

November 4, 1976

REPORT TO THE CONVENTION OF  
THE COMMITTEE ON GOVERNMENTAL INSTITUTIONS

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11-19-76

Subject: Committee Recommendation Number 3:  
Legislative Branch of Government

The Committee on Governmental Institutions recommends that the Convention adopt in principle the attached constitutional provisions with respect to the legislative branch of government.

The Committee believes that the legislature of the Commonwealth of the Northern Mariana Islands should have power adequate to deal with the difficult and varied problems to be faced by the Commonwealth. Its recommended constitutional language accordingly vests such power in a legislature to be composed of two houses. The Committee's recommended language also deals with the composition of the two houses and the qualifications for membership in each, reapportionment, the procedure for the enactment of legislation, the governor's veto, confirmation of appointments, impeachment, the filling of vacancies in the legislature, legislative compensation, the conduct of legislators, and the sessions, organization and procedures in the two houses. These suggested constitutional provisions are contained in an article of fifteen sections. The principal issues considered by the Committee and the reasons underlying the Committee's recommended draft constitutional provisions are discussed below.

Section 1: Legislative Power. This section provides that the legislative power of the Commonwealth "shall extend to all rightful subjects of legislation." It vests this power in a Northern Marianas Commonwealth Legislature, to be divided into a Senate and a House of Representatives.

The language describing the extent of the legislative power is the same language used in the Covenant and is repeated here in order to confer upon the legislature all the power that the Covenant made available. As is made clear in the legislative history of the Covenant, this language gives the Commonwealth as much legislative power as is available under the United States Constitution. The Committee felt that conferring on the legislature all power available under the Covenant was the best way to ensure that the law-making body would have sufficient authority to deal with the many unique problems the Commonwealth will face. The Committee rejected the alternative of trying to enumerate the specific powers to be exercised by the legislature because of the risk of omitting an important power and the desire to avoid needless litigation concerning legislative enactments. For the same basic reasons, the Committee decided not to impose any specific limitations on the legislature in the legislative article.

The Committee intends this general grant to include the power to pass special and local laws. Local laws are those that relate only to a particular locality, such as one of the three major islands. Giving this power to the legislature does not prejudge the question of whether particular

matters should be addressed at the Commonwealth level or at the local level. That subject will be addressed by any article on local government, and in any case, power over local affairs may be delegated to localities by statute. This language was adopted to ensure that power to act in all matters, including those regarding localities, was lodged somewhere and provides the Commonwealth legislature with needed flexibility to deal with the individual problems of Rota, Saipan and Tinian.

The division of the legislature into two houses that is provided by the article is required by section 203 of the Covenant.

Section 2: Composition of the Senate. Rota, Saipan and the islands north of it, and Tinian are each to have three senators elected at large. Solely for purposes of providing representation to anyone who may come to live there, the island of Aguiguan is grouped with Tinian. The section further provides that the residents of the islands north of Saipan, once they number 1,000 persons, will also be entitled to three senators. Senators will be elected for four-year terms, except for the senator from each delegation who receives the lowest number of votes in the first election; these senators will serve for two years only. To qualify for the office of senator, a person is required to be a qualified voter, a United States citizen or national, at least twenty-five years old, and a resident of the Commonwealth for at least five years.

The Committee decided on a nine-person Senate as a compromise, balancing the need to avoid unnecessary expense against the necessity that the body be large enough to discharge its functions. Equal representation of Rota, Saipan and Tinian is required by the Covenant. Under this provision the islands north of Saipan, once their population is large enough, would be entitled to representation in the Senate automatically. The Committee felt that any other procedure might lead to politically motivated delay in providing representation to this area.

The Committee favors a four-year term for senators to permit the accumulation of legislative experience and to provide for continuity in the Senate. The senators receiving the lowest number of votes in the first election are given two-year terms so that at least one-third of the seats in the Senate will be contested in each election. This was done to ensure that the voters would not have to wait four years to express an opinion on the actions of the Senate and to make the Senate somewhat more responsive to changes in political sentiment.

