candidates for Delegate to the United States House of Representatives, except that the filing fee shall be five-hundred dollars for each resident representative. Each petition shall be accompanied by the signature of the person nominated, which shall constitute the nominees assent to be a candidate.

**Source:** PL 12-18, § 2 (6341); repealed and reserved by PL 16-13 § 3(c); enacted by PL 17-11 § 12 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(e) and (f). Section 6341 was similar to the former § 6331 (source: DL 5-19, § 12, modified) which was repealed and reenacted by PL 12-18, § 2. Following the enactment of PL 12-18 this section was entitled "Nominations: Resident Representative to United States" until it was repealed and reserved by PL 16-13 § 3(c). See commission comment to 1 CMC § 6360 for more information regarding PL 16-13. PL 17-11 provided the current title of this section. For more information regarding PL 17-11, see comment to 1 CMC § 6205.

**Article 6. Federal Elections; Delegate to the U.S. House of Representatives. [new article]**

§ 6360. Qualifications.
§ 6361. Nominations.
§ 6362. Election.
§ 6363. Term.
§ 6364. Vacancy.
§ 6365. Special election.
§ 6366. Procedures.
§ 6367. Appropriation.
§ 6368. Conflict of law.
§ 6369. Reserved.
§ 6370. Reserved.

**§ 6360. Qualifications.**

To be eligible for the office of Delegate a person shall:

(a) Be at least 25 years of age on the date of the election;

(b) Have been a citizen of the United States for at least seven years prior to the date of the election;

(c) Be a resident and domiciliary of the Commonwealth for at least seven years prior to the date of election;

(d) Be qualified to vote in the Commonwealth on the date of election; and

(e) Not be, on the date of the election, a candidate for any other office.

**Source:** PL 16-13, § 2(6360), modified.

**Commission Comment:** The commission removed numbers that repeated words in this section pursuant to 1 CMC § 3806(e). PL 16-13 was enacted on August 25, 2008 and contained conforming amendments, severability and savings provisions. In addition, PL 16-13 contained the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that

[U.S.] Public Law 110-229 created a delegate to the United States House of Representatives for the Commonwealth. The purpose of this Act is to establish procedures for the election of the delegate.

**§ 6361. Nominations.**

The nomination of candidates for the office of Delegate shall be made by the petition of any political party or by any independent candidate, and shall be made according to the procedures for political parties and independent candidates set forth in this division.

**Source:** PL 16-13, § 2(6361).

**§ 6362. Election.**

(a) The Delegate shall be elected by the people qualified to vote for the popularly elected officials of the Commonwealth of the Northern Islands.

(b) The election of Delegate shall be conducted at the general election on the Tuesday next after the first Monday in November in even-numbered years, and at such elections every two years hereafter. (c) The Delegate shall be elected at-large and by a plurality of the votes cast for the office of Delegate.

**Source:** PL 16-13, § 2(6362); (b) amended PL 17-11 § 13 (August 12, 2010).

**§ 6363. Term.**

The term of the Delegate shall commence on the 3rd day of January following the date of election and shall expire upon the subsequent date of commencement of term two years thereafter.

**Source:** PL 16-13, § 2(6363).

**§ 6364. Vacancy.**

In the case of a permanent vacancy in the office of Delegate, the office shall remain vacant until a successor is elected and qualified.

**Source:** PL 16-13, § 2(6364).

**§ 6365. Special Election.**

(a) In the case of a permanent vacancy in the office of Delegate, the Governor shall call for a special election to be held within 90 days of the date of the call for election; provided that in the event that a vacancy occurs within six months of the next general federal election, no special election shall be called and the office shall remain vacant.

(b) In the event of a tie vote for the office of Delegate, the tie shall be decided by the drawing of lots, under the supervision of the CEC [Commonwealth Election Commission]. Each candidate shall be present at the drawing of lots along with two witnesses. The result of a drawing of lots shall be final and shall not be contestable.

**Source:** PL 16-13, § 2(6365), modified.

**Commission Comment:** The commission added the bracketed information for clarity.

**§ 6366. Procedures.**

Except as otherwise provided by federal law, the conduct of the election of Delegate to the U.S. House of Representatives shall be according to procedures set forth in this division.

**Source:** PL 16-13, § 2(6366).

**§ 6367. Authorization for Reprogramming.**

Notwithstanding any provision of law to the contrary, the Governor shall reprogram the sum of $60,000 from the Office of the Resident Representative's Account to the Commonwealth Election Commission (CEC) for the first Delegate election to be conducted on November 4, 2008. The Commission shall be the expenditure authority for the reprogrammed funds.

**Source:** PL 16-13, § 2(6367).

**§ 6368. Conflict of Law.**

Any conflict between this article and federal law shall be resolved in favor of the federal law.

**Source:** PL 16-13, § 2(6368).

**§ 6369. Reserved.**

**Source:** PL 16-13, § 2 (6369).

**§ 6370. Reserved.**

**Source:** PL 16-13, § 2 (6370).

## CHAPTER 5. ELECTIONS.

### Article 1. General Election and Special Election.

. . .

§ 6509. Runoff Elections for Governor and Lieutenant Governor. [new section]
§ 6510. Employees Entitled to Leave on Election Day for Voting. [new section]

**§ 6501. General Election.**

In conformance with Article VIII, Section 1 of the Constitution of the Commonwealth of the Northern Mariana Islands, regular general election of the Commonwealth shall be held on the Tuesday next after the first Monday in November in even-numbered years. In the event of a natural disaster or other Act of God, the effect of which precludes holding the election on the foregoing day, the Governor, acting pursuant to his powers under Article III, Section 10 of the Constitution, may proclaim the general election be held not later than thirty days thereafter in the Commonwealth, or in the affected senatorial or election district or districts.

**Source:** Repealed and reenacted by PL 12-18, § 2 (6501); amended PL 17-11 § 14 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(e).

**§ 6509. Runoff Elections for Governor and Lieutenant Governor.**

(a) If in an election for the offices of governor and lieutenant governor – no candidate receives more than one-half of the total votes cast and counted, there shall be a runoff election fourteen days after the Commonwealth Election Commission has certified the results of the general election consistent with Article III, Section 4 of the Constitution of the Commonwealth of the Northern Mariana Islands. The Commission shall certify the results of the general election not later than twenty days after the date of the general election.

(b) The candidates who received the highest and second highest number of votes cast and counted in the general election shall compete in the runoff election. The candidates who receive more than half of the votes cast and counted in the runoff shall be declared the winner.

(c) The Commonwealth Election Commission shall carry out the runoff election in the same manner as provided in 1 CMC § 6208, except that the distribution deadlines for eligible voter lists and specimen ballots in § 6208(a) and § 6208(b) for the runoff election shall be not less than seven days before the day of the runoff election.

(d) The Commission shall mail absentee ballots, other than absentee ballots that are picked up in person, not less than ten days before the runoff election date. All other matters pertaining to runoff election absentee ballots shall be as provided in chapter 2 of this part.

(e) The Commonwealth Election Commission shall make reasonable rules and regulations, not inconsistent with the constitution and laws of the Commonwealth, as may be necessary to carry out the provisions of this chapter including, but not limited, to the timing, manner and method in which runoff absentee ballots are to be distributed, collected and counted.

**Source:** PL 16-43, § 2(e); (a) amended PL 17-11 § 15 (August 12, 2010), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(f) and (e).

### § 6510. Employees Entitled to Leave on Election Day for Voting.

(a) Any voter shall on the day of the election be entitled to be absent from any service or employment in which such voter is then engaged or employed for a period of not more than two hours (excluding any lunch or rest periods) between the time of opening and closing the polls to allow two consecutive hours in which to vote. Such voter shall not because of such absence be liable to any penalty, nor shall there be any rescheduling of normal hours or any deduction made, on account of the absence from any usual salary or wages; provided that the foregoing shall not be applicable to any employee whose hours of employment are such that the employee has a period of two consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls when the employee is not working for the employer. If, however, any employee fails to vote after taking time off for that purpose the employer, upon verification of that fact, may make appropriate deductions from the salary or wages of the employee for the period during which the employee is hereunder entitled to be absent from employment.

(b) Any person, business, or corporation who refuses an employee the privileges conferred by this section, or subjects an employee to a penalty or deduction of wages because of the exercise of the privileges, or who directly or indirectly violates this section, shall be subject to a fine of not less than $50.00 nor more than $300.00 per violation.

(c) Any action taken to impose or collect the fines established in this section shall be a civil action.

