



POST CONVENTION COMMITTEE Third Northern Mariana Islands Constitutional Convention

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January 29, 1996

Ben Sablan
Chair, Democratic Party
Saipan, MP 96950

Dear Ben:

I have put together an overview of the constitutional amendment passed by the Third Northern Marianas Constitutional Convention that affect political parties and elected office holders. The delegates consulted extensively with legislators and others in the Democratic Party during the Convention. The work of the Convention strengthens our two-party system, protects the electoral strength of our Chamorro and Carolinian communities, and improves the governance of the Commonwealth. These changes mean progress, and they deserve the support of the Party.

Because the overall effects on political parties and elected office holders are interwoven, and appear in many articles, this letter outlines first the changes in Article II (Legislative Branch), Article VI (Local Government), and Article XVIII (Constitutional Amendment). It then deals with Article III (Executive Branch), Article VII (Eligibility to Vote), Article VIII (Elections), Article IX (Initiative, Referendum, and Recall), and Article X (Taxation). If there are other articles on which it would be useful to have some briefing materials, please let me know and I will get them to you promptly.

I think the product of the Convention's work deserves the Party's support. If approved by the voters, these amendments will help solve important problems that have caused our political system here in the Commonwealth a considerable amount of difficulty in the past.

Article II: Legislative Branch

Of the three branches of government, the legislative branch was the subject of the most extensive set of proposed amendments by the Convention. Although the delegates liked the legislators personally, there was widespread disappointed with the way in which the legislative branch had functioned in recent years. Most of the reforms are designed to reduce the cost of the legislative branch, enhance its professionalism, and engender greater responsiveness to the public. The sense of the Convention was that such an improved legislature would provide both a

more effective counter-balance to the executive branch and a more collaborative effort between the two branches in serving the public interest.

The reduction in size and other changes proposed for the house of representatives amount to a very significant reformation of the lower house. The house is reduced to 13 (from 18) with a new cap of 15 -- the lowest size that would still conform with the applicable legal requirements. The delegates were motivated in part by a desire to reduce costs, but also by the desire to make the house a more effective body generally. At the same time, the Convention proposes four year terms instead of the present two years and election at large on Saipan rather than from individual districts. These changes, it is hoped, will attract a broader range of qualified candidates for the lower house and will provide more time for learning how to be effective legislators (with less need to be constantly working on reelection). The delegates hoped that election at large might foster a greater sense of the community's needs as a whole rather than a focus on the needs of individual villages on Saipan.

The downsizing of the senate -- from nine to six -- puts the senate on a par with the United States Senate with two senators from each political unit no matter how large or small. This change cuts the cost of the senate but does not decrease the effectiveness of senators in representing their islands. This change also resulted in the new proposal to have the lieutenant governor play a narrow, but critical role, in the work of the senate. The lieutenant governor will be called upon to break tie votes, and he also is part of the small group to select the director of the legislative bureau that provides staff assistance to the legislature. Although involving the second highest official of the executive branch in the work of the legislature prompted some concerns, it may serve in a useful way to make it easier for the two branches of government to function together.

Reducing the costs of this branch was of major concern to the delegates. This concern was highlighted by the Legislative Initiative proposed by the legislature and defeated by the voters this past November. The Convention decided on a fixed cap of \$4.5 million, with inflation protection for the future, to cover all expenses of the legislature -- salaries, office expenses, and legislature bureau costs. The delegates propose to eliminate all distinctions between the house and the senate with respect to office expenses and also the distinction between majority and minority members of the legislature. The delegates concluded that all members of the legislature have virtually identical needs for office expenses and should be treated equally irrespective of whether they are senators or representatives or whether they are in the majority or the minority.

With the restrictions imposed on the disposition of these funds, the legislative bureau will receive the greatest increase in funding for its purposes. The Convention proposes a major upgrading of the bureau, headed by a qualified director, with funds available to hire lawyers, economists and other professionals necessary to enable the legislature to enact sensible and well drafted laws. The Convention concluded that the executive branch, as well as the legislative branch, would benefit from this enhanced professionalism.