The Committee has suggested several qualifications for the office of senator. The requirement that senators be qualified voters is based on the idea that persons ineligible to vote should not hold high office. The requirement of United States citizenship or national status is intended to ensure that senators have a basic loyalty to the

United States and to the Commonwealth. The age requirement is intended to guarantee that senators have a certain maturity of judgment.

The Committee felt that it was necessary to require senators to have resided in the Commonwealth for the five years preceding their election to ensure that candidates for that office have time to acquaint themselves with the unique situation of the Commonwealth and that the voters have an opportunity to study the candidates. On advice of counsel the Committee concluded that any longer residency requirement would involve an unacceptable risk of being considered in violation of the United States Constitution. Authority is granted the legislature to increase the residency requirement if future circumstances, including clarification of the pertinent legal limitations, suggest that this is desirable.

Section 3: Composition of the House of Representatives. This section provides for a thirty-member House of Representatives, with twenty-five members elected from Saipan, and the islands north of it, two from Tinian, and three from Rota. For purposes of representation only, the island of Aguiguan is grouped with Tinian. The legislature is empowered to increase the total membership to not more than forty. Representatives are required to be qualified voters, United States citizens or nationals, at least twenty-one years old, and residents of the Commonwealth for at least three years preceding their election. For purposes of electing representatives,

the Commonwealth is divided into nine electoral districts: one each on Rota and Tinian, six on Saipan and one covering the islands north of Saipan. These districts may be altered in number or boundaries by the legislature, except that those on Saipan may not be changed for ten years following the effective date of the Constitution except as is necessary for reapportionment purposes. Also, any alteration must respect the geographic integrity of Rota and Saipan, so that no district including any part of either of these two islands may include any part of another island.

In recommending this number and distribution of representatives, the Committee has balanced the need for efficiency, the interest in economy and the requirements of the United States Constitution. The House must be large enough to do its work and represent fairly the various groups in the Commonwealth. It must not be so large as to be unwieldy or excessively expensive. The Committee believed that no substantially populated island in the Commonwealth should be represented by fewer than two representatives. However, United States constitutional provisions requiring that each representative represent approximately equal numbers of people make it necessary to give Saipan and the islands north of Saipan at least twenty-five representatives and Rota three, if Tinian is to have two. A thirty-member House of Representatives is thus the best available compromise. The legislature is permitted to increase the size of the House of Representatives

to forty members in order to facilitate adjustments necessary to ensure equal representation in the future.

The Committee recommends a two-year term of office to ensure that representatives will be responsive to the wishes of the people. The Committee's reasoning regarding the qualifications of representatives was essentially the same as that regarding senators. The Committee felt that a lower maximum age and a shorter period of required residency were desirable in light of the differences between its duties and those of the Senate in order to open the House to the greatest number of qualified persons. As in the case of the Senate, the legislature is given the power to increase the residency requirement if that seems desirable in the future.

The Committee has recommended that representatives be elected from districts in order to maximize their accountability to the voters. Linking representation to particular geographic areas lessens the likelihood that the interests of the voters of these areas would be neglected. For this reason and because of their historic representation in the District Legislature, the Committee decided that the islands north of Saipan should constitute a single district for the purpose of electing one member of the House of Representatives. It is anticipated that the six districts on Saipan be formed either by some combination of the present electoral precincts or by a special redistricting of Saipan for purposes of the first election under this constitution. The twenty-four representatives for Saipan would be divided among these districts

so as to provide for approximately equal representation of citizens by each representative. The Committee recommends that the legislature be empowered to alter or increase the number of electoral districts in order to facilitate adjustments required due to population changes. In view of the special situation of Saipan, it is felt that no alteration should take place there for ten years unless such change appears necessary to enable the legislature to fulfill its reapportionment responsibilities under this Constitution and the United States Constitution. The requirement that the geographic integrity of the islands be respected is intended to forestall any effort to create a district including parts of Rota or Saipan and another island.

