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TO: Herman T. Guerrero, Chair

FROM: Howard P. Willens

MESSAGE

Herman: Here is a resolution for the Committee members to sign, if you approve its form and substance, to confirm their approval of the specified corrections and revisions to the Analysis. This probably should be done by February 28, which is the date I put on the Resolution.

The only new subject included in the Corrections sheets is the discussion of the Public Auditor and the addition of a new sentence that may allay some of the Governor's concerns regarding Amendment #3. We think it might be very desirable to effect this change promptly and let the Governor know of the Committee's actions.

If you approve, I suggest that we ask Alicia and staff to take charge of getting this around and signed by the members of the Committee who are on island.

Let me know if there are any questions or problems.

Howard

February 28, 1996

RESOLUTION OF THE POST CONVENTION COMMITTEE

WHEREAS, Public Law 9-18 authorizes the Post Convention Committee to prepare an Analysis of the amendments proposed by the Third Constitutional Convention if one has not been prepared;

WHEREAS, counsel has advised the Post Convention Committee that the authority granted the Committee by Public Law 9-18 necessarily includes the more limited authority to revise the Analysis approved by the Convention if such corrections or additions are necessary to state more clearly the intentions of the Convention in proposing any particular amendment;

WHEREAS, during the public education program conducted by the Committee over the past six months the Committee has become aware of certain errors and omissions in the Analysis whose correction would clarify the intentions underlying the amendments proposed by the Convention and avoid unnecessary disputes and litigation in the future; and

WHEREAS, the Committee after discussing the matter thoroughly has decided to make the corrections and revisions to the Analysis set forth on the attached Correction Sheets for the Analysis; now therefore

BE IT RESOLVED that the Post Convention Committee approves the corrections and revisions to the Analysis set forth on the attached Correction Sheets for the Analysis and directs the Secretary and staff of the Committee to issue a Press Release describing this action of the Committee before March 2, 1996.

Herman T. Guerrero, Chair

Esther S. Fleming, Vice-Chair

John O. DLR. Gonzales, Secretary

Tomas B. Aldan

David Q. Maratita

Felix R. Nogis

Justo S. Quitugua

Date: February 28, 1996

POST-CONVENTION COMMITTEE
THIRD NORTHERN MARIANAS CONSTITUTIONAL CONVENTION

February 27, 1996

CORRECTION SHEETS FOR THE ANALYSIS OF THE CONSTITUTION OF THE
NORTHERN MARIANA ISLANDS ADOPTED BY THE CONVENTION

Article 2, Section 2, Composition of the Senate, subsection (b) (p. 4)

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) (p. 10)

No change. Under this section, an organizational meeting will be held in each house of the legislature after each regular general election at which members of the Senate or the House of Representatives are elected. The Legislatures would continue to be numbered in a two-year sequence as they are now. The 1998 Legislature would be the 11th, and the 2000 Legislature would be the 12th. The Senate membership may remain the same after the election each two years, because the same Senator or Senators may be reelected. In this case, it is likely that the leadership of the Senate would remain the same when the organizational meeting is held after the mid-term election. Similarly, the House membership will remain the same unless there has been a vacancy, so it is likely that the leadership of the House would remain the same when the organizational meeting is held after the mid-term election.

No change was made by the Convention. This makes clear, what was intended by the Convention, that the procedures for organizational meetings of the Legislature every two years remain the same.

Article 3, Section 9 (Executive Functions), subsection (a) (p. 17)

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.

This change corrects a typographical error and a punctuation error. It also adds to the explanation of the procedure covered by the amendment.

Article 3, Section 12 (Public Auditor) (p.20)

A question has been raised as to an incoming Governor's authority to replace the Public Auditor with his own nominee upon confirmation by the Legislature as required under Section 12 of Article 3. With respect to other officials who can be removed only for cause, like the Attorney General and the Secretary of Finance as recommended by Amendments 3 and 10, either the amended Constitution itself or the Analysis makes clear that the official involved, like other appointees of the Governor, can be replaced by a newly-elected Governor. In order to make this clear with respect to the Public Auditor, the following sentence will be added to the Analysis at the end of the discussion regarding the Public Auditor:

“Nothing in this section is intended to eliminate the right of the incoming governor to appoint a new public auditor.”

