February 8, 1996

MEMORANDUM FOR THE POST-CONVENTION COMMITTEE

SUBJECT: Revision of the Analysis of the Constitution

Public Law 9-18 authorizes the Post-Convention Committee to make revisions in the Analysis of the Constitution that was approved by the Convention on August 3, 1995. Indeed, the Committee has the authority to write the entire Analysis if the Convention has not done so. This power should be exercised on a very selective basis -- principally to deal with typographical errors, sentences or phrases inadvertently left out, or language that has caused some unintended interpretation that is incorrect. The Analysis is 99 pages long. Although the delegates had it before them on several days, and discussed the language extensively, errors can occur with a long, complicated document.

Because the Post-Convention Committee has the power to correct errors and unintended meanings, it may be important to do so. Otherwise, the courts may conclude that an unintended interpretation has substance. One of the purposes of the public education campaign is to find out if there are any unintended meanings in the Analysis so they can be corrected.

This memorandum places before the Committee for decision 10 such proposed changes.

Article 2, Section 2, Composition of the Senate, subsection (b)

The proposed downsizing of the Senate and the proposed new role for the Lieutenant Governor are the subject of a discussion on page 4 of the Analysis. Some people have incorrectly interpreted the present language of this paragraph as adversely affecting the independence of the Legislature. Such an interpretation was unintended.

The current paragraph of the Analysis (p. 4) now reads:

Section 2(b): Changing the number from nine to six creates the possibility that the senators might be evenly divided on an issue. Section 2(b) is a new provision. Borrowing from the experience in the United States Senate and many states, the Commonwealth's lieutenant governor is given the additional duties of presiding over the senate until it elects a presiding officer and voting only in the event of a tie. In order to maintain the separation of powers between the legislative and executive branches of the Commonwealth government, the lieutenant governor has no other duties with respect to the operations and deliberations of the senate other than these specific responsibilities, and that of helping to choose the director of the legislative bureau, discussed in section 16.

Proposed change:

Section 2(b): Changing the number from nine to six creates the possibility that the senators might be evenly divided on an issue. Section 2(b) is a new provision. Borrowing from the experience in the United States Senate and many states, the Commonwealth's lieutenant governor is given the additional duties of presiding over the senate until it elects a presiding officer and voting thereafter only in the event of a tie. In order to maintain the separation of powers between the legislative and executive branches of the Commonwealth government, the lieutenant governor has no other duties with respect to the operations and deliberations of the senate other than these specific responsibilities, and that of helping to choose the director of the legislative bureau, discussed in section 16.

This change makes clear, what was intended by the Convention, that the lieutenant governor will not have any vote in the senate's election of its presiding officer.

Article 2, Section 12 (Sessions)

Section 12 (which is Section 13 in the current Constitution) was not proposed to be changed by the delegates. There is, however, a minor conforming change that would be needed and was not made.

The first sentence of this section of the Constitution reads as follows:

> The legislature shall meet for organizational purposes on the second Monday of January in the year following the regular general election at which members of the legislature are elected and shall be a continuous body for the two years between these organizational meetings.

Because under proposed Amendment 2 the members of the House would be elected every four years, although members of the Senate would be elected every two years on a staggered basis, the above sentence should have been amended to read "two or four years between these organizational meetings."

This is a minor matter that is unlikely to lead to any real confusion or problem. The sentence makes clear that there will be an organizational meeting after the general election at which members of the house involved are elected. As a matter of fact, either house can have an organizational meeting any time a majority of the members want one -- as the Commonwealth's history amply demonstrates.

The current paragraph of the Analysis (p. 10) now reads:

Section 12: Sessions (Former Section 13)

No change.

Proposed change:

Section 12: Sessions (Former Section 13)

No change. The word "two" is the first sentence should be read to mean "two or four" years to reflect the proposed change in the term of office for members of the House of Representatives from two years to four years. An organizational meeting will be held after the regular general election at which members of the Senate or the House of Representatives are elected. This would be every two years for the Senate, whose members are elected on a staggered basis every two years, and four years for the House of Representatives if the change in their term of office is increased to four years.