The Committee considered alternative methods of voting and concluded that the simplest and traditional method -- one vote per seat to be filled -- should be followed. In districts with four representatives to be elected, for example, each voter could cast four votes but only one to a candidate. The Committee considered a system of cumulative voting, which would permit a voter to cast all his votes for a single candidate, but decided it might be confusing and was probably not necessary to protect minority rights in light of the electoral districts proposed for the new Commonwealth.

Section 4: Reapportionment. This section makes provision for the reapportionment of the House of Representatives. Such reapportionment as is needed to reflect changes



in the Commonwealth's population or as required by law is to take place at least every ten years. Initial responsibility for reapportionment is vested in the legislature, which must enact a reapportionment plan within one hundred and twenty days following each decennial (ten-year) census. The plan must provide for compact and contiguous districts and for representation by each representative of approximately the same number of residents, to the extent geography permits. If the legislature fails to carry out its responsibility, the governor is charged with the duty of promulgating a plan within one hundred and twenty days of the legislature's failure to act. The governor's plan is to be published in the manner provided for acts of the legislature, and to have the force of law once published. Upon the application of any qualified voter, the court with jurisdiction of appeals from the Commonwealth trial court is given sole jurisdiction to review any reapportionment plan and make any necessary changes or promulgate a plan if the governor has failed to do so.

The purpose of periodic reapportionment is to ensure that seats in the House of Representatives are in fact distributed on the basis of population. Without such reapportionment, changes in the distribution of population among the districts would not be reflected in the allocation of seats in the House. This result would not only be contrary to the basic concept of the form of representation in the House of Representatives, but would also violate the United

States Constitution's requirement that legislators represent approximately equal numbers of people.

The requirement of reapportionment every ten years or as provided by law is intended to ensure that reapportionment takes place whenever new census information is available, and to permit more frequent reapportionment if that appears desirable. Initial responsibility is vested in the legislature in order to permit popular input into questions of representation and because the legislature has the legal authority to increase the size of the House of Representatives, to change districts and to reapportion representatives among districts. Thus the legislature is best equipped to deal responsibly with population changes and to fashion a reapportionment scheme which comports both with legal requirements and political realities. The one hundred and twenty day time limit is established to make certain that the matter is addressed expeditiously. The proposed language requires that districts be compact and contiguous to reduce the possibility that district lines will be drawn in a way intended to give a particular political group an advantage.

The governor is given the power to reapportion the House of Representatives if the legislature fails to act. The Committee intends by this arrangement to make certain that legally required reapportionment is carried out even if the legislature fails in its duty. The governor's published plan is given the force of law, in order to eliminate

any need for action by the same legislature that has already shown itself unable to deal with this question. The power of the governor in this matter is, however, checked by that of the court which hears appeals from the trial court. This check has two aspects. First, the court may review the lawfulness of the plan and amend it as necessary to bring it into line with the Constitutional requirements. Second, if the governor has failed in his duty to draw a plan, the court may draw one of its own. The court may act in either situation upon the application of any qualified voter.

Section 5: Enactment of Legislation. This section sets out the requirements for enactment of legislation. The Committee recommends that origination of appropriation and revenue bills be limited to the House of Representatives, but that no restriction be imposed on the origination of any other bill. All bills must be confined to one subject except for bills dealing with appropriations, on bills dealing with the codification, revision or rearrangement of existing law. Appropriations bills are further limited to the subject of appropriations. Under the Committee's recommendation, the legislature has the responsibility for ensuring compliance with these rules; judicial review of these matters is expressly forbidden. This section requires that a bill receive a majority of the votes cast in each house of the legislature in order to become law.

The Committee believes that appropriations and revenue bills ought to originate in the House of Representatives because that body is likely to be more closely attuned to the people than is the Senate. Furthermore, a requirement that the House of Representatives act first on such bills will permit the Senate to be aware of the views of the House of Representatives before it acts. The Committee felt that all other bills could originate in either house.

