



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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May 29, 1997

The Honorable Diego T. Benavente  
Speaker of the House of Representatives  
Tenth Northern Marianas Commonwealth Legislature

Dear Speaker Benavente:

**Subject: Final Letter Report - Audit of Compliance With the Authorized Number of Full Time Employment Positions by Government Departments and Agencies Under the Executive Branch as of September 30, 1996 (Report No. LT-97-05)**

This final letter report presents the results of our audit of compliance with the authorized number of full time employment (FTE) positions by government departments and agencies under the Executive Branch as of September 30, 1996. The objective of our audit was to determine whether there were government departments or agencies which exceeded the authorized number of FTE positions set by the annual appropriation acts.

Our audit showed that five government departments and agencies under the Executive Branch exceeded their authorized number of FTE positions established by the Legislature in the annual appropriation acts. As of September 30, 1996, there were 103 FTE positions in excess of the authorized number of positions allotted to these five departments and agencies. As a result, an estimated \$3.4 million in public funds were expended for personnel in excess of the authorized FTE ceilings and without legislative appropriations. We recommended that the Special Assistant for Management and Budget (1) enforce the authorized FTE ceilings for each department and agency without exception or be subject to proceedings under the Planning and Budgeting Act and (2) issue a written directive to all department and agency heads to comply with the authorized FTE ceilings established by the appropriation acts. We also suggested that the Speaker of the House may wish to consider introducing *permanent legislation* that (1) specifically limits filling of available FTE positions to only those positions identified in the personnel budget worksheets of a particular department or agency and (2) restrict FTE transfers within departments and agencies of a government branch to eliminate any misunderstanding on the non-transferability of unfilled FTE positions.

The Special Assistant for Management and Budget did not directly respond to our recommendations. After his receipt of our draft report, however, the Special Assistant issued a written directive dated April 21, 1997 to all department and agency heads informing them that the Office of Management and Budget will reject all requests for personnel actions (RPAs) in excess of the FTE ceilings. Based on this action, we considered both recommendations as closed and implemented.

In his letter dated May 14, 1997, the Speaker of the House acknowledged our findings and informed us that he will bring our suggestions to the House Leadership at the earliest opportunity for consideration.

## **BACKGROUND**

In October 1996, the Speaker of the House requested the Office of the Public Auditor (OPA) to audit several areas involving government expenditures, particularly those incurred by the Executive Branch of the CNMI Government. These included possible hiring of employees by government departments and agencies beyond the authorized number of FTE positions. This audit covered only the Speaker's concerns about compliance with the FTE ceilings authorized by annual appropriation acts.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objective of our audit was to determine whether there were government departments or agencies which exceeded the authorized number of FTE positions set by annual appropriation acts. The scope of our audit covered FTE positions as of September 30, 1996 and included all agencies under the Executive Branch of the CNMI Government. Our procedures included a review of existing laws and regulations on the FTE ceilings, and comparison of the number of actual FTE positions currently occupied by government employees under the Executive Branch with the maximum number of FTE positions authorized under applicable appropriation laws.

## **FINDINGS AND RECOMMENDATIONS**

### ***Authorized FTE Ceilings Exceeded By Executive Branch Departments and Agencies***

Under the Commonwealth Constitution, the Legislature shall establish ceilings on the number of persons who may be employed by each branch, department, agency, authority, and public corporation, and no public funds may be expended for personnel in excess of the ceilings except upon specific approval by joint resolution of the Legislature. Our audit showed that five

government departments and agencies under the Executive Branch exceeded their authorized number of FTE positions established by the Legislature in the annual appropriation acts. As of September 30, 1996, there were 103 FTE positions in excess of the authorized number of positions allotted to these five departments and agencies. This occurred because the Office of Management and Budget, which was responsible for certification of funding and availability of FTE positions, did not reject the requests for additional personnel by departments and agencies which already had hired the maximum number of FTE positions. As a result, an estimated \$3.4 million in public funds were expended for personnel in excess of the authorized FTE ceilings and without legislative appropriations.

### *Discussion*

Article X, Section 7 (Government Employment) of the Commonwealth Constitution states:

*“In the annual appropriation acts, the legislature shall establish ceilings on the number of persons that may be employed by each branch, department, agency, authority, and public corporation of the Commonwealth to which public funds are appropriated. Except upon specific approval by joint resolution of the legislature, no public funds may be expended for personnel in excess of the ceilings so established.”* (Emphasis added.)