**Source:** PL 17-11 § 16 (August 12, 2010).

### § 6521. Right to Cast Secret Ballot.

(a) Each qualified voter has the right to cast a secret ballot in private. The Commission shall set up voting booths and places to guarantee that each voter may vote in private. No person shall be allowed with a voter in a voting booth, except as provided by the Commission. Voting booths shall provide the voter with a fully enclosed space within which to vote.

(b) Except where voting machines are used, each election ballot shall remain sealed until issued to a registered voter. Issues for initiative, referendum and recall shall be listed separately and apart from the names of candidates.

(c) Each qualified voter's right to cast a secret ballot shall be maintained in the courts of the Commonwealth. No voter shall be compelled to reveal his or her vote unless and until he or she has been determined to have been unqualified pursuant to a timely filed voter qualification challenge as provided by law, and then only if and so far as such disclosure is necessary to determine the outcome of an election.

**Source:** . . . (c) added by PL 17-11 § 17 (August 12, 2010).

**Article 2. Conduct of Elections.**

**§ 6524. Tabulation of Votes.**

(a) Except as provided in subsection (d), the Commission shall establish an accounting and tabulation committee composed of not less than five members. The accounting and tabulation committee shall count and tally all votes cast and determine the acceptability thereof.

(1) The accounting of ballots shall begin after all the polls in each election district are closed and shall continue in any tabulating location specified by the Commission until all votes are counted. No person may be present in the vicinity of the counting and tabulation area, except that each political party may have not more than two observers in the area, and each candidate for partisan office not affiliated with a political party may have one observer in the area. When the ballots are in the counting and tabulation area, the area shall not be left unattended. There shall be a minimum of two election officials at all times, in addition to the two observers from each political party and the observers, if any, representing the independent candidate(s) standing for election to partisan office. For the purpose of this sub-subsection, "partisan office" includes Governor or Lieutenant Governor, Senator, Representative, Delegate to the United States, or Mayor.

(2) Upon the completion of the counting and tabulation of all votes cast in the Commonwealth or local elective office, an official public announcement shall be made by the Commission, except that no official announcement of the results may be made for those offices in which a proceeding affecting ballots or the election results has been initiated until the legality of such issues raised in such proceeding affecting ballots or election results have been determined. As soon as is practicable after the tabulation of ballots is completed, the Commission shall issue certificates of election to the winning candidates for those Commonwealth or local elective offices in which no proceeding affecting ballots or election results has been initiated. The Commission may make periodic announcements of results during tabulating and counting.

(3) If precincts are established, the Board of Election must publish the unofficial precinct results as soon as is practicable after the tabulation of the ballots is completed. If sub-precincts are established, the Board of Election must publish the sub-precinct results as soon as is practicable after the tabulation of the ballots is completed.

(b) [unchanged]

(c) Any candidate for Commonwealth Delegate to the United States House of Representatives, mayor, senator, representative, municipal council, or board of education, who receives the highest number of votes cast for that office in any elections shall be declared the winning candidate. In the case of any office where more than one candidate is to be elected, the candidates receiving the highest number of votes, from greatest to least, shall be declared the winning candidates.

(d) Votes physically cast in each Senatorial District's polling place(s), for Senator, Representative, Municipal Council and Mayor, as well as for any local initiative or any other matter for which only voters registered in one senatorial district may determine the outcome must be

preliminarily counted, tabulated, and published in the senatorial district in which they were cast prior to shipment to the Third Senatorial District for the official count.

This preliminary count maybe conducted by one Commission Member in the presence of one representative from the Office of the Public Auditor and one assistant attorney general. Any rejected ballots during the preliminary count either by electronic, mechanical or hand, shall be set aside and sent to the Third Senatorial District for disposition by the Commission during the official count.

**Source:** . . . amended by PL 16-38, § 8, (d) added by PL 16-38, § 9; (c) and (d) amended by PL 16-43 § 2(f) and (h), respectively, modified; (d) amended by PL 17-11 § 18 (August 12, 2010).

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(e) (f), and (g). The commission removed a period before the semi-colon in subsection (d)(1) to correct a manifest error.

### § 6528. Polling Places: Three-hundred Foot Radius Prohibition of Campaign Activity.

(a) It shall be unlawful for any person, between the hours of 7:00 a.m. to 7:00 p.m. on the day of the election and during early voting to perform or cause to be performed any of the following acts within a three-hundred foot radius of the polling place:

(1)-(3) [unchanged]

(b)-(f) [unchanged]

**Source:** . . . (a) amended by PL 17-16 § 2 (September 24, 2010).

**Commission Comment:** . . . See comment to 1 CMC § 6205 for more information regarding PL 17-16.

## CHAPTER 6. ELECTION CONTESTS.

### § 6601. Election Contests: Recount.

(a) Any Commonwealth voter may contest an election for any of the following reasons:

(1) The person declared elected to an office will not be eligible for that office at the beginning of his term.

(2) The candidate has given to an election official anything of value to procure his election.

(3) The Commission in the conduct of election or arithmetical tabulation of votes made errors sufficient to change the final result of the election as to any person who has been declared elected.

(4) Actual fraud by any person in the voting process, in the conduct of the election or in the tabulation of the votes sufficient to have changed the outcome of the election.

(b) *Recount.* If less than five votes separate the person declared elected and the next highest vote getter, the next highest vote getter is entitled to a recount. Such recount shall be made in the presence of the parties and the Commonwealth Superior Court. A quorum of the Commonwealth Election Commission will conduct the recount and will be responsible for the recount and determining marks on ballots and envelopes and determining the intent of the voter.

**Source:** . . . amended by PL 17-11 § 19 (August 12, 2010).

**Case Annotations:** *Atalig v. Inos,* 2006 MP 1, 7 N.M.I. 236 (2006).

## § 6602. Election Contests: Actual Prejudice Required.

(a) [unchanged]
(b) [repealed]

**Source:** . . . (b) repealed by PL 17-11 § 20 (August 12, 2010).

**Case Annotations:** *Atalig v. Inos,* 2006 MP 1, 7 N.M.I. 236 (2006).

**ELECTIONS**

**Contests**

– **Generally**
NMI Superior Court has jurisdiction to review election contests based on claims that legal votes were not counted. This jurisdiction emanates from 1 CMC § 6421, which allows election contests arising from the actions of the Board of Elections in the conduct of elections. *Bd. of Elections v. Superior Ct.*, 4 N.M.I. 111 (1994).

## § 6603. Election Contest: Written Complaint.

(a) -(c) [unchanged]
(d) [repealed]

**Source:** . . . (d) repealed by PL 17-11 § 21 (August 12, 2010).

**Case Annotations:** . . .

*[Replace current annotations by topic with the following]*

**ELECTIONS**

**Contests**

– **Generally**

Election contest hearings in NMI Superior Court are limited to contests involving non-legislative offices. 1 CMC § 6423. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

– **Hearings**

— **Particular Cases**
In extraordinary writ proceeding arising from election contests, NMI Supreme Court would decline to issue writ of prohibition prohibiting Superior Court from exercising jurisdiction over contests, despite court's failure to begin contest hearing within fifteen to twenty days after complaints were filed, as required by 1 CMC § 6424, and Board of Election's previous failure to serve complaints upon defendants/writ petitioners within five days of receipt of verified complaint, as required by 1 CMC § 6423. Superior Court was not clearly erroneous in asserting jurisdiction; statutory timeliness requirements relate not to jurisdiction but to legislative intent to hasten election contest proceedings. *Taimanao v. Superior Ct.,* 4 N.M.I. 94 (1994).

– **Initiation**
The requirement, set forth in 1 CMC § 6603, that a complaint regarding election results may only be filed within fifteen days after the declaration of the official results, acts as an absolute cut-off for filing. *Atalig v. Inos*, 2006 MP 1 ¶ 21, 7 N.M.I. 236, 238 (2006).

Service of election contest complaints is not governed by Com. R. Civ. P. 4 but by express language of 1 CMC § 6423, requiring Board of Elections to deliver copy of complaint to defendant within five days of Board's receipt of complaint. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

Where failure to serve timely notice of an election contest upon a defendant is not attributable to the contestant, trial court is

not deprived of jurisdiction and should proceed with merits of case. Timely service of complaint is not required to perfect court's jurisdiction. It is timely filing, not service, that perfects the court's jurisdiction to hear contest. 1 CMC § 6423. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

Service of a summons upon a defendant is not a prerequisite to trial court's jurisdiction over an election contest under 1 CMC § 6423. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

Lack of service of a summons upon a defendant in an election contest does not deprive the defendant of due process. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

### § 6605. Election Contest: Court Hearing; Recount.

(a) At the hearing the ballots shall be recounted in the presence of all parties, where it appears from the complaint that actual prejudice occurred making a recount necessary for the proper determination of the contest. If two or more statements of contest are filed requiring a recount, the Commission may join the action of the contestants for the purpose of recounting the votes.