Article 3, Section 9 (Executive Functions), subsection (a)

There is a typographical error in the subparagraph numbered 2 that begins at the bottom of page 17. There is also a missing comma. In addition, some have interpreted this subparagraph as allowing an allocation according to the entire appropriation for the past fiscal year. This is not correct. Some further explanation of the proposed changes to Section 9(a) would be useful.

The current subparagraph in the Analysis (p. 17) reads:

2) If the projected revenues for the new fiscal year are less than the fiscal year just ended, the shortfall is allocated on a proportionate basis to each activity funded during the last fiscal year. This marks a clear difference from the system currently in place under which expenditures can go forward at the same level as the estimted revenues for the past fiscal year irrespective of the anticipated revenues for the current year. In making this calculation all extraordinary or non-recurring expenditures are first subtracted from the appropriations for the past fiscal year.

Proposal:

2) If the projected revenues for the new fiscal year are less than the fiscal year just ended, the shortfall is allocated on a proportionate basis to each activity funded during the last fiscal year. This marks a clear difference from the system currently in place under which expenditures can go forward at the same level as the estimated revenues for the past fiscal year irrespective of the anticipated revenues for the current year. In making this calculation, all extraordinary or non-recurring expenditures are first subtracted from the appropriations for the past fiscal year. After this subtraction, the allocation of funding to remaining activities during the past fiscal year is followed in the allocation of the lower level of funding anticipated for the new fiscal year.

Article 3, Section 13 (Education), subsection (d)

Some have interpreted the language of the Analysis, although not the language of the constitutional provision, to required that all appropriations of any kind or at any time that deal with instruction must be allocated on a per student basis. This is not correct. The interpretation apparently arises because the words "annual appropriation for instruction" are used in the constitutional language and the shorthand term "funds" is used in the Analysis. Any possible unintended ambiguity can be cleared up by using the exact language of the constitutional provision and by adding two explanatory sentences.

The current paragraphs of the Analysis (p. 23) read:

Section 13(d): This section provides for Commonwealth funds to be provided for local schools. This section makes clear that the decentralization intended by the Convention applies at the school level. Each school receives its share of the appropriation for instruction and the principal, as the executive head of the school, is responsible for the expenditure of that appropriation. This decentralization is intended to empower principals to do site-based management. They are allocated funds for their school and they are responsible for the best and wisest use of those funds. Principals are the key to the success of a decentralized system.

The legislature appropriates funds for instruction (actual classroom teaching and teaching materials and related student activities), for administration (procurement, research, teacher training, facilities maintenance, transportation, freight, communications, and related services), and for capital improvements (building schools and related facilities). The funds for instruction (but not other funds) must be divided among the local schools on a per enrolled student basis. For example, if the instructional appropriation is $30 million and there are 10,000 students enrolled in the elementary and secondary schools system, $3,000 per student would be allocated to each school on a timetable during the fiscal year as established by the legislature or by the secretary.

Proposal:

Section 13(d): This section provides for Commonwealth funds to be provided for local schools. This section makes clear that the decentralization intended by the Convention applies at the school level. Each school receives its share of the appropriation for instruction and the principal, as the executive head of the school, is responsible for the expenditure of that appropriation. This decentralization is intended to empower principals to do site-based management. They are allocated funds for their school and they are responsible for the best and wisest use of those funds. Principals are the key to the success of a decentralized system.

The legislature makes an annual appropriation for instruction (actual classroom teaching and teaching materials and related student activities). The legislature also makes appropriations for administration (procurement, research, teacher training, facilities maintenance, transportation,

freight, communications, and related services), for capital improvements (building schools and related facilities), and for other, additional, or supplemental purposes. The annual appropriation for instruction (but not other funds) must be divided among the local schools on a per enrolled student basis. For example, if the annual appropriation for instruction is $30 million and there are 10,000 students enrolled in the elementary and secondary schools system, $3,000 per student would be allocated to each school on a timetable during the fiscal year as established by the legislature or by the secretary. This is a starting point, so that parents understand the level of instruction to which each child in the Commonwealth is entitled. If there are other, additional, or supplemental instructional needs in a school or group of schools, the legislature may make appropriations for that purpose that are not divided on a per enrolled student basis.

