

TENTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 10-27  
SENATE BILL  
NO. 10-58

SECOND REGULAR SESSION, 1996

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AN ACT

To amend 4 CMC §§ 8133(a) & (c), 8134(f), 8151, and 8152, and 1 CMC §§ 8131 and 8250, to implement recommendations of the Operations and Maintenance Improvement Program for the Commonwealth Utilities Corporation and conform with the Partnership Agreement; and for other purposes.

**BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

Section 1. Short Title. This Act may be cited as the “CUC Effective Corporate Management Act of 1996.”

Section 2. Purpose. The purpose of this Act is to address the recommendations incorporated by the Operations and Maintenance Improvement Program Team in their December 1992 and December 1993 reports (Third and Fourth Year Reviews) and to conform with the Partnership Agreement with the Federal Government. Broadly stated, the purpose is to provide full autonomy to the Commonwealth Utilities Corporation. One aspect of this is authority to prescribe and administer its own personnel policies tailored to the needs of the Corporation. The authority to appoint, promote, or remove is a management tool crucial for the Corporation to economically, adequately, and efficiently meet its prescribed goals and objectives. Failure to grant such authority will hinder the delivery of water, power, and sewer services to the people of the Commonwealth. The OMIP reports addressed this and other concerns.

The Department of Interior commissioned the OMIP Team to evaluate, inter alia, the operations of CUC, and submit their recommendations to the Department of Interior and the Government of the Northern Mariana Islands. The specific recommendations addressed by this Act (which appear on pages 25 and 26 of the 1992 report and pages 23-25 of the 1993 report) are detailed below:

(1) CUC employment should be exempted from civil service regulation, at least to the same extent as CPA employment is. The 1993 report stated: “The authority to hire, promote, and remove employees, and to establish salaries, is a primary requirement for an independent authority.”

(2) The Board should have unrestricted authority to retain its own legal counsel. The reports stated: “The appointment of legal counsel be a corporate board of directors is a basic characteristic of an independent government corporation.”

(3) The Board should have clear authority to appoint its own auditor and not rely exclusively on the Public Auditor. The 1992 report stated (emphasis added): “It should be the right, as well as the responsibility of the CUC Board to appoint its own auditor, with experience in doing utility audits, to conduct an annual audit, with copies to be furnished to the Governor and the Legislature. The Public Auditor should be free to conduct audits on behalf of the CNMI Government if needed, *but the basic responsibility for the audit function needs to rest with the CUC Board.*”

(4) Removal of the Executive Director should require the vote of a majority of the membership of the Board, and upon request an Executive Director should be entitled to a public hearing prior to removal.

(5) The experience qualifications for the Executive Director, which were reduced to a broad preference by P.L. 7-2, should be restored.

Despite these clear, direct, and unequivocal recommendations by the OMIP team, the Governor vetoed the previous version of this bill. The entirely predictable result was that the federal government found the Commonwealth in violation of the Partnership Agreement. This Act contains a number of changes in form from the vetoed measure, S.B. 10-8, SS1, but is otherwise substantively the same. The provisions of this Act are stronger and clearer than those of Executive Order 96-2, which the Legislature finds to be an inadequate and inappropriate means of accomplishing these purposes.

### Section 3. Amendments.

(a) 4 CMC § 8133(a) is amended to read:

“(a) Executive Director. The Board shall appoint an Executive Director to administer the operations of the Corporation on behalf of the Board. The Executive Director shall have, in addition to such other qualifications as the Board may prescribe, a minimum of five years professional experience in public utility services, business management or finance and shall possess at least a bachelor’s degree from an accredited university or college.”

(b) 4 CMC § 8133(c) is repealed and reenacted as follows:

“(c) Staff. The staff of the Corporation shall be exempt from the application of the Commonwealth Civil Service Act, Part 1 (commencing with § 8101) of Division 8 of Title 1 of the Commonwealth Code; except that 1 CMC §§ 8142 and 8145(c) shall apply to the Corporation as if all employees of the Corporation were members of the Civil Service, and employees of the Corporation shall enjoy the protections of 1 CMC §§ 8141, 8145(b), (d), (e), and (f), and 8151 through 8153 to the same extent and in the same manner as if they were members of the Civil Service. The Corporation shall develop, adopt, and administer a merit personnel system that rewards productivity and service, provides management flexibility, and includes provisions for employees to appeal serious disciplinary action. The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Corporation.