(b) If the statements of the cause of the contest are insufficient, the court may dismiss the proceedings for lack of evidence or for want of prosecution.

(c) The court shall hear and determine all issues arising in contested elections, except that the Commonwealth Election Commission's determinations concerning the intent of a voter in marking a ballot are unreviewable and shall not be judicially disturbed. After hearing the evidence and within five days of the submission thereof, the court shall issue its findings of fact and conclusions of law, and immediately thereafter announce judgment in the case, either confirming, or reversing the result of the election.

(d) A quorum of the Commonwealth Election Commission will conduct the recount in the presence of the Court. The quorum will be responsible for the recount and determining marks on ballots and envelopes and determining the intent of the voter.

**Source:** . . . (a) and (c) amended and (d) added by PL 17-11 § 22 (August 12, 2010), modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e).

**Case Annotations:** *Atalig v. Inos,* 2006 MP 1, 7 N.M.I. 236 (2006).

### § 6608. Election Contests: Costs.

**Case Annotations:** *Atalig v. Inos,* 2006 MP 1, 7 N.M.I. 236 (2006).

## CHAPTER 7. CRIMINAL PENALTIES.

### § 6706. Unlawful Sale or Purchase of Alcohol on Election Day.

(a) No person may sell, purchase or dispense any alcoholic beverages or liquor while the polls are open on the day of an election. Any person who knowingly and willfully violates this section shall upon conviction be fined not more that $1,000 or imprisoned for not more that one hundred days, or both.

(b) This section shall not apply to concession stands on Managaha Island, CNMI airports, hotels, hotel resorts, or golf course resorts.

**Source:** PL 12-18, § 2(6706); amended by PL 16-18, § 2, modified; (b) amended by PL 16-45,

§ 2.

**Commission Comment:** The commission deleted numbers that repeated words in this section pursuant to the authority granted by 1 CMC § 3806(e). Public Law 16-18 took effect on October 31, 2008. PL 16-18 contained severability and savings provisions and the following:

> Section 1. Findings and Purpose. The prohibition of alcoholic beverage sales on Election Day is to prevent conflicts between party camps escalating. The Commonwealth Legislature finds, however, that this prohibition has a potential loss of economic growth within our tourism industry. This is an industry that the CNMI has been largely dependent on for its economic growth for the past 30 years. Thus, our tourists' visit within the CNMI should not be hampered in any way. Tourists visiting the Commonwealth on Election Day are restricted from purchasing alcoholic beverages for their consumption though they are not involved with local political affairs. The purpose of this Act therefore, is to exempt CNMI airports, hotels, hotel resorts, and golf course resorts from the prohibition of alcoholic beverage sales on Election Day.

Public Law 16-45, effective on August 20, 2008, contained severability and savings provisions and the following:

> Section 1. Findings and Purpose. The prohibition of alcoholic beverage sales on Election Day is to prevent conflicts between party camps from escalating. The Commonwealth Legislature finds, however, that this prohibition has a potential loss of economic growth within our tourism industry. As a result, Public Law 16-18 was enacted to exempt CNMI airports, hotels, hotel resorts, and golf course resorts from such prohibition. The Commonwealth Legislature further finds that Managaha Island, a popular tourist destination, was inadvertently excluded from the exemption. The purpose of this Act, therefore, is to include Managaha Island under this exemption.

# DIVISION 7: PLANNING, BUDGETING AND AUDITING

## PART 1. PLANNING AND BUDGETING ACT.

## CHAPTER 1. GENERAL PROVISIONS.

### § 7101. Short Title.

**Case Annotations:**

**PUBLIC OFFICERS AND EMPLOYEES**

**Misconduct in Office**

– **Standard of Review**
Whether a taxpayer can sue a government official for monetary relief under Article X, Section 9 of the Constitution and the Commonwealth Planning and Budgeting Act of 1983, 1 CMC § 7101, *et seq*., is a question of law and is reviewed de novo. N.M.I. Const. art. X, 9, 1 CMC § 7101, *et seq*. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3, 6 N.M.I. 575, 580 (2003).

### § 7103. Definitions.

(a)-(m) [unchanged]

(n) "Government corporation" includes the Northern Marianas Retirement Fund, the Northern Marianas Housing Corporation, the Marianas Public Land Trust, the Marianas Visitors Authority, the Commonwealth Ports Authority, the Commonwealth Healthcare Corporation, and any other public corporation created by a specific Commonwealth law.

(o)-(ff) [unchanged]

**Source:** . . . (n) amended by PL 16-51 § 5 (January 15, 2010).

## CHAPTER 2. BUDGET PROCESS.

### § 7204. Approval of Annual Budget.

**Case Annotations:**

**APPEAL AND ERROR**

**Standard of Review**

**– Mixed Questions of Fact and Law**

Whether certain acts of reprogramming and expenditure of funds violate Article III, Section 9(a) of the Constitution and 1 CMC § 7204(d) is a mixed question of law and fact that will be reviewed de novo. N.M.I. Const. art III, 9(a), 1 CMC § 7204(d). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3, 6 N.M.I. 575, 580 (2003).

## CHAPTER 4. EXPENDITURE AND REPROGRAMMING OF APPROPRIATED FUNDS.

### § 7402. Reprogramming Authority.

**COURTS**

**Justiciability**

**– Standard of Review**

Whether violations of Article III, Section 9(a) of the Constitution and 1 CMC § 7402(d) arising out of reprogramming and expenditure decisions constitute nonjusticiable political questions is a question of law and is reviewed de novo. N.M.I. Const. art III, 9(a), 1 CMC § 7402(d). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3, 6 N.M.I. 575, 580 (2003).

### § 7404. Bidding Preference.

(a)-(b) [unchanged]

(c) In contracting for capital improvements, public works, or procurement of goods or services involving a contract amount of $500,000 or less, a Commonwealth agency shall award a bidder or proposer who is a United States citizen or permanent resident and who, for three years prior to submitting a bid or proposal, continuously possessed a valid Commonwealth business license and whose business headquarters is located in the Commonwealth, or any state or territory of the United States. In the event that no such business qualified under this section submits a bid or proposal, a Commonwealth agency may award a bidder or proposer who is otherwise qualified under the particular solicitation but is not a United States citizen or permanent resident.

(d) In contracting for capital improvements, public works, or procurement of goods or

services, a Commonwealth agency shall give preference for award to a bidder or proposer who is otherwise qualified for award under the particular solicitation and who for three successive years prior to submitting the bid or proposal has:

(1) Continuously possessed a valid Commonwealth business license; and

(2) Filed all required Commonwealth employment, excise tax, business gross revenue tax, and income tax returns and paid all amounts owing on such returns;

Provided, that the bid or proposal is more than $500,000 and less than $5,000,000 and is not more than 15 percent higher than the amount bid or proposed by any competing contractor not so qualified.

(e) In contracting for capital improvements, public works, or procurement of goods or services involving a contract amount of $5,000,000 or more, a Commonwealth agency shall give preference for award to a bidder or proposer who is otherwise qualified for award under the particular solicitation and who for five successive years prior to submitting the bid or proposal has:

(1) Continuously possessed a valid Commonwealth business license; and

(2) Filed all required Commonwealth employment, excise tax, business gross revenue tax, and income tax returns and paid all amounts owing on such returns;

Provided, that the bid or proposal is not more than 15 percent higher than the amount bid or proposed by any competing contractor not so qualified.

(f) Contractors desiring a Commonwealth contractor preference under subsections (c), (d) or (e) of this section who are involved in a joint venture with any contractor not qualifying for the Commonwealth contractor preference must submit certification and evidence that at least 51 percent of the contract will be performed by the local contractor or contractors meeting the criteria set forth in subsections (c), (d) and (e) of this section. Such a preference shall not be granted unless it is determined that at least 51 percent of the contract will in fact be so performed. Determination of whether a contractor will be involved in a joint venture and whether the 51 percent requirement will be met is committed to the reasonable judgment of the contracting authority subject to review by the Attorney General.

(1) Relevant information in determining satisfaction of the requirement of this subsection includes the amount of revenue to be received by each of the parties, the amount of profit expected to accrue to each of the parties, subcontracting plans or arrangements, and other factors.

(2) Prior to granting a Commonwealth contractor preference, the contracting authority shall make an assessment of whether the contractor will be involved in a joint venture, and any significant difference in the manner in which a bidder or proposer anticipates performing the requirements of the contract, which difference involves a business that would not qualify under either subsection (c), (d) or (e) of this section, is a basis for a finding that a bidder or proposer intends to be involved in a joint venture.