Section 301 of Public Laws 9-25 and 9-66, the Annual Appropriation Acts for fiscal years 1995 and 1996, states:

*“Funds for the programs and activities of the Government of the Northern Mariana Islands are hereby appropriated as per the attached appropriation and personnel worksheets, which are incorporated by reference in this Act. The FTEs identified are the maximum number of positions approved and authorized and shall not be exceeded unless authorized in accordance with Article X, Section 7 of the Commonwealth Constitution.”* (Emphasis added.)

The Commonwealth Code in 1 CMC §7401 (Expenditure of Appropriated Funds) of the Planning and Budgeting Act also states in part:

*“No expenditure of Commonwealth funds shall be made unless the funds are appropriated in currently effective Annual Appropriation Acts or pursuant to Section 7204(d) [referring to provision on Continuing Appropriations]...”* (Emphasis added.)

Further, 1 CMC §7701 (Criminal Offenses) states:

“No officer or employee of the Commonwealth shall willfully and knowingly make or authorize any expenditure from or create any obligation or allotment under any appropriation or fund *in excess of the amount available therein.*” (Emphasis added.)

Based on the above provisions, the FTE ceilings established by the Legislature refer to the number of positions specified in the appropriation and personnel worksheets supporting the amounts set forth in the annual appropriation acts. A reasonable interpretation of the Constitutional provision would conclude that the FTE ceiling was intended to limit the number of employees who may be hired by a particular department or agency. This intent is further indicated by discussions of the proposed law by the 2<sup>nd</sup> Constitutional Convention (as recorded in the Journal of the Second Constitutional Convention, 31<sup>st</sup> day, July 18, 1985, pp. 560-568) which debated the restrictive nature of the law on “executive department directors”<sup>1</sup> who may have an urgent need to increase their ceilings. Under the Constitution, the FTE ceiling can only be exceeded upon specific approval by joint resolution of the Legislature.

Commonwealth laws also prohibit expenditure of funds in excess of the amount appropriated by the Legislature. Hiring of employees in excess of the authorized number of FTE positions would likely result in expenditure of funds in excess of the amounts appropriated for personnel costs. It should be noted that amounts appropriated for personnel costs cannot be increased through departmental reprogramming or transfer of appropriated funds from nonpersonnel expenses to personnel expenses. As provided in 1 CMC §7402 (c)(3) (Agency and Department Reprogramming Authority), “departmental reprogramming shall not be permitted if it will be used to reprogram funds appropriated for nonpersonnel expenses to personnel expenses...”

### ***Excess FTE Positions***

Our comparison of the number of actual FTE positions with the number of authorized FTE positions as of September 30, 1996 showed the following five Executive Branch departments and agencies which exceeded their authorized FTE ceilings by 103 FTE positions [See table on the following page (Note: departments and agencies were grouped in accordance with the annual budget groupings - refer to **Appendix A** for details)]:

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<sup>1</sup>Executive department directors are now called department secretaries, pursuant to Section 106 of Executive Order 94-3 effective August 24, 1994.

Particulars	Nos. Of Full Time Employment Positions		
	Actual	Authorized	Excess
1. Governor's Office	274	202	72
2. Department of Finance	206	196	10
3. Department of Land & Natural Resources	185	169	16
4. Department of Public Works	198	195	3
5. Department of Community & Cultural Affairs	96	94	2
	959	856	103

The actual number of FTE positions was based on the number of active employees under the department's or agency's payroll per Department of Finance's records as of September 30, 1996. The number of authorized FTE positions was based on appropriations worksheets incorporated in the annual appropriations act for fiscal year 1996 except for those departments and agencies line-item vetoed by the Governor. For those vetoed departments and agencies, the number of authorized FTE positions was based on worksheets of the annual appropriations act for fiscal year 1995.

We also compared the amounts appropriated for personnel expenditures with the actual personnel costs incurred by the department or agency which exceeded the FTE ceiling. The results of our comparison showed a total deficit in personnel costs of almost \$4.5 million as of September 30, 1996. Based on estimated average personnel costs of \$33,198 per FTE position, the deficit attributable to the 103 excess FTE positions amounts to more than \$3.4 million (the rest of the deficit is attributable to higher salaries and other benefits, such as overtime compensation, etc.)

This occurred because the Office of Management and Budget (OMB), which was responsible for certification of funding and availability of FTE positions, did not reject the requests for additional personnel of departments and agencies which had already hired the maximum number of FTE positions. Under existing policies and procedures, each executive department and agency is required to submit its requests for personnel actions (RPA) to OMB for certification and approval. OMB reviews each RPA to determine if there are positions and funding available for additional personnel. If there is no basis for approval, OMB prepares a memo stating the reason(s) why the RPA cannot be processed. The memo is attached to the RPA and returned to the department or agency initiating it. OMB's standard checklist for returning an RPA are no budgeted funds, no budgeted FTEs, unbudgeted pay level, anticipated funding shortfall, and hold until appropriation is passed. OMB, however, failed to reject the RPAs of departments and agencies which had no more available FTE positions. As a result, an estimated \$3.4 million in public funds was expended for personnel in excess of the authorized FTE ceilings and without legislative appropriations.

