Subsection (d)(2) of this section is based on the references, in former § 20(d), to "express approval ... by the President ... and the Speaker" and "documented compliance" and the cross-reference, in former Art. 15A, § 8(f), to Art. 64A, § 27 of the Code. However, in 62 Op. Att'y Gen. 674 (1977), the Attorney General opined that, under the separation of powers doctrine, Art. 64A, § 27 of the Code does not apply to employees of the Administrative Office of the Courts. On the basis of that doctrine, presumably present § 27 does not apply to employees of the Legislative Branch. Therefore, the new language in subsection (d)(2) of this section applies to the types of employees for which an emergency increase is authorized under present § 27, but does not include the requirements of present § 27 for a recommendation of the Secretary of Personnel and approval by the Board of Public Works.

Also, in subsection (d)(2)(i) of this section, the reference to an "essential career employee ... performing an administrative function" is substituted for the reference, in present Art. 64A, § 27(a), to "essential career administrative employees, performing executive functions", to avoid possible confusion with functions of the Executive Branch.

The introductory language of subsection (d)(2) of this section, "[w]hile the General Assembly is not in session," reflects the third sentence of former Art. 15A, § 20(d). That former sentence stated that "all actions in which the ceiling is exceeded [are] temporary until approved by the General Assembly at its next session" and, thus, seemed not to apply to an action by the General Assembly while in session.

Subsection (d)(2)(i) of this section also clarifies that the inability to obtain or keep staff constitutes the "emergency".

However, the Commission notes that there are still a number of unresolved issues.

For example, while the third sentence of former Art. 15A, § 20(d) stated that a salary increase is temporary until "approved by the General Assembly at its next session", the former law did not provide for the manner in which the salary increase is to be "approved" or disapproved.

The Commission considered whether the Senate or the House could exercise its authority under subsection (a) of this section to ratify or disapprove the increase. However, it is unclear whether, in light of the requirement for "express approval" of the