(g) If two or more contractors qualifying under subsection (c), (d) or (e) of this section submit bids or proposals, the contract shall be awarded to the lowest responsible bidder/proposer qualifying for the Commonwealth contractor preference.

(h) No provision of this section shall apply to capital improvements or procurement of goods or services funded, in whole or in part, by grants or funds from an agency of the government of the United States upon certification by the agency that this section conflicts with such agency's regulations.

**Source:** . . . (a) amended by PL 13-24, § 602(b); (c), (d), (e), (f), and (g) amended by PL 15-95, § 2; (c) amended and (h) added by PL 15-116, §§ 2 and 3, respectively, modified.

**Commission Comment:** The commission changed capitalization pursuant to the authority granted by 1 CMC § 3806(f). PL 13-24 was enacted on September 10, 2002. PL 13-24 was an appropriations bill wherein § 602(b) was a rider. While appropriation bills are temporary law in nature,

§ 602(b) explicitly stated that the according amendment to 1 CMC § 7404(a) "shall remain in effect until subsequently amended," therefore, all implications aside, the commission codified § 602(b), and similarly also § 602(a).

PL 15-95 was enacted into law by override on October 4, 2007, and contained the following findings in addition to severability and savings provisions.

> Section 1. Findings. The Legislature finds that the Commonwealth continues to be in a state of economic decline and many businesses owned by United States citizens have been forced to shut down their establishments due to severe financial hardships and losses. Many of these business establishments provide unique and distinctive goods and services to [the] Commonwealth and have been doing business in the Commonwealth for over a decade.
>
> The Legislature finds that the Commonwealth should promote and stimulate businesses owned by United States citizens by requiring that Commonwealth agencies to award contracts for capital improvements, public works, and procurement of goods and services involving a contract amount of $500,000 or less to businesses that are owned by United States citizens. Many businesses owned by United States citizens maintain and expend their money in the Commonwealth thereby stimulating the economy. The Legislature further finds that restricting government procurement of $500,000 or less to United States citizens is necessary to grow our economy and preserve businesses owned by United States citizens that have diligently served the Commonwealth for many years.

PL 15-118 was enacted into law December 14, 2007, and contained the following findings in addition to severability and savings provisions. The commission designated the two subsections enacted by PL 15-118 as (c) and (h), instead of (i) and (i), respectively, as indicated in the text of PL 15-118, pursuant to its authority under 1 CMC § 3806.

> Section 1. Findings and Purpose. The Legislature finds that the Commonwealth from time to time receives critical U.S. federal grants and assistance for capital improvements and procurement of goods and services. The use or disposition of these funds are governed by and large by applicable U.S. laws and regulations that may conflict with the Commonwealth's local bidder preference laws and regulations. The purpose[s] of this act are to include United States permanent residents and citizens of any state or territory of the United States in the local bidder preference law, and to exempt capital improvements and procurement of goods and services funded in whole or in part with federal funds from the local bidder preference laws and regulations of the Commonwealth upon certification by a federal agency that such preference law conflicts with federal regulations.

**§ 7407. Restrictions on Government Paid Travel Outside of the Commonwealth.**

(a)-(d) Unchanged.

(e) *Per diem allotments*. Per diem allotments shall be made in accordance with a uniform government policy applicable to all branches, departments, divisions, agencies, and autonomous agencies of the Commonwealth Government. The Secretary of Finance shall develop and implement the policy by regulation and shall set the per diem rates for government travel.

(f) *Airfare restriction*. The Commonwealth Government shall not purchase or furnish for or reimburse to any employee, contractor, board member, or other person required to travel on behalf of the Government, its departments, divisions, agencies, and autonomous agencies, an airline ticket for travel in first class, business class, or any other premium class designation. Travel agents issuing tickets for government travel shall only be paid at the regular economy fare or its equivalent. Any government employee who causes an airline ticket to be issued in violation of this section shall pay a civil fine of one-thousand dollars.

**Source:** . . . (e) and (f) added by PL 15-86, § 2, modified.

**Commission Comment:** . . . The commission deleted figures that repeated words pursuant to its authority in 1 CMC § 3806(e). PL 15-86 was enacted on September 26, 2007, and contained the

following purpose provision in addition to severability and savings clauses.

Section 1. Purpose. The purposes of this Act are to establish uniform per diem policies for government travel and to prohibit the purchase of first class, business class, or other premium airline tickets by the Commonwealth Government.

## CHAPTER 5. FEDERAL ~~GRANT~~ FUNDS. [Chapter Renamed]

### § 7505. Capital Improvement Project Legislative Approval Required.

Notwithstanding any law to the contrary, no capital improvement project may be funded, in total or in part, from federal funds obtained pursuant to the Covenant or to the Impact Aid for the Compact of Free Association or through a special appropriation by the United States Congress, unless specifically approved first by the Legislature. Such projects include but are not limited to: public school and college facilities; streets, highways, roads, parking, wastewater, storm drainage, and sewage
removal or treatment facilities; solid waste disposal (including landfill or incineration), remediation, recycling or resource recovery facilities; water supply, treatment (including desalination) or distribution facilities; judicial or criminal justice facilities; power generation or distribution facilities (including refinancing of generators previously purchased); public health facilities; fire suppression facilities;
tourism related public facilities; seaport facilities; public buildings, facilities, improvements, equipment or furnishings; and public parks. The Governor or his designee shall submit any necessary document describing any project affected by this section to the respective presiding officers of the legislature for action.

**Source:** PL 15-121, § 2(b).

**Commission Comment:** Public Law 15-121 was enacted into law by override on December 3, 2007, and contained the following purpose and renaming provisions in addition to severability and savings clauses:

Section 1. Purpose. The purpose of this Act is to mandate legislative approval for the funding of any capital improvement project, either in total or in part, from federal funds obtained pursuant to the Covenant or to the Impact Aid for the Compact of Free Association.

Section 2. Amendments.

(a) The title of Chapter 5 of Division 7 of Title 1 of the Commonwealth Code is amended by deleting the word "Grant," such that the title shall read "Federal Funds."

. . .

# PART 3. AUDITING ACT.

## CHAPTER 3. BUDGETING AND FUNDING FOR THE PUBLIC AUDITOR.

### § 7831. Authorization for Funding By Commonwealth Agencies.

(a) - (d) [unchanged]

(e) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be

reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner of Education shall be the expenditure authority for funds deposited into the Textbook Account.

**Source:** . . . (e) added by PL 15-107, § 2, modified.

**Commission Comment:** . . . The commission deleted figures that repeated words when codifying subsection (e) above. PL 15-107 was enacted on November 9, 2007, and contained the following findings and purposes, in addition to severability and savings clause provisions.

Section 1. Findings and Purpose. The Legislature finds that Public Law No. 14-96 was enacted to amend Public Law No. 13-2.4, the "Appropriations and Budget Authority Act of 2003," to supplement the budget of the Public School System (PSS) by returning the one percent Public Auditor fee that is assessed for all government agencies back to the PSS to be used exclusively to purchase textbooks. The Legislature also finds that Public Law No. 15-28, the "Appropriations and Budget Authority Act for 2007," did not provide the same provision for the PSS. The Legislature further finds that this provision enabled PSS to acquire the needed textbooks and that PSS should be permanently exempted from the Public Auditor fee assessment so that it may use these funds specifically to purchase textbooks.

The Legislature finds that Article XV of the Constitution of the Northern Mariana Islands states not only that "[e]very person in the Northern Mariana Islands has the right to free, compulsory and public elementary and secondary education within age and educational levels provided by law," but also that "[t]he educational system shall also provide support and guidance for students in assessing areas of interest and ability, in clarifying values and goals, and in providing students with clear and accurate information so they may gain the most from their educational experience." In addition, the Legislature finds that because the Public School System receives federal funding that it is subject to the provisions of the No Child Left Behind Act of 2001 which holds schools and school districts accountable for results. This essentially means that schools are responsible for ensuring that students are learning, that school districts are accountable for results, that the school district should provide options and accessible information to parents about the quality of their child's school, and that the school district should continuously work to improve teacher quality.

The Legislature further finds that parents and students are complaining about the lack of textbooks available to their children. This shortage of textbooks affects the quality of education a student is receiving and hampers a student's ability to study effectively at home or to complete homework assignments. The Legislature finds that this is a serious problem, as a textbook shortage will have an effect on the performance of students, schools, and the school district. lf a school district is not performing, that district may be subject to scrutiny by the federal government and this in turn may affect federal funding. Ultimately, the most immediate and pressing concern is that students are not learning properly. The Constitution mandates that students gain the most from their educational experience, an objective that clearly cannot be realized without textbooks.

