



HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE
COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE
P.O. BOX 500586 SAIPAN, MP 96950

CELINA R. BABAUTA
CHAIRPERSON
JUDICIARY AND GOVERNMENTAL OPERATIONS COMMITTEE

Adopted - 10/18/2022
STANDING COMMITTEE REPORT NO. 22-56
DATE: AUGUST 18, 2022
RE: H.B. 22-30

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations to which was referred:

H. B. No. 22-30:

“To grant the Legislature a reasonable allowance, to define a “reasonable allowance”, to set the amount of the allowance, and to certify it as a public purpose.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 22-30 be passed by the House in the form of House Draft 1.

II. ANALYSIS:

A. Purpose:

The purpose of House Bill No. 22-30 is to grant the Legislature a reasonable allowance, to define a “reasonable allowance”, to set the amount of the allowance, and to certify it as a public purpose.

B. Amendments:

In addition to non-substantive technical amendments, the Committee made the following amendments to strengthen the intent of House Bill No. 22-30.

- Page 1
 - Line 1, after the word “the”:
 - **Delete** “NMI”
 - Line 2, after the word “Constitution”:
 - **Insert** “of the Commonwealth of the Northern Mariana Islands”
 - Line 5, after the word “and:
 - **Insert** “has”
 - Line 5, after the word “instead”:
 - **Delete** “has”
 - Line 7:
 - **Insert** “The Office of the Attorney General’s legal opinion, OAC-21-02, regarding the Legislative Allowances notes: “The Commonwealth Supreme Court has recognized that the term ‘as provided by law’ means the provision is not self-executing, and requires further action to gain the force of law. Public Law 20-67 is a valid law enacted by the Legislature and signed by the Governor that appropriates funds for ‘expenditures authorized by the adopted rules of the House of Representatives.’ The passage of Public Law 20-67 satisfies the provided-by-law requirement.” The attorney general further stated that a reasonable allowance is around \$30,000.00, though an increase in legislators’ salaries may reduce this amount. The OAG noted that the “Commonwealth Constitution Article II, Section 16(f) explicitly

prohibits legislators from using any appropriation for the Legislature other than their salaries on personal or political expenses. Section 16(f) provides: ‘No part of the appropriations for the legislature or the legislative bureau, other than a member’s salary, may be used for personal or political activities.’ The Allowance appears to be for personal expenses, i.e., ‘to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business.’ House Legislative Initiative 10-8, SS1 added Section 16(f) ‘to prevent the Legislative Members from abusing the limited budget of the legislative bureau for their own purposes for their self-indulgence.’ Article II, Section 16(f) was added to the Constitution to address precisely this kind of conduct by legislators.”

- Page 4

- Line 17, after the word “organizations;”:
 - **Delete** “intrastate and interstate travel-related”
- Line 18, after the word “expenses”:
 - **Insert** “related to interisland travel and travel outside of the CNMI”

- Page 7

- Line 3, after the word “meals).”:
 - **Insert** “These expenses are subject to other CNMI statutory restrictions, including the airfare and per diem restrictions set forth in 1 CMC § 7407, and applicable regulations.”
- Line 8, after the word “employees”:
 - **Insert** “or other legislative staffers,”

- Line 10, after the word “elected.”:
 - **Delete** “A vendor is one that provides maintenance and support for equipment and software under a valid contract or working on a time and material basis.”
- Page 9
 - Line 4, after the word “status.”:
 - **Delete** “These expenses are subject to other CNMI statutory restrictions, including the airfare and per diem restrictions set forth in 1 CMC § 7407.”
- Page 10
 - Line 7:
 - **Insert** “(h) Bar on Double Compensation. Members may receive reimbursements for expenses associated with official travel from the legislative allowance or via regular travel per diem or stipends from the Department of Finance, but not both at the same time.”
- Page 11
 - Line 2, after the word “document”:
 - **Insert** “and shall be made available online”
 - Line 12:
 - **Insert** “(H) Record Keeping. Each member who draws an allowance authorized under this Act shall maintain a record of all transactions, including corresponding receipts and public purpose justifications. The records shall be public records.”

C. Committee Findings:

Your Committee finds that in addition to their salaries, elected officials are given privilege to a certain amount of public funds for allowance purposes. Such funds can be utilized for office supplies and staffing; out-of-district traveling; and certain benefits.¹ All of which must fulfill a good amount of benefit to the general public. To avoid misuse and abuse of such funds, each state possesses their own rules and regulations in regards to how their allowances were expended. Furthermore, each state consists of their own per diem rates that are considered reasonable by their own standards. In lieu with other jurisdictions, it is important for the Commonwealth of the Northern Mariana Islands to establish our own set of rules and regulations of allowance expenditures to further ensure that such funds are reasonably utilized to achieve a certain level of public benefit.

Your Committee also finds that pursuant to Article II, Section 10 of the Constitution of the CNMI, the members of the Legislature are given a respective salary and a reasonable allowance for expenses “provided by law”. Pursuant to this constitutional mandate, it respectfully states that allowances must be provided by law. However, throughout the years, the term “reasonable allowance” has only been addressed through legislative rules and resolutions that lack the necessary force of law. Pursuant to the Office of the Attorney General’s legal opinion, OAC-21-02, such opinion clearly states, “The Commonwealth Supreme Court has recognized that the term ‘as provided by law’ means the provision is not self-executing, and requires further action to gain the force of law....” As stated by our Supreme Court, it is highly necessary to enact a law that would grant such force, especially in regards to “reasonable allowance”.

Your Committee further finds that pursuant to Office of the Public Auditor Report No. AR-03-05, OPA’s review of the Constitution, statutes, regulations, Senate Resolutions and Rules, quoted air fares and applicable per diems show that allowances for expenses must be in the form of a law. Further, the OPA felt that certain travel costs for certain senators were excessive and unreasonable. In addition, OPA found that the Senate rules and resolutions do not provide assurance that senators were not reimbursed for items covered under their allowances. In accordance with Article II, Section 10 of the Constitution, it is important to use this constitutional mandate as a foundation for implementing necessary procedures to ensure that legislative allowances are utilized in an ethical and prudent manner.

It is the intent of your Committee to amend the proposed legislation to incorporate the some changes recommended by the Office of the Public Auditor (OPA); OPA Report No. AR-03-05; and the Attorney General’s Legal Opinion, numbered as OAC-21-02, in regards to “Legislative Allowance”. Such amendments included more information in Section 1 (Findings and Purpose); establish travel restrictions pursuant to 1 CMC §7407; prohibit double compensation in regards to reimbursements and travel per diems/stipends; and for the maintenance of records of transactions when a member draws an allowance. Therefore, your Committee agrees with the intent and purpose of House Bill No. 22-30 and recommends its passage in the form of House Draft 1.

¹ <https://www.ncsl.org/research/about-state-legislatures/2021-legislator-compensation.aspx>

D. Public Comments:

The Committee received comments from the following:

- Ashley Kost, Legal Counsel, Office of the Public Auditor

E. Legislative History:

House Bill No. 22-30 was introduced by Representative Christina M.E. Sablan on March 16, 2021 to the full body of the House and was referred to the House Standing Committee on Judiciary and Governmental Operations for disposition.

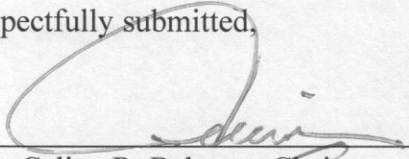
F. Cost Benefit:

The enactment of House Bill No. 22-30, HD1 will not result in additional cost to the CNMI government for the intent of the proposed legislation is to establish a respective set of laws pursuant to Article II, Section 10 of the Constitution of the Commonwealth of the Northern Mariana Islands. The stated constitutional provision allows for the legislators' annual salary and reasonable allowances for expenses provided by law. The proposed legislation aims to fulfill that provision.

III. CONCLUSION:

The Committee is in accord with the intent and purpose of H. B. NO. 22-30, and recommends its passage in the form of House Draft 1.

Respectfully submitted,



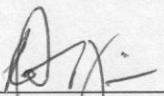
Rep. Celina R. Babauta, Chairperson



Rep. Blas Jonathan "BJ" T. Attao, Vice Chair



Rep. Vicente C. Camacho, Member



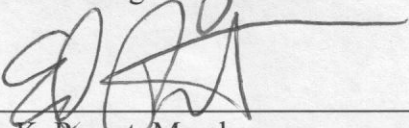
Rep. Richard T. Lizama, Member



Rep. Donald M. Manglona, Member

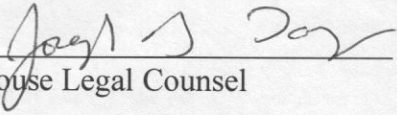


Rep. Christina M.E. Sablan, Member



Rep. Edwin K. Propst, Member

Reviewed by:


House Legal Counsel

Attachment:

- Office of the Public Auditor Report No. AR-03-05;
- Attorney General's Legal Opinion on Legislative Allowances (OAC-21-02); and
- Letter dated April 14, 2022 from the Legal Counsel of the Office of the Public Auditor.

EXECUTIVE SUMMARY

Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002

Report No. AR-03-05, dated August 6, 2003

Summary

This report presents the Office of the Public Auditor's (OPA) evaluation of the monthly subsistence allowance provided to the members of the Senate for the Thirteenth Legislature in the Commonwealth of the Northern Mariana Islands (CNMI). The evaluation's objectives were to determine whether: (a) the Senate has authority to grant the monthly \$5,000 subsistence allowance; (b) the amount of the \$5,000 monthly allowance satisfies public purpose requirements; (c) senators receiving monthly allowances are required to submit documentation detailing travel; and (d) the Commonwealth is compensating senators twice for items covered by the monthly subsistence allowance.

Senators from the First Senatorial District (Rota), Second Senatorial District (Tinian and Aguiguan) and Third Senatorial District (Saipan and the Northern Islands) receive a monthly subsistence allowance for local inter-island travel within the CNMI. The allowance is based upon Senate rules and resolutions.

Our review of the NMI Constitution, statutes, regulations, legislative resolutions and rules, current quoted air fares, and applicable per diem rates show that the monthly travel expenses for Rota and Tinian senators are likely to be considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan, resulting in an unjustified personal benefit to the senators in violation of public purpose.

Reasonableness of \$5,000 Monthly Travel Allowance for Tinian and Rota Senators Traveling to Saipan

When Per Diem is Based Upon:	Excessive Monthly Allowance Under Different Scenarios		
	Daily Trips	Weekly Trips	Monthly Trips
Full \$175 Per Diem Regardless of Whether Overnight Trips Were Made			
Rota	(\$34)	\$1,720	\$961
Tinian	1,265	1,980	1,021
\$87.50 Per Diem in Lieu of the Full \$175 Per Diem Because Overnight Trips Not Made			
Rota	1,387	2,004	1,027
Tinian	2,686	2,264	1,087

Our review also found:

- while the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law require allowances for expenses to be in the form of a law;
- the Commonwealth is likely paying the six senators from Rota and Tinian \$104,216 annually in excess of reasonable travel costs;
- although current laws and regulations applicable to the Senate appear to require submission of documentation for travel covered by the monthly allowance, senators are not filing such documentation; and

- finally, Senate rules and resolutions do not provide adequate assurance that senators are not reimbursed for items already covered by the allowance, i.e. concurrent travel.

Accordingly, we recommend that the Senate:

- 1) introduce legislation to grant it authority for the subsistence allowance and its amount, to set the amount of the allowance, and to certify it as a public purpose;
- 2) undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred;
- 3) document travel activity to enable it to more accurately estimate an appropriate monthly allowance;
- 4) require that travelers document trip activities to ensure compliance with applicable regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount; and
- 5) draft amendments to current legislation or other travel policies to prevent senators from being reimbursed for other concurrent travel.

In a letter response dated June 25, 2003, the Senate agreed with recommendations 2, 3, and 5. More specifically, the Senate agreed to replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse senators for expenses incurred in the exercise of their constitutional duties. The Senate also agreed to conduct an analysis of travel expenses to ensure that the new per diem rate was reasonable. Further, it agreed to adopt policies to ensure compliance with public purpose requirements. Also, the Senate confirmed that any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures. Finally, it agreed to take action to ensure that members of the Senate do not receive "double compensation" for travel costs.

The Senate did not, however, adequately respond to recommendations 1 and 4. More specifically, the Senate did not agree:

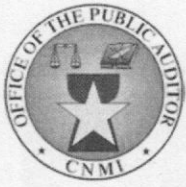
- with OPA's position that authority for the monthly subsistence allowance, created in the Senate rules, must be in the form of a law. Instead the Senate asserts that it has the implied statutory authority to establish the subsistence allowance for its members by Senate rule; or
- to submit travel vouchers documenting travel purpose and expenses.

Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

**CNMI Senate
Monthly Subsistence Allowance
Provided to Members of the Senate
Covering the Six Months Ending June 30, 2002**



Audit Report
AR-03-05



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

World Wide Web Site: <http://opacnmi.com>

1236 Yap Drive

Capitol Hill, Saipan, MP 96950

Mailing Address:
P.O. Box 501399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: (670) 322-6481
Fax: (670) 322-7812

August 6, 2003

The Honorable Paul A. Manglona
President of the Senate
Thirteenth Northern Marianas Commonwealth Legislature
P.O. Box 500129
Saipan, MP 96950

The Honorable Ramon S. Guerrero
Senator
Thirteenth Northern Marianas Commonwealth Legislature
P.O. Box 500129
Saipan, MP 96950

Dear President Manglona and Senator Guerrero:

**Subject: Monthly Subsistence Allowance Provided to Members of the Senate
Covering the Six Months Ending June 30, 2002 (Report No. AR-03-05)**

This report presents the Office of the Public Auditor's (OPA) evaluation of the monthly subsistence allowance provided to the members of the Senate for the Thirteenth Legislature in the Commonwealth of the Northern Mariana Islands (CNMI). The evaluation's objectives were to determine whether: (a) the Senate has authority to grant the monthly \$5,000 subsistence allowance; (b) the amount of the \$5,000 monthly allowance satisfies public purpose requirements; (c) senators receiving monthly allowances are required to submit documentation detailing travel; and (d) the Commonwealth is compensating senators twice for items covered by the monthly subsistence allowance.

BACKGROUND

Senators from the First Senatorial District (Rota), Second Senatorial District (Tinian and Aguiguan) and Third Senatorial District (Saipan and the Northern Islands) receive a monthly subsistence allowance for local inter-island travel within the CNMI. The allowance is based upon Senate rules and resolutions.

On March 15, 2002, Senator Ramon S. Guerrero requested the Office of the Public Auditor to review the monthly subsistence allowance received by senators from Rota and Tinian.¹ Later, in a meeting on June 11, 2002, Senate President Paul Manglona, Senator Joaquin Adriano, and Senator Ricardo Atalig requested OPA to broaden the request to include other areas which will be addressed in a separate report.

The Senate has periodically increased the subsistence allowance, which initially applied only to senators from Rota and Tinian, and has more recently provided a similar allowance to senators from Saipan.