Article 3, Section 13 (Education), subsection (d) (p. 23)

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 base point or floor, so that parents understand the level of instruction to which each child in the Commonwealth is entitled and to which each school in the Commonwealth is entitled. If there are other, additional, or supplemental instructional needs in a school or group of schools, the legislature, in its judgment, may make appropriations for that purpose that are not divided on a per enrolled student basis if the legislature receives the necessary justification.

This change substitutes the words of the constitution, “annual appropriation” for the word “funds” to make clear, as the Convention intended, that only the annual appropriation for instruction is required to be distributed on a per enrolled student basis. This change also adds an explanation that the Legislature retains the flexibility to make other, additional, or supplemental appropriations for instruction to take care of special needs.

Article 4, Section 9 (Administration), subsection (c) (p. 40)

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.

This change corrects a sentence that had been subject to misinterpretation because it apparently had been transcribed incorrectly during word processing. This correction contains the wording of the preceding draft that was before the Convention.

Article 6, Section 5 (Responsibilities and Duties of the Municipal Council (Former Section 7), subsection (a) (p. 52)

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.

This change is a clarification to incorporate the mayor's veto power.

Article 9, Section 1 (Initiative), and Section 2 (Referendum) (p. 58)

Section 1: Initiative

No substantive change. 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.

Section 2: Referendum

No substantive change. 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.

This change clarifies the references to "local law" in sections of the Constitution that were not changed by the Convention. The wording used in Article 6 is "ordinance" instead of "local law."

Article 11, Section 5 (Fundamental Policies), subsection (b) (p. 65)

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.

This change incorporates a reference to the preceding section that was left out of the Analysis.

Article 12, Section 6 (Enforcement) (p. 86)

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.

This change adds the word "individual" to distinguish between persons and corporations, and corrects a typographical error in the third sentence.

Article 18, Section 2 (p. 94)

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

This change adds a sentence that was inadvertently omitted from the Analysis. The petition to call a constitutional convention after the year 2021 would need a majority vote to be approved. After that approval, the constitutional convention would meet and proposes amendments. Those amendments would require a majority vote to be approved or any higher vote requirement imposed by the convention, as is explained under Section 4(c).

Article 18, Section 3 (Mutual Consent) (p. 96)

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.

This change corrects a proof-reading error in which a change that should have been made was omitted.

PRESS RELEASE

Third Northern Marianas Constitutional Convention
Post-Convention Committee

The Post-Convention Committee today issued revisions and corrections to the Analysis of the proposed constitutional amendments that will be on the ballot on March 2, 1996.

Public Law 9-18, which establishes the Post-Convention Committee, permits the Committee to put together the entire Analysis if that task is not completed before the end of the Convention. "We did have our Analysis done before the end of the Convention," Con-Con President Herman T. Guerrero said. "A draft of this 100-page document was distributed to the delegates on Saturday, July 29, 1995, five days before the Convention closed on Thursday, August 3, 1996. We were still debating some of the amendments at that time, so the delegates took up the Analysis on Tuesday, August 1 and Wednesday, August 2."

Guerrero explained that there are a few typographical errors that need to be corrected, and some sentences that may have been transcribed in error as the word processing on the final version was completed. "We have also found, during the public education campaign, that in a few places the Analysis needed an expanded explanation of what we did," Guerrero said, "because some people have misinterpreted the words. We don't want those misinterpretations to continue, so we cleared them up."

Guerrero cited as an example the explanation of Amendment #13 on education. The constitutional language says that the "annual appropriation for instruction" is to be divided on a per enrolled student basis. The Analysis shortened this phrase to "funds". This caused the School Board to issue statements that Tinian and Rota would lose up to 40% of their funding. "The School Board's interpretation was not correct," Guerrero said. "But that is one of the purposes of the public education program so we can find where people have misinterpreted things."

The 10 corrections to the 99-page Analysis do not change anything in the language of the proposed amendments. The Analysis is issued to explain the proposed amendments.

The First Constitutional Convention in 1976 issued a 225-page Analysis of its work in writing the original Constitution. The Second Constitutional Convention in 1985 did not issue any analysis of the proposed changes put on the ballot. The voters approved all 44 amendments.

The Analysis issued by the Third Constitutional Convention in 1995 covers every section of the Constitution. It states whether any change is proposed, and explains each proposed change. The Analysis has been published by the Post-Convention Committee in booklet form and copies have been distributed at the public meetings on Saipan, Rota, and Tinian. Copies of the Analysis and the correction sheet are available at the Post-Convention Committee offices at the JoeTen Center in Dandan.