The Committee's proposal that no bill should become law without the votes of the majority of those voting in each house is an important recommendation. Any other system would reduce the degree of protection that the different systems of representation in the Senate and the House of Representatives were intended to provide. The Committee anticipates that joint action will permit more careful considerations of legislation than would be possible if one house could act alone and that the two houses will have to work out some method (such as the use of conference committees) to reconcile their views regarding proposed legislation.

The requirement that most bills be limited to one subject is intended to prevent the attachment to desirable bills of unrelated, undesirable provisions, and other devices whereby the legislature may be led to enact measures which, if considered alone, would be rejected. Such a requirement also eliminates the possibility that a bill may deal with so many different matters as to be incomprehensible

to the legislators who must consider it. The exceptions for appropriations bills and bills codifying, revising and rearranging laws were necessary because such bills cannot by their nature be limited to one subject. The majority vote requirement is simply intended to clarify this matter. It should be noted that this margin is merely a minimum requirement. It is intended that either house be able to require a different margin for passage of a bill in its own procedural rules.

Section 6: Action on Legislation by the Governor.

This section would require the presiding officer of each house to sign every bill passed by the legislature. The bill will then be transmitted to the governor. If he signs the bill, it would become law. On the other hand, if the chief executive vetoes all or part of the bill, he must return it to the legislature for its reconsideration. Only if two-thirds of the elected members of each house vote to pass the bill over the governor's veto would the measure become law. The governor would be able to disapprove part rather than all of a bill only if it deals with the appropriation of money. If the governor fails to complete consideration of an appropriation bill within twenty days of receiving it and of any other bill within forty days of receiving it, it would become law automatically.

Under the Committee's proposed language, a bill passed by the legislature could become a law in three ways.

First, signature by the governor would transform a bill into a statute. Second, a bill vetoed by the governor would become law if reconsidered favorably by two-thirds of the members elected to each house of the legislature. Third, a measure would become law if the governor fails to act on it within a fixed period of time.

The Committee is convinced that assigning the veto power to the governor is an essential check on the power of the legislature. In addition, this power would increase the likelihood that legislation will benefit the people of the Commonwealth by subjecting each bill passed by the legislature to the scrutiny of the official who would be responsible for its implementation were it to become law.

Every state constitution except one follows the example of the United States Constitution in permitting a governor to veto a bill as a whole. The Committee believes that this precedent should be followed, and a general veto power is included in its recommended provision. The Committee also recommends that the governor be given the power to veto items in an appropriation bill without having to disapprove the entire measure. Item vetoes used in the context of money bills promote the efficient completion of the budgetary process while avoiding unwise expenditures. The Committee feels it unwise to permit item vetoes of all types of legislation. Most legislation is the result of compromises reached among

legislators and the Committee is reluctant to permit the governor to upset compromises reflected in bills other than appropriations bills.

The Committee is also persuaded that every bill endorsed by both houses of the legislature merits swift consideration by the governor. The time constraints imposed on the governor by the Committee's recommended section are designed to achieve that objective. The Committee concluded that a distinction could properly be drawn between appropriations bills and other bills. Since the executive branch will have prepared a proposed budget for consideration by the legislature, the Committee concluded that twenty days would be sufficient for the governor to approve or veto any appropriations bill.

A governor might reject a bill for unwise or even capricious reasons. Authorizing the legislature to override such a veto by an extraordinary majority provides flexibility necessary to the smooth functioning of government. The Committee considered other possible requirements for legislative override but decided that two-thirds of the elected members (not just those present and voting) was an appropriately severe requirement to pass legislation over the governor's veto.

Section 7: Confirmation of Appointments. This section empowers the Senate to confirm appointments by the governor where such confirmation is

required by the law or by the Constitution. The purpose of this provision is to ensure that persons whose duties are important to the whole Commonwealth are acceptable to the representatives of the three main islands within the Commonwealth.

Section 8: Impeachment. This section empowers the legislature to impeach those officials made subject to impeachment by the executive and judicial branch articles of the Constitution. Impeachment is divided into two separate processes. The House of Representatives may bring charges of impeachment by the affirmative vote of two-thirds of its entire membership. The Senate will try the official named in the charges and may convict only upon the affirmative votes of two-thirds of its members.