- On February 24, 1999, the Senate adopted Senate Resolution 11-30 setting the monthly allowance at \$5,000. According to the resolution, senators would no longer receive housing allowances or blanket travel authorizations and “reimbursement is permitted upon legal review by the Senate Legal Counsel.”
- On July 3, 2002, the Senate for the Thirteenth Legislature adopted Official Rules. Rule 12, section 2(a)(6) provides that Members of the Senate from Rota and Tinian may use a portion of the funds under their individual office accounts as an allowance to defray the costs of food, lodging, transportation, and other expenses they incur by reason of their presence on Saipan on legislative business, in accordance with any Senate resolution relative to such subsistence costs allowances. It further provided that members of the Senate from the Third Senatorial District shall receive a legislative allowance from funds under their individual office accounts to defray the cost of food, lodging and transportation and other related expense incurred while on legislative business in the First or Second Senatorial Districts. According to the rule, the allowance shall be \$2,000 per month if the member is a chairperson of a standing or special committee and \$1,000 per month per committee, standing or special, of which the member is a member, but in no event shall a member from the Third Senatorial District receive more than \$5,000 per month under this Rule.
- Senate Resolution 13-19, adopted on August 16, 2002, increased the Senate per diem rates for travel within the CNMI to \$175 per day. The resolution provided that if a senator spends eight hours away from his island of residence he is entitled to a stipend equal to the full per diem rate. If a senator spends less than eight hours on travel within the Commonwealth, he is entitled to receive a stipend equal to fifty percent of the daily per diem rate, which equals \$87.50.

¹ When OPA received Senator Guerrero’s request on March 15, 2002, the Interim Rules of the Thirteenth Senate were in effect, which provided the allowance only to senators of the First Senatorial District (Rota) and Second Senatorial District (Tinian and Aguigan). Subsequently, on July 3, 2002, the Thirteenth Senate adopted final rules which provided for allowances to senators of the Third Senatorial District (Saipan and the islands to the north of it) in amounts ranging from \$1,000 to \$5,000 calculated based upon the number of committees of which the senator is a member or chairs.

Senate Rule 12, section 2(a)(6), together with Senate Resolution 11-30, authorized Rota and Tinian senators to receive a monthly allowance of \$5,000 and allowed senators from Saipan to receive up to \$5,000 per month, based on the number of committees the senator chairs or serves as a member, while Senate Resolution 13-19 increased the per diem rates for travel within the CNMI to \$175.

OBJECTIVE, SCOPE, AND METHODOLOGY

OPA's evaluation had four objectives:

- Does the Senate have authority to grant the monthly \$5,000 allowance?
- Does the amount of the \$5,000 monthly allowance meet public purpose requirements?
- Are senators who receive monthly allowances required to submit documentation detailing travel?
- Is the Commonwealth compensating senators twice for items covered by the monthly subsistence allowance?

To address our 1st objective, namely to determine whether the Senate has authority to grant the monthly subsistence allowance, we reviewed the applicable provisions in the Constitution of the Northern Mariana Islands (NMI), statutes, regulations and legislative resolutions and rules.

To address our 2nd objective, namely to determine whether the amount of the monthly subsistence allowance comports with public purpose requirements, we utilized current quoted air fares and applicable per diem rates to determine if estimates of reasonable travel expenses approximated the current allowance.

To address our 3rd objective, namely to determine whether senators receiving the allowance need to submit travel documentation, we reviewed the applicable provisions in the NMI Constitution, statutes, regulations and legislative resolutions and rules.

To address our 4th objective, namely to determine whether the Commonwealth is providing duplicate compensation to senators for items covered by the monthly allowance, we reviewed the applicable Senate rules and resolutions and available financial documents.

Our evaluation was limited to: (a) reviewing documents obtained from the Department of Finance (DOF) and the CNMI Legislature relating to legislative expenditures and the monthly allowance, (b) conducting interviews with various legislative and DOF employees, (c) reviewing applicable airline flight costs, per diem rates, as well as the CNMI's consumer price index, (d) reviewing applicable provisions in the Constitution of the NMI, statutes, regulations and legislative rules, and (e) conducting analyses of average travel and subsistence costs to determine

reasonable travel expenses.

Our evaluation was conducted, where applicable, in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary to accomplish our objectives.

RESULTS OF EVALUATION

Our review of the NMI Constitution, statutes, regulations, Senate resolutions and rules, current quoted air fares, and applicable per diem rates shows that:

- while authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law require allowances for expenses to be in the form of a law;
- Rota and Tinian senators are likely to spend considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan resulting in an unjustified personal benefit to the senators in violation of public purpose;
- the Commonwealth is likely paying the senators \$104,216 annually in excess of reasonable travel costs;
- although current laws and regulations applicable to the Senate appear to require submission of documentation for travel covered by the monthly allowance, senators are not filing such documentation; and
- finally, Senate rules and resolutions do not provide adequate assurance that senators are not reimbursed for items already covered by the allowance, i.e. concurrent travel.

A. Authority to Grant Subsistence Allowance

The Senate's monthly subsistence allowance appears to have been improperly authorized. Based on the NMI Constitution, it appears such allowance for expenses should be authorized in the form of a law rather than a Senate rule or resolution.

Article X, Section 1 of the NMI Constitution mandates that Commonwealth funds be expended for a "public purpose" and it authorized "*the legislature*" to define public purpose. (Emphasis added). Public Law 11-84, the Public Purpose Definition Act of 1998, which was subsequently amended through Public Law 12-2, provided that:

[n]otwithstanding any other provision of this act or other law to the contrary, expenditures *authorized and regulated by legislative rules* are expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.” (Emphasis added.)

However, the Senate rules and resolutions authorizing the monthly allowance were not passed by “the legislature” as a whole, but rather independently by the Senate. OPA has concerns regarding the constitutionality of this portion of Public Law 12-2 as the CNMI Legislature, through Public Law 12-2, essentially changed the Constitutional mandate that public purpose be defined by law, and allowed it to be done by legislative rule.² Furthermore, 1 CMC §1251, which was enacted prior to, and not affected by, Public Law 12-2, states that “[l]egislators traveling away from their home islands on legislative business shall be paid such per diem as may be determined by *the legislature*.” (Emphasis added). This law also seems to contemplate that the funds provided to a legislator traveling outside of his or her home island is to be set by the “legislature” as a whole rather than the individual houses of the Legislature. Furthermore, Public Law 12-2 provides that legislators shall be paid per diem for travel away from their home islands and does not appear to contemplate or authorize subsistence in lieu of per diem.

In addition, Article II, Section 10 of the NMI Constitution states “[t]he members of the legislature shall receive an annual salary of eight thousand dollars and reasonable *allowances for expenses provided by law* . . .”³ (Emphasis added). Consequently, if the monthly subsistence allowances cover travel expenses related to a senator’s official duties, and are therefore “allowances for expenses,” and the authorization for those expenses would need to be provided for in the form of a law rather than a Senate rule.

As 1) the NMI Constitution mandates that the Legislature define public purpose in the form of law, 2) the NMI Constitution requires allowances for expenses provided by law, and 3) CNMI

² Relegating the defining of public purpose from a law to a legislative rule avoids the veto power of the governor and judicial review. (See, e.g. Mafnas v. Inos, Civ. Action No. 90-031, N.M.I. Super. Ct. Jan. 22, 1990, Memorandum Decision on Order to Show Cause for Declaratory Relief at n.16. In the absence of any law specifically authorizing judicial inquiry, court has no authority to inquire into or police administration of senate’s internal rules.). “The legislature cannot enact laws by a resolution, which merely expresses the agreement of the legislators without force of law.” Analysis of the Constitution of the CNMI, p. 43. It must be noted that, outside of the Senate’s traditional role of confirming executive nominations, “the Commonwealth Constitution contains no authorization for one house of the legislature to act unilaterally...”. Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 37). In addition, Mason’s Manual of Legislative Procedure, Section 12 (1) states “[a] legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot do directly.” Mason’s Manual of Legislative Procedure, Section 12 (2) at 21. Public Law 12-2 indirectly evades the mandate of the NMI Constitution that public purpose be set by the Legislature through a law.

³ The eight thousand dollar annual salary was only the initial compensation level set by the NMI Constitution. The NMI Constitution also provided a mechanism and formula for increases in the compensation levels of legislative members over the years.

statutory law requires that the legislature determine per diem, OPA recommends that the Legislature enact laws to address Senate/legislative travel and expenses to replace Senate rules and resolutions so as to forestall challenges to the constitutionality of the authority for the monthly subsistence allowance.

B. Satisfaction of Public Purpose

The NMI Constitution mandates that government funds only be expended for a public purpose. While providing senators funds for reasonable official travel expenses satisfies public purpose, any amount provided above reasonable travel expenses would violate public purpose.

The members of the Second Constitutional Convention set forth the intended limitations of the Legislature's authority to define public purpose by stating:⁴

'A public purpose is one that directly and substantially benefits the public welfare. The direct and substantial benefits to the welfare necessary for a finding of public purpose must be reasonably foreseeable and reasonably likely to occur. This section does not prohibit government participation with private investors in enterprises that will benefit the public welfare. *A public purpose does not include an objective that brings benefits only to a few persons or corporations, that results in profits most of which are exported from the Commonwealth to the benefit of persons in other countries, that redresses private wrongs or that improves private property.*' (Emphasis added.)⁵

While Public Law 12-2 states that the Legislature may define public purpose through legislative rule, this authority must be interpreted in light of guidance set forth by the Committee in its Report to the Convention if it is to be consistent with the constitutional intent and its intended limitations. Therefore, to comply with the public purpose requirement, the Senate must set the allowance at a level that ensures a direct and substantial benefit to the public welfare without benefit to selective persons or to improving private property.

Article II, Section 10 of the NMI Constitution also mandates that the allowance legislators receive should be "reasonable." It states "[t]he members of the legislature shall receive an annual salary of eight thousand dollars and *reasonable allowances* for expenses provided by law..." As the monthly allowances are for expenses, pursuant to this section they must be both reasonable and provided for by law. (Emphasis added.)

⁴ The original version of Article X, Section 1 of the NMI Constitution did not provide for the Legislature to define public purpose. The change to the NMI Constitution granting such power to the Legislature came from ratification of Amendment 28 of the Second Constitutional Convention.

⁵ Committee Recommendation No. 33, Report To The Convention By The Committee on Finance And Other Matters. (Adopted, as amended, by the Committee of the Whole and the Convention on July 12, 1985.)

Given these constitutional principles, it is important to understand that each senator has a dual responsibility, namely to be: (1) responsive to their constituents which requires a presence in their legislative district and, (2) responsible to their legislative duties which require their attendance at official functions in Saipan, Rota, and Tinian. If senators are to be compensated for travel expenses incurred in carrying out their official duties, the per diem or allowance must still be reasonable and comply with public purpose. However, the Senate rules and resolutions do not provide clear guidance on what basis was used to set the monthly allowance at \$5,000. It therefore cannot be clearly determined if: 1) such amount is reasonable and in compliance with the public purpose requirement, or 2) whether the allowance provides an unjustified personal benefit.

If the \$5,000 monthly allowance was based on the average cost of hotel lodging, airline fares, and past expenditures for such items, the allowance might be reasonable. However, if these costs are less than \$5,000 per month, the allowance would benefit a few, namely the legislators, contrary to the limitations set forth by Article X, Section 1 of the NMI Constitution.

The Senate has indicated that it intended to conserve Commonwealth funds when it established the monthly allowance. Its justification, set forth in Senate Resolution 8-1 was “to *save public funds* by setting a maximum and yet *reasonable* limit on monthly subsistence allowance to senators rather than utilizing the established per diem rate for Saipan, which would cause a severe and unnecessary strain on available financial resources.” (Emphasis added.)⁶

OPA attempted to determine whether the fixed monthly allowance generates a public savings or is even reasonably related to estimated costs of travel. OPA compared the \$5,000 allowance with estimated per diem and air fares, assuming that senators from Rota and Tinian spent three-fourths of their time (75%) in Saipan on official business. This is a generous presumption as Senate attendance records indicate that, on average, the Senate only holds about two single day sessions each month in Saipan. While senators need to travel to Saipan for more than just attendance at legislative sessions, the number of monthly Senate sessions held indicates that OPA’s assumption that members spend not less than 75 percent of their time in Saipan is generous.

To analyze the reasonableness of the \$5,000 allowance, OPA:

- computed the number of days a senator would have to travel to Saipan to incur \$5,000 in costs associated with travel, lodging, and incidentals, and
- compared the allowance with estimated travel costs under different travel scenarios.

⁶ Senate Resolution 8-1.

The results of these analyses follow.

Number of Trips Needed by Rota and Tinian Senators to Incur \$5,000 in Travel Costs

Our analyses show that the \$5,000 allowance is unreasonably high given the number of daily trips a Rota or Tinian senator would need to take to Saipan to incur \$5,000 in costs associated with travel, lodging, and incidentals. OPA used per diem rates set forth in Senate Resolution 13-19 which authorizes full per diem of \$175 for senate travel exceeding 8 hours regardless of whether or not an overnight stay is involved, and provides a stipend of \$87.50 for any trip under 8 hours.

The Senate's policy of providing a full per diem rate without considering whether or not the traveler stays overnight is unreasonable. Full per diem rate assumes that an individual needs overnight accommodation, and is, therefore, partially based on hotel room rates. If a traveler does not spend the night, it seems arbitrary and without sound basis that a trip of more than 8 hours, including flight time, would justify a full per diem rate. According to the Department of Finance, the non-overnight travel stipend for the Executive Branch is \$15. This is likely insufficient given current food costs. The Senate's \$87.50 stipend rate, though still high for food costs alone, is more reasonable than \$175 for an individual who made a day trip of more than 8 hours but returned home by the end of the day and, therefore, did not require overnight lodging.

Our analysis of the number of travel days required to incur \$5,000 in costs associated with travel, lodging, and incidentals, where senators receive full per diem of \$175 regardless of whether or not they stayed overnight, shows that the allowance is unnecessarily high. To illustrate, Rota senators would need to make 16 round trips per month to Saipan to incur \$5,000 in travel expenses, while Tinian senators would likewise need to make 22 round trips, meaning they would spend practically every work day in Saipan.

For non-overnight travel the \$175 per diem rate appears overly generous as it compensates senators for lodging not necessarily used. Calculations based on the more reasonable daily stipend rate of \$87.50 for non-overnight stays show that Tinian senators would need to make 35 round trips per month and Rota senators would need to make 23 round trips per month to justify the \$5,000 monthly allowance. The 35 round trips from Tinian per month is clearly unrealistic. It is also unreasonable to assume that a Rota senator makes 23 day trips to Saipan per month. See **Appendix A** for the analysis.

Likely Travel Costs for Rota and Tinian Senators under Various Travel Scenarios

OPA reviewed three scenarios, namely, daily, weekly, and monthly travel to Saipan. OPA found that the allowance was excessive in every scenario, except the daily travel scenario from Rota where full per diem (\$175) would be received despite the senator not staying overnight.

- Under the daily travel scenario a senator would arrive in Saipan in the morning of each day and would return to the home island at the end of the day. Under this scenario, the total

cost of travel would be the corresponding daily air fare and daily stipend for non-overnight travel (either \$87.50 for less than 8 hours or \$175 for more than 8 hours).