Article 4, Section 9 (Administration), subsection (c)

The constitutional language gives the Supreme Court the power to make rules for the courts. It does not include the current practice under which proposed rules are put before the Legislature for its approval. The constitutional language is clear.

But one sentence in the Analysis appears to be garbled. Some words may have been inadvertently omitted or part of another sentence may have been added. Some have interpreted the Analysis to mean that the legislature is denied any power whatsoever in this area. That is incorrect, and such an interpretation was unintended. Only the Supreme Court can enact court rules. And these rules become effective when published by the Court. The power of the Legislature to pass laws is unaffected. The legislature continues to have the authority that it presently has to enact laws that override court rules in most areas. This is the same power the Legislature has with respect to the Executive Branch when its departments or agencies make rules. Of course, the Legislature cannot enact laws that affect the constitutionally guaranteed structure, functions or independence of the co-equal judicial branch. The potential misinterpretation can be remedied by going back to the immediately preceding draft of the Analysis and using the phrase that was in that version.

The current paragraph of the Analysis (p. 40) reads:

Subsection (c): The supreme court is given rule-making authority over all aspects of the administration of the judicial branch. Both the proposal advanced by the courts and the legislative initiative endorsed by the house adopted this approach. Neither the courts nor the house proposed to continue the current practice by which rules issued by the supreme court become effective only if the legislature takes no action for sixty days after the rules are submitted. This section does not continue that practice. The rules issued by the supreme court are effective when published. The legislature has no role in or power to legislate in areas that are the province of the court's rule-making. The Convention expected that, as a matter of course, the supreme court would provide an opportunity for comment by the bar and other interested parties prior to the issuance of new rules. This would provide adequate public input now arguably provided by the legislative review period.

Proposal:

Subsection (c): The supreme court is given rule-making authority over all aspects of the administration of the judicial branch. Both the proposal advanced by the courts and the legislative initiative endorsed by the house adopted this approach. Neither the courts nor the house proposed to continue the current practice by which rules issued by the supreme court become effective only if the legislature takes no action for sixty days after the rules are submitted. This section does not continue that practice. The rules issued by the supreme court are effective when published, and no review by the legislature is necessary. The Convention expected that, as a matter of course, the supreme court would provide an opportunity for comment by the bar and other interested parties prior to the issuance of new rules. This would provide adequate public input now arguably provided by the legislative review period.

Article 6, Section 5 (Responsibilities and Duties of the Municipal Council (Former Section 7), subsection (a)

Article 6, Section 3, gives the mayor the power to approve or veto ordinances passed by the municipal council. Article 6, Section 5 provides that there may be procedures established by the mayor and municipal council for the orderly exercise of legislative authority by municipal councils. The Analysis does not explain clearly enough what is contemplated and could possibly be subject to misinterpretation. There is also a missing comma.

The current paragraph of the Analysis (p. 52) reads:

Section 5(a): This subsection grants the council the basic legislative authority for the senatorial district with respect to local matters. The subject matters that are appropriate for the enactment of municipal ordinances are those described above with respect to the mayor's authority under section 3. With respect to those matters the council can enact municipal ordinances that are then approved by the mayor in accordance with the procedures agreed to by the mayor and council. The elimination of the authority of the legislative delegations to enact local laws for the individual districts under former section 6 of article II was predicated upon giving such power to the municipal councils. This section in effect transfers the authority from the legislative delegations to the councils.

Proposal:

Section 5(a): This subsection grants the council the basic legislative authority for the senatorial district with respect to local matters. The subject matters that are appropriate for the enactment of municipal ordinances are those described above with respect to the mayor's authority under section 3. With respect to those matters, the council can enact municipal ordinances that are then approved by the mayor in accordance with this article and any other procedures agreed to by the mayor and council. The elimination of the authority of the legislative delegations to enact local laws for the individual districts under former section 6 of

article II was predicated upon giving such power to the municipal councils. This section in effect transfers the authority from the legislative delegations to the councils.