The Convention also proposed amendments that would preclude the use of public funds for political or personal purposes. The Convention was well aware of the use of "community workers" by the legislators and the growing complaints of legislators that they must use their public funds to pay the bills of their constituents, provide picnic tables, or meet other expenses that are not directly related to the fundamental duties of the legislature. The delegates recognized that it may be difficult to change a practice that has been in effect in the Commonwealth for so long, but that the effort was important to make. These constitutional restrictions on the use of public funds also apply to the use of Commonwealth funds by local government officials

The delegates were very concerned by the legislative procedures that the legislature followed (or did not follow) in the enactment of legislation. For example, amendments were proposed to require joint hearings by the legislature on all appropriations bill and other bills dealing with financial matters -- in part to minimize the burdens on executive branch officials. The Convention also proposed that every expenditure of public funds be authorized in an appropriation bill and would prohibit all unfunded new or expanded programs. Another amendment would require two separate readings on two separate days before a bill could be enacted into law and sent to the Governor. These amendments are all designed to deal with some of the legislature's past practices and to ensure that the public have the opportunity for input before important measures are enacted.

Article VI: Local Government

The amendments proposed for Article VI provide for a substantially enlarged form of local government in the Northern Marianas, structured along the lines of local government in other parts of the United States. If over time these local governments exercise the powers granted them under these amendments, some of the tension between the local governments and the central government may disappear.

First, these local governments now have the authority to enact municipal ordinances on local matters. These are defined as matters that affect only the island or islands served by the local government. In addition, this local authority must be exercised in a way that is consistent with Commonwealth law. The Commonwealth legislature (or individual delegations) will no longer have the authority to enact such local laws; a proposed amendment would delete the section of Article II which previously gave the legislative delegations that authority. On the other hand, the legislature (and the Governor) retain the authority to decide what should be considered a Commonwealth-wide matter and to preempt the local governments if their action is truly not limited to the island or islands involved.

Second, the municipal councils will have the authority to enact revenue-raising measures, subject of course to the veto power of the mayor. The proposed amendments reflect the delegates' view that local government should ultimately pay for itself, and not be dependent on Commonwealth funds for paying employees of the mayors or the councils. Under the proposed

amendments, after a brief grace period the local governments will have their Commonwealth funding reduced by the amount raised locally and, after five years, Commonwealth funding will be limited to matching locally raised revenues and then only if the Commonwealth legislature and the Governor conclude after public hearings that the local governments have made all feasible efforts to keep their government employees under the constitutionally established cap and to exercise their authority to impose taxes on their residents.

Third, the Convention proposed a cap on local government employees based on the number employed as of June 5, 1995. The cap does not apply to local residents paid from Commonwealth funds because they are providing Commonwealth public services delegated by the Governor to the mayor. Other local employees cannot exceed this cap and, if they do, must be paid from locally raised revenues. By such a provision, the delegates expressed the strongly held view that local government has become the employment of choice on Rota and Tinian for the residents and that more effort must be made to develop alternative sources of employment on those islands.

There was very extensive debate within the Convention on these significant reforms in local government. The financial provisions prompted the walkout by Tinian delegates, which in turn resulted in the compromise summarized above regarding the grace period and the five-year program for reducing local government dependency on Commonwealth funds. Interestingly, the Tinian delegates were much more enthusiastic about the enhanced powers of the municipal councils than were some of the Rota delegates. It may be that the municipal councils, through their newly established authority, may operate to limit somewhat the authority of the mayors on Tinian and Rota, provide opportunity for new political leaders to develop, and hopefully develop a greater sense of collaboration with the Commonwealth government.

Article XVIII: Constitutional Amendment and Mutual Consent

Three important changes were made in Article 18. First, the supermajority vote needed to amend the Constitution was changed from a majority plus two thirds on each of two islands to a 60% majority Commonwealth-wide. The delegates made this change primarily because the Attorney General has opined that the formula used in the 1976 Constitution is unconstitutional.

Second, the delegates added a procedure for approval of any proposed changes in the Covenant. This new procedure requires action by the legislature, the governor, and the people. The Covenant contains fundamental rights upon which the Commonwealth was founded, and the delegates believed that it should not be changed unless the people concurred. The 60% majority was applied here as well.

Third, the delegates channeled most constitutional amendments through the people at the stage when a constitutional amendment is initiated as well as when it is approved. There would not be another constitutional convention for 25 years. Amendments to the constitution would be proposed by 30% of the voters. If the legislature wanted to sponsor an amendment to the

Constitution, each legislator who was in favor of the proposed amendment would have to come up with a certain number of signatures so that the total equaled 30% of the registered voters. If a majority of the members of the house, for example, were in favor of a particular constitutional amendment, each one would go out and get about 450 signatures. Together, seven of the 13 members would have the total needed to get an initiative on the ballot. If more legislators were in favor of the measure, the number of signatures each would have to gather would decrease down to a minimum of 250.