The Committee believes that the power of impeachment is necessary to check possible abuses by high officers of the government. The Committee believes that the definition of the officers subject to impeachment and the grounds for impeachment should be spelled out in the judicial and executive branch article and that the legislative branch article should deal only with matters of procedure. The House of Representatives is given power to bring charges, since it is most directly representative of the people who elected the executive branch officials whose judgment is to be challenged directly (in the case of impeachment of an executive branch official) or indirectly (in the case of impeachment of a judge



who was appointed by the governor). The Senate is given the power of trial to insure that the question is considered by a body that represents equally the three major islands and that can most effectively guard against conviction based on irrelevant political grounds. Extraordinary majorities are required both to impeach and to convict because of the importance of the matter.

Section 9: Vacancies: This section provides for filling vacancies that may occur through death, disability, resignation or expulsion. It provides that seats that become vacant with more than half of the term remaining shall be filled by a special election. Seats that become vacant when less than half the term remains shall be filled by the governor. He is obliged to appoint to the vacancy the unsuccessful candidate for the seat in the last election who received the highest number of votes, who is able and willing to serve. If there are no unsuccessful candidates who are able and willing to serve, the governor must appoint a qualified person from the island, if the seat is in the Senate, or electoral district, if the seat is in the House of Representatives, to which the seat is apportioned.

The Committee felt that the decision on filling a vacant term with more than half its length to run was too important to be taken from the voters. The Committee was reluctant to impose upon the Commonwealth the expense of special elections for shorter periods, and therefore

provided that the highest available runner-up should be appointed to terms with relatively little time remaining. Such persons, the Committee believed, would have demonstrated their acceptability to the voters by receiving votes in an election. The Committee believes that the governor may be trusted to appoint a successor when no runners-up are available, in light of his responsibility to the entire Commonwealth.

Section 10: Legislative Compensation. This provision sets the salary of the members of the legislature at \$12,000 and permits the legislators to receive reasonable compensation for expenses. It permits the legislature to alter the amount of salary, but only upon the recommendation of an advisory commission established by law to study and make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. Such changes could not take place more often than once in four years. The section further provides that a salary increase may not be effective for the legislature that enacts it.

In dealing with the question of compensation, the Committee balanced four considerations. First, it wanted to ensure that the salaries for members of the legislature would be adequate to attract competent people to public service. Second, the Committee wished to avoid extravagance. Third, the Committee wanted to provide a system flexible enough to adjust to changing economic circumstances. Finally, the Committee wished to avoid 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.

The Committee believes that the draft article meets each of these concerns. The amount selected is large enough to be competitive, but not unreasonable. Flexibility is guaranteed by giving the legislature authority to change this amount, but the requirement of a recommendation by a commission considering the salaries received by members of all three branches of government will eliminate any impression that the legislature is acting out of self interest. The limitation to one salary change in four years and the delay in effectiveness of changes will also reduce the likelihood of needless increases. The Committee reserved to the legislature power over expenses, however, as traditional and necessary.

Section 11: Prohibition on Government Employment.

This section prohibits legislators from serving in any other government position, including independent boards, agencies, authorities or commissions established by the Commonwealth legislature.

The Committee felt that permitting legislators to work in other branches of government would raise problems of separation of powers, with government-employed legislators facing conflicting pressures from the two branches of government that they serve. The Committee's proposed language also covers employment by the United States government.

The reference to independent boards and agencies was included because of the ambiguous nature of such entities and the desire to provide a clear rule prohibiting any service (whether compensated or not) by legislators on such bodies created by Commonwealth law.

The Committee discussed but discarded a proposal to forbid all outside private employment. It was felt that such a provision would make it impossible for many people to serve as legislators. Professionals who were obliged to abandon their professions for two or four years might have great difficulty re-entering private practice after their term of service ended. Business people and farmers might be forced to sell their property in order to serve. Persons who could not support their families on legislative salaries would clearly be unable to afford service as legislators.

