

July 18, 1995

COMMITTEE ON JUDICIARY AND OTHER ELECTED OFFICES

REPORT NO. 6: ARTICLE 18, CONSTITUTIONAL AMENDMENT AND MUTUAL  
CONSENT

The Committee met on Friday, July 14, 1995 and Monday, July 17, 1995 to consider proposed amendments to Article 18: Constitutional Amendment. A subcommittee was appointed by the Chair to work on the draft language and report with respect to this area. The Committee considered Delegate Proposals 86, 134, 141, 157, 158, 209, 262, 352, 353, 354, 421, 478, 509, 520, and 594 .

The Committee decided to consolidate the provisions for amending the Constitution, and to incorporate a new provision for mutual consent.

Initiative petitions

Under this article, there are two ways to amend the constitution: first, the voters can amend one provision by a popular initiative. Second, the voters can amend the whole constitution by a popular initiative that calls a constitutional convention.

If someone wants to proceed by popular initiative for one provision, they need to get the signatures of 30% of the qualified voters Commonwealth-wide, and at least 25% of the qualified voters in each senatorial district.

The Committee reduced the number of signatures for the petition, just to put the question on the ballot, from 50% to 30% of the persons qualified to vote in the Commonwealth. The 50% number had been put in the Constitution in 1976 when the Constitution also provided for amendment by action of the legislature. For the reasons explained below, the provisions for amending the Constitution by action of the legislature have been deleted from the Constitution. Therefore, the Committee believed it would be appropriate to make it slightly easier for a petition to get put on the ballot.

If someone wants to proceed by popular initiative to amend the whole constitution, they need to wait until the year 2021, and then get the signatures of 25% of the qualified voters Commonwealth-wide or at least 75% of the qualified voters in one senatorial district.

The Committee provided that a constitutional convention cannot be called for 25 years after the approval by the voters of the amendments from this Constitutional Convention. The 1976 Constitution allowed for a constitutional convention after the Trusteeship had been terminated. At the time the 1976 Constitution was written, the Trusteeship Agreement was still in place and it was uncertain exactly when it would be terminated. The delegates to that convention wanted to be sure that there was an opportunity to re-write the constitution, if necessary, after the Trusteeship was gone. The 1985 amendments allowed for a convention after 10 years. The Committee believes this time period is too short. The Committee believes that the revisions to the Constitution being worked on by this Convention will endure, and should not be challenged in a short time. Rewriting the Constitution on a frequent basis brings instability to

the government.

The requirements for the petition to call a constitutional convention are the same as the 1976 Constitution.

### Ratification

Each petition must be submitted to the Attorney General for review of the signatures to ensure that the requirements of this article have been met. The Attorney General also ensures that the text of the petition is proper -- that is, under Section 1 it contains the full text of the proposed amendment, and under Section 2 it states the proper question. The Attorney General does not approve the substance of the proposed language. That is not the Attorney General's function. A petition could proposed language that is entirely unconstitutional. It is the function of the courts to take care of that problem. Either a taxpayer could sue to prevent the election on the ground that it would be a waste of taxpayer money to put something on the ballot and go to the expense of the election process for a proposed amendment that cannot survive. Or someone affected by the amendment could sue after the election to challenge the constitutionality of the provision in the traditional way.

One a petition is approved by the Attorney General, it goes on the ballot at the next regular election, so long as that election is more than 90 days from the date the petition is certified. This language was in the 1976 Constitution and the time period was changed from 60 days to 90 days by the 1985 amendments.

Mutual consent

The Covenant is the fundamental document that defines the relationship between the United States and the Commonwealth. It took more than two years to negotiate and was eventually ratified by a vote of 78% of the Northern Marianas people. The most important provisions of the Covenant are protected by mutual consent, which means that neither the United States or the Commonwealth can change these provisions unilaterally. Among the provisions protected are Articles I, II and III, Section 501 and Section 805 of the Covenant ---dealing with the basic rights of self-government, the grant of United States citizenship, and restraints on land alienation.

The Covenant did not provide how the Commonwealth could express its consent to a change in one of these fundamental provisions and that is what this proposed amendment is designed to cure. The Covenant is too important to let any individual Governor or any legislature make this decision for the Northern Marianas people; such a change should go through the same process as was followed when the Covenant was approved. Only the people can agree to a change in the fundamental provisions of the Covenant.

