

HOWARD P. WILLENS  
Law Office of William M. Fitzgerald  
P. O. Box 909  
Saipan, MP 96950

Tel: 670/234-7241  
Fax: 670/234-7530

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**TO: Governor Tenorio**  
**Fax 322-4462**

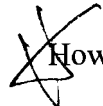
**FROM:** Howard P. Willens

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MESSAGE

Governor: Herman asked us to fax you the attached two documents. The first is a short memorandum to you regarding certain concerns that you have expressed regarding Amendments ##2, 3 and 11. The second is a corrections sheet to the official Analysis of the Constitution that corrects certain mistakes and clarifies certain issues that have been brought to the attention of the Post Convention Committee during the public education program. This was approved by the Committee at its meeting today.

In view of your meeting with certain members of the educational establishment tomorrow, you might be interested in the enclosed columns on the subject of Amendment #13 that will run in the Saipan Tribune on Wednesday and Thursday.

  
Howard

PERSONAL AND CONFIDENTIAL

February 27, 1996

MEMORANDUM FOR THE GOVERNOR

FROM: The Post Convention Committee

SUBJECT: March 2 Vote on the Proposed Constitutional Amendments

The Post Convention Committee appreciates your decision to let the vote go forward on March 2 with respect to the proposed constitutional amendments. The delegates have worked very hard for the past several months to get the facts out to the voters, and it is now time for the voters to express their wishes.

We understand that you may have some concerns about Amendments ## 2, 3 and 11. We would like to address those concerns. The enabling legislation gives the Post Convention Committee the authority to add clarifications to the Analysis where necessary. We believe that certain clarifications will take care of some of your concerns.

**Amendment #2 (Section 12 - Sessions)**

The delegates have proposed no change to this section of Article 2, which provides for organizational meetings of the Legislature every two years. Specifically, the first sentence of Section 12 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.”

Some question has been raised about this sentence because of the proposed change in the term of the members of the House of Representatives to four years.

After considering this matter the Post Convention Committee has approved the following addition to the Analysis of the Constitution under the authority granted it in Public Law 9-18:

“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.”

The Committee does not see any practical problems resulting from this section of Article 2. As you know, each house of the legislature can change its leadership any time a majority wants to do so. Continuing to require an organizational meeting of both houses every two years still seems to make good sense politically and practically. Changes in the membership of the Senate may influence the choice of leaders in the House and, from time to time, it is likely that in fact there will be new members of the lower house elected at the mid-term election. But it does no harm to have the House meet for organizational purposes every two years.

We know that you understand the very substantial changes in Article 2 proposed by the delegates. A downsized legislature, with a reasonable budget, and a new role for the Lieutenant Governor offers the first opportunity since 1978 to make the Commonwealth’s legislative and executive branches work more effectively together. Amendment #2 is strongly opposed by most of the current members of the legislature and, in particular, by the political leaders of Rota and Tinian. Its only chance of ratification is a substantial positive vote on Saipan, whose citizens will benefit especially from these proposed reforms. We hope you will support Amendment #2.

### **Amendment #3 (Section 12 - Public Auditor)**

The delegates did not recommend any changes in Section 12 of Article 3 that relate to the appointment or the removal of the Public Auditor. In other words, under the constitutional provision, the Governor still appoints the Public Auditor with the advice and consent of each house of the Legislature and the Public Auditor may be removed only for cause and with the affirmative vote of two-thirds of the members of each house of the Legislature. During the Convention it was never suggested by anyone that the Public Auditor had an indefinite term in office that would go on under successive governors unless it was removed for cause and with the approval of the required numbers of the members of the Legislature. The Legislature has imposed a term of office for the Public Auditor, but that can be changed by the Legislature. As far as the Constitution itself is concerned, it has always been assumed that the Public Auditor, like all other officials appointed by the Governor, could be replaced by a newly elected Governor without any showing of cause or involvement by the Legislature.

The requirement of removal only for “cause” does not change this general rule. That is made clear in other provisions of the proposed amendments to the Constitution. For example, the proposed amendment to Section 11 (Attorney General) states:

“The attorney general may be removed during the governor’s term only for cause.”

With respect to the Secretary of Finance, the Analysis provides that the requirement of cause for this officer's removal "is not intended to eliminate the right of the incoming governor to appoint a new secretary." (Analysis, p.62)

In order to meet any concern you may have on this point, we are recommending that the Post Convention Committee add the following sentence to the discussion of Section 12 (Public Auditor) in the Analysis:

"Nothing in this section is intended to eliminate the right of the incoming Governor to appoint a new public auditor if there is no statutory limitation. Nothing in this section is intended to limit the legislature's authority to prescribe terms of office for the public auditor."

If this change is made, we hope that you can endorse proposed Amendment #3. There is much in this amendment that is very supportive of the executive branch of government.

### **Amendment #11 (Commonwealth Lands)**

We understand that you have some concern about the impact of this proposed amendment on pending commercial leases of public land. Amendment #11 does propose changes in the procedures that need to be followed in connection with the commercial leasing of public land after August 4, 1995.

Over the long term, the new requirements in Amendment #11 will help the Executive Branch administer public lands and limit the intervention of the Legislature. We can understand the concern about pending matters, however. Our suggestion is that, if this Amendment #11 is approved, a single public hearing be announced at which all pending leases can be considered. If well organized and staffed, this could be done within 30-45 days. Leases of not more than 25 years and not more than 5 hectares would then be approved, and would have complied with Amendment 11. Leases of more than 25 years or more than 5 hectares would have to go to the Legislature. Under the new provisions, of course, the Legislature has a fixed time within which to act and can only approve, or reject, a proposed commercial lease. We recognize that this seems burdensome, at least at the beginning, but we think it will help you defend these leases in the media and in the courts if someone tries to challenge a particular lease of public lands.

We request only that you consider this particular aspect of Amendment #11 with its many other proposed changes keeping the public lands within the regular line authority of the executive branch, affecting the homestead program, preserving some lands for future generations, and doing much more to protect this limited resource while still permitting economic development to go forward.

If there are any other questions that you have about any of the proposed amendments, we are available to meet with you at your convenience.

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. The Legislature has provided for a term of office and may continue to do so or may delete this requirement. With respect to the Constitution itself, as is done in connection with 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 sentences 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 if there is no statutory limitation. Nothing in this section is intended to limit the legislature's authority to prescribe terms of office for the 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.