# DIVISION 8: PUBLIC EMPLOYMENT

## PART 1. CIVIL SERVICE ACT.

# CHAPTER 1. CIVIL SERVICE COMMISSION.

## § 8101. Title.

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007)*; Dept. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005).

## § 8102. Statement of Policy: General.

**Case Annotations:** *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005).

## § 8116. Civil Service Commission: Powers and Duties.

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007)*; Dept. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005).

## § 8117. Civil Service Commission: Rules and Regulations.

(a) - (h) [unchanged]

(i) Establish the method of certification of eligibles for appointments or promotions, provided however, that such method of certification shall not require that persons seeking to be certified as eligible for a civil service position have prior work experience in a related field if such persons possess a Bachelor's, Masters, or Doctoral degree, in a field of expertise related to the civil service position for which the person has applied. The appointing authorities shall be entitled to the certification of not less than five eligibles for each vacancy. If more than one vacancy is to be filled, an additional eligible shall be certified for each additional vacancy. Special and different rules and regulations may be established for unskilled labor lists, reemployment lists, reinstatements, procedures for emergency, and provisional or temporary appointments or promotion for a limited period where status in the civil service is not obtained and certification is not required;

(j) [unchanged]

**Source:** . . . (i) amended by PL 15-119, § 2.

**Commission Comment:** Public Law 15-119 was enacted into law by override on December 5, 2007, and contained the following findings in addition to and severability and savings provisions:

> Section 1. Findings. The Legislature notes that the Civil Service Act, set forth at 1 CMC § 8101, et. seq. states that "[i]t is the policy of the Commonwealth to encourage the professional, technical and skilled-trade education and training of resident citizens in filling positions in the government service, whether by appointment, recruitment, or promotion." The Legislature finds, however, that the Civil Service Commission, in attempting to fulfill the mandate of the Civil Service Act, has implemented rules and regulations that excessively restrict the ability of returning citizens to qualify for civil service positions by requiring that only those individuals with years of prior work experience in a related field can be certified as eligible for a civil service position. The Legislature finds, therefore, that it is necessary to amend 1 CMC § 8117(i) of the Civil Service Act to provide that the Civil Service Commission shall amend the Civil Service Rules and Regulations to remove any and all provisions requiring that persons seeking to be certified as eligible for a civil service position have prior work experience in a related field if such persons possess a Bachelor's, Masters, or Doctoral degree, in a field of expertise related to the civil service position for which the person has applied.

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007).

## CHAPTER 3. THE CIVIL SERVICE SYSTEM.

**§ 8131. Civil Service System: Applicability; Exemptions.**

(a) Commonwealth government now existing or hereafter established. Unless this part is otherwise specifically made applicable to them, the following persons or positions are exempt from the civil service system:

(1)-(15) [unchanged]

(16) Personnel and staff of the Commonwealth Healthcare Corporation.

**Source:** . . . (a)(16) added by PL 16-51 § 6 (January 15, 2010).

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007).

# PART 2. EMPLOYEE COMPENSATION AND BENEFITS.

## CHAPTER 1. SALARY ACT.

**§ 8211. Short Title.**

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007).

## CHAPTER 4. COMPENSATION ADJUSTMENT ACT.

**§ 8241. Short Title.**

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007).

**§ 8248. Government Salary Ceiling.**

(a) Except as provided by law, no employee of the Commonwealth government shall receive an annual salary of more than $50,000.

(b) Medical professionals, whose primary responsibilities include giving professional medical advice and are licensed to prescribe medicine, U.S. or Commonwealth-licensed attorneys, certified public accountants, engineers, and architects whose primary responsibilities include practice within their profession, and professionals employed by the legislative branch may receive an annual salary in excess of $50,000. For the executive branch, such salaries must be certified by the Governor to the presiding officers of the legislature and the Civil Service Commission. For the legislative branch, such salaries must be approved by the official with expenditure authority.

(c) In the event that the incumbent of any position within the government, agency or corporation is receiving an annual compensation in excess of that authorized by this chapter on June 19, 1991, that incumbent shall continue to receive that amount as long as such salary is authorized under applicable Commonwealth law prior to June 19, 1991. The compensation shall be frozen at that level.

(d) [Redesignated as 1 CMC § 8213(g).]

**Source:** . . . amended by PL 15-81, § 2.

**Commission Comment:** . . . PL 15-81 was enacted on September 18, 2007, and contained the following findings and purpose and effective date provisions in addition to severability and savings clauses:

Section 1. Findings and Purpose. The Legislature finds that attorneys and certified public accountants serve critical and essential functions within the government of the Commonwealth of the Northern Mariana Islands.

Under Public Law 7-31, § 4(d), an annual salary ceiling of $50,000 was established for government employees, including executive branch attorneys and certified public accountants, effective June 19, 1991. Between October 1, 1998 and October 1, 2006 an annual salary ceiling of $70,000 applied to executive branch attorneys and certified public accountants, under the Appropriations and Budget Authority Act of 1999, Public Law 11-41, § 513 and the Appropriations and Budget Authority Act of 2003, Public Law 13-24, § 514. However, the Appropriations and Budget Authority Act for 2007, Public Law 15-28 did not include a similar provision, causing the already non-competitive salary ceiling for executive branch attorneys to revert to $50,000 for the first time in eight years.

The Legislature finds that the hiring and retention of full-time employees committed to serving the needs of the Commonwealth not only minimizes personnel turnover costs, but in many instances directly enhances government revenues and reduces expenditures. The Legislature further finds that there exist disparities between and within the various branches, agencies and instrumentalities (including autonomous agencies and municipalities) of the Commonwealth as to the amount of compensation paid to qualified professionals employed by the government, whether classified, unclassified, or contract hire, and that uniformity in compensation for similar professional services rendered to the government is, to the extent practicable, desired. As a consequence, the Legislature finds that in order to attract and retain competent and dedicated professional employees to serve the needs of the Commonwealth, exceptions to the ceiling on government salaries established for other classifications of employees are necessary.

Accordingly, the purpose of this bill is to make executive branch attorneys and certified public accountants eligible for annual salary cap exemption certification, on the same basis as other branches, agencies and instrumentalities, effective Fiscal Year 2007.

. . .

Section 5. Effective Date. This Act shall take effect upon its approval by the Governor or its becoming law without such approval, and shall apply to salaries paid beginning October 1, 2006

## CHAPTER 5. LEAVE.

**Article 2. Family Sick Leave.** **[New Renamed Article]**

§ 8265. Definitions.
§ 8266. Leave.
§ 8267. Rules and Regulations.

**§ 8265. Definitions.**

(a) "Certified medical statement" means a statement from an attending physician that a Commonwealth Government employee is needed to care for an immediate family member;

(b) "Commonwealth Government employee" means an employee of any department,

division, or agency of the Commonwealth Government including autonomous agencies;

(c) "Immediate family member" means a legal spouse; child, whether natural or adopted; or parent.

**Source:** PL 15-116, § 3(8265).

**Commission Comment:** Public Law 15-116 was enacted on November 29, 2007, and contained the following findings and purpose in addition to other enactments (see repeal of 1 CMC §§ 8276 and renumbering of articles 2 and 3 of Chapter 5, Division 8, herein) and severability and savings provisions:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that government employees should be permitted to use their earned sick leave to attend to immediate family members who are sick.

**§ 8266. Leave.**

A Commonwealth Government employee may apply for leave to attend to an immediate family member who is sick. For leave in excess of two consecutive days, such request shall be supported by a certified medical statement. Leave taken under this section shall be deducted from the employee's earned sick leave.

**Source:** PL 15-116, § 3(8266), modified.

**Commission Comment:** The commission deleted figures that repeated words pursuant to its authority in 1 CMC § 3806(e).

**§ 8267. Rules and Regulations.**

The Office of Personnel Management and the autonomous agencies shall promulgate rules and regulations for the effective implementation of this article.

**Source:** PL 15-116, § 3(8267), modified.

**Commission Comment:** The commission changed "this act" to "this article" pursuant to the authority granted by 1 CMC § 3806(d).