## Conclusion and Recommendation

Executive Branch departments and agencies exceeded the authorized FTE ceilings established by the Legislature in violation of CNMI laws, and public funds were expended for personnel costs without legislative appropriations. Accordingly, we recommend that the Special Assistant for Management and Budget (1) enforce the authorized FTE ceilings for each department and agency without exception or be subject to proceedings under the Planning and Budgeting Act and (2) issue a written directive to all department and agency heads to comply with the authorized FTE ceilings established by the appropriation acts.

## Agency Response

The Special Assistant for Management and Budget did not directly respond to our recommendations. After his receipt of our draft report, however, the Special Assistant issued a written directive dated April 21, 1997 to all department and agency heads informing them that the Office of Management and Budget will reject all requests for personnel actions (RPAs) in excess of the FTE ceilings (See **Appendix B**).

## OPA Comments

The written directive issued by the Special Assistant addressed both our recommendations. We considered both recommendations as closed and implemented.

## Matters for Legislature's Consideration

### *Permanent Legislation Needed*

The Legislature, under Section 507 of Public Law 10-41 (Fiscal Year 1997 Annual Appropriation Act), conditionally created new FTE positions for several Executive Branch departments and agencies, and provided that the new FTEs shall not be transferred or detailed for any other purpose, department, division, agency or branch or to any government corporation. *The FY 1997 appropriation act, however, did not clarify whether all other FTE positions of other departments and agencies would also be subject to such restriction.*

To ensure full compliance with the authorized FTE ceilings, the Speaker of the House may wish to introduce *permanent legislation* that (1) specifically limits filling of available FTE positions to only those positions identified in the personnel budget worksheets of a particular department or agency and (2) restrict FTE transfers within departments and agencies of a government branch to eliminate any misunderstanding on the non-transferability of unfilled FTE positions. The legislation should include appropriate penalty provisions.

## Speaker of the House Response

In his letter dated May 14, 1997, the Speaker acknowledged our findings and informed us that he will bring our suggestions to the House Leadership at the earliest opportunity for consideration (See **Appendix C**).

### *Other Matters*

Although our findings showed that there were several departments and agencies with excess FTE positions, the overall total number of employees in the Executive Branch was less than the authorized number of FTE positions by 75 FTE positions. As of September 30, 1996, there were 1,953 employees in the Executive Branch while the overall total number of authorized FTE positions was 2,028 (See **Appendix A**). This occurred because there were departments and agencies with unfilled FTE positions. These unfilled FTE positions, however, can not be transferred from one department to another since the FTE ceiling was specified to be the number of employees that may be hired by specific departments and agencies.

For information purposes, we also compared the actual number of FTE positions of Executive Branch departments and agencies as of March 17, 1997, with their authorized number of FTE positions for fiscal year 1997. Our comparison showed no department or agency exceeded its authorized FTE ceiling. The overall total number of authorized FTE positions was 2,391 while the actual number of employees totaled 1,934. These figures show that 457 FTE positions are still available as of March 17, 1997.

Sincerely,

ORIGINAL SIGNED

Leo L. LaMotte  
Public Auditor, CNMI

cc: Governor  
Lt. Governor  
Tenth CNMI Legislature (27 copies)  
Secretary of Finance  
Attorney General  
Special Assistant for Management and Budget  
Public Information Officer  
Press

**Executive Branch Departments and Agencies**  
**Comparison of Authorized FTE Positions With Actual Positions and**  
**Comparison of Budgeted Personnel Costs With Actual Costs**  
**As of September 30, 1996**