- Under the weekly travel scenario, a senator would arrive on Saipan on Monday morning and could return to his home island on Friday afternoon, having spent four nights at the full overnight per diem rate and a single day of less than full day per diem (for Friday) plus corresponding airfare.
- Under the monthly travel scenario, a senator would arrive on Saipan on the first of the month and would return to his home island at the end of the month. Costs would include per diem for each day of the month and the one round trip air fare.

Under the daily scenario where a senator can receive per diem of \$175 despite travel being non-overnight, a Rota senator's estimated travel costs would only exceed his monthly allowance by \$34 per month. This assumed that the senator spent 75 percent of his time in Saipan, took no off-island trips on other official business, never took any personal time, and only spent one week per month in Rota. For all other scenarios, the monthly allowance provided to senators exceeded estimated travel costs by amounts ranging from \$961 to \$2,686 per senator. These amounts in excess of estimated travel costs are difficult to justify and clearly exceed public purpose limitations.

Reasonableness of \$5,000 Monthly Travel Allowance for Tinian and Rota Senators Traveling to Saipan⁷

When Per Diem is Based Upon:	Excessive Monthly Allowance Under Different Scenarios		
	Daily Trips	Weekly Trips	Monthly Trips
Full \$175 Per Diem Regardless of Whether Overnight Trips Were Made			
Rota	(\$34)	\$1,720	\$961
Tinian	1,265	1,980	1,021
\$87.50 Per Diem in Lieu of the Full \$175 Per Diem Because Overnight Trips Not Made			
Rota	1,387	2,004	1,027
Tinian	2,686	2,264	1,087

⁷ OPA assumed that Senators spend 75 percent of their time in Saipan while making daily, weekly, or monthly round trips to their home island.

See **Appendix B** for OPA's detailed computation of the reasonableness of the \$5,000 subsistence allowance under daily, weekly, and monthly scenarios.

OPA calculated that if Rota and Tinian senators spend no less than 75 percent of their time in Saipan, the Commonwealth is likely paying the six senators via the monthly allowance \$104,216 annually in excess of estimated travel costs. See **Appendix C**.

Allowance provided to Saipan Senators

Although current Senate rules provide that Saipan senators are eligible to receive a monthly allowance of between \$1,000 to \$5,000 depending on the number of committees chaired or served, such allowance seems unreasonable given that:

- travel costs should be less than that of Rota and Tinian senators as most legislative meetings are held in Saipan.
- a Saipan senator would need to make at least 5 round trips to Rota or Tinian each month to fully utilize a \$1,000 allowance, and 11 round trips to utilize \$2,000.

The NMI Constitution mandates that allowances for expenses must be reasonable, and requires that expenditures must have a direct and substantial benefit to the public welfare. Article II, Section 10 of the NMI Constitution mandates "*reasonable allowances* for expenses." Setting the monthly allowances above reasonable travel costs violates both of these provisions, and results in an unjustified benefit to the senators receiving the allowance in violation of these constitutional provisions.

C. Documentation Needed

While both the NMI Constitution and CNMI law appear to require that the Legislature account for its travel, senators do not document travel covered by their allowances. Article X, Section 8 of the NMI Constitution states:

[t]he Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall *promulgate regulations* including accounting procedures that require public officials to provide *full and reasonable documentation* that *public funds* are expended for public purposes." (Emphasis added.)

This authority extends to legislative expenditures⁸ and indicates that there is an expectation that government expenditures be fully accounted for and documented.

DOF regulations, adopted in the September 20, 2000 Commonwealth Register Volume 22, Number 9, page 17489, et seq., (“DOF Regulations”), to provide uniform standards for the control of public funds do not specifically address monthly allowances. However, two definitions addressing a “Travel Authorization Form” and “Travel Voucher Form” contained in such regulations do provide guidance. Such guidance, in Section 1100.3(v) of the DOF Regulations, requires government travelers to file a travel voucher for “*travel allowances, per diem, honorarium, or other expenses*” and would seem to cover the Senate’s monthly allowance which are intended to be a substitute for per diem. (Emphasis added)⁹

Furthermore, DOF Regulations and CNMI law indicate that the Government will not expend funds unless the expenditure is documented. More specifically, section 1100.6 of the DOF Regulations states:

Unallowable or *undocumented* official representation and *other expenditures will not be reimbursed or paid* by the CNMI Government. In cases where payments for such unallowable or *undocumented* expenses have been made from CNMI Government funds such as *travel or other advances*, imprest funds or other government funds, the responsible party who incurred the expense will pay or reimburse the CNMI Government for these expenditures. If not paid in a timely manner, such costs may be recovered, after notice through payroll deductions, or other means authorized by law. (Emphasis added)

This documentation requirement is also found in 1 CMC §7407(a) which states that:

Every government travel authorization shall contain a statement under penalty of perjury that the travel is for official business purposes and undertaken to benefit the people of the Commonwealth.

⁸ Public funds are used to pay Senators’ monthly subsistence allowance. Furthermore, discussions of the Second Constitution Convention members relating to Committee Recommendation 59, (which later became Article X section 8) focused on the Department of Finance’s authority to issue “regulations” that would apply to all branches of government.

⁹ When per diem is provided, travelers need not document expenses such as meals and incidental items, and the traveler is also permitted to retain the unspent amounts. However, to receive a per diem, an individual must complete a travel authorization and file a travel voucher upon completion of travel detailing trip activities.

In addition, 1 CMC §7407(b) requires that:

Within 15 days after completion of government travel, the traveler shall submit a detailed trip report and documented travel expenditures to the approving authority. The submissions shall be a public record. A person who has failed to make a timely submission shall not receive travel advances until his untimely submission is remedied.

These provisions, which apply to the Senate, also appear to apply to the monthly allowances, as the allowances are for Senate travel, which is “government travel.” Furthermore, the applicable Senate rules and resolutions do not contain language specifically excusing senators who receive monthly allowances from reporting on the travel activities covered by the funds.¹⁰ To the contrary, Senate Rule 12, Section 2(b)(1) provides that expenditures, whenever appropriate, shall follow the “standard procurement, purchase, *travel, per diem* and contract format.” (Emphasis added).

In addition, Senate Resolution 11-30 indicates that reimbursement connected to the monthly allowance is permitted upon legal review by the Senate Legal Counsel. While this can not serve as a substitute for the requirements set forth in public law and the constitutionally mandated DOF regulations, it does indicate that some documentation must be provided by the Senators, for review, to the Senate Legal Counsel.¹¹ Therefore, in order to comply with the law and to receive the monthly allowance, senators must file travel authorizations and travel vouchers or be liable to the Commonwealth for such funds pursuant to Section 1100.6 of the DOF Regulations.

While this analysis seems fairly straightforward, an issue arises because Public Law 12-2 created a different standard for expenditures authorized by legislative rules as compared to other expenditures of public funds. Normally expense items are submitted to DOF for payment and, if the Secretary of Finance denies payment because they are not found to be for public purpose, the burden is on the entity or individual submitting the request for payment to establish that the expenditures constitute a public purpose. According to Article X, Section 8 of the NMI Constitution, DOF regulates public funds and sets procedures for public officials to provide “full and reasonable documentation that public funds are expended for public purpose” thus placing a burden on the party requesting payment to show public purpose. If someone objects to the Secretary of Finance’s refusal to pay, he or she could seek remedy in a civil suit employing the

¹⁰ Given Article X, Section 8 of the NMI Constitution mandate, the legislative rules or resolutions can not override the DOF Regulation’s reporting requirements.

¹¹ Senate Legal counsel advised OPA that the Senate was not bound by this language given that it is contained in a “whereas” clause. However, the “resolved” language of the resolution adopts the increased per diem stating that the “Senate agrees with the maximum limit *as said above*.” The words “as said above” refer to the above “whereas” clauses. As such, there is some indication that the requirement for legal review was part of the intended resolution.

standard of preponderance of the evidence that the expenditure was for a public purpose.

According to Public Law 12-2, items authorized through legislative rules are presumed to be for a public purpose. If the Secretary of Finance refuses to pay them because of concern they do not satisfy public purpose, DOF would have to provide "clear and convincing evidence that the expenditure was in fact for a personal or political activity." This is a higher standard than the "preponderance of the evidence" standard used for other government expenses and more importantly it shifts the burden of proof from the expenditure authority to the DOF. Such differential treatment for legislative expenditures would seem contrary to the intention as indicated by the Constitutional framers of Article X, Section 8.

Nevertheless, while the burden of proof for denial of payments of travel expenses or allowances may differ, this does not negate the requirement that current regulations and laws appear to require submission of documentation regarding the travel covered by the monthly allowances. Given (1) these requirements, (2) the Senate rule stating that standard travel and per diem format be observed, and (3) the benefit the Legislature could derive from documenting and tracking travel to more accurately estimate actual travel expenses in setting the allowance amount, OPA suggests that senators receiving the allowance file travel documentation and substantiation as required by the DOF Control of Public Fund Regulations and Commonwealth law.

D. Possible Double Compensation of Travel Expenses

OPA noted a number of areas where senators might be receiving double reimbursement for the same travel:

- OPA is concerned that the current allowance system allows senators to receive double compensation for per diem when they travel to destinations other than Saipan both within and outside of the Commonwealth. OPA noted two instances during the 6 months ended June 30, 2002 where senators traveled out of the CNMI, and were reimbursed twice for the same period of time. A senator traveled to Manila and received \$804 in per diem for a five day trip, but still collected his full monthly allowance of \$5,000. This resulted in the senator being reimbursed twice for the five days he was out of the CNMI. In the other instance, a senator from Tinian traveled to Rota for two and a half days and received \$321.50 in per diem in addition to the full \$5,000 monthly allowance.
- Another area where double payment for the same item can occur concerns official representation reimbursements. Thirteenth Senate Rule 12, Section 2(a)(3) states that members can expend Senate funds for "food, beverage, entertainment, and similar expenses" and seek separate reimbursement for such costs upon submission of supporting documentation. If the monthly allowance was intended to be in lieu of per diem, there is a question of whether a senator should be reimbursed for food and meals under an official representation request, as this would essentially reimburse the senator twice for such expense.

- Finally, Senate Rule 12, Section 2(a)(6) states that the monthly allowance is intended to cover “food, lodging, transportation, and other expenses.” The phrase “other expenses” opens the door for uncertainty.¹² This language and the other issues raised above need to be analyzed to ensure that senators receiving monthly allowances are not compensated more than once for an expense.

OPA strongly suggests clarifications in these areas to resolve these issues.

CONCLUSIONS AND RECOMMENDATIONS

Although the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law appear to require it to be in the form of a law. Rota and Tinian senators are likely to spend considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan because the allowance has been set unreasonably high. This results in an unjustified personal benefit to the senators in violation of public purpose. OPA estimates that the Commonwealth is likely paying the six senators \$104,216 annually in excess of reasonable travel costs. Although current laws and regulations applicable to the Senate appear to require submission of documentation on the travel covered by the monthly allowance, senators are not filing such documentation. Finally, Senate rules and resolutions do not provide adequate assurance that senators are not compensated for items already covered by the allowance.

Accordingly, we recommend that the Senate:

1. introduce legislation to grant it authority for the subsistence allowance, to set the amount of the allowance, and to certify it as a public purpose;
2. undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred;
3. document travel activity to enable it to more accurately estimate an appropriate monthly allowance;
4. require that travelers document trip activities to ensure compliance with applicable

¹² The language in this rule for the Twelfth and Thirteenth Senate is the same. Senate Resolution 8-1, the initial resolution establishing the monthly allowance, authorized a Senate Committee to establish a “monthly subsistence and travel allowance.” The Resolution also provides that the allowance was to be used in lieu of per diem. Although per diem traditionally covers food and lodging, the Resolution used the term “monthly subsistence and travel” when establishing the allowance. By using the words “and travel” in the allowance, it appears the Resolution intended the allowance to cover food, lodging and air fare. The next resolution addressing the allowance, Senate Resolution 9-9, set the “monthly subsistence travel allowance” at \$2,000 per month using the same phrase, “monthly subsistence and travel allowance.” Senate Resolution 11-30, the current resolution addressing the monthly allowance established by Senate Resolution 8-1, increased the rate to \$5,000 per month.

regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount; and

5. amend legislation and/or travel policy to prevent senators from being reimbursed for other concurrent travel.

Senate Comments on Draft Report

The Senate provided OPA its initial written comments (See **Appendix D**) on June 12, 2003 by a letter dated May 29, 2003 which was accompanied by a Legal Opinion from its counsel concluding that the Senate had implied authority to establish a monthly subsistence allowance by legislative rule.

On June 17, 2003, OPA met with members of the Senate to discuss the Senate's response to OPA's draft report. The Senate subsequently responded by letter, dated June 25, 2003 (See **Appendix E**), to this discussion, and agreed with certain recommendations made by OPA. More specifically, the Senate agreed to:

- replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse Senators for expenses incurred in the exercise of their constitutional duties. This new system would apply only to travel within the Commonwealth.
- conduct an analysis of travel expenses to establish a new reasonable per diem rate.
- adopt policies to ensure compliance with public purpose requirements. Also, they agreed that any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures. They did not, however, agree to submit travel vouchers documenting travel purpose and expenses.
- take action to ensure that members of the Senate do not receive "double compensation" for travel costs.

The Senate did not, however, agree with OPA's position that authority for the monthly subsistence allowance, created in the Senate rules, must be in the form of a law. Instead, the Senate asserts that it has the implied statutory authority to establish the subsistence allowance for its members by Senate rule because Public Law 12-2, codified at 1 CMC §121(i) states that "expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose...". They further reasoned that this section "impliedly grants the Legislature the authority to authorize and regulate expenditures by legislative rule because it expressly refers to the existence of such expenditures and states that such expenditures are deemed to be for a public purpose."

OPA's Response

The Senate's response and agreements will, if carried through, satisfy or make moot all but two of OPA's recommendations: Recommendation No. 1, namely that the Senate provide for the subsistence allowance through law as required by the Constitution and existing Commonwealth laws, and Recommendation No. 4, namely the need to submit travel vouchers documenting travel. The remaining recommendations would be moot if the Senate: (a) abandons the allowance system and properly institutes a revolving reimbursement account, (b) properly sets reasonable researched per diem rates, and (c) requires proper substantiation and documentation. Those recommendations can be closed once the Senate completes these actions.

OPA disagrees that the Senate may impliedly grant itself the authority to create an allowance for expenses through its internal rules as the Constitution requires otherwise. More specifically,

- Article II, Section 5 states that the "legislature may not enact a law except by bill and no bill may be enacted without the approval of at least a majority of the votes cast in each house of legislature."
- Article II, Section 10 of the NMI Constitution allows the members of the legislature to "receive *reasonable allowance for expenses as provided by law.*"

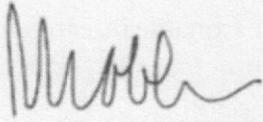
Therefore, until such time as allowances that have been created by the Senate rules are discontinued, OPA must reiterate that the potential for legal challenges to the constitutionality and the authority for the monthly allowance exists.

Actions or documents needed to consider these recommendations as closed are presented in **Appendix F**.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An open recommendation is one where no action or plan of action has been made by the client. A resolved recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A closed recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it.