**Article 3. Sick Leave Bank.** **[Article Renumbered from Article 2]**

~~**§ 8276. Family Sick Leave.**~~

~~(a) A Commonwealth Government employee or employee of any Commonwealth autonomous government agency may apply for sick leave to attend to an immediate family member who is sick. The government employee shall be subject to the same requirements as in Section 8273 of this Article, except that the certified medical statement shall be for the immediate family member. For purposes of this section "immediate family member" means the employee's legal or common law spouse, child, brother, sister, parent, or person for whom the employee is the legal guardian.~~

~~(b) *Rules and Regulations*. The Office of Personnel Management shall promulgate rules and regulations to administer this Act.~~

**Source:** PL 15-69, §§ 1 and 2; repealed by PL 15-116, § 2.

**Commission Comment:** Public Law 15-57 was enacted on June 5, 2007 by override and contained severability and savings clauses but not findings or purpose provisions. Public Law 15-116 was enacted on November 29, 2007, and contained the following findings and purpose in addition to other

enactments (see 1 CMC §§ 8265 *et seq.* and resulting renumbering of articles 2 and 3 of Chapter 5, Division 8, herein) and severability and savings provisions:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that government employees should be permitted to use their earned sick leave to attend to immediate family members who are sick.

**Article 4. Annual Leave.** **[Article Renumbered from Article 3]**

## CHAPTER 6. LAW ENFORCEMENT OFFICERS' DEATH BENEFITS.

**§ 8282. Law Enforcement Officers.**
(a)-(i) [unchanged]
(j) [deleted by PL 17-1 § 3(C)]
(k)-(n) [unchanged]

**Source:** . . . (j) deleted by PL 17-1 § 3(C) (March 22, 2010).*

**Commission Comment:** Public Law 17-1 § 3(C) provides: "Division 2 (Executive Branch), Part 2 (Employee Compensation and Benefits), Chapter 6 (Law Enforcement Officers' Death Benefits) is amended to delete § 8282(j)." However, 1 CMC § 8282(j) is found in Division 8 (Public Employment) not Division 2 (Executive Branch). The commission, therefore, corrected this manifest error pursuant to 1 CMC § 3806(g) by deleting 1 CMC § 8282(j) of Division 8, Part 2, Chapter 6.

*PL 17-1 (approved by the Governor on March 22, 2010) contains an effective date provision (§ 12) which provides that the law "shall be retroactive to November 28, 2009 except as otherwise specifically provided herein." For more information regarding PL 17-1, see comment to 3 CMC § 4511.

# PART 3. RETIREMENT FUND.

## CHAPTER 3. BENEFITS.

**§ 8347. Disability: Administrative Provisions.**

(a) A member shall be considered totally and permanently disabled after the board receives written certification by at least two licensed and practicing physicians selected by the board, at least one of whom is a specialist in the area of the disability being evaluated, that the member is totally and permanently disabled for the further performance of the duties of any assigned position in the service of the government. If, upon consideration of the reports of the physicians and any other evidence presented to the board by the member or others interested therein, the board finds the member to be totally and permanently disabled, it shall grant the member a disability retirement annuity upon written certification that the member has been separated from the service of the employer because of total disability of such nature as to reasonably prevent further service for the employer, and as a consequence is not entitled to compensation from the government.

(b) At least once each year during the first five years following the allowance of a disability annuity to any member, and at least once in every three-year period thereafter, the board shall require any disability annuitant to undergo a medical examination to be made at the place of residence of the

annuitant, or at any other place mutually agreed upon, by a physician or physicians engaged by the board. If any examination indicates that the annuitant is no longer physically or mentally incapacitated for service, or that the annuitant is engaged or is able to engage in a gainful occupation, payments of the disability annuity by the fund shall be discontinued.

(c) - (g) [unchanged]

(h) Any annuity received by a class I or class II member as a result of any disability shall be reduced by an amount equal to any sum the member is entitled to from U.S. Social Security, any workers' compensation insurance or any other insurance covering such disability.

**Source:** . . . (a), (b), (d), and (h) amended by PL 13-60, § 6(c) and (i), respectively; (a) and (b) amended by PL 16-19 § 2.

**Commission Comment:** PL 13-60 was enacted on December 5, 2003 and contained, in addition to other enactments, a short title, findings and purpose, severability, and savings clause provisions. See the comment to 1 CMC § 8253 regarding PL 13-60. PL 16-19 took effect on November 7, 2008 and included severability and savings clause provisions as well as the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that Public Law 13-60 amended, among other provisions, Title 1 CMC § 8347, to require that potential disabled retirees be evaluated by two physicians and a vocational rehabilitation counselor. The Legislature finds that this requirement has created a hardship for some retirees and for the Retirement Fund because a pool of qualified vocational rehabilitation counselors is not always readily available.

The Legislature further finds that requiring two physicians, one of whom is a specialist in the area of the disability being evaluated, to certify the disability is adequate protection for the N.M.I. Retirement Fund and its members.

**§ 8356. Benefits: Refund on Separation.**

(a) Effective January 1, 2008, upon complete separation from service before a class I member shall have completed 15 years of contributing member service, the class I member may elect to receive a refund of his or her total contributions, including regular interest. Except as provided in other sections of this part, no refund of any contributions shall be permitted for class I members after completion of 15 years of contributing member service, provided that, notwithstanding any other provision of law, any class I member electing to receive a refund of contributions, upon reemployment by the Commonwealth Government, its agencies or instrumentalities shall become a member of the Defined Contribution Plan, pursuant to 1 CMC §§ 8454 and 8456, as enacted by Public Law 15-13.

(b)-(c) [unchanged]

Notwithstanding any other provision of law, no refund of contributions shall be made to a Class I or Class II member upon complete separation from service following both (i) the first pay period fifteen years from the effective date of this act and (ii) 180 days following the date on which the member is eligible to receive a refund of the member's contributions by electing to participate in the defined contribution plan under Public Law 15-13.

**Source:** . . .(a) amended by PL 15-98, § 1.

**Commission Comment:** . . .

PL 15-98 was enacted into law by override on October 4, 2007, and did not contain any findings or purpose, but did include severability and savings provisions.

## CHAPTER 4. CONTRIBUTIONS TO FUND.

**§ 8362. Contributions to Fund: By Government.**

(a) - (d) [unchanged]

(e) Any employer who fails to pay or remit contributions as required by this part shall pay a penalty on the amount of unpaid contributions of 10 percent if paid within 30 days after the payment is due, 20 percent if paid within 60 days after the payment is due, and 25 percent if paid within 61 days or more after payment is due.

(f) [unchanged]

(g) *Employer Retirement Contribution Mandate.* Notwithstanding any law or regulation to the contrary, the Commonwealth government, its departments, divisions, municipalities, public corporations, autonomous agencies, and offices shall prioritize and pay the full retirement employer contributions of government employees who are eligible to retire from government service.

**Source:** . . . (e) repealed and reenacted by PL 16-2 § 9; (g) added by PL 16-36 § 2.

**Commission Comment:** . . .

For more information regarding PL 16-2, see comment to 4 CMC § 8143.

PL 16-36 was enacted on April 15, 2009. PL 16-36 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Northern Mariana Islands (NMI) Retirement Fund, through Board Resolution No. 08-001, adopted a policy to suspend all applications for retirement benefits due to the Commonwealth government's inability to pay its employer contributions to the NMI Retirement Fund for more than two years. However, unlike the Commonwealth government, employees continue to pay their employee contributions to the Fund. The Legislature further finds that many government employees are eligible to retire but cannot do so because of the NMI Retirement Fund's policy to suspend all retirement applications at this time. The Legislature finds that Article III, Section 20(a) of the NMI Constitution provides that "[a]ccrued benefits of [the retirement] system shall be neither diminished nor impaired." The NMI Retirement Fund's policy to suspend all retirement applications and the Commonwealth government's inability to pay its employer contributions are impairing the accrued benefits of the members of the NMI Retirement Fund. The Legislature finds that the Commonwealth government could realize savings on personnel costs by allowing eligible government employees to retire at this time. Moreover, eligible government employees have a right to retire from government service at the time of their choosing not at the time the government decides to pay its employer contributions to the NMI Retirement Fund. Accordingly, the purpose of this legislation is to require the Commonwealth government to prioritize and pay its retirement employer contributions for government employees who are eligible to retire from government service.

**§ 8368. Employer Retirement Contribution.**

(a) Notwithstanding 1 CMC § 8362 or any other provision of law, the Public School System (PSS) and employers of employees funded by the General Fund shall remit a retirement contribution of 18%* of the total salary of the employee. Except as provided by law, employer retirement contributions under this section shall be deducted from the agency's personnel appropriations. The Secretary of Finance shall remit employer retirement contributions not later than the end of each quarter of the fiscal year. This section shall be retroactive to October 1, 2007.

(b) Any difference between the actuarially calculated contribution rate and the sum

remitted by the employer shall accrue as a liability for the government and shall not be excused or waived by this provision.