Article 9, Section 1 (Initiative), and Section 2 (Referendum)

Proposed Amendment 9 does not recommend any change to Section 1 (Initiative) and Section 2 (Referendum). However, both provisions refer to "local law" because under the current Constitution the delegations in the legislature from each senatorial district can enact local laws for their districts. This power would be eliminated under the proposed amendments and the authority would be given to the municipal councils to enact municipal ordinances (or local laws). In order to clarify the intent of the Convention in this regard, a sentence can be added to the paragraphs of the analysis that deal with these sections.

The current paragraphs of the Analysis (p. 58) read:

Section 1: Initiative

No substantive change.

Section 2: Referendum

No substantive change.

Proposal:

Section 1: Initiative

No substantive change. <u>The reference to "local law" in this section refers to the municipal ordinances enacted by municipal councils (and the mayors) as proposed by the amendments to article 6.</u>

Section 2: Referendum

No substantive change. <u>The reference to "local law" in this section refers to the municipal ordinances enacted by municipal councils (and the mayors) as proposed by the amendments to article 6.</u>

Article 11, Section 5 (Fundamental Policies), subsection (b)

Article 11 allows transfers of freehold interests for homesteads (under subsection 5(a)) and for use by other government agencies (under subsection 5(b)). For consistency, it may be useful to state this again in the Analysis.

The current paragraph of the Analysis (p. 65) reads:

Section 5(b): This section allows the bureau to transfer a freehold interest in public lands to another agency of the Commonwealth government for use for a public purpose. This kind of transfer may be done only after reasonable notice and a public hearing.

Proposal:

Section 5(b): This section allows the bureau to transfer a freehold interest in public lands to another agency of the Commonwealth government for use for a public purpose. This kind of transfer may be done only after reasonable notice and a public hearing. Other than homesteads, covered in Section 5(a), this is the only authorized transfer of a freehold interest in public lands.

Article 12, Section 6 (Enforcement)

There is a typographical error in the Analysis that should be corrected. In addition, a phrase has been transcribed incorrectly. The meaning of the constitutional language is clear, but this inadvertent error should be corrected.

The current paragraph of the Analysis (p. 86) reads:

Nothing in the changes to section 6 in any way authorize the courts to allow persons who are not of Northern Marianas descent to own land in the Commonwealth. No remedy can reach that result, as that is prohibited by the Covenant and by section 1. Under no circumstances may the land be left in the hands of an owner who is not a person of Northern Marianas descent under section 4 or a corporation that qualifies under section 5. In the event that no private action is initiated, because of the important public interests at stake, the Attorney General may act.

Proposal:

Nothing in the changes to section 6 in any way authorizes the courts to allow persons who are not of Northern Marianas descent to own land in the Commonwealth. No remedy can reach that result, as that is prohibited by the Covenant and by section 1. Under no circumstances may the land be left in the hands of an individual owner who is not a person of Northern Marianas descent under section 4 or a corporation that does not qualify under section 5. In the event that no private action is initiated, because of the important public interests at stake, the Attorney General may act.

Article 18, Section 2

A sentence has been inadvertently omitted from the Analysis.

The current paragraph of the Analysis (p. 94) reads:

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, he or she needs to wait until the year 2021, and then get the signatures of thirty percent of the qualified voters Commonwealth-wide and at least twenty-five percent of the qualified voters in each senatorial district.

Proposal:

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, he or she needs to wait until the year 2021, and then get the signatures of thirty percent of the qualified voters Commonwealth-wide and at least twenty-five percent of the qualified voters in each senatorial district. Once on the ballot, an initiative petition to call a constitutional convention would be approved by a majority of the votes cast

Article 18, Section 3 (Mutual Consent)

One sentence in the Analysis contains an inadvertent error which reflects a prior draft that was not changed when constitutional language was changed. There is no ambiguity about the constitutional language, but this sentence in the Analysis needs to be corrected.

The current paragraph of the Analysis (p. 96) reads:

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.

Proposal:

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 a majority of at least 60% of the votes cast Commonwealth-wide.