Please provide us the status of recommendation implementation within 30 days along with documentation showing specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,



Michael S. Sablan, CPA
Public Auditor

cc: Members of the Thirteenth CNMI Senate
Governor
Lt. Governor
President of the Senate
Speaker of the House
Attorney General
Special Assistant for Management and Budget
Secretary of Finance
Press

Appendix A

Number of Round Trips that Rota and Tinian Senators Need to Make to Incur \$5,000 in Costs Associated with Travel, Lodging, and Incidentals

Travel Costs		Number of Round Trips Needed to Incur \$5,000 in Travel Costs
Using \$175 Per Diem Rate and Air Fare:		
Rota Senators	\$135 Air Fare & 175 Per Diem = \$310	$\$5,000/\$310 = 16$ trips
Tinian Senators	\$55 Air Fare & \$175 Per Diem = \$230	$\$5,000/\$230 = 22$ trips
Using \$87.50 Per Diem Rate and Air Fare:		
Rota Senators	\$135 Air Fare & 87.50 Per Diem = \$222	$\$5,000/\$222 = 23$ trips
Tinian Senators	\$55 Air Fare & \$87.50 Per Diem = \$143	$\$5,000/\$143 = 35$ trips

APPENDIX B
Page 1 of 4

Calculation of the Reasonableness of Subsistence For Rota Senators Under Daily, Weekly and Monthly Scenarios Using a \$175 Per Diem Rate	
DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$2,923
Non-Overnight Per Diem At \$175 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	3,789
Total Monthly Expenses With 100% Time Spent On Saipan	6,712
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	5,034
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	34
For 3 Senators	101
For 3 Senators Annually	\$1,217
WEEKLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x 4.33 Flights Per Month	\$585
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$175 Per Day x 4.33 Weeks Per Month	758
Total Monthly Expenses With 100% Time Spent On Saipan	4,373
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,280
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,720)
For 3 Senators	(5,160)
For 3 Senators Annually	(\$61,921)
MONTHLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x One Flight Per Month	\$135
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$175 x One Day	175
Total Monthly Expenses With 100% Time Spent On Saipan	5,385
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	4,039
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(961)
For 3 Senators	(2,884)
For 3 Senators Annually	(\$34,605)

Calculation of the Reasonableness of Subsistence For Tinian Senators Under Daily, Weekly and Monthly Scenarios Using a \$175 Per Diem Rate	
DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$55 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$1,191
Non-Overnight Per Diem At \$175 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	3,789
Total Monthly Expenses With 100% Time Spent On Saipan	4,980
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,735
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,265)
For 3 Senators	(3,796)
For 3 Senators Annually	(\$45,554)
WEEKLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x 4.33 Flights Per Month	\$238
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	758
Total Monthly Expenses With 100% Time Spent On Saipan	4,027
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,020
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,980)
For 3 Senators	(5,939)
For 3 Senators Annually	(\$71,274)
MONTHLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x One Flight Per Month	\$55
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	175
Total Monthly Expenses With 100% Time Spent On Saipan	5,305
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,979
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,021)
For 3 Senators	(3,064)
For 3 Senators Annually	(\$36,765)

Calculation of the Reasonableness of Subsistence For Rota Senators Under Daily, Weekly and Monthly Scenarios Using a \$175 Per Diem Rate for Overnight Travel & \$87.50 For Non-Overnight Travel	
DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$2,923
Non-Overnight Per Diem At \$87.5 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	1,894
Total Monthly Expenses With 100% Time Spent On Saipan	4,817
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,613
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,387)
For 3 Senators	(4,161)
For 3 Senators Annually	(\$49,938)
WEEKLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x 4.33 Flights Per Month	\$585
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	379
Total Monthly Expenses With 100% Time Spent On Saipan	3,994
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,996
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,004)
For 3 Senators	(6,013)
For 3 Senators Annually	(\$72,151)
MONTHLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x One Flight Per Month	\$135
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	88
Total Monthly Expenses With 100% Time Spent On Saipan	5,298
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,973
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,027)
For 3 Senators	(3,081)
For 3 Senators Annually	(\$36,968)

Calculation of the Reasonableness of Subsistence For Tinian Senators Under Daily, Weekly and Monthly Scenarios
Using a \$175 Per Diem Rate for Overnight Travel & \$87.50

DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$55 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$1,191
Non-Overnight Per Diem At \$87.50 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	1,894
Total Monthly Expenses With 100% Time Spent On Saipan	3,085
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,314
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,686)
For 3 Senators	(8,058)
For 3 Senators Annually	(\$96,702)
WEEKLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x 4.33 Flights Per Month	\$238
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	379
Total Monthly Expenses With 100% Time Spent On Saipan	3,648
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,736
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,264)
For 3 Senators	(6,792)
For 3 Senators Annually	(\$81,503)
MONTHLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x One Flight Per Month	\$55
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	88
Total Monthly Expenses With 100% Time Spent On Saipan	5,218
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,913
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,087)
For 3 Senators	(3,261)
For 3 Senators Annually	(\$39,128)

* 4.33 Weeks In a Month Is Derived as Follows: 365 Days per Year Divided by 12 Months Divided by 7 Days Equal 4.33 Weeks.

APPENDIX C

Summary of Annual (Excess) Reimbursements to Senators Using Per Diem¹³		
Excess Allowance Using \$175 Per Diem Under:	<u>Rota</u>	<u>Tinian</u>
Daily Scenario	\$1,217	(\$45,554)
Weekly Scenario	(61,921)	(71,274)
Monthly Scenario	(34,605)	(36,765)
Average Excess Allowance Under the 3 Scenarios	(\$31,772)	(\$51,198)
Average between Rota And Tinian		(\$82,969)
Excess Allowance Using \$87.50 Per Diem Under:	<u>Rota</u>	<u>Tinian</u>
Daily Scenario	(\$49,938)	(\$96,702)
Weekly Scenario	(72,151)	(81,503)
Monthly Scenario	(36,968)	(39,128)
Average Excess Allowance Under the 3 Scenarios	(\$53,019)	(\$72,444)
Average between Rota And Tinian		(\$125,463)
Overall Average		(\$104,216)

¹³ Derived from Appendix B, pages 1 to 4.



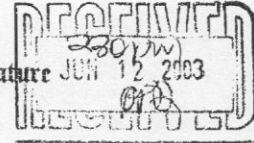
The Senate

Thirteenth Northern Marianas Commonwealth Legislature

Senator Joaquin G. Adriano

Floor Leader

P.O. Box 500129, Saipan, MP 96950 email address: sen.j.adriano@vzpacifica.net



May 29, 2003

Michael S. Sablan
Public Auditor
Office of the Public Auditor
J.E. Tenorio Building, Gualo Rai
P.O. Box 51399 CK
Saipan, MP 96950

Re: Written Comment on OPA's Draft Report on the Monthly Subsistence Allowance.

Dear Michael S. Sablan:

This following written comment is submitted for your review and is in response to the Office of the Public Auditor's (OPA) Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002.

First, the members of the Senate have sought and obtained legal advice from its counsel as to the authority of the Senate to establish a monthly subsistence allowance for its members by legislative rule. The members of the Senate have been advised that the Senate has the implied statutory authority to establish a monthly subsistence allowance for its members by legislative rule due to the enactment of Public Law 12-2 which is codified at 1 CMC § 121(i). See Attached Confidential Legal Opinion. The members of the Senate have also been advised, however, that the monthly subsistence allowance must be reasonable and must be accounted for in a manner that ensures that the "public purpose" requirement set forth at 1 CMC § 121 is fulfilled.

The members of the Senate, after reviewing the aforementioned legal analysis, have determined that it is in the best interests of all concerned that the present monthly subsistence allowance provisions be rescinded. The members of the Senate will establish, by legislative rule, a new

Telephone No. (670) 664-8816 (670) 433-3414 Fax: (670) 322-0519 (670) 433-0516

revolving account system that utilizes a uniform per diem rate to reimburse members of the Senate for costs incurred in the exercise of their constitutional duties and responsibilities on a monthly basis.

Second, the members of the Senate will endeavor to ensure that the new revolving account system satisfies the public purpose requirements established by law. The members of the Senate note that the public purpose requirements will be enforced in accordance with the mandate of Public Law 12-2, which specifically sets forth the legal mechanism by which expenditures authorized by legislative rules can be challenged to ensure that they are indeed for a public purpose. Public Law 12-2, states:

Notwithstanding any other provision of this act or other law to the contrary, expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose, **unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.**

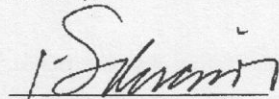
See Public Law 12-2, codified at 1 CMC § 121(i) (emphasis added).

Third, the members of the Senate will require that the disbursement of funds from the new revolving account system are predicated on the provision of sufficient documentation of costs incurred.

Finally, the members of the Senate will ensure that the new revolving account system does not allow for members of the Senate to receive "double compensation" for travel costs. The new revolving account system shall apply solely to travel within the Commonwealth. Travel outside of the Commonwealth will be compensated under the existing system whereby each member of the Senate submits a travel authorization request directly to the Department of Finance.

The members of the Senate would appreciate the opportunity to meet with you to discuss the aforementioned issues and to answer any questions you may have.

Sincerely,



Senator Joaquin G. Adriano
Chairman
Senate Standing Committee on Rules and Procedure

Telephone No. (670) 664-8816 (670) 433-3414 Fax: (670) 322-0519 (670) 433-0516



Legislative Bureau

P.O. BOX 500586
SAIPAN, MP 96950

DIRECTOR (670) 664-5643
ADMINISTRATIVE OFFICER (670) 664-1341
CLERKS:
HOUSE (670) 664-5659
SENATE (670) 664-5103
FACSIMILE:
HOUSE (670) 322-0993
SENATE (670) 664-1342

LEGAL COUNSEL:
HOUSE (670) 664-4338
(670) 664-0991
SENATE (670) 664-5104
LEGISLATIVE ASSISTANTS:
HOUSE (670) 664-0992
SENATE (670) 664-5103

LEGAL OPINION

To: Senator Joaquin G. Adriano
Chairman, Senate Standing Committee on Rules and Procedures
Re: Senate's Authority to Adopt Subsistence Allowance Policy
From: Steven M. Newman
Senate Legal Counsel
Date: May 23, 2003

I. Facts.

The Senate has adopted several Senate Resolutions establishing per diem and allowance rates for members of the Senate, including: (1) Senate Joint Resolution No. 7-13, establishing a per diem rate of one hundred twenty five dollars (\$125) per day for travel within the Commonwealth; (2) Senate Joint Resolution No. 8-1, authorizing the Senate Standing Committee on Rules and Procedures, in consultation with the Senate Standing Committee on Fiscal Affairs, to establish a monthly subsistence and travel allowance for each Senator from the First and Second Senatorial Districts for travel within the Commonwealth; (3) Senate Resolution No. 9-9, authorizing Senators from the First and Second Senatorial District to receive a monthly subsistence allowance in the amount of two thousand dollars (\$2,000); (4) Senate Resolution No. 11-30, authorizing Senators from the First and Second Senatorial District to receive a monthly subsistence allowance in the amount of five thousand dollars (\$5,000), such amount to replace the previous quarterly subsistence allowance, the housing allowance, and the blanket travel authorizations previously issued to Senators from the First and Second Senatorial Districts; and (5) Senate Resolution 13-19, establishing a per diem rate of one hundred seventy five dollars (\$175) per day for travel within the Commonwealth and establishing separate per diem rates for travel outside the Commonwealth.

Confidential Memorandum

On July 3, 2002, the Official Rules the Senate for the Thirteenth Northern Marianas Legislature were adopted. Rule 12, Section 2(a)(6) of the Official Rules of the Senate incorporates the aforementioned resolutions in the form of a legislative rule, stating:

Members of the Senate from the First or Second Senatorial Districts may use a portion of the funds under their individual office accounts as an allowance to defray the costs of food, lodging, transportation, and other expenses they incur by reason attending to legislative business without their respective senatorial district, in accordance with any Senate resolution relative to such allowances. Allowances previously approved, whether by action of the current or a preceding Senate, shall be deemed approved and remain in effect until amended or repealed by the Senate. Members of the Senate from the Third Senatorial District shall receive a legislative allowance from funds under their individual office accounts to defray the cost of food, lodging and transportation and other related expenses incurred while on legislative business in the First or Second Senatorial Districts. The allowance shall be \$2,000.00 per month if the member is a chairperson of a standing or special committee and \$1,000.00 per month per committee, standing or special, of which the member is a member, but in no event shall a member from the Third Senatorial District receive more than \$5,000.00 per month under this Rule.

See Official Rules of the Senate, Rule 12, § 2(a)(6).

On April 14, 2003, upon the request of members of the Senate, the Office of the Public Auditor submitted a Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate (OPA Draft Report). The OPA Draft Report addressed, in part, the Senate's authority to establish a monthly subsistence allowance. The OPA Draft Report concludes that "while the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law appear to require it to be in the form of a law." See OPA Draft Report, Page 4.

II. Issue.

Whether the Senate has the authority to establish a monthly subsistence allowance for its members by legislative rule.

Confidential Memorandum

III. Analysis.

Article II, Section 10 of the Commonwealth Constitution states, in pertinent part, that “[t]he members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law.” *See* N.M.I. Const. Art. II, § 10. Article II, Section 10 of the Commonwealth Constitution further states that “[t]he salary of members may be changed no more than once every four years and only upon the recommendation of an advisory commission established by law to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers.” *See* N.M.I. Const. Art. II, § 10.

Members of the Senate are permitted by Article II, Section 10 of the Commonwealth Constitution to receive “reasonable allowances provided by law.” *See* NMI Const. Art. II, § 10. Legislators were formerly given an “Official Representation Allowance” pursuant to 1 CMC §1201 through 1 CMC § 1203. The “Official Representation Allowance,” however, was discontinued upon the enactment of Public Law 4-32, the “1984 Compensation Adjustments Act.” *See* Public Law 4-32, § 3. The “Official Representation Allowance” has not been reinstated as evidenced by the language of Public Law 7-31, the “Commonwealth Compensation Adjustment and Salary Act of 1991,” which states that “[t]he members of the legislature shall receive an annual salary of \$39,300 and no official representation allowance.” *See* 1 CMC § 1271. There have been no further enactments specifically authorizing Legislators to receive an “allowance.”

1 CMC § 121(i), however, states:

Notwithstanding any other provision of this act or other law to the contrary, **expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose**, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.

See 1 CMC § 121(i) (emphasis added).

The language set forth at 1 CMC § 121(i) does not specifically authorize Legislators to receive an “allowance.” 1 CMC § 121(i), however, impliedly grants the Legislature the authority to authorize and regulate expenditures by legislative rule because it expressly refers to the existence of such expenditures and states that such expenditures are deemed to be for a public

Confidential Memorandum

purpose. Accordingly, the Senate has the authority to establish a monthly subsistence allowance by legislative rule.

B. CONCLUSION:

The Senate has the authority to establish a monthly subsistence allowance by legislative rule. The monthly subsistence allowance, however, must be reasonable and must be accounted for in a manner that ensures that the “public purpose” requirement set forth at 1 CMC § 121 is fulfilled.

