

July 19, 1995

COMMITTEE ON JUDICIARY AND OTHER ELECTED OFFICES

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

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 .

On Tuesday, July 18, 1995, draft language for Article 18 was considered by the Committee of the Whole. A number of modifications were proposed that have been incorporated by the Committee. New language has been proposed in these and other areas.

Section 1: Initiative petitions

Under this article, the voters may amend a single provision of the Constitution (or a single provision plus the necessary conforming changes in other by a popular initiative.

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.

Section 2: Constitutional Convention

This article also makes provision for a constitutional convention. This would generally be used for a review and amendment of a number of different, unrelated provisions of the Constitution. The voters may call a constitutional convention by initiative petition.

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 30% of the qualified voters Commonwealth-wide and at least 25% of the qualified voters in each 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.

Section 3: 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.

There may be intermediate steps to any approval of a specific change in the Covenant and the people may express their wishes in a variety of ways. For example, those who advocate a change in the Covenant could call for an expression of the people that the change would be of great benefit to the people and is supported in the Commonwealth. This kind of expression of

wishes and views could be used by the negotiators to influence views in the United States. But the proposers of such a resolution might want to leave negotiating room for their representatives in the United States by providing a general declaration rather than specific language.

Changes to the Covenant sometimes are included at the initiative of the Governor 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.

If there is a specific change in the language of the Covenant to be approved in the process of mutual consent between the Commonwealth and the United States, this section provides a three-step process:

First, the legislature will consider the proposed change. In this process, the legislature will provide for public hearings and will inform the public about the position of the United States as to its consent. The legislature is not bound by any position taken by the United States -- it may elect to go ahead with the approval process regardless of the position of the United States. However, it is important that the people be informed whether the United States will consent to the change being proposed. If it is the position of the United States that it will not consent, and mutual consent is required, it may not be the best choice to go ahead with the approval of consent on the part of the Commonwealth. That is a decision for the legislature. This provision requires only that information be made available to the public as to the position of the United States. This will ensure that the Northern Marianas people are not wrongly

encouraged to believe that an amendment to the Covenant is achievable and in their interests.

The position of the United States can be set out in any 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 or that it disagrees with the proposed change and will not support it before Congress.

The legislature must approve the proposed change by a three-fourths vote in each house. This means that the interests of Tinian and Rota will be protected in the Senate; and the interests of Saipan will be protected in the House. If the legislature does not approve, then the process stops.

Second: after the legislature approves, the bill is sent to the Governor. If the Governor approves, the process moves to the third step. If the Governor does not approve, the process stops. It is important that the executive branch, which negotiates any changes in the Covenant on behalf of the people, approve the change. If the Governor withholds approval without justification, he or she can be held accountable at the polls in the next election.

Third: after the legislature and the Governor approve, the text of the proposed change is submitted to the people at the next regular general election that is more than 90 days from the date of the Governor's approval or in a special election provided by law. This allows the legislature to exercise its judgment about a fair period of time for public education. The consent of the Commonwealth is authorized if the text is approved by at least two-thirds of the votes cast and at least a majority of the votes cast in each of two senatorial districts.

Section 4: Ratification

Section 4(a): Attorney General Review. Each initiative petition proposing amendment of a single constitutional provision or a legislative petition proposing mutual consent to a change to the Covenant must be submitted to the Attorney General for review. There is no time limit for submission of the petition.

The Attorney General reviews initiative petitions to determine if the signatures are genuine and if they total 30% of the persons entitled to vote in the Commonwealth and 25% of the persons entitled to vote in each of two senatorial districts. The Attorney General also determines whether the petition states the full text of the proposed amendment.

In addition, the Attorney General would review the petition to determine whether the proposed constitutional amendment would conflict with other provisions of the Constitution that are not being amended. If there were direct conflicts, the Attorney General would reject the petition and send it back so that the conflicts could be cured. In fact, it is likely that anyone proposing a petition would seek the advice of the Attorney General ahead of time, before collecting signatures, that the text was appropriate. It is the intention of the Committee that the Attorney General would provide such advice. This provision has been added to prevent direct conflicts from being introduced into the Constitution by means of petitions.

The Attorney General reviews legislative petitions to consent to changes in the Covenant to determine if they state the specific change to be approved.

The Attorney General reviews initiative petitions to call a constitutional convention to ensure that the required number of signatures has been collected and that the question is stated properly.