Article III: Executive Branch

Although the Convention proposed amendments with respect to many sections of Article III, the overall thrust of the Convention's actions in this area was to delete many of the restrictive provisions added by the 1985 Convention and to propose reforms addressed to problems of concern to the delegates.

Section 1 of Article III, placing executive authority squarely in the hands of the Governor, was left intact by the Convention, notwithstanding efforts by Rota delegates to amend the section so as to provide a constitutional basis for delegating executive authority to the mayors of Rota and Tinian. The delegates generally expressed a firm preference for a strong chief executive, who could direct the affairs of the Commonwealth and be held responsible at the polls if the voters did not like the way in which the Governor exercised this authority. In line with this general view, the delegates left intact the Governor's reorganization authority under Section 15, notwithstanding the considerable public furor (and litigation) that had been prompted early in the Governor's administration by the exercise of this authority.

After extended deliberations and a walkout by the Rota delegates, the Convention decided that it would not propose any amendments to Section 17 of Article III, dealing with the delivery of public services in the Commonwealth. The Saipan delegates recognized that the court decision in the litigation initiated by Mayor Inos by and large confirmed the authority of the Governor, especially with respect to the execution of Commonwealth laws. Although all the delegates would have preferred more clarity and less litigation, they were unable to reach a consensus on how to achieve these goals. Staying with the status quo was a profound setback for former Lieutenant Governor Manglona, who decided not to sign the Convention's proposed amendments because of his disappointment on this issue. Some of the litigation on these issues may be diminished in the future if the amendments are approved by the voters because of the new provision in Article IV (Judicial Branch) providing for advisory opinions by the Supreme Court with respect to disputes between elected officials in the Commonwealth.

The Convention proposed deletion from the Constitution of several sections added in 1985 that intruded on executive authority. For example, the Convention proposed elimination of former section 21, which established a general rule with respect to all boards and commissions appointed by the Governor with certain exceptions. The Convention concluded that the rules applicable to boards and commissions should be left to the Governor and the Legislature for

resolution on a case by case basis.

The Convention also proposed deletion of the constitutional provisions establishing special offices for women's affairs and indigenous affairs. The Convention did retain the Executive Assistant for Carolinian Affairs, which has a very important symbolic importance to the Carolinian community. The delegates concluded, however, that a newly established Council for Indigenous Affairs, designed to implement programs aimed at preserving Chamorro and Carolinian language, culture and traditions, would be desirable and might over time lessen the need for the special office for the Carolinians. The Convention anticipated that the new Council would assume the duties of some existing agencies, although both the Governor and the Legislature will be able to influence the scope and extent of the Council's activities through the normal budgetary process. The Convention delegates in establishing this new Council were reflecting the widespread concern in the community that more attention needed to be directed to the preservation of indigenous traditions and languages as the Commonwealth grows and develops over the years.

The Convention eliminated the elected Commonwealth-wide board of education and provided for a strong secretary of education to be appointed by the Governor. Local boards of education would be elected on each island to provide policy input for local schools on questions such as uniforms, school fees, parent activities, and community and cultural programs.

The Convention also addressed the civil service provisions of the Constitution and has proposed a series of reforms designed to bring about a more efficient and cost-effective civil service. The delegates approved a downsizing of the commission from seven to five members. The legislature has broad flexibility to create exceptions to the general coverage of the civil service and to provide that certain positions or groups of positions are not covered by the civil service system. The Civil Service Commission would be free to permit non-tenure positions for those who come temporarily from elsewhere, to allow for more performance-oriented standards, and to enact other reforms to make the civil service work better.

The Convention did propose several amendments that address perceived problems in the Commonwealth -- some important and some relatively insignificant.

Section 7 of Article III, dealing with succession, was amended in 1985 to place the presiding officer of the senate in line to become lieutenant governor under certain circumstances. The Convention recognized that this could lead to an unacceptable circumstance where the governor and the lieutenant governor might be of different political parties or otherwise unable to work together. As proposed to be amended, Section 7 would let a lieutenant governor who becomes governor select a replacement lieutenant governor subject to the advice and consent of the senate.