Confidential Memorandum

4



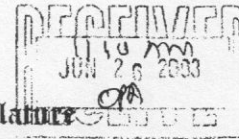
The Senate

Thirteenth Northern Marianas Commonwealth Legislature

Senator Joaquin G. Adriano

Floor Leader

P.O. Box 500129, Saipan, MP 96950 email address: sen.j.adriano@vzpacifica.net



June 25, 2003

Michael S. Sablan
Public Auditor
#1236 Yap Drive, Capitol Hill
Saipan, MP 96950

Re: June 17, 2003, Meeting to Discuss OPA Draft Report on Monthly Subsistence Allowance.

Dear Michael S. Sablan:

Thank you for taking the time to meet with members of the Senate on June 17, 2003, to discuss the Office of the Public Auditor's (OPA) Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002.

The following is set forth to clarify the position of members of the Senate as to some of the issues discussed at the aforementioned meeting.

First, the members of the Senate reiterate that the Senate has the implied statutory authority to establish a monthly subsistence allowance for its members by legislative rule due to the enactment of Public Law 12-2 which is codified at 1 CMC § 121(i). The members of the Senate acknowledge, however, that as discussed in the June 17, 2003 meeting, it would be prudent to clarify the kind of expenditures that can be authorized by legislative rule by amending Public Law 12-2 or by enacting new legislation.

Second, the members of the Senate note that the existing subsistence allowance system will be replaced by a new revolving account system that utilizes a uniform per diem rate to reimburse

Telephone No. (670) 664-8816 (670) 433-3414 Fax: (670) 322-0519 (670) 433-0516

APPENDIX E
Page 2 of 2

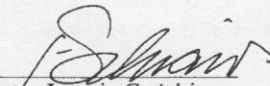
June 25, 2003
June 17, 2003. Meeting OPA Draft Report on Monthly Subsistence Allowance.
Page -2-

members of the Senate for costs incurred in the exercise of their constitutional duties and responsibilities. The members of the Senate accept the recommendations made by OPA as to the method for determining a reasonable per diem rate and will undertake an analysis of travel expenses to ensure that the rate adopted is reasonable.

Third, the members of the Senate agree with the suggestions made by OPA related to the adoption of policies to ensure compliance with the public purpose requirements established by law. Disbursement of funds from the new revolving account system will be predicated on the provision of sufficient documentation of costs incurred.

Finally, the members of the Senate reiterate that they will ensure that the new revolving account system does not allow for members of the Senate to receive "double compensation" for travel costs. The new revolving account system shall apply solely to travel within the Commonwealth. Travel outside the Commonwealth will be compensated under the existing system whereby each member of the Senate submits a travel authorization request directly to the Department of Finance.

Sincerely,



Senator Joaquin G. Adriano
Chairman, Rules and Procedure

xc: *Senate President, Paul A. Manglona*
Senate Vice-President, Jose M. Dela Cruz
Senate Legislative Secretary, Thomas P. Villagomez
Chairman PUTC, Diego M. Songao
Chairman RED&P, Ramon S. Guerrero
Senate Minority Leader, Pete P. Reyes

Telephone No. (670) 664-8816 (670) 433-3414 Fax: (670) 322-0519 (670) 433-0516

**Thirteenth Legislature
 Monthly Subsistence Allowance Provided to Members
 of the Senate Covering the Period Ending June 30, 2002**

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Action Required
<p>1. Introduce legislation to grant it authority for the subsistence allowance, to set the amount of the allowance, and to certify it as a public purpose.</p>	Senate	Open	<p>Senate Response: The Senate stated that the subsistence allowance need not be in the form of a law. Instead the Senate asserts that it has <u>implied</u> statutory authority to establish the subsistence allowance for its members by Senate rule because 1 CMC §121 (i) states that "expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose...".</p> <p>Action Required: Introduce legislation to authorize monthly subsistence allowance and any changes in its amount, and to certify it as a public purpose.</p>
<p>2. Undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred.</p>	Senate	Resolved	<p>Senate Response: The Senate said it will replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse Senators for expenses incurred in the exercise of their constitutional duties. It would also conduct an analysis of travel expenses to ensure that the new per diem rate was reasonable.</p> <p>Action Required: After the Senate replaces its existing subsistence system with a new revolving reimbursement system, it should provide OPA with:(1) the Senate's analysis of what it considers reasonable travel to support the amount set for per diem. and (2) legislative bills authorizing the new per diem.</p>
<p>3. Document travel activity to enable the Senate to more accurately estimate an appropriate monthly allowance.</p>	Senate	Resolved	<p>Senate Response: The Senate agreed to provide OPA with a written analysis of what it considers as reasonable travel to support changing the amount set for the monthly subsistence allowance.</p> <p>Action Required: The Senate should provide OPA with an analysis of what it considers as reasonable travel to support changing the amount set for the monthly subsistence allowance.</p>

**Thirteenth Legislature
Monthly Subsistence Allowance Provided to Members
of the Senate Covering the Period Ending June 30, 2002**

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Action Required
<p>4. Require that travelers document trip activities to ensure compliance with applicable regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount.</p>	Senate	Open	<p>Senate Response: The Senate stated it would adopt policies to ensure compliance with established public purpose requirements. Also, any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures.</p> <p>Action Required: Department of Finance regulations which apply to all 3 branches of government require (Section 1100.2(v) government travelers file a government travel voucher documenting travel and other expenses. The Senate did not, however, agree to document trips with travel vouchers as required by regulation and law. The Senate should enact a Resolution requiring Senators to submit a travel voucher monthly showing local trips taken to Saipan in order to comply with regulations and law.</p>
<p>5. Amend legislation and/or travel policy to prevent senators from being reimbursed for other concurrent travel.</p>	Senate	Resolved	<p>Senate Response: The Senate stated it would take action so that members do not receive "double compensation" for travel costs.</p> <p>Action Required: The Senate should amend language in legislation and/or travel policy requiring senators to adjust their vouchers or allowance so as not to obtain reimbursement for other concurrent travel.</p>

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 43
NUMBER 10
OCTOBER 28, 2021
Addendum

COMMONWEALTH REGISTER

VOLUME 43

NUMBER 10

OCTOBER 28, 2021

Addendum

TABLE OF CONTENTS

LEGAL OPINION

Number: OAC-21-02

Subject: Legislative Allowance

Agency: Department of Finance

Office of the Attorney General

047867



**Commonwealth of the Northern Mariana Islands
Office of the Attorney General**

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

OAG 21-02

November 1, 2021

Subject: Legislative Allowances

Agency: Department of Finance

Opinion of the Attorney General¹

I. QUESTIONS PRESENTED

1. The Commonwealth Constitution allows legislators “reasonable allowances for expenses provided by law.”² Public Law 20-67 appropriates funds to the House and Senate for expenditures authorized by House or Senate rule in Fiscal Year 2019. The House of Representatives has enacted rules of procedure granting an allowance to its members (the “Allowance”).³ Are the Allowances “validly provided by law?”
2. The Commonwealth Constitution prohibits legislators from using appropriated funds for personal and political activities. The Allowance is written broadly, potentially authorizing Representatives to claim personal expenses. Can legislators use their allowances for personal or political expenditures?
3. Article II, Section 10 authorizes “reasonable allowances.” The Allowances in both houses purport to authorize an allowance of \$5,000.00 per month (\$60,000.00 per year). Is an allowance of \$5,000.00 per month reasonable?
4. The Secretary of Finance has the constitutional duty to control and regulate public funds. The Secretary of Finance, through the Commonwealth Treasury, would be required to issue public funds pursuant to the Allowance. Can the Secretary of Finance disburse public funds for the Allowances?

¹ This opinion was first issued on January 8, 2020 at the request of the Secretary of Finance.

² NMI Const. art. II, § 10.

³ 21st Northern Mariana Islands Commonwealth Legislature, House Rule of Procedure XIII, § 10(a).

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7600
Facsimile: (670) 234-7016

Attorney General’s Investigative
Telephone: (670) 237-7625
Facsimile: (670) 234-7016

Division Domestic Violence Intervention Center
Telephone: (670) 664-4583
Facsimile: (670) 664-4589

II. SHORT ANSWER

1. Yes. Article II, Section 10 of the Commonwealth Constitution provides: “The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law.”⁴ The Commonwealth Supreme Court has recognized that the term “as provided by law” means the provision is not self-executing, and requires further action to gain the force of law.⁵ Public Law 20-67 is a valid law enacted by the Legislature and signed by the Governor. Public Law 20-67 appropriates funds for “expenditures authorized by the adopted rules of the House of Representatives.”⁶ The passage of Public Law 20-67 satisfies the provided-by-law requirement.
2. No. Commonwealth Constitution Article II, Section 16(f) explicitly prohibits legislators from using any appropriation for the Legislature other than their salaries on personal or political expenses.⁷ Section 16(f) provides: “No part of the appropriations for the legislature or the legislative bureau, other than a member's salary, may be used for personal or political activities.”⁸ The Allowance appears to be for personal expenses, i.e., “to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business.”⁹ House Legislative Initiative 10-8, SS1 added Section 16(f) “to prevent the Legislative Members from abusing the limited budget of the legislative bureau for their own purposes for their self-indulgence.”¹⁰ Article II, Section 16(f) was added to the Constitution to address precisely this kind of conduct by legislators.
3. No. A reasonable allowance is around \$30,000.00, though an increase in legislators’ salaries may reduce this amount. Public Law 1-3 established a maximum allowance of \$8,000.00, which amounts to approximately \$31,352.06 adjusted for inflation.¹¹ Public Law 3-17 increased the maximum allowance to \$13,000.00, approximately \$33,703.47 per year adjusted for inflation.¹² Early legislators considered a reasonable allowance to be between \$31,000 and \$35,000 in today’s currency. Their contemporary interpretation is

⁴ NMI Const. art. II, § 10.

⁵ *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 8.

⁶ P.L. 20-67, § 703(b)(2).

⁷ NMI Const. art. II, § 16(f).

⁸ NMI Const. art. II, § 16(f).

⁹ 21st Northern Mariana Islands Commonwealth Legislature, House Rules of Procedure XIII, § 10(a).

¹⁰ HLI No. 10-8.

¹¹ U.S. Dep’t of Labor, Bureau of Labor Statistics, Consumer Price Index Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl> [hereinafter Bureau of Labor Statistics CIP Calculator].

¹² *Id.*

persuasive.¹³ The current maximum allowance is almost double what the first legislators considered to be reasonable. Furthermore, the Fourth Legislature repealed the authorization for legislative allowances in the same legislation that first increased the salaries of government officials, including legislators.¹⁴

4. Yes, but only to the extent the Allowance is set within the reasonable limit discussed in the analysis. Otherwise, if the disbursements are at the current \$60,000.00 yearly limit, the Secretary of Finance would violate his or her duty to control public funds by disbursing funds to pay the Allowances based on such an unreasonable amount. The Allowances violate Article II, Section 10 because they are not reasonable. The Allowances violates Article II, Section 16(f) to the extent that legislators use their allowances for personal or political activities.

III. STATEMENT OF FACTS

The people of the Northern Mariana Islands ratified the Commonwealth Constitution on March 6, 1977, and it took effect on January 9, 1978. Article II, Section 10 provides for the compensation of legislators: "The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law."¹⁵ Article II, Section 10 also established the mechanism for increasing salaries for executive, legislative, and judicial salaries.

A. Drafting History

The First Constitutional Convention's Committee on Governmental Institutions addressed compensation for legislators, though it remarked on allowances only in passing. In deciding on legislative salaries, the Committee balanced four factors: (1) ensuring a salary adequate to attract citizens to public service, (2) avoiding legislative extravagance, (3) granting flexibility to respond to changing economic circumstances, and (4) "avoid[ing] a situation in which the legislature would be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase."¹⁶ As to allowances, the Committee opted to leave the question of "expenses" to the political process, stating: "The Committee reserved to the legislature power over expenses, however, as traditional and necessary."¹⁷ This single sentence is ambiguous as to the method for the Legislature would employ to authorize allowances.¹⁸

¹³ See *In re Petition of Comm'n on the Governorship of Cal.*, 603 P.2d 1357, 1357 (Cal. 1979); *City of Los Angeles v. Rancho Homes, Inc.*, 256 P.2d 305, 308 (Cal. 1953); *State ex rel. Gass v. Gordon*, 181 S.W. 1016, 1021 (Mo. 1915). See also 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

¹⁴ P.L. 4-32, §§ 3, 14.

¹⁵ NMI Const. art. II, § 10.

¹⁶ First Const. Convention, Comm. On Gov'tal Institutions, Report No. 3 18-19 (Nov. 4, 1976).

¹⁷ *Id.* at 19.

¹⁸ The Chamber of Commerce commented on Article II, Section 10, stating: "We recommend a salary of \$8,000 annually with a special allowance of an additional \$2,000 for the Speaker of the House and President of the Senate." Chamber of Commerce,

As one of its first acts, First Commonwealth Legislature enacted legislation authorizing legislative allowances under Section 10.¹⁹ The Legislature explained: "The purpose of this Act is to provide each Senator and Representative with a reasonable allowance which he may use to defray the *necessary and official expenses* incurred in connection with his official duties."²⁰ The statutory authorization for legislative allowances, originally codified at 1 CMC §§ 1201-1203, provided: "There shall be made available to each of the Senators and Representatives an allowance of \$8,000.00 per annum for the purposes specified in Section 1 of this Act."²¹ Section 1203 provided for a detailed procedure:

Each Senator and Representative shall submit to the Treasurer of the Commonwealth of the Northern Mariana Islands a request for his projected expenses in connection with his office, approved by the President of the Senate or the Speaker of the House of Representatives, as the case may be. Such request may be for the full \$8,000.00 or for a lesser amount. In the case of a Senator's or Representative's request for a lesser amount, he shall be entitled to make subsequent requests; PROVIDED that a Senator or Representative may not receive more than \$8,000.00 in any one year. In the event that a legislator dies, resigns, or is removed from his office, he shall be entitled to no further expense allowance than that which he has expended, but his successor in office shall be entitled to an expense allowance which is equal to the ratio of the remaining percentage of the term in office and the same percentage of the \$8,000.00.²²

In 1982, the Legislature amended Sections 1202 and 1203 by increasing the amount to \$13,000.00. Both Governor Carlos S. Camacho and Governor Pedro P. Tenorio expressed concern as to the amount of the allowance when signing the respective public laws.²³ Governor Camacho expressed serious concern over legislator's documentation of their expenses, and noted that the Public Auditor could audit legislator's expenditures.²⁴

Comments Submitted to Public Hearing on Saipan 3 (Nov. 18, 1976). In the draft constitution submitted for public comment, Article II, Section 11 addressed the compensation of legislators.

¹⁹ P.L. 1-3.

²⁰ P.L. 1-3, § 1 (emphasis added).

²¹ 1 CMC § 1202 (1978), amended by P.L. 3-17 (1982), repealed by P.L. 4-32, § 14.

²² 1 CMC § 1203 (1978), amended by P.L. 3-17 (1982), repealed by P.L. 4-32, § 14.