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.

Once 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.

Initiatives by the Legislature

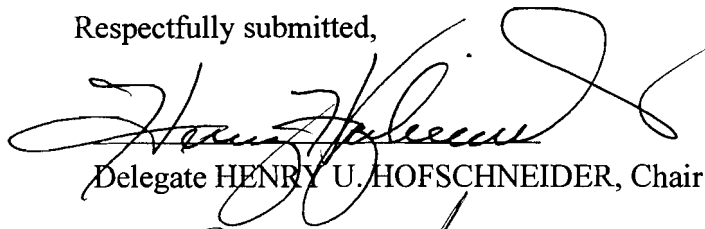
The Committee recommends that the Convention delete the legislative initiatives that allowed the legislature to amend one provision in the Constitution or to call a constitutional convention. The Committee believes that the popular initiative is a better method to amend the Constitution. If the legislative 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 with which they disagree.

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

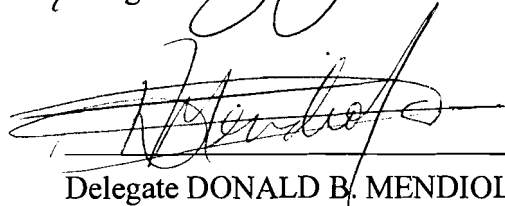
any public education. If the voters approved it on the ballot, then the legislature's budget ceiling will be \$8 million. That is far higher than what the Committee on Legislative Branch and Public Finance has recommended. But the legislature just went ahead and put their own budget ceiling on the ballot. Once they get theirs established by the voters, then they can campaign against the provision recommended by the Convention, 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,



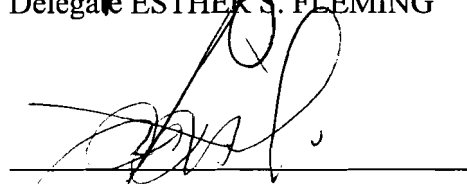
Delegate HENRY U. HOFSCHNEIDER, Chair



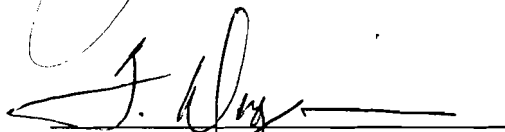
Delegate DONALD B. MENDIOLA, Vice Chair



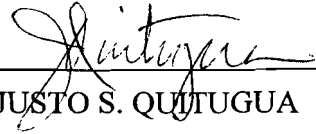
Delegate ESTHER S. FLEMING



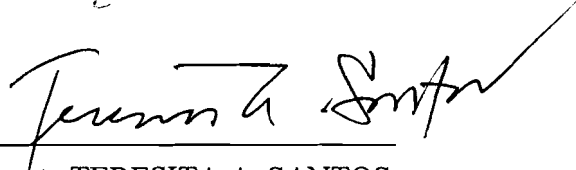
Delegate JAMES M. MENDIOLA



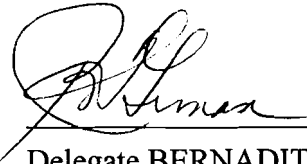
Delegate FELIX R. NOGIS



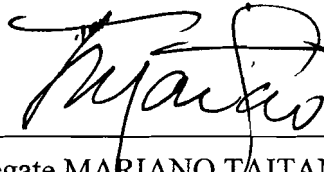
Delegate JUSTO S. QUITUGUA



Delegate TERESITA A. SANTOS



Delegate BERNADITA T. SEMAN



Delegate MARIANO TAITANO

DRAFT
7/19/95

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.

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 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. 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 shall be communicated to the United States and bind the Commonwealth only after 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 and adequate information about the position of the United States as to its consent, approved by the governor, and ratified by the people in accordance with section 4 of

this article.

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 and that, if approved, there are no direct conflicts with provisions of the constitution not amended.

b) A proposed constitutional amendment by 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 90 days from the date the petition has been certified or at a special election provided by 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 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. Constitutional amendments proposed by a convention shall be submitted to the voters at the next regular election that is held at least 90 days from the end of the convention or at a special election provided by law and shall become effective if approved by a majority of the votes cast or such higher requirement as provided by the convention.

d) If a constitutional amendment or consent of the Commonwealth is approved by the voters, it shall become effective immediately or as provided in the text approved by the voters.