Changes to the Covenant sometimes are included in the discussions between the United States and the Commonwealth under Section 902 of the Covenant. The Northern Marianas people may not be aware of these discussions and what changes are being considered --whether they are lawful, beneficial to the people and likely to win the support of the Executive Branch of the United States or the United States Congress. Changes to these Covenant provisions would

require action by the United States Congress. The last sentence of the proposed amendment is designed to ensure that the Northern Marianas people are not wrongly encouraged to believe that an amendment to the Covenant is achievable and in their interests. It simply requires that, after the legislature and governor have approved placing such an amendment before the people, there be some official communication from the Executive Branch of the United States that it agrees with the proposed change and will support it before Congress if the Northern Marianas people want the change in the Covenant. Without such an indication of United States support, further consideration of a proposed amendment to the fundamental provisions of the Covenant may be wasteful, misleading and divisive.

#### Initiatives by the Legislature

The Committee decided to take out the legislative initiatives that allowed the legislature to amend one provision in the Constitution or to call a constitutional convention. The Committee believes that the popular initiative is a better method to amend the Constitution. If the legislative initiative is left in the Constitution, then next week, or next month, or next year the Legislature could put on the ballot an initiative to take out anything they don't like.

The Committee took note that there is currently a legislative initiative on the ballot for this November to increase the legislature's budget to \$8 million. This was done in the legislature without any public hearings, or notice; and the legislature intends that it go on the ballot without any public education. If the voters approved it on the ballot, then the legislature's budget ceiling will be \$8 million. That is far higher than what our Committee on Legislative Branch and Public

Finance has recommended. But the legislature just went ahead and put their own budget ceiling on the ballot. Once they get theirs established by the voters, then they can campaign against ours, and maybe they will win. This is not a good system, so the Committee recommends that the legislative initiative be taken out for the future.

The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

Respectfully submitted,

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Delegate HENRY U. HOFSCHEIDER, Chair

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Delegate DONALD B. MENDIOLA, Vice Chair

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Delegate ESTHER S. FLEMING

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Delegate JAMES M. MENDIOLA

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Delegate FELIX R. NOGIS

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Delegate JUSTO S. QUITUGUA

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Delegate TERESITA A. SANTOS

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Delegate BERNADITA T. SEMAN

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Delegate MARIANO TAITANO

DRAFT  
7/18/95

ARTICLE XVIII: CONSTITUTIONAL AMENDMENT AND MUTUAL CONSENT

Section 1: Amendment by Popular Initiative.

The people may propose constitutional amendments by initiative. An initiative petition shall contain the full text of the proposed amendment. The petition shall be signed by at least thirty percent of the persons qualified to vote in the Commonwealth and at least twenty-five percent of the persons qualified to vote in each senatorial district.

Section 2: Amendment by Constitutional Convention.

a) An initiative petition may submit to the voters the question, "Shall there be a constitutional convention to propose amendments to the Constitution?" The petition shall be signed by at least twenty-five percent of the persons qualified to vote in the Commonwealth or by at least seventy-five percent of the persons qualified to vote in a single senatorial district. An initiative petition for this purpose may not be used until the year 2021.

Section 3: Mutual Consent

Consent by the government of the Commonwealth to amendment of any fundamental provision of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America protected by the mutual consent requirement of Section 105 of the Covenant cannot be communicated to the United States or bind the Commonwealth unless the proposed amendment to the Covenant has been approved by a vote of three-fourths of the members of each house of the legislature after public hearings, approved by the governor, and ratified by the



people in accordance with section 4 of this article. No proposed amendment shall be placed before the people for approval unless executive branch officials of the United States authorized to do so have formally expressed in writing to the governor their commitment to support the proposed amendment in the United States Congress.

Section 4:       Ratification.

a)     An initiative petition or a proposed consent to a change in the Covenant shall be filed with the attorney general for certification that the requirements of this article have been met.

b)     An initiative petition or a proposed consent to a change in the Covenant certified by the attorney general shall be submitted to the voters for ratification at the next regular general election that is held at least 30 days from the date the petition has been certified or at a special election established by law and shall become effective if approved by at least two-thirds of the votes cast and at least a majority of the votes cast in each of two of the senatorial districts.

c)     If a constitutional amendment is approved by the voters, it shall become effective immediately or as provided in the petition.

d)     If the calling of a constitutional convention is approved, the legislature shall convene a convention promptly which shall be organized under rules enacted by the convention. The number of delegates to the convention shall be equal to the number of members of the legislature. No person holding an elected office may be a delegate. Delegates to the convention shall be elected on a nonpartisan basis.