²³ Letter from Carlos S. Camacho, Governor, to Lorenzo I. Guerrero, President of the Senate, and Oscar C. Rasa, Speaker of the House (May 3, 1978) ("I do so [sign P.L. 1-3 into law] in the interest of harmonious relations between the executive and legislative branches, although I am persuaded that an annual allowance smaller than \$8,000 would have been preferable."); Letter from Pedro P. Tenorio, Governor to Olympio T. Borja, President of the Senate, and Benigno R. Fitial, Speaker of the House of Representatives (July 07, 1982) ("I am confident that the vast majority of our legislators spend their reasonable allowance expense in order to assist their constituents or to advance the interests of the Commonwealth. In implementing this Act, I would respectfully request that the Legislative Branch consider the financial condition of our government.").

²⁴ Letter from Carlos S. Camacho, Governor, to Lorenzo I. Guerrero, President of the Senate, and Oscar C. Rasa, Speaker of the House (May 3, 1978).

Public Law 4-32 repealed the statutory authorization for legislative allowances.²⁵ The repeal took effect on April 1, 1985.²⁶ The repeal coincided with two significant events: the first legislative salary increase and the authorization for the Second Constitutional Convention.²⁷ The historical and political context suggest that both of these events contributed significantly to the decision to repeal the statutory authorization for legislative allowances.

Legislators' extravagant expenditure of public funds was one of the most significant issues facing the Second Constitutional Convention. On the 10th day of the Convention Delegate Jesus P. Mafnas explained:

Many if not all of the successful and unsuccessful candidates to the Constitutional Convention were asked by our voters to address the excessive expenditures in the Legislative Branch. This Convention is left without any alternative but to diligently submit amendments with respect to legislative reforms.²⁸

Delegate Mafnas specifically suggested removing the "reasonable allowances" provision of Article II, Section 10, identifying approximate savings of \$312,000.00.²⁹ Delegate Mafnas had good reason to suggest removing the allowance. The documents from the Second Constitutional Convention are replete with examples of legislators' extravagant spending. "Extravagance" is not an overstatement. The Tinian Delegation, chaired by James M. Mendiola, wrote to the Public Auditor alleging that legislative allowances were "being paid to Bars, Ladies Drinks and Donations."³⁰ Delegate Mafnas, joined by several other delegates, made several proposals, all of which abolished the "reasonable allowance."³¹

Documents from the Second Constitutional Convention strongly suggest that the repeal of the statutory authorization for legislative allowance was directly related to the impending Constitutional Convention. In a letter to Delegate Lorenzo I. Guerrero commenting on Delegate Proposal 108-85, James H. Ripple, Acting Special Assistant for Planning and Budgeting suggested that constitutional amendments relating to the legislative allowances were unnecessary in light of

²⁵ P.L. 4-32, § 14.

²⁶ *Id.* § 15.

²⁷ *Id.* § 3; P.L. 4-30.

²⁸ Journal, Second Const. Convention, 10th Day 165 (June 27, 1985). Delegate Mafnas was a staunch advocate for fiscal responsibility and accountability for the Legislature. *See, e.g.*, Journal, Second Const. Convention, Transcript of 32nd Day, Tape 1A 14-17 (616-618 in final journal) (July 19, 1985).

²⁹ *Id.* The total savings adjusted for inflation is \$747,546.09 in February 2019.

³⁰ Letter from James M. Mendiola, William B. Nabors, David M. Cing, & Estevan M. King, Tinian Delegates to the Second Constitutional Convention, to Rex Palacios, Public Auditor (June 25, 1985).

³¹ *See* Delegate Proposal No. 47-85 (June 20, 1985); Delegate Proposal No. 290-85 (July 7, 1985).

Public Law 4-32's repeal of the legislative allowance.³² Considering this letter in the context strongly suggests that the Fourth Commonwealth Legislature repealed the legislative allowance authorization in response to public concerns regarding legislators' extravagant spending and the upcoming Second Constitutional Convention.

Ultimately, the delegates of the Second Constitutional Convention did not agree on any amendment that would have abolished the "reasonable allowance" in Article II, Section 10. However, the Second Constitutional Convention submitted Proposed Amendment No. 9 creating a budget ceiling of \$2.8 million for the Legislature.³³ The citizens of the Commonwealth ratified the Proposed Amendment No. 9, which was enshrined in the Constitution as Article II, Section 16. Article II, Section 16 originally read:

Section 16 Budget Ceiling. There shall be a ceiling on the budget of the legislature.

- (a) Appropriations, or obligations and expenditures, for the operations and activities of the legislature may not exceed two million eight hundred thousand dollars in any fiscal year. This ceiling on the legislative budget shall be divided equally between the Senate and the House of Representatives.
- (b) Obligations and expenditures for the operations and activities of the legislature for the period October 1 through the second Monday in January of a fiscal year in which there is a regular general election, may not exceed seven hundred thousand dollars or the spending authority otherwise available by law, whichever is less. This ceiling shall apply to the various offices and activities in the same proportions as the annual spending authority provided by law.

The citizens of the Commonwealth ratified two further amendments to Article II, Section 16.

In 1989, the citizens of the Commonwealth ratified House Legislative Initiative No. 6-2. House Legislative Initiative No. 6-2 amended Article II, Section 16(a) to exclude the legislator's salaries from the budget ceiling.³⁴ After amendment, the first sentence of Section 16(a) read: "Appropriations, or obligations and expenditures, exclusive of the salaries of the members of the legislature, for the operations and activities of the legislature may not exceed two million eight hundred thousand dollars in any fiscal year."³⁵ House Standing Committee Report No. 6-64 noted that Section 16 was ratified "[b]ecause of prior spending abuses by preceding legislatures."³⁶ The Committee explained that the Framers of Section 16 had not exempted the salaries of legislators.³⁷

³² Letter from James H. Ripple, Acting Special Assistant for Planning and Budgeting, to Lorenzo I. Guerrero, Delegate (June 28, 1985) ("Public Law 4-32 repealed 1 CMC 1201 to 1203 relating to Official Representation Allowance. Therefore, it would be most appropriate if this subject matter is addressed through Legislative procedures, rather than a Constitutional amendment.").

³³ Proposed Constitutional Amendment No. 9 (Aug. 10, 1985).

³⁴ H.L.I. 6-2, § 3.

³⁵ *Id.*

³⁶ H. Standing Comm. On Judiciary & Gov'tal Operations Rep. No. 6-64 at 2 (Sept. 15, 1989).

³⁷ *Id.*

The Committee asserted: "At this point in time, inflation has caught up with the budget ceiling so that the limitation becomes an injustice to both the Legislative Branch and to the people it purports to serve."³⁸ The voters ratified House Legislative Initiative 6-2 in the 1989 general election.

In 1997, the citizens of the Commonwealth ratified House Legislative Initiative 10-8, which extensively revised Section 16 by raising the budget ceiling and imposing additional restrictions on legislator's use of public funds. Two changes are relevant to this inquiry. Foremost, House Legislative Initiative 10-8 created Section 16(f): "No part of the appropriations for the legislature or the legislative bureau, other than a member's salary, may be used for personal or political activities."³⁹ Second, it exempted "major equipment or capital improvement projects" from the budget ceiling.⁴⁰ Third, it defined the term "major equipment or capital improvement projects" to exclude "the purchase, rental, or lease of vehicles for the use of individual members of the legislature or their offices."⁴¹ The findings for the original House Legislative Initiative 10-8 stated its purpose was

to prevent the Legislative Members from abusing the limited budget of the Bureau for their own purposes or for their own self-indulgence with specific concern for the lease or purchase of vehicles, travel, and the use of the Bureau's limited budget for the construction of new or expanded building facilities.⁴²

House Legislative Initiative No. 10-8 thus continued and expanded the Second Constitutional Convention's policy of preventing legislators from abusing public funds for personal extravagance and self-indulgence.

B. 21st House of Representatives Rule XIII, Section 10.

Promulgating procedural rules is one of the first orders of business for an incoming legislature. Commonwealth Constitution Article II, Section 14(b) directs "[e]ach house of the legislature . . . [to] promulgate rules of procedure."⁴³ The House of Representatives adopted its Rules of Procedure on January 14, 2019. On the same day, Speaker of the House Blas Jonathan T. Attao appointed an Ad Hoc Committee to review the rules of order and suggest any changes within 30 days.⁴⁴ On March 12, 2019, the House adopted the Ad Committee's changes to the Rules of Procedure.⁴⁵

³⁸ *Id.*

³⁹ H.L.I. 10-8, SS1, § 1; NMI Const. art., II § 16(f).

⁴⁰ H.L.I. 10-08, SS1, § 1; NMI Const. art. II, § 16(a).

⁴¹ H.L.I. 10-08, SS1, § 1; NMI Const. art. II, § 16(d).

⁴² H.L.I. 10-8, § 1.

⁴³ NMI Const. art. II, § 14(b).

⁴⁴ H. Res. 21-4, HD1, at 1.

⁴⁵ *Id.* at 5.

The House of Representatives' amendment of Rule XIII, Section 10 states in full:

- (a) A member of the House may use a portion of the funds under the member's individual office account as an allowance of \$2,500 but not more than \$5,000 per month to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business in any Senatorial District and outside the Commonwealth. A representative may charge the member's office account for (a) per diem to cover food and lodging, (b) ground transportation and (c) cost of airline transportation to attend legislative business in any Senatorial District and outside the Commonwealth. Costs of transportation for airfare and car rental shall be charged to the member's office account through regular travel procedures.
- (b) Funds expended pursuant to this subsection shall be for expenses incurred during the month in which the allowance was disbursed. Additionally, the funds allocated in accordance with this subsection shall be disbursed each month and none of the said funds provided in this subsection shall be advanced.
- (c) Each member shall maintain a record of all transaction and corresponding public purpose justification related to the allowance authorized by this section.⁴⁶

The change to the Rule XIII, Section 10 is significant. The Section 10(a) is much broader than the Interim Rule which had only allowed for an allowance "to defray the cost of food, lodging and other related expenses incurred by reason of attending to legislative business." Similar to the corresponding rule in the Senate's Official Rules, the new Section 10(a) now authorizes an allowance of between \$2,500 and \$5,000 "per month to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business in any Senatorial District and outside the Commonwealth."⁴⁷ The phrase "incidental expenses related to community events and activities" is extremely vague, and the broad term "community events and activities" is undefined.

The breadth of Section 10(a) does not end at "community events and activities." Whereas the Interim Rule provided an allowance for representatives attending to legislative business away from their home island and within the Commonwealth, amended Section 10(a) authorizes a Representative to use his or her allowance "to defray the costs of food, lodging, and . . . expenses incurred by reason of attending to legislative business in *any Senatorial District and outside the Commonwealth.*"⁴⁸ Under the plain meaning of Section 10(a), a Representative from Saipan can

⁴⁶ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10.

⁴⁷ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(a). *Compare* Interim H. R. of P. XIII, § 10(a)-(d), (f) with H. R. of P. XIII, § 10(a).

⁴⁸ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(a) (emphasis added). *Compare* Interim H. R. of P. XIII, § 10(a)-(d), (f) with H. R. of P. XIII, § 10(a).

use his or her allowance to defray the cost of food and lodging in Saipan. Section 10(a) appears to authorize Representatives to use their allowances to purchase groceries and pay their rent or mortgage. The same application for the Representative from Tinian or Rota to pay for expenses incurred in their respective election district. This is the ordinary plain meaning of Section 10(a). Section 10(a) also authorizes the allowances to be used on the cost of “attending to legislative business *outside the Commonwealth*” rather than paying for travel through the per diem rates like the rest of the Commonwealth government.

The total amount of the allowance is a staggering \$60,000 per year per Representative. If every Representative took full advantage of the allowance, it would cost the taxpayers \$840,000 per year. Given the breadth of Section 10(a)—authorizing expenses such as groceries, rent, and the cost of travel within a Representative’s home island—it would not be difficult for a Representative to meet the \$5,000 limit while staying well within the plain meaning of its terms. The multiple amendments to Article II explicitly sought to prevent this kind of extravagance.

Finally, the only saving graces are the record keeping requirement and prohibition on allowances being advanced. Section 10(c)’s requirement that Representatives record the “public purpose” for each use of their allowance is useful. Although the definition of “public purpose” in the Commonwealth Code includes “expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose,” it also provides that one can prove that the expenditure in fact was for a personal or political activity.⁴⁹ These records will be useful in any action to recoup the cost of misspent public funds.⁵⁰

IV. ANALYSIS

Article II, Sections 10 and 16(f) restrain legislators’ use of allowances in several ways. First, any allowance must be “provided by” law.⁵¹ Second, any allowance must be “reasonable.”⁵² Third, the allowance—not being part of a legislator’s salary—cannot be used for “private or political activity.”⁵³ How the Supreme Court construes Constitution’s text is dispositive. The inquiry thus must begin with a review of constitutional construction.

A. Rules of Interpretation

The most important canon of construction is that “language must be given its plain meaning.”⁵⁴ The Supreme Court reads the Constitution’s language “in the context of the entire provision at

⁴⁹ 1 CMC § 121(i).

⁵⁰ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(b).

⁵¹ NMI Const. art. II, § 10.

⁵² NMI Const. art. II, § 10.

⁵³ NMI Const. art. II, § 16(f).

⁵⁴ *Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6 (quoting *N. Marianas Coll. v. Civil Serv. Comm’n*, 2007 MP 8 ¶ 9); see also *Palacios v. Yumul*, 2012 MP 12 ¶ 4.

issue,”⁵⁵ and “give[s] effect to every word of a constitutional provision.”⁵⁶ The Court considers the Constitution as a whole, giving meaning to every word.⁵⁷ In doing so, the Court takes care to harmonize conflicting provisions to prevent one provision from voiding or nullifying another.⁵⁸ If the Court can determine the meaning of a constitutional or statutory provision using the plain meaning, then the analysis ends.⁵⁹

The Court uses several “stabilizing canons” of construction to avoid unnecessarily disrupting the current order.⁶⁰ The Court presumes that a challenged provision is constitutional, and must give statutory text a constitutional interpretation if possible.⁶¹ The Court avoids interpreting statutes in a manner that will defies common sense.⁶²

Where the plain meaning results in ambiguity, the Court can look for clues outside of the text. In doing so, the Court “must attempt to ascertain and give effect to the intent of the drafters of the provision.”⁶³ The Court can look to the legislative history of the provision’s drafting.⁶⁴ This includes the materials of the Constitutional Conventions and the Analysis of the Constitution.⁶⁵ “The Analysis is a memorandum, approved by the Constitutional Convention following the adoption of the constitution in 1976, that provides an explanation of each section in the Commonwealth Constitution and summarizes the intent of the Convention in approving each section.”⁶⁶ “The Analysis . . . is extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity.”⁶⁷ That being said, Commonwealth Courts have long recognized that “[t]he Analysis is not the law” and

⁵⁵ *Palacios*, 2012 MP 12 ¶ 4.

⁵⁶ *Id.* (citing *Sablan v. Superior Court*, 2 NMI 165, 185 n.21 (1991)).

⁵⁷ *Peter-Palican*, 2012 MP 7 ¶ 6 (citing *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 11); *Hackel v. Macomb Cty. Comm’n*, 298 Mich. App. 311, 323, 826 N.W.2d 753, 761 (2012) (“Courts must avoid a construction that would render any part of a statute surplusage or nugatory.”).

⁵⁸ *Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶¶ 24–26.

⁵⁹ *Calvo v. NMI Scholarship Bd.*, 2009 MP 2 ¶ 21 (“If a statute is clear and unambiguous, that is the end of the matter, as the court and the agency must give effect to the unambiguously expressed intent of Congress.”).

⁶⁰ *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶¶ 18–19.

⁶¹ *Rayphand v. Tenorio*, 2003 MP 12 ¶ 58.

⁶² *Manibusan v. Larson*, 2018 MP 7 ¶ 12 (quoting *Peter-Palican*, 2012 MP 7 ¶ 6).

⁶³ *Id.*

⁶⁴ *Aldan-Pierce v. Mafnas*, 2 NMI 122, 142 n.23 (1991); *Maratita v. Palacios*, 2013 MP 15 ¶ 15.

⁶⁵ The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976)

⁶⁶ *Dep’t of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 7.

⁶⁷ *Rayphand*, 2003 MP 12 ¶ 71.

may not be used to overcome “the clear language of the Constitution.”⁶⁸ Where the text’s plain meaning is unambiguous, the text controls.

The Supreme Court will avoid considering most challenges to legislative rules of procedure under the political question.⁶⁹ Although the Commonwealth Supreme Court has not addressed the question, the courts of the several states recognize an exception to the political question doctrine when a legislative rule of procedure directly contravenes a provision of the Constitution.⁷⁰

B. The Legislature Has Provided for Allowances Under Article II, Section 10 in Public Law 20-67.

By appropriating funds for “expenditures authorized by . . . the adopted rules of the House of Representatives,” Public Law 20-67 has satisfied the requirement that allowances be “provided by law.” The Supreme Court presumes that every provision of the Constitution is self-executing.⁷¹ However, the words “as provided by law” contemplate further legislative action.⁷² Here, Public Law 20-67 appropriates funds for “expenditures authorized . . . by adopted rules of the House of Representatives,” thereby delegating to the House the implicit power to authorize reasonable allowances for legitimate expenses.

An appropriation bill can satisfy the provided-by-law requirement. An appropriation is “[a] legislative body’s . . . act of setting aside a sum of money for a specific purpose.”⁷³ Unlike codified statutes, appropriations are ephemeral, and only carry authority for a limited period, usually a year. Appropriation bills are similar to other legislative enactments. Both houses of the legislature must pass an appropriation bill by majority vote, and the bill only becomes law with the Governor’s approval or, in the case of a veto, the Legislature overrides the Governor’s veto with a two-thirds vote in both houses.⁷⁴ This is the classic method of creating law in a democratic government; the fact that an appropriations bill has an expiration date does not make it any less of a law.

Public Law 20-67 does not violate the provided-by-law requirement because the houses of the Legislature have the inherent authority to define expenditures. The Commonwealth Constitution is a limitation on power; an instrumentality of Commonwealth thus possesses all inherent powers

⁶⁸ *Camacho v. Camacho*, 1 CR 620, 628–29 (Trial Ct. 1983).

⁶⁹ *Sablan v. Tenorio*, 4 NMI 351, 363–64 (1996) (“By refraining from interfering with the Senate’s constitutionally-exercised power to promulgate rules, we accord proper respect to the legislature as a separate and coequal branch of government which must be free from domination and unnecessary intrusion by the judiciary.”).

⁷⁰ *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 83–84 (Ky. 2018).

⁷¹ *Borja*, 2003 MP 8 ¶ 7 (quoting *Rockefeller v. Hogue*, 429 S.W.2d 85, 88 (Ark. 1968) (“There is a presumption of law that any and every constitutional provision is self-executing.”)).

⁷² *Id.* ¶¶ 10–11; see also *Torres v. Commonwealth Utils. Corp.*, 2009 MP 14 ¶¶ 19–20. *Torres* also stands for the proposition that the “law” in the phrase “provided by law” does not necessarily mean “provided by statute.” *Id.* ¶ 20.

⁷³ *Appropriation*, Black’s Law Dictionary (10th ed. 2014).

⁷⁴ NMI Const. art. II, § 5(c) (“The legislature may not enact a law except by bill and no bill may be enacted without the approval of at least a majority of the votes cast in each house of legislature.”); NMI Const. art. II, § 7.

occurring “within its natural orbit.”⁷⁵ The Constitution authorizes both houses of the Legislature to create rules of procedure.⁷⁶ Defining the proper expenses by enacting rules of procedure falls within the “natural orbit” of each house of the Legislature.⁷⁷ Indeed, when discussing Article II, Section 10 in its report to the First Constitutional Convention, the Committee on Governmental Institutions stated: “The Committee reserved to the legislature power over expenses, however, as traditional and necessary.”⁷⁸ Thus, the fact that Public Law 20-67 delegated the power of defining proper expenses by formally rule does not violate the provided-by-law requirement.

The fact that the first three legislatures enacted statutory authorization for legislative allowances did not bind future legislatures to use the same practice. Courts may resort to a contemporaneous, practical construction of a constitutional provision to determine its meaning.⁷⁹ Courts note that past practice, especially contemporary practice, can be “extremely persuasive.”⁸⁰ “The conclusiveness of the interpretation depends on whether the interpretation originated from a reliable source, the interpretation was made at or near the time of the enactment of the statute, and the interpretation has continued for a long period of time and received acceptance and following.”⁸¹

The fact that the first Commonwealth Legislatures chose to enact a statute authorizing allowances rather than authorizing expenditures in an annual appropriation is mostly irrelevant. The First Commonwealth Legislature enacted statutory authorization for allowances with Public Law 1-3.⁸² This authorization lasted almost seven years before its repeal by the Fourth Commonwealth Legislature.⁸³ At the most, this practice demonstrates that the first few legislatures interpreted “as provided by law” to require legislative enactment. Appropriations bills meet this definition.

C. Rule XIII, Section 10 Violates Commonwealth Constitution Article II, Section 16(f) to the Extent It Allows Representatives to Spend Their Allowances on Personal, Private Activities.

Whether a legislator can use his or her allowance for his or her own personal benefit is not a question of policy: Article II, Section 16(f) plainly forbids legislators from using allowances for their private or political benefit. Section 16(f) provides: “No part of the appropriations for the

⁷⁵ *Kabir v. Pub. Sch. Sys.*, 2009 MP 19 ¶ 17.

⁷⁶ NMI Const. art. II, § 14(b).

⁷⁷ *See, e.g., Watson v. Fair Political Practices Comm'n*, 266 Cal. Rptr. 408, 413 (Ct. App. 1990); *see also* 2A Norman Singer, *Statutes and Statutory Construction* §§ 7:1–7.2 (2000).

⁷⁸ First Const. Convention, Comm. On Gov'tal Insts., Report No. 3 19 (Nov. 4, 1976).

⁷⁹ *See In re Petition of Comm'n on the Governorship of Cal.*, 603 P.2d at 1357 (Cal. 1979); *Rancho Homes, Inc.*, 256 P.2d at 308; *Gass*, 181 S.W. at 1021. *See also* 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

⁸⁰ *Johnson v. Duke*, 24 A.2d 304, 307–08 (Md. 1942).

⁸¹ *Maiter v. Chicago Bd. of Ed.*, 395 N.E.2d 1162, 1165 (Ill. App. 1979), *rev'd on other grounds*, 415 N.E.2d 1034 (Ill. 1980).

⁸² P.L. 1-3.

⁸³ P.L. 4-32, § 14.

legislature or the legislative bureau, other than a member's salary, may be used for personal or political activities.”⁸⁴ The plain meaning of Section 16(f) is patently obvious: legislators are forbidden from using any funds appropriated for the Legislature other than their salaries on personal or political expenses.

Assuming for the sake of argument that Section 16(f) is ambiguous—it is not—the Framers’ unambiguous intent was to prevent legislators from using anything but their salaries for personal expenditures. The drafting history of Article II since the Second Constitutional Convention is replete with references to legislators “self-indulgence,” “self-aggrandizement,” and “extravagance.” Since 1985, the voters of the Commonwealth have acted to further restrict the legislator’s use of public money for personal gain. The original legislative findings for H.L.I. 10-8 specifically stated that it sought to prevent legislators from abusing the Legislature’s budget.⁸⁵

The Supreme Court would likely hold that Rule XIII, Section 10 violates Article II, Section 16(f) to the extent that it authorizes Representatives to spend the allowance on personal expenses. While the Court would normally refuse to rule on the interpretation of the House’s Rules of Procedure as a political question, Rule XIII, Section 10 is so broad that it conflicts directly with Article II, Section 16(f).⁸⁶ The Court will attempt to construe Rule XII, Section 10 to be constitutional if such an interpretation is possible.⁸⁷ Given the sheer breadth of Rule XIII, Section 10, the Supreme Court would likely find that Rule XIII, Section 10 is unconstitutional to the extent it purports to authorize personal and private expenditures. This includes meals and groceries purchased in the Representative’s district, paying for lodging in a Representative’s Senatorial District, and generally any expenses that are not legitimately connected with legislative business.

D. The Allowance Is Not Reasonable Because It Far Exceeds Previous Allowances.

The amount of the allowance is not reasonable because it is far in excess of any previous allowance. “Reasonable” means “[f]air, proper, or moderate under the circumstances; sensible.”⁸⁸ In context “reasonable” could mean “a reasonable amount,” “for a reasonable purpose,” or both. The previous Section shows that the Allowance can be used for purposes that are not reasonable. Unfortunately, the word “reasonable” is not specific and the Constitutional Convention materials do not suggest what a reasonable amount would be or how a reasonable amount is calculated. As such, contemporary construction is the best guidance on what “reasonable” means.

Contemporary practice is a useful tool for interpreting ambiguous constitutional language. The Court of Appeals of Maryland explains that “contemporaries of the framers have claims to our deference on the question of interpretation inasmuch as they enjoyed the best opportunities of

⁸⁴ NMI Const. art. II, § 16(f).

⁸⁵ See *supra* note 42 and accompanying text.

⁸⁶ Compare *Sablan*, 4 NMI at 363–64, with *Beshear*, 563 S.W.3d at 83–84.

⁸⁷ *Rayphand*, 2003 MP 12 ¶ 58.

⁸⁸ *Reasonable*, Black’s Law Dictionary (10th ed. 2014).

learning the intention of the framers and the understanding of the people who ratified the instrument.”⁸⁹ The doctrine must be used cautiously, as “[n]o acquiescence for any length of time can legalize a usurpation of power, where the people have plainly expressed their will in the Constitution and established judicial tribunals to enforce it.”⁹⁰ Contemporaneous construction is especially useful where other canons of statutory construction fall short.

Contemporary construction suggests that an amount between \$30,000 and \$35,000 is reasonable. The first few Commonwealth Legislatures’ interpretation of Article II, Section 10 is persuasive authority.⁹¹ Public Law 1-3 established an allowance of \$8,000, which is approximately \$31,352.06 adjusted for inflation.⁹² Public Law 3-17 increased the maximum allowance to \$13,000 in 1985, which is approximately \$33,703.47 per year adjusted for inflation.⁹³ This amount is half of the Allowance. An amount of no more than \$2,500 per month seems reasonable, especially considering the travel and lodging expenses of legislators from Tinian and Rota.

There is a strong counter argument against using contemporary construction in this case: The Legislature repeal of the statutory allowance was within seven years and the subsequent Constitutional Convention enacted a budget ceiling. Notably, this counter argument does not support the current allowance, but rather supports a figure of less than \$31,000.

E. The Department of Finance Is Forbidden from Disbursing Funds for Private and Political Activity.

The Constitution forbids the Department of Finance from disbursing funds to legislators for private or political expenditures and requires the Department of Finance to demand full documentation justifying a legislator’s expenditures. Article X, Section 8 provides:

The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.⁹⁴

Article X, Section 8 checks the powers of the other branches of government. By requiring reasonable documentation, the Department of Finance guarantees compliance with Article II, Section 16(f).

⁸⁹ *Johnson*, 24 A.2d at 308 (quoting *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 290 (1827)).

⁹⁰ *Id.*

⁹¹ See *In re Petition of Comm’n on the Governorship of Cal.*, 603 P.2d at 1357 (Cal. 1979); *Rancho Homes, Inc.*, 256 P.2d at 308; *Gass*, 181 S.W. at 1021. See also 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

⁹² Bureau of Labor Statistics CIP Calculator, *supra* note 11.

⁹³ *Id.*

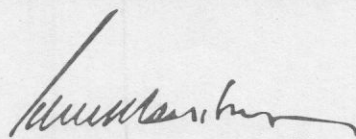
⁹⁴ NMI Const. art. X, § 8.

The Department of Finance must refuse to issue payment to Representatives in two situations. The Department must refuse to issue payment to Representatives who do not provide reasonable documentation. The Department of Finance must also refuse to issue payment where the documentation demonstrates that a Representative's expenditure was for a personal or political purpose.

V. CONCLUSION AND RECOMMENDATIONS

House Rule of Procedure XIII, Section 10 appears to authorize payments that would violate the Constitution. Based on our review, the allowance of \$60,000.00 per year (\$5,000.00 per month) would be considered unreasonable under the Constitution. As explained, an allowance of about \$30,000.00 would be reasonable under a contemporary analysis which takes into account adjustments for inflation. Public Law 1-3 set the initial legislative maximum allowance at \$8,000.00 which would be about \$31,352.06 in today's dollars. Public Law 3-17 increased the allowance to \$13,000.00, approximately \$33,703.47 per year adjusted for inflation. The present maximum allowance of \$60,000.00 is double what the initial allowance would be today and still significantly higher than the second adjustment under PL 3-17. Moreover, the fact that the Fourth Legislature repealed the authorization for allowances within seven years and a constitutional ceiling was imposed on the Legislature with the ratification of Second Constitutional Amendment No. 9 strongly suggests the Legislature does not have a free hand in defining "reasonableness" well beyond the constitutional realm of what has been contemplated and approved. Doubling the allowance to \$60,000.00 from the initial allowance adjusted by inflation of \$31,352.06 appears to challenge any reasonableness standard.

Another constitutional concern is to guard against the use of the legislative allowance for any personal, private or political activities or expenses. As stated, each member of the House of Representatives must provide "full and reasonable" documentation to the Department of Finance to support requests for payment from each member's legislative allowance. Such documentation must prove that the payment will be used for a public purpose and not for any personal or political activities or expenditures. The Constitution compels the Secretary of Finance to ensure that no disbursement of public funds is made which would contravene the public purpose requirement under Article X, Section 8 of the Constitution. Only when the House of Representative members present the requisite documentation proving the public purpose of the disbursement from their respective legislative allowance, may the Department of Finance issue any payment.



EDWARD MANIBUSAN
Attorney General



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

Website: <http://opacnmi.com>

1236 Yap Drive, Capitol Hill, Saipan, MP 96950

Mailing Address:
P.O. Box 501399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: (670) 322-6481
Fax: (670) 322-7812

April 14, 2022

VIA EMAIL

Chairwoman Celina Babauta
The House of Representatives Committee on Judiciary and Governmental Operations
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA additional comments regarding House Bill No. 22-30

Dear Chairwoman Babauta:

The Office of the Public Auditor (OPA) will take this opportunity to comment on House Bill 22-30 (H.B. 22-30). OPA addressed similar issues regarding legislative allowances in our 2003 report "Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002" and our April 10, 2019 letter response "Request for OPA guidance on rule change that would permit each member to draw an allowance from that member's individual office allotment." We consider this letter supplemental and complimentary to the concerns and analysis previously addressed by our office. Additionally, when setting the allowance as discussed in section F of H.B. 22-30, we urge you to reference the Office of the Attorney General legal opinion, OAG 21-02, issued on November 1, 2021, in regards to the constitutionally required reasonableness of the allowance.