Org	Particulars	FTE Positions		Unfilled (Excess)	Personnel Costs		Balance (Deficit)
		Authorized	Actual		Authorized	Actual	
<u>Governor's Office</u>							
1011	Governor's Office	31	108	(77)	\$1,289,500	\$3,187,307	(\$1,897,807)
1050	Lt. Governor's Office	17	15	2	609,000	626,920	(17,920)
1013	Administration	28	39	(11)	841,200	1,088,834	(247,634)
1014	Management and Budget	21	24	(3)	869,100	986,700	(117,600)
1015	Programs & Legislative Review	3	3	0	129,900	129,792	108
1017	Public Information & Protocol	4	4	0	185,300	183,391	1,909
1040	Guam Liaison	4	4	0	153,500	171,540	(18,040)
1041	Honolulu Liaison	7	7	0	466,200	397,200	69,000
1019	Emergency Management Opera	29	33	(4)	1,040,500	1,524,656	(484,156)
1033	Scholarship Funds	2	2	0	100,900	97,905	2,995
1022	Planning	7	4	3	299,900	174,471	125,429
1025	Drugs & Substance Abuse	2	2	0	90,600	58,253	32,347
1023	Board of Parole	2	2	0	67,300	68,054	(754)
1026	Personnel Mgmt - Saipan	41	24	17	1,533,500	1,081,531	451,969
1020	Youth Affairs	4	3	1	166,800	99,295	67,505
		202	274	(72)	7,843,200	9,875,849	(2,032,649)
<u>Commerce and Labor</u>							
1300 *	Office of the Secretary	14	16	(2)	538,400	675,584	(137,184)
1310	Economic Development	9	7	2	251,000	319,150	(68,150)
1331	Statistics	6	6	0	204,100	218,927	(14,827)
1332	ABC Board	11	11	0	264,700	237,509	27,191
1333	Enforcement/Compliance	11	10	1	111,800	289,509	(177,709)
1606	MVB	56	55	1	1,381,400	1,586,882	(205,482)
		107	105	2	2,751,400	3,327,561	(576,161)
<u>Finance</u>							
1100	Office of the Secretary	5	19	(14)	217,400	578,840	(361,440)
1101	Admin/Tech Support	5	3	2	208,500	202,332	6,168
1110	Finance & Accounting	40	39	1	1,275,200	1,368,967	(93,767)
1120	Treasury	9	10	(1)	305,100	360,717	(55,617)
1130	Revenue & Taxation	48	45	3	1,358,800	1,518,351	(159,551)
1140	Procurement & Supply	23	21	2	687,800	700,273	(12,473)
1150	Customs Service	53	54	(1)	1,536,900	2,109,738	(572,838)
1160	EDP	6	8	(2)	230,400	343,182	(112,782)
1165	Group Health Insurance	6	6	0	197,700	222,800	(25,100)
1102	Lottery	1	1	0	39,100	39,947	(847)
		196	206	(10)	6,056,900	7,445,147	(1,388,247)

Org	Particulars	FTE Positions		Unfilled (Excess)	Personnel Costs		Balance (Deficit)
		Authorized	Actual		Authorized	Actual	
<u>Land and Natural Resources</u>							
1400	Office of the Secretary	9	37	(28)	400,700	545,522	(144,822)
1410	Plant Industry	46	43	3	1,121,600	1,272,406	(150,806)
1420	Fish & Wildlife	15	12	3	475,900	359,327	116,573
1430	Lands & Survey	15	12	3	488,500	354,465	134,035
1440	Parks & Recreation	24	23	1	558,400	539,846	18,554
1450	Animal Health	11	10	1	317,100	258,039	59,061
1461	Soil & Water Conservation	2	0	2	31,300	58	31,242
1469	Zoning	6	3	3	179,600	150,596	29,004
1467	Land Registration	8	7	1	252,800	234,515	18,285
1464	Public Lands	33	38	(5)	1,299,300	1,371,722	(72,422)
		169	185	(16)	5,125,200	5,086,496	38,704
<u>Public Works</u>							
1471	Office of the Secretary	43	47	(4)	1,506,100	1,637,292	(131,192)
1480	Ops. & Maintenance	91	103	(12)	2,213,800	2,963,342	(749,542)
1486	Auto./Heavy Equipment	36	27	9	1,087,500	1,328,806	(241,306)
1470	Building Safety Code	13	11	2	449,500	433,409	16,091
1556	Board of Prof. License	3	3	0	107,100	111,093	(3,993)
1496	Grd Water Protection Act	6	5	1	117,000	91,931	25,069
1869	DEQ/Litter Control	3	2	1	83,800	50,326	33,474
		195	198	(3)	5,564,800	6,616,199	(1,051,399)
<u>Public Defender</u>							
1190	Public Defender	10	9	1	470,600	477,437	(6,837)
		10	9	1	470,600	477,437	(6,837)
<u>Attorney General</u>							
1170	Attorney General	27	23	4	1,338,400	1,117,203	221,197
1185	Consumer Counsel	2	3	(1)	93,400	54,219	39,181
1187	Investigation Unit	4	3	1	176,900	96,512	80,388
		33	29	4	1,608,700	1,267,934	340,766