(1) (A) No recommendation of any person who applies for examination or appointment to any office or position within the Corporation which may be given by an elected official of the Commonwealth, except as to the ability or

character of the applicant, shall be considered by any person in the giving of any examination or in the making of any appointment under the personnel system of the Corporation.

(B) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under the personnel system of the Corporation, nor commit or attempt to commit any fraud preventing the impartial execution of any provision of the personnel system of the Corporation.

(C) No person shall, directly or indirectly, give, pay, offer, solicit, or accept any money, service, or other thing of value to obtain any appointment, proposed appointment, promotion or proposed promotion to, or obtain any advantage in, a position within the Corporation.

(2) The Corporation may set its own compensation, wage and salary scales. The Corporation shall provide a copy of its wage and salary scales to the presiding officers of the legislature upon adoption, and shall also so provide a copy of any changes to those scales as and when made from time to time. The Corporation shall submit an annual report to the Governor and the presiding officers of the legislature no later than April 1 of each year detailing how the wage and salary scales in effect during the preceding calendar year compare with the wages and salaries paid by the Commonwealth and in the marketplace generally for positions requiring comparable education, training, or experience.

(3) Employees of the Corporation shall be eligible to participate in any Commonwealth health and life insurance plan, and shall accumulate leave time in accordance with applicable law and the personnel system of the Corporation. The provisions of the CNMI Workers' Compensation Law, Chapter 3 of Division 9 of Title 4 of the Commonwealth Code (commencing with § 9301), apply to employees of the Corporation, and compensation payments pursuant thereto unless otherwise secured shall be made from the Government Self-Insurance Fund (4 CMC § 9354), from appropriations by the Legislature for that purpose, or from funds otherwise available.”

(c) A new paragraph (13) is added to 1 CMC § 8131 to read:

“(13) Personnel, staff and other employees of the Commonwealth Utilities Corporation.”

(d) Subsections (e) and (f) of 1 CMC § 8250 are hereby redesignated as subsections (f) and (g), and a new subsection (e) is hereby enacted to read:

“(e) Sections 8245(b)-(d), 8246, 8248(a), 8251, and 8252 of this Chapter shall not apply to the Commonwealth Utilities Corporation.”

(e) 4 CMC § 8134(f) is amended to read:

“(f) The Executive Director, Comptroller and any other officer may be dismissed by affirmative vote of a majority of the authorized voting membership of the Board. Any officer subject to dismissal under this subsection may request a public hearing before the Board; and in the event of such a request, no dismissal shall be effective unless voted by the Board at the conclusion of or subsequent to such hearing.”

(f) 4 CMC § 8151 is amended to read:

“Section 8151. Legal Counsel.

The Board may retain or engage private legal counsel. In addition, unless prevented by conflict from doing so, the Attorney General shall serve as legal counsel to the Corporation upon request of the Board, providing the representation of such scope as the Board may prescribe.”

(g) 4 CMC § 8152 is amended by redesignating the existing section as subsection (a) and adding a new subsection (b) to read:

“(b) Nothing in this section shall be construed as limiting the authority of the Board to employ, retain or engage auditors or a private auditing firm. Basic responsibility for the audit function belongs to the Board, which should appoint a certified public auditor with experience doing utility audits (which may be the Public Auditor) to conduct an annual audit and such other audits as the Board deems appropriate. The annual audit should be complete with a management letter, shall be a public document, and shall include a summary suitable for ready publication in newspapers of general circulation in the Commonwealth. Copies of the annual audits shall be provided to the Governor and both houses of the legislature. Audits by the Public Auditor do not relieve the Board of its overall responsibility for the audit function; the sufficiency of such audits shall be judged by the same standards as would apply in the case of private auditors retained or engaged by the Board.”

Section 4. Transition.

(a) The amendment to 4 CMC § 8133(a) made by this Act shall not affect the tenure of the incumbent Executive Director. Any Commonwealth Utilities Corporation employee who loses civil service coverage as a result of this Act and would prefer to return to civil service status, shall, for a period of one year from the effective date of this Act, be given preference for any civil service employment with the Commonwealth government for which he or she is qualified and shall be entitled to transfer into such employment.

(b) The Executive Director of the Commonwealth Utilities Corporation (CUC) and the Director of Personnel shall make recommendations to the CUC Board of Directors and to the Civil Service Commission for an orderly transition from civil service to CUC’s own personnel system.

Section 5. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

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

Section 7. Effective Date. This Act shall take effect upon its approval by the Governor or