H.B. 22-30 addressed many of the concerns OPA raised in our 2019 letter; however, there are still some potential issues we would bring to your attention. To begin, we would suggest moving the language on page 8, lines 8-10, "These expenses are subject to other CNMI statutory restrictions, including the airfare and per diem restrictions set forth in 1 CMC § 7407," to the beginning of section E on page 6, line 3. This will ensure that all travel under H.B. 22-30 is done in accordance with the uniform travel policy mandated by 1 CMC § 7407. Conversely, H.B. 22-30 does not discuss how airfare and per diem restriction application will be ensured by the representatives drawing from their allowance. An additional process may need to be identified to ensure statutory compliance.

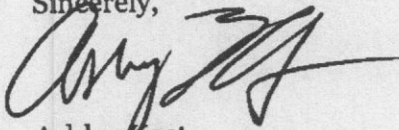
Moreover, OPA has identified a list of phrases that are vague which could result in loopholes or abuse. They are as follows:

- Page 2, lines 17-18- "Actions taken as a representative of the district from which a member is elected"
- Page 3, line 13- "protocol-type gifts"
- RS 5 — • Page 4, line 1- "sympathy gifts"
- Page 5, line 10- "unrelated to the member's official duties"
- Page 5, lines 18-19- "Any expense for membership fees or dues except those for certain legislative or governance-related organizations"
- Page 6, lines 2-3- "official travel"

- Page 6, line 18- "primarily relate to official business"
- Page 8, line 3- "personal convenience"
- Page 8, lines 7-8- "other ordinary and necessary incidental expenses while on official travel status"

If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,



Ashley Kost
Legal Counsel

cc: Kina Peter, Public Auditor

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

First Regular Session, 2021

H. B. 22-30, HD1

A BILL FOR AN ACT

To grant the Legislature a reasonable allowance, to define a “reasonable allowance”, to set the amount of the allowance, and to certify it as a public purpose.

**BE IT ENACTED BY THE 22ND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** Article II, Section 10 of the NMI
2 Constitution of the Commonwealth of the Northern Mariana Islands provides that
3 members of the Legislature shall receive an annual salary as well as reasonable
4 allowances for expenses provided by law. The definition of a reasonable allowance
5 has not been defined by CNMI law and has instead ~~has~~ been addressed by
6 legislative rules and resolutions that lack the necessary force of law.

7 The Office of the Attorney General’s legal opinion, OAC-21-02, regarding
8 the Legislative Allowances notes: “The Commonwealth Supreme Court has
9 recognized that the term ‘as provided by law’ means the provision is not self-
10 executing, and requires further action to gain the force of law. Public Law 20-67 is
11 a valid law enacted by the Legislature and signed by the Governor that appropriates
12 funds for ‘expenditures authorized by the adopted rules of the House of

1 Representatives.’ The passage of Public Law 20-67 satisfies the provided-by-law
2 requirement.” The attorney general further stated that a reasonable allowance is
3 around \$30,000.00, though an increase in legislators’ salaries may reduce this
4 amount.

5 The OAG noted that the “Commonwealth Constitution Article II, Section
6 16(f) explicitly prohibits legislators from using any appropriation for the
7 Legislature other than their salaries on personal or political expenses. Section 16(f)
8 provides: ‘No part of the appropriations for the legislature or the legislative bureau,
9 other than a member’s salary, may be used for personal or political activities.’ The
10 Allowance appears to be for personal expenses, i.e., ‘to defray the costs of food,
11 lodging, and other incidental expenses related to community events and activities
12 and other expenses incurred by reason of attending to legislative business.’ House
13 Legislative Initiative 10-8, SS1 added Section 16(f) ‘to prevent the Legislative
14 Members from abusing the limited budget of the legislative bureau for their own
15 purposes for their self-indulgence.’ Article II, Section 16(f) was added to the
16 Constitution to address precisely this kind of conduct by legislators.”

17 Accordingly, the Legislature finds it necessary to enact this law to grant it
18 authority for the allowance to its members, to define a reasonable allowance, to
19 implement procedures for setting an amount allowance, and to implement
20 procedures for certifying expenses claimed under an allowance for a public
21 purpose.

1 **Section 2. Enactment.** The following is hereby enacted subject to
2 codification by the CNMI Law Revision Commission:

3 “(A) **Short Title.** This act shall be known and may be cited as the
4 Legislative Allowance Act.

5 (B) **Purpose.** The purpose of this Act is to define what a reasonable
6 annual allowance is for members of the CNMI Legislature, to grant it
7 authority for the allowance, and to implement procedures to set the
8 allowance and certify it for a public purpose.

9 (C) **Definition of a Reasonable Allowance.** A “reasonable
10 allowance” means reasonable expenditures incurred in support of official
11 and representational duties to the district from which a member is elected.
12 Official and representational duties include but are not limited to the
13 following:

14 (a) Relating to the legislative process; or

15 (b) Facilitating interaction between constituents and the CNMI
16 government (including but not limited to information on laws, programs,
17 regulations, funding, decisions, and other actions by the CNMI
18 government); or

19 (c) Actions taken as a representative of the district from which a
20 member is elected.

1 (d) Examples of expenses reasonably related to official legislative
2 duties include but are not limited to the following:

3 (i) Office-related expenses, including office supplies,
4 postage, printing charges, newspaper and other publication
5 subscriptions, cellular telephone and internet plans, constituent lists,
6 and legislative newsletters.

7 (ii) Office equipment and appliances, including furniture,
8 computers and tablets, televisions and monitors, cellular telephones,
9 coffee makers, and refrigerators. Office equipment and appliances
10 purchased using the allowance are CNMI government property and
11 cannot be used for private business purposes.

12 (iii) Official duty-related expenses, including leis or
13 mwarmwars (for ceremonial occasions or for those being honored
14 by the Legislature); protocol-type gifts; room/facility rental costs;
15 parking for members and staff attending meetings or functions away
16 from the CNMI; conference registration fees; membership fees and
17 dues to member/governance-related organizations; ~~intrastate and~~
18 ~~interstate travel-related~~ expenses related to interisland travel and
19 travel outside of the CNMI, including airfare, hotel and food, to
20 attend an event having a direct benefit to the Commonwealth, and
21 automobile mileage reimbursement associated with a member's use

1 of his or her personal vehicle to attend meetings and other events in
2 his or her official legislative capacity (excluding mileage relating to
3 a member's commute to work).

4 (iv) Other food and beverages: expenses relating to food and
5 beverages for visitors to a member's office; for constituents and
6 others (excluding legislative staff) who attend official meetings or
7 functions involving a member at which the food and beverages are
8 provided (for example, meetings with constituents, community
9 meetings); and for members and legislative staff who are required
10 to attend the meeting or function at which the food and beverages
11 are provided. These expenses must be reasonably related to a
12 member's official duties; they also must be reasonable in cost for
13 the given situation.

14 (D) **Prohibited Uses of an Allowance.** A member's allowance must
15 only be used for purposes that are primarily official and representational.

16 The following uses of a member's allowance are prohibited:

17 (a) Any expenses related to activities or events that are primarily
18 social in nature (including but not limited to sporting events, concerts,
19 personal events).

20 (b) Any personal expenses.

- 1 (c) Any celebration, appreciation, or sympathy gifts, including
2 chenchule.
- 3 (d) Any charitable donations or charitable fundraisers.
- 4 (e) Any campaign expenses or campaign-related political party
5 expenses or donations.
- 6 (f) Any expenses for food and beverages for members or legislative
7 staff except for those provided at meetings at which a member and/or staff
8 is required or expected to attend.
- 9 (g) Any expenses for food and beverages for others or for activities
10 or events unrelated to the member's official duties.
- 11 (h) Any expenses for entertainment, including tickets to sporting
12 events, entertainment events, for recreational activities, including those that
13 benefit a non-profit organization.
- 14 (i) Any expenses for advertisements for any private individual, firm,
15 charity, or corporation, or imply in any manner that the government
16 endorses or favors any specific commercial product, commodity, or service.
- 17 (j) Any expenses for membership fees or dues except those for
18 certain legislative or governance-related organizations.
- 19 (k) Any expenses reimbursed from another source.
- 20

1 (E) **Use of Allowance for Travel.** The allowance may be used for a
2 member's ordinary and necessary expenses associated with official travel
3 (including lodging and meals). These expenses are subject to other CNMI
4 statutory restrictions, including the airfare and per diem restrictions set forth
5 in 1 CMC § 7407, and applicable regulations.

6 (a) Authorized Persons. The allowance may be used for the ordinary
7 and necessary expenses associated with official travel for the member,
8 member's employees or other legislative staffers, and vendors in support of
9 the official and representational duties of that member to the district from
10 which he or she is elected. ~~A vendor is one that provides maintenance and~~
11 ~~support for equipment and software under a valid contract or working on a~~
12 ~~time and material basis.~~ The allowance shall not be used for travel expenses
13 for a member's family member or any other person that is not otherwise a
14 legislative staffer.

15 (b) Connecting Travel. A member may use the allowance for official
16 travel to or from a destination for the purposes of connecting to or from
17 another official or officially-connected trip. Any connecting/linking travel
18 incurred abroad must primarily relate to official business.

19 (c) Unexpected Official Travel. Official travel includes travel to an
20 official point from a location visited on a personal travel trip by members
21 and staff, if the travel to the official point is necessitated by an unexpected

1 official duty, such as a previously unscheduled vote, natural disaster,
2 pandemic, or civil disorder. In such cases, return travel to the point of
3 personal destination is considered official travel.

4 (d) No travel for non-public purposes. Official travel shall not be
5 used for personal, campaign-related political party, campaign, or committee
6 purposes. Official travel cannot originate from or terminate at a campaign
7 event. Official travel shall not be combined with or related to travel or
8 travel-related expenses paid for with campaign funds.

9 (e) Combined Travel. Combined travel is travel by a member or their
10 employees for the primary purpose of supporting the official and
11 representational duties of the member, but includes an intervening
12 destination or an additional time period that is included for personal
13 purposes. Combined travel requires that:

14 (i) The primary purpose of the travel must be official and
15 representational. The personal segment of the combined travel may
16 not be purchased at a government rate or be purchased with a
17 member's allowance.

18 (ii) The traveler must provide a written justification stating
19 that the official travel and personal travel was combined for personal
20 convenience.

1 (f) Official Travel Expenses. Official travel expenses include
2 transportation, lodging, meals (excluding alcohol), fees (e.g., parking, tolls,
3 ticket change fees, travel insurance, etc.), and other ordinary and necessary
4 incidental expenses while on official travel status. ~~These expenses are~~
5 ~~subject to other CNMI statutory restrictions, including the airfare and per~~
6 ~~diem restrictions set forth in 1 CMC § 7407.~~

7 (g) Chartered Aircraft. Ordinary and necessary expenses related to
8 chartering an aircraft for official travel may be paid with the allowance
9 when:

10 (i) Passengers are restricted to members, their employees,
11 and their immediate family members (spouse from a legal marriage,
12 child, parent), the names of whom must be stated on the voucher.

13 (ii) If an immediate family member uses a chartered aircraft
14 with the member, the member may seek reimbursement for the full
15 cost of the chartered aircraft and the family member must submit a
16 check to the Department of Finance payable to the Commonwealth
17 Treasury equivalent to the cost of a comparable commercial fare. A
18 letter explaining the reason for its submission must accompany the
19 check.

20 (iii) Other non-legislative individuals may travel on the
21 member-chartered aircraft when the following criteria are met:

1 (1) The chartered aircraft vendor has the ability to
2 charge based on individual seating in the same manner as a
3 commercial aircraft vendor; and

4 (2) The other passengers are federal, state or local
5 officials, and are joining the members and staff in support of
6 legislative issues related to the district.

7 (h) Bar on Double Compensation. Members may receive
8 reimbursements for expenses associated with official travel from the
9 legislative allowance or via regular travel per diem or stipends from the
10 Department of Finance, but not both at the same time.

11 **(F) Setting of the Allowance; Budgeting and Disclosure.** The
12 reasonable allowance may be set by legislative rule but such rules must be
13 guided by this Act and must be only for a public purpose as defined by law.
14 In setting the allowance, the Legislature shall undertake an analysis of
15 reasonable travel costs and ensure the amount set for allowances is
16 appropriate given the expenses incurred. Members shall document travel
17 activity to enable the Legislature to more accurately estimate an appropriate
18 monthly allowance. All traveling members shall ensure compliance with
19 applicable regulations and the law. The Department of Finance shall send
20 each member monthly statements showing year-to-date expenditures and
21 obligated amounts. The quarterly expenditures reflected in these statements

1 shall be compiled and published as the Quarterly Statement of
2 Disbursements, which shall be a public document and shall be made
3 available online.

4 (G) **Disbursements of the Allowance.** Disbursements from an
5 allowance shall be made on a reimbursement or direct payment basis and
6 requires specific documentation and member certification as to accuracy
7 and compliance with the public purpose justification, as well as compliance
8 with this Act and legislative rules. Such certifications shall be made under
9 the penalty of perjury. Reimbursements and payments from an allowance
10 may be made only to the member, the member's employees, or a vendor
11 providing services to support the operation of the member's offices.

12 (H) **Record Keeping.** Each member who draws an allowance
13 authorized under this Act shall maintain a record of all transactions,
14 including corresponding receipts and public purpose justifications. The
15 records shall be public records."

16 **Section 3. Severability.** If any provisions of this Act or the application of
17 any such provision to any person or circumstance should be held invalid by a court
18 of competent jurisdiction, the remainder of this Act or the application of its
19 provisions to persons or circumstances other than those to which it is held invalid
20 shall not be affected thereby.

1 **Section 4. Savings Clause.** This Act and any repealer contained herein shall
2 not be construed as affecting any existing right acquired under contract or acquired
3 under statutes repealed or under any rule, regulation, or order adopted under the
4 statutes. Repealers contained in this Act shall not affect any proceeding instituted
5 under or pursuant to prior law. The enactment of the Act shall not have the effect
6 of terminating, or in any way modifying, any liability, civil or criminal, which shall
7 already be in existence on the date this Act becomes effective.

8 **Section 5. Effective Date.** This Act shall take effect upon its approval by
9 the Governor, or its becoming law without such approval.

Prefiled: 3/9/2021

Date: 3/8/2021

Introduced by: /s/ Rep. Christina M.E. Sablan
/s/ Rep. Celina R. Babauta
/s/ Rep. Richard T. Lizama
/s/ Rep. Donald M. Manglona
/s/ Rep. Edwin K. Propst
/s/ Rep. Leila H.F.C. Staffler
/s/ Rep. Denita Kaipat Yangetmai

Reviewed for Legal Sufficiency by:

/s/ Joseph L.G. Taijeron, Jr.
House Legal Counsel