

On My Mind
10/15/10

Just a little more than two weeks remain before voters will be asked to vote not only for the CNMI non-voting delegate to the U.S. Congress, but also on three amendments to the CNMI Constitution. While access to information by and about the candidates has been plentiful, the same is not true in regard to the three proposed amendments. The CNMI Attorney General's office provided brief statements in one issue of one of the local newspapers (the *Saipan Tribune's* 10/08 issue); and while there is said to be information going out over the radio and tv and via brochures and hand-outs - thanks to the efforts of Northern Marianas College Department Chair Sam McPhetres' Social Issues class - it is not readily accessible, nor is it any more than was contained in the original AG descriptions.

Herewith, then, an attempt to fill in some of the holes. All three proposals are labeled House Legislative Initiatives because they became proposed amendments through the HLI process prescribed in the Constitution. An amendment may also be proposed through popular initiative or through a constitutional convention.

House Legislative Initiative 16-3 would amend Article III, Section 20 of the CNMI Constitution by adding a new section "c" and reads: "**The Legislature shall not increase benefits until all government obligations to the retirement system have been satisfied or the system is fully funded. Provided further that no law shall be enacted by the Legislature that will create an unfunded liability to the retirement system.**"

According to the text of the initiative, "*The purpose of this initiative is to prohibit future benefit increases unless and until: a) the Commonwealth government satisfies its liabilities to the Retirement Fund, or b) the Fund is fully funded. This action is taken in furtherance of providing long term stability to a resource upon which so many families in the CNMI depend.*"

This means that the legislature cannot pass a law giving more benefits to any retiree unless either all government obligations owed the the Retirement Fund have been fully paid, or the added benefits will not incur an unfunded liability - that is, create an obligation the Fund can not meet from its budget at that time.

The AG's office lists as argument against the proposed amendment the "either-or" aspect of the proposal - that only one of those conditions has to be met, but not both. Yet the initiative does state that "no law shall be enacted by the Legislature that will create an unfunded liability to the retirement system," so it's not quite clear what the concern is. The AG statement also notes that the initiative doesn't define what "satisfying government

obligations" means, nor does it provide for "what if" situations when benefits may need to be adjusted or increased - neither of which seem all that convincing.

On the other hand, this initiative would appear to prohibit the legislature from awarding additional retirement benefits to government employees without sufficient funding being in place, which, in turn, would protect the Retirement Fund from incurring further unfunded liabilities - both desirable outcomes.

House Legislative Initiative 16-18 would amend Article IX, Section 5(g) of the CNMI Constitution by inserting the bolded provision shown below into existing text, so that the section would read "(g) The corporation shall receive all moneys from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), and shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust except that the corporation shall retain the amount necessary to meet reasonable expenses of administration and management, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of its functions; **provided further that the corporation shall be authorized to expend up to twenty percent of its revenue to pay and satisfy land compensation claims as provided by law.** The annual budget of the corporation shall be submitted to the legislature for information purposes only."

According to the "Findings" included in the initiative, more than one hundred land compensation claimants are waiting to resolve their claims with the Commonwealth government. Their land has been taken for public purposes such as roads, highways, right of ways, ponding basins, and easements, yet owners have waited decades and not received just compensation. Many have died without ever being compensated. Moreover, several land claims have been settled but not actually paid by the government, because it lacks the funds to do so.

The initiative continues, "*...with the new language, the argument that the Constitution does not expressly allow for payment of judgments cannot be made, because it is the intent of this amendment to allow the Department of Public Lands to do precisely that.*"

Money from public land leases, etc., now goes to the Marianas Public Land Trust, which invests the money, and deposits the interest earned in the General Fund. Without any figures to indicate how much money the General Fund would lose by enacting this initiative, it is difficult to judge whether it should be passed or not, since the consequences are not at all clear. Additionally, the AG's office points out that while the initiative would permit DPL to use 20% of its income for compensating land owners, it does not require DPL to do so, making it unsure as to whether the initiative would even accomplish its intent.

House Legislative Initiative 17-1 would amend Article X of the CNMI Constitu-

tion by adding a new section 10, which reads: **Upon the affirmative vote of two-thirds of the members of each house of the Legislature, the Commonwealth may issue pension obligation bonds, the cumulative amount of which shall not exceed the Commonwealth's actuarially determined unfunded accrued liability to the Retirement Fund. The net proceeds of each bond issuance shall be deposited and invested along with other monies in a defined benefit plan trust fund administered by the Northern Mariana Islands Retirement Fund. The bonds issued under this section shall comply with Section 3 of this Article and shall be exempt from Section 4 of this Article.**

Article 10, Section 3, states that "Public debt may not be authorized or incurred without the affirmative vote of two-thirds of the members in each house of the legislature." *The bonds would have to comply with this provision.*

Article 10, Section 4, states that "Public indebtedness...may not be authorized in excess of ten percent of the aggregate assessed valuation of the real property within the Commonwealth. Public indebtedness may not be authorized for operating expenses of the Commonwealth government or its political subdivisions." *The bonds would NOT have to comply with this provision.*

This initiative does not, of itself, require that a bond be issued. It merely gives the legislature permission to issue one. As the text of the initiative states, "*Before any such bonds are actually issued, the Commonwealth additionally must assess their feasibility. The feasibility of the bonds depends upon bond market conditions, prevailing interest rates, and other factors that may change over time.*"

According to the text of the initiative it is clear that the bond would be issued by the CNMI government, not the Retirement Fund.

A question that has not been addressed in discussion of this proposal is why the government should borrow money (that is, float one or more bonds) to pay off its debt to the Retirement Fund when it would be far simpler to use the money that would go to the bond payments, and instead, to pay it directly to the Retirement Fund. At the very least, the government would save the interest it would have to pay on the money it borrowed. To be sure, the Retirement Fund would not get a lump sum payment as it would if a bond were issued and buyers for it found. But it's not clear that a lump sum payment is essential.

The more frequently asked questions: what are the chances of finding a buyer of the bonds in today's economy, given the CNMI's economic condition? What interest rate would be set? Where would the CNMI get the money to pay off the debt? Would the RF be able to invest well enough to earn more in interest than the bonds cost?

Both Retirement Fund personnel and the board of the Commonwealth Retirees Association are lobbying heavily for the passage of this initiative. Interestingly enough, this is the only initiative for which the AG did not provide both a "pro" and a "con" statement. Rather, it only spelled out the conditions for obtaining the bond.

It should be noted, moreover, that it would take some time - no estimates are given - to meet all the required procedures - it is not an instant solution to meeting the RF's income needs. Rather than looking to future solutions, the RF might better focus on the on-going efforts to satisfy the court's judgement.

The full text of the three initiatives is available on the Election Commission's web site < www.votecnmi.gov.mp >. Unfortunately, its version cannot be cut and pasted. Many thanks to Claire Sablan, one of the Legislative Bureau's House Legislative Assistants, for providing me with copies I could cut and paste.

The Commonwealth Election Commission is scheduled to conduct a hearing on the three initiatives on Thursday, 10/21/10 from 5:00 p.m. to 6:30 p.m. at Northern Marianas College classroom D-1.

My take? Vote "yes" to House Legislative Initiative 16-13, and "no" to both HLI 16-18 and HLI 17-1.