Section 12: Legislative Immunity. This section confers immunity upon legislators for oral or written statements made either on the floor or in Committee, and shields them from arrest while going to or coming from the legislature.

The Committee believes that legislators will feel free to discuss any subject only if they are immune from civil suit and criminal prosecution as a result of any remarks made on the floor of the legislature or in its committees or in any written report. Otherwise, legislators might be afraid to discuss a subject until they had accumulated sufficient evidence to defend themselves in court. This might prevent very important matters from ever being discussed. The

Committee was concerned that immunity for statements made might be abused, but finally decided that the need to ensure freedom of debate outweighed the danger of abuse. The Committee considered also that limitations on debate so as to avoid, for example; irrelevant criticism of Commonwealth citizens would be set forth in the legislature's internal rules.

The arrest provision is intended to ensure that members are able to participate in deliberations of the legislature. The Committee rejected a broader immunity from arrest in the belief that no citizen of the Commonwealth should be above the law. Under the Committee's recommendation, members are subject to arrest for crimes committed during the legislative session but cannot be deterred while going to or coming from a legislative meeting. If convicted of a crime, of course, they would be imprisoned just like any other citizen.

Section 13: Sessions. This section provides that the legislature shall be in continuous session, with the actual meetings of each house regulated by law or by its own procedures. The presiding officers of the legislature and the governor may call special sessions. In the case of a special session called by the governor, the legislature shall be limited to a discussion of the subject that was described in the call.

The Committee wished to avoid the technical problems that develop when legislative sessions legally "end" after a brief period of convening. The Committee also felt that the legislature should have maximum flexibility in deciding how much time it needs to deal with the public business. For these reasons, sessions are to be continuous, with actual meetings to be set by law or house rule. It was felt that the subject matter of special sessions called by the governor should be limited, however, to ensure that whatever extraordinary matter inspired the governor's call was resolved first.

Section 14: Organization and Procedures. The Committee has attempted to collect all important provisions concerning organization and procedures in this section. All other procedural and organizational matters would be left for the legislature to resolve in its own rules.

Subsection (a): This subsection makes each house the final judge of the elections and qualifications of its members, and permits the legislature to vest in the courts the responsibility for determination of contested elections. Each house is permitted to compel the attendance of members, to discipline members, and, upon a three-fourths vote of its membership, to expel members for commission of treason, felony, breach of the peace, or violation of the legislature's rules.

The Committee concluded that each house should be the final judge of the elections and qualifications of its members so that the legislature is not subordinated to a court

on such an important matter. However, the legislature is expressly permitted to vest jurisdiction in the courts to determine contested elections. The Committee feels that the legislature may be ill-equipped to undertake the court-like proceedings required to settle a contested election, and wishes to make clear that this function may be delegated to a court. The legislature may retain final authority to accept or reject the court's action.

The provisions on compelling attendance and discipline are standard. The power of expulsion is limited to the stated grounds to prevent politically motivated expulsions. In cases of expulsion, it must be emphasized, the legislature is free to act without the member in question having been convicted in a court. Use of this provision is only one of the ways to remove legislators; they may also be recalled.

Subsection (b); This subsection requires each house of the legislature to choose its presiding officer from among its members, establish such committees as it deems necessary and determine its rules of procedure. Each house is also given power to compel the attendance and testimony of witnesses and the production of books and papers before the full house or one of its committees. Also, the legislature is required to keep a journal to be published from day to day.

These are standard provisions relating to legislative organization. The language concerning the power to compel attendance and testimony of witnesses and the production of papers is intended to make explicit the

legislature's inherent power to investigate. The requirement of a journal ensures a public record of legislative actions so as to permit informed public scrutiny of the legislature. The Committee rejected any constitutional provision directing that particular staff positions, such as auditor, be created by the legislature.