Org	Particulars	FTE Positions		Unfilled (Excess)	Personnel Costs		Balance (Deficit)
		Authorized	Actual		Authorized	Actual	
<u>Community and Cultural Affairs</u>							
1200	Office of the Secretary	7	9	(2)	327,500	364,592	(37,092)
1201	Carolinian Affairs	15	13	2	479,800	448,823	30,977
1202	Indigenous Affairs	4	4	0	192,000	188,565	3,435
1260	Women's Affairs	4	5	(1)	169,300	204,625	(35,325)
1220	Youth Services	16	17	(1)	666,400	518,535	147,865
1230	Historic Preservation	6	6	0	198,700	229,085	(30,385)
1240	Office of Aging	18	16	2	474,000	391,773	82,227
1250	Council for Arts & Culture	9	8	1	245,600	221,117	24,483
1251	Veteran's Affairs	3	4	(1)	119,400	118,616	784
1252	LIHEAP	4	3	1	109,400	73,018	36,382
1557	Cham/Car. Lang. Com.	4	4	0	158,800	113,091	45,709
1270	NMA Sports Assoc.	4	7	(3)	141,300	173,875	(32,575)
		94	96	(2)	3,282,200	3,045,715	236,485
<u>Labor and Immigration</u>							
1275	Office of the Secretary	11	17	(6)	387,100	470,862	(83,762)
1290	Immigration - Saipan	69	60	9	1,844,540	2,311,726	(467,186)
1280	Labor	28	23	5	834,600	967,242	(132,642)
1330	Employment Services	6	9	(3)	172,200	216,539	(44,339)
1583	Job Training Program Act	11	0	11	365,900	0	365,900
		125	109	16	3,604,340	3,966,369	(362,029)
<u>Public Safety</u>							
1340	Office of the Commissioner	5	3	2	310,200	225,472	84,728
1350	Police Division	95	100	(5)	2,288,660	4,237,954	(1,949,294)
1360	Training & Academy	0	0	0	0	0	0
1361	CNMI Justice Info System	0	0	0	0	0	0
1362	Admin Division	36	32	4	986,400	1,035,248	(48,848)
1365	Motor Vehicles	12	9	3	286,480	232,523	53,957
1370	Investigative Division	27	19	8	797,700	1,071,353	(273,653)
1375	Correction	46	42	4	1,271,260	1,938,207	(666,947)
1380	Fire Division	93	78	15	2,310,360	3,005,493	(695,133)
1390	Boating Safety	14	14	0	384,800	762,994	(378,194)
1584	CJPA	5	5	0	203,700	197,457	6,243
		333	302	31	8,839,560	12,706,701	(3,867,141)

Org	Particulars	FTE Positions		Unfilled (Excess)	Personnel Costs		Balance (Deficit)
		Authorized	Actual		Authorized	Actual	
<u>Public Health</u>							
1801	Office of the Secretary	15	12	3	653,400	502,674	150,726
1810	CHC	443	341	102 (1)	18,156,200	14,541,318	3,614,882
1870	Dental Services	24	17	7	734,400	679,455	54,945
1873	Voc. Rehab Services	0	0	0	0	0	0
1876	General Pub. Health	27	21	6	1,063,700	883,944	179,756
1878	Medical Supplies	0	0	0	0	0	0
1865	Env/Quality Sanitation	20	19	1	532,800	497,048	35,752
1879	Medical Referral	14	14	0	593,200	571,851	21,349
1880	Medicaid Agency	7	4	3	87,900	88,034	(134)
1881	Medical Reimb.	0	0	0	0	0	0
1883	Child Dev. Assist Center	14	12	2	357,800	312,558	45,242
		<u>564</u>	<u>440</u>	<u>124</u>	<u>22,179,400</u>	<u>18,076,882</u>	<u>4,102,518</u>
	Grand Total	<u>2,028</u>	<u>1,953</u>	<u>75</u>	<u>\$67,326,300</u>	<u>\$71,892,290</u>	<u>(\$4,565,990)</u>
	Average Personnel Costs				<u>\$33,198</u>	<u>\$36,811</u>	<u>\$3,613</u>

(1) Most of the unfilled FTEs were for positions filled in by non-resident professionals whose services were obtained through manpower services contracts. Therefore, the compensation for those professionals were charged to professional fees expense account rather than salary expense account.

Note: APPENDIX B which contains a copy of the April 21, 1997 written directive issued by the Special Assistant for Management Budget to all department and agency heads, was intentionally omitted to reduce this publication's file size. This appendix is available at OPA upon request.

Note: APPENDIX C which contains a copy of the May 14, 1997 letter response of the Speaker of the House to OPA's draft letter report, was intentionally omitted to reduce this publication's file size. This appendix is available at OPA upon request.