There was considerable debate within the Convention regarding the past difficulties in getting a balanced budget approved by the executive and legislative branches of the government

before the fiscal year begins. Some very radical proposals were discussed by the delegates but eventually rejected because of their possibly severe consequences on the Commonwealth's citizens. The proposed amendments to Section 9(a) of Article III outline a more modest effort at addressing this problem, which was one that was generally recognized as being best left to the political process. The proposed amendments here impose a timetable on the submission of the proposed budget that is less demanding than legislation presently in place, direct that estimated revenues to be based on legislation already enacted, and modify the continuing resolution procedure so as to make it a less attractive alternative in the event that the Governor and the legislature are unable to reach agreement on a proposed budget. The Governor remains free, of course, to propose new revenue measures or other programs as part of the proposed budget.

The Convention delegates attached a high priority to a greater flow of information from Commonwealth officials to the people regarding the affairs of the Commonwealth. It was in this vein that the Convention proposed amendment of Section 9(b) to provide that the Governor deliver an annual report in person to a joint session of the Legislature. The Convention also proposed similar such reports by the Resident Representative and the Chief Justice of the Commonwealth Supreme Court. By deleting the requirement added in 1985 that the Governor's report include a comprehensive financial report, the Convention delegates were highlighting their view that this annual occasion provided an opportunity for the Governor to describe the accomplishments and challenges of the Administration and propose those important new measures needed to address the Commonwealth's problems.

Several other sections of Article III are affected by amendments proposed by the Convention. After exercising emergency powers under Section 10, the Governor is required to report to the legislature within thirty days. The Convention's concern about the legislature's inability (or refusal) to act on the Governor's nominees for executive branch positions and concern about "acting" department heads led to proposed amendments of Sections 12 and 14. The general view of the delegates was that the Governor was entitled to have his nominees acted upon in timely fashion by the legislature and that, failing such action within a fixed period of time, the nominee should be considered confirmed.

The amendment to Section 11, dealing with the Attorney General, might be viewed as a more important constraint on the Governor's authority to appoint, and remove, his own Attorney General. The Convention after much debate decided to keep this position an appointed, rather than elected, one. There was concern about the independence of the office, however, and the requirement of "cause" to justify removal was proposed with this concern in mind. There is no definition of "cause" in the proposed amendment or in the accompanying Analysis, but it was recognized by the delegates that the Governor was entitled to have an attorney general who generally supported the policies of the Administration. On a practical level, the Convention recognized that an attorney general was always free to resign if the Governor and the attorney general were not able to function effectively together.

Article VII: Eligibility to Vote and Hold Office

The delegates added a general provision with respect to the disqualification of anyone convicted of a felony to hold elected office. This disqualification had been incorporated in several places within the Constitution, but had not been made a uniform requirement.

Article VIII: Elections

The delegates deleted a provision in the 1976 Constitution that had requested the legislature to provide for the registration of voters and other election procedures. These laws already have been passed by the legislature, and this provision is no longer needed in the Constitution.

Article IX: Initiative, Referendum, and Recall

The recall of elected officials was made somewhat easier under the proposed amendments. A recall petition can be put on the ballot if signed by 20% of the registered voters (but not in the first six months in office) and becomes effective if approved by a majority vote.

Article X: Taxation and Public Finance


The Convention proposes eliminating some current provisions in this article. For example, it proposes eliminating the requirement that the legislature define "public purpose" contained in present section 1. In addition, it would eliminate current section 2, requiring the Governor to report on tax exemptions every five years, as unnecessary. The most important changes proposed here, however, relate to deficit retirement.

The delegates were very concerned about the Commonwealth's deficits, as reported by the public auditor, and were determined to propose amendments to address the problem. The proposed amendments seek to require the elimination of a deficit within two years, or within three years if the deficit exceeds ten percent of the Commonwealth's projected revenues during the fiscal year in which the deficit is to be retired. As would be natural, the Governor would be asked as part of the annual budgetary process to propose a plan for reduction of the deficit.

The delegates wanted to do more, however, to ensure that the Commonwealth government did not continue to add to its deficit while this process for reducing the deficit was underway. It proposes, therefore, that a general hiring and salary freeze would go into effect as soon as a deficit is identified. It was generally recognized by the delegates that the Commonwealth has too many employees doing too little for too much pay. The Convention believed that the Governor shared this view and would welcome the opportunity to make the government a more cost-effective and responsive instrument. The proposed amendment does provide an exception to the hiring freeze if the Governor and two-thirds of the legislature agree that certain new hires are necessary to protect public health and safety.

I hope this summary of constitutional amendments affecting the political system and elected officials is informative. If you have any questions or need further information, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Herman T. Guerrero". The signature is written in a cursive style with a large, prominent initial "H".

Herman T. Guerrero
Chair, Post-Convention Committee