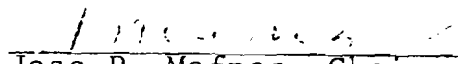
Subsection (c): This subsection requires the legislature and its committees to meet in public, but permits meetings of either house in executive session if approved by a two-thirds vote of the full membership of that house. The same vote by its parent house or houses is required before any committee may go into executive session. This section prohibits taking any final action in executive session.

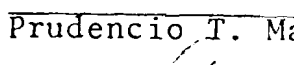
The Committee attempted to balance the desirability of open government against the necessity for conducting some business in private. The Committee felt that some mechanism for private sessions was necessary, in order to facilitate, for example, discussions of military matters connected with any military posts established in the Commonwealth, or to investigate unverified charges against individuals being considered for executive positions. The two-thirds vote required as a prerequisite to executive sessions is intended to guard against excessive secrecy. Likewise, the prohibition on taking final actions in executive session is aimed at ensuring that all actions of the legislature and its committees are on the record.

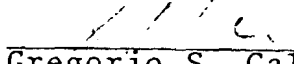


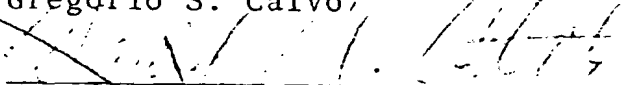
Section 15: Code of Conduct. This section requires legislators to disclose any personal or private interest in any measure or bill proposed or pending before the legislature and not to vote thereon. It also requires the legislature to enact a code of conduct to govern its members, particularly regarding conflicts of interest and propriety in debate. The Committee feels that voting in situations where a member has a private interest must be discouraged. Beyond setting policy on this one matter, the Committee believes that a simple mandate to the legislature to act will ensure that the subject is adequately treated, while avoiding the inflexibility inherent in a detailed provision.


Respectfully submitted,

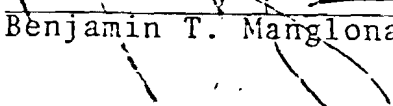
  
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Jose P. Mafnas, Chairman

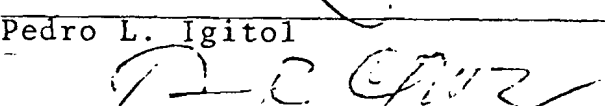
  
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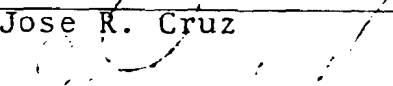
  
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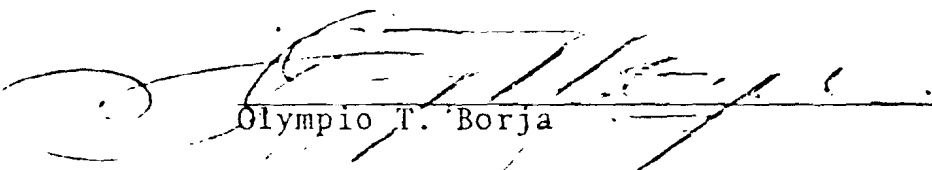
  
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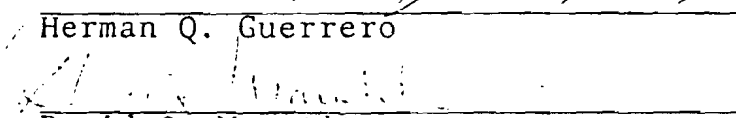
  
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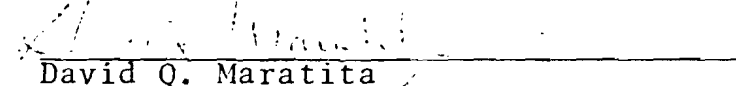
  
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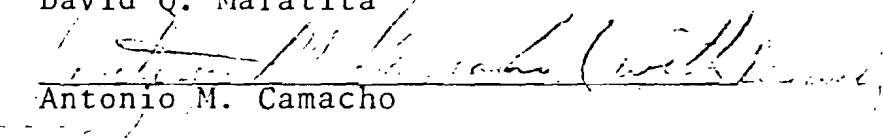
  
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