(c) ~~This section shall apply to salaries funded from the PSS budget and the General Fund only. Employer retirement contributions for employees not funded by the PSS budget or the General Fund, including but not limited to federally funded employees, and employees of autonomous agencies, including but not limited to the CNMI Government Health and Life Insurance Office, Commonwealth Development Authority, Commonwealth Ports Authority, Commonwealth Utilities Corporation, N.M.I. Retirement Fund, N.M.I. Housing Corporation, the Office of the Public Auditor, and the Department of Public Lands, shall not be affected by this provision. Retirement contributions for those employees shall be made according to law~~. This section shall apply to salaries funded from the general fund and salaries from other locally generated revenue sources of autonomous agencies and public corporations.

(d) Any savings realized by PSS as a result of this section shall be applied to the "all others" account in the PSS budget, and shall be apportioned to the schools for budgetary needs according to student population. The expenditure authority for apportioned funds shall be the ~~school principal~~ Commissioner of Education.

(e) The Northern Mariana Islands Retirement Fund (NMIRF) is authorized to liquidate assets held to cover any shortfall in retiree distributions.

**Source:** PL 15-126, § 2; (a) suspended for Fiscal Year 2008, (c) repealed and reenacted and (d) amended by PL 16-2 § 7; *(a) temporarily amended by PL 16-32 §608(a).

**Commission Comment:** Public Law 15-126 was enacted on January 24, 2008, and contained the following findings and purpose in addition to severability and savings provisions:

> Section 1. Findings and Purpose. The Commonwealth Legislature finds that the suspension of employer retirement contribution payments under Public Law 15-15 expired on September 30, 2007. The Legislature finds that the current employer retirement contribution rate, as determined by an actuarial study, is 36.7%. Due to a drastic decrease in resources over the past 24 months, however, the CNMI Government can only afford to remit a reduced contribution rate of 18% for salaries paid from the General Fund. The difference between the 18% and 36.7% contribution will accrue as a liability to the government. The purpose of this Act is to meet the government's obligation to remit employer retirement contributions for employees funded by the General Fund while at the same time preserving diminished government resources.
>
> It is the intent of the Legislature that this Act shall not be inconsistent with the Employee Retirement Income Security Act (ERISA, 29 U.S.C. § 1001 *et seq.*), particularly with regard to the CNMI Defined Contribution plan established by Public Law 15-13. Any conflict in law should be resolved in favor of the federal statute.

Public Law 16-2, enacted on May 3, 2008, contained numerous provisions amending various sections throughout the code. Section 7 of PL 16-2, entitled "Employer Retirement Contribution Rate," provided:

> Section 7. Employer Retirement Contribution Rate.
>
> (a) Section 2(a) of Public Law 15-126 is hereby suspended for the entirety of Fiscal Year 2008, beginning October 1, 2007. Notwithstanding any other provision of law, all government departments, divisions, offices, municipalities, autonomous agencies, and public corporations shall remit employer contribution payments for employees in the Defined Benefit plan to the Northern Mariana Islands Retirement Fund based on a new rate of eleven percent (11%) of the employee's salary for Fiscal Year 2008. All expenditure authorities and the Department of Finance shall ensure that employer contribution amounts incurred after the effective date of this Act and amounts that have accrued but are unpaid since October 1, 2007, until the effective date of this Act shall be paid in equal installments to the Northern Mariana Islands Retirement Fund.
>
> (b) Section 2(b) of P.L. 15-126 shall remain in effect. The government acknowledges its

obligation to the Retirement Fund for deficient employer contributions and statutory penalties; provided further that the difference for the Northern Marianas College shall accrue as a liability for the central government.

(c) Section 2(c) of P.L. 15-126 is repealed and reenacted to read as follows:

[as codified in 1 CMC § 8368(c)].

(d) Section 2(d) of P.L. 15-126 shall remain in effect, except that the Commissioner of Education shall be the expenditure authority for apportioned funds.

(e) Section 2(e) of P.L. 15-1 26 shall remain in effect. The Board of Trustees of the N.M.I. Retirement Fund shall be authorized to use sound fiscal management to prudently reallocate the Retirement Fund assets as needed in order to protect from diminishment and impairment of retirement benefits of its members.

(f) The difference between the 18% retirement employer contribution rate for general fund employers or actuarially calculated contribution rate for autonomous agencies and public corporations and the sum remitted by such general fund employers, autonomous agencies, and public corporations, except for the Commonwealth Utilities Corporation, and fifty percent (50%) of the difference of the employer contribution of the Public School System and the Northern Marianas College, shall be deposited into a special account within the General Fund and appropriated as follows:

(1) Fifty percent (50%) of the funds to Commonwealth Utilities Corporation to pay for its fuel expenses.

(2) $80,000.00 to the Public Utilities Commission (PUC) for its start-up costs and operating expenses for fiscal year 2008; provided that the PUC shall reimburse the general fund the appropriated funds upon such time that it is duly organized and has access to funds under its expenditure authority.

(3) The remaining funds shall be expended pursuant to the reprogramming authority set forth in Section 4(b) of this Act.

For more information regarding PL 16-2, see comment to 4 CMC § 8143.

*Public Law 16-32, the Appropriations and Budget Authority Act of 2009, was enacted by override on March 11, 2009 for appropriations for fiscal year 2009 (October 1, 2008- September 30, 2009). For that period, PL 16-32 set the employer contribution rate in subsection (a) at 11%.

### § 8369. NMI Retirement Fund.

Notwithstanding any law or regulation to the contrary, the NMI Retirement Fund Board and Administrator shall, upon receipt of the CNMI government employer contribution as stated under 1 CMC § 8362(g), accept and provide full pension to all government employees described under 1 CMC § 8362(g) above.

**Source:** PL 16-36, § 3, modified.

**Commission Comment:** See the comment to 1 CMC § 8362 for more information regarding PL 16-36. The commission modified this section pursuant to 1 CMC § 3806(c). The commission changed references to PL 16-36 § 2 to "1 CMC § 8362(g)."

# DIVISION 9 MISCELLANEOUS PROVISIONS

# CHAPTER 1. ADMINISTRATIVE PROCEDURE ACT.

## § 9101. Administrative Procedure: Definitions.

**Case Annotations:**

**ADMINISTRATIVE LAW**

**Administrative Procedure Act**

**– Effective Date**

. . .

**Agency Action**

– **Appeals, Administrative, Generally**
The Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, *et seq*., allows two entities to appeal a decision: a person suffering a legal wrong, and a party to the administrative hearing. 1 CMC §§ 9101, *et seq*. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 12, 7 N.M.I. 140, 144 (2005).

A department or agency does not have a right to appeal the outcome of an administrative hearing, held pursuant to Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, *et seq*., as a person suffering a legal wrong because it is not, in fact, a "person" as defined by the Act. However, the department or agency does have a right to appeal under the Act by virtue of the fact that it was a party to the administrative hearing. The right to appeal granted by 1 CMC § 9113, is the right is to appeal a trial court's ruling to the Supreme Court. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 13, 7 N.M.I. 140, 144 (2005).

In defining the term person at 1 CMC § 9101(j) very broadly, the legislature intended to expand the right of judicial review of administrative proceedings and to allow standing to a nonparty, including entities that were not involved in the agency decision but were nevertheless adversely affected by the agency's action. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 16, 7 N.M.I. 140, 144 (2005).

Despite the conflict in the terms between "party" and "person" contained in the Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, *et seq*., the legislature did not intend to constrict the right of judicial review to exclude party-agencies; rather, it intended to restrict non-party agencies from intervening into disputes in which they might have an interest, but where they were not a party. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 16, 7 N.M.I. 140, 144 (2005).

. . .

**Judicial Review**

. . .

– **Jurisdiction, Generally**
Commonwealth administrative decisions are not subject to judicial review as a matter of right. Instead, judicial review, like all aspects of administrative procedure in the CNMI, is governed by the Commonwealth Administrative Procedure Act, 1 CMC 9101, *et seq*. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 12, 7 N.M.I. 256, 260 (2006).

. . .

**PARTIES**

**Standing**

– **Generally**

Section 9112(b) of Title 1 of the Commonwealth Code cannot be understood to prohibit agencies from seeking judicial review of administrative rulings when that subsection is read in conjunction with 1 CMC § 9113. Whereas 1 CMC § 9112(b) restricts judicial review to a person suffering legal wrong, and 1 CMC § 9101(j) defines person as excluding an agency; 1 CMC § 9113 allows an aggrieved party to appeal the Superior Court's decision to the Supreme Court, and 1 CMC § 9101(i) defines party as including an agency. It would be inconsistent to read one section as prohibiting an agency from seeking judicial review of an administrative decision, while reading the next section as broadening an agency's ability to seek judicial recourse by allowing them to appeal to the Supreme Court. 1 CMC § 9101(i); 1 CMC § 9101(j); 1 CMC § 9112(b); 1 CMC § 9113. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 17, 7 N.M.I. 256, 260 (2006).

## § 9108. Administrative Procedure: Adjudications.

**Case Annotations:** *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005).

## § 9109. Administrative Procedure: Conduct of Hearings.

**Case Annotations:** *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005).

## § 9110. Administrative Procedure: Issuance of Orders and Decisions Upon Hearing.

**Case Annotations:** *Pacific Saipan Tech. Contractors v. Rahman,* 2000 MP 14, 6 N.M.I. 146 (2000).

## § 9112. Administrative Procedure: Judicial Review of Contested Cases.

**Case Annotations:** *Marianas Insurance Co. v. CPA,* 2007 MP 24, 7 N.M.I. 507 (2007)*; NMI Scholarship Board v. Superior Ct.,* 2007 MP 10, 7 N.M.I. 434 (2007); *Pacific Security Alarm, Inc. v. CPA,* 2006 MP 17, 7 N.M.I. 334 (2006); *Dep't. Pub. Safety v. Civil Svc. Comm'n (Chong),* 2005 MP 6, 7 N.M.I. 140 (2005); *Ramos v. Magusa, Inc.,* 2002 MP 25, 6 N.M.I. 520 (2002).

**ADMINISTRATIVE LAW**

**Agency Action**

– **Appeals, Administrative, Generally**
While 1 CMC § 9112(b) should be read to include in the class of entities entitled to seek judicial review, agencies that were actual parties to the administrative proceeding, it should not be read so broadly as to expand standing to agencies who were not in fact parties to the underlying administrative dispute. This limitation captures the legislature's intent when providing for judicial review of agency action: to keep the courts out of intra-agency disputes. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 19, 7 N.M.I. 256, 261 (2006).

The language of 1 CMC § 9112(b) grants standing for an agency to seek judicial review when that agency was not part of the administrative body that enjoyed decision-making authority. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 24, 7 N.M.I. 256, 262 (2006).

The provisions of 1 CMC § 9113 and 1 CMC § 9112(b) create an unstable situation in that agencies which are parties to administrative hearings can seek an appeal from the trial court's ruling (on appeal of the administrative hearing decision), but cannot initially appeal to the trial court for judicial review of the administrative hearing decision. This construction of the statutes is untenable. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 14, 7 N.M.I. 140, 144 (2005).

The legislature, in drafting 1 CMC §§ 9112(b) and 9113, could not have intended to restrict the appeals of parties at one level (appeal to the Superior Court allowed only to "persons" not including agencies) only to broaden them at another (appeals from the Superior Court's decisions allowed by "persons" or agencies which were parties to the hearing), especially when parties to an administrative hearing have traditionally had the right to appeal. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 15, 7 N.M.I. 140, 144 (2005).

**Ripeness**

. . .

**PARTIES**

**Standing**

– **Generally**
Section 9112(b) of Title 1 of the Commonwealth Code cannot be understood to prohibit agencies from seeking judicial review of administrative rulings when that subsection is read in conjunction with 1 CMC § 9113. Whereas 1 CMC § 9112(b) restricts judicial review to a person suffering legal wrong, and 1 CMC § 9101(j) defines person as excluding an agency; 1 CMC § 9113 allows an aggrieved party to appeal the Superior Court's decision to the Supreme Court, and 1 CMC § 9101(i) defines party as including an agency. It would be inconsistent to read one section as prohibiting an agency from seeking judicial review of an administrative decision, while reading the next section as broadening an agency's ability to seek judicial recourse by allowing them to appeal to the Supreme Court. 1 CMC § 9101(i); 1 CMC § 9101(j); 1 CMC § 9112(b); 1 CMC § 9113. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 17 (2006).

## § 9113. Administrative Procedure: Appeals.

**Case Annotations:** *Pacific Security Alarm, Inc. v. CPA,* 2006 MP 17, 7 N.M.I. 334 (2006).

**ADMINISTRATIVE LAW**

**Agency Action**

– **Appeals, Administrative, Generally**
The provisions of 1 CMC § 9113 and 1 CMC § 9112(b) create an unstable situation in that agencies which are parties to administrative hearings can seek an appeal from the trial court's ruling (on appeal of the administrative hearing decision), but cannot initially appeal to the trial court for judicial review of the administrative hearing decision. This construction of the statutes is untenable. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 14, 7 N.M.I. 140, 144 (2005).

The legislature, in drafting 1 CMC §§ 9112(b) and 9113, could not have intended to restrict the appeals of parties at one level (appeal to the Superior Court allowed only to "persons" not including agencies) only to broaden them at another (appeals from the Superior Court's decisions allowed by "persons" or agencies which were parties to the hearing), especially when parties to an administrative hearing have traditionally had the right to appeal. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 15, 7 N.M.I. 140, 144 (2005).

**Judicial Review**

– **Jurisdiction Generally**
The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC § 9113, over the appeal of a trial court's decision to uphold the Department of Labor and Immigrations denial of a claim for lost wages and transfer relief. 1 CMC § 9113. *Ramos v. Magusa, Inc*., 2002 MP 25 ¶ 1, 6 N.M.I. 521 (2002).

**PARTIES**

**Standing**

– **Generally**
Section 9112(b) of Title 1 of the Commonwealth Code cannot be understood to prohibit agencies from seeking judicial review of administrative rulings when that subsection is read in conjunction with 1 CMC § 9113. Whereas 1 CMC § 9112(b) restricts judicial review to a person suffering legal wrong, and 1 CMC § 9101(j) defines person as excluding an agency; 1 CMC § 9113 allows an aggrieved party to appeal the Superior Court's decision to the Supreme Court, and 1 CMC § 9101(i) defines party as including an agency. It would be inconsistent to read one section as prohibiting an agency from seeking judicial review of an administrative decision, while reading the next section as broadening an agency's ability to seek judicial recourse by allowing them to appeal to the Supreme Court. 1 CMC § 9101(i); 1 CMC § 9101(j); 1 CMC § 9112(b); 1 CMC § 9113. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 17, 7 N.M.I. 256, 261 (2006).

## CHAPTER 2. EMINENT DOMAIN.

### Article 2. Procedures and Proceedings.

#### § 9227. Immediate Possession Procedure: Generally.

**Case Annotations:** *Estate of Muna v. Commonwealth,* 2007 MP 16, 7 N.M.I. 473 (2007).

## CHAPTER 7. PUBLIC EMPLOYEES STRIKE ACT.

#### § 9708. Mediation.

**Case Annotations:** *PAC United Corp. (CNMI) v. Guam Concrete Builders,* 2002 MP 15, 6 N.M.I. 446 (2002).

## CHAPTER 9. OPEN GOVERNMENT MEETINGS AND RECORDS.

#### § 9901. Legislative Declaration.

**Case Annotations:** *NMI Scholarship Board v. Superior Ct.,* 2007 MP 10, 7 N.M.I. 434 (2007).

#### § 9913. Legislative Branch: Applicability.

~~The public records of the Legislative Bureau shall be subject to 1 CMC § 9917. Any request to make a public record available for inspection or copying pursuant to 1 CMC § 9917 shall be subject to the exemptions listed in 1 CMC § 9918.~~

The Commonwealth Legislature, including all Commonwealth legislators and the Legislative Bureau, shall be subject to 1 CMC § 9901, *et seq.* The respective rules and procedures of the Senate, the House of Representatives, and the Legislative Bureau shall be in compliance with this chapter.

**Source:** . . . PL 15-19, § 2; Popular Initiative (2009).

**Commission Comment:** PL 15-19 was enacted on June 26, 2006 and contained the following findings and purpose provision in addition to severability and savings clauses:

> Section 1. Findings and Purpose. The legislature finds and declares that the people of the Commonwealth do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The Legislative Bureau exists to aid the legislature in the conduct of the people's business. It is the intent of this Act that the public records of the Legislative Bureau be subject to the Open Government Act. The people insist on remaining informed so that they may retain control over the instruments they have created.

Popular Initiative 2009 regarding the application of the Open Government Act to the Legislature became effective on November 9, 2009 when the election results for 2009 were certified by the Election Commission.

## § 9918. Certain Personal and Other Records Exempt.

**Case Annotations:** *NMI Scholarship Board v. Superior Ct.,* 2007 MP 10, 7 N.M.I. 434 (2007).