

*Eighteenth Northern Marianas Commonwealth Legislature*

IN THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_, 2014

H. L. I. 18-14

**A HOUSE LEGISLATIVE INITIATIVE**

To amend Article II Section 9 of the Constitution of the Commonwealth of the Northern Mariana Islands for the purpose of clarifying that a vacant legislative seat shall be filled by the person who was the unsuccessful candidate for the same office and same seat in the same election who received the largest number of votes and is willing to serve.

**BE IT ENACTED BY THE EIGHTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

1           **Section 1. Findings.** Who replaces a senator who was elected in 2009 if  
2           there is was a subsequent election conducted in 2012, just prior to the vacancy  
3           arising? Does the Governor appoint the so-called “runner up” in the 2009 election  
4           who actually ran against and received fewer votes in the exact same election to the  
5           vacating senator? Or, does the Governor appoint the “unsuccessful candidate for  
6           the office in the last election who received the largest number of votes and is  
7           willing to serve” from the 2012 election which was the election that last occurred  
8           following the creation of the vacancy? This legislation seeks to put the questions  
9           set forth above to the People of the CNMI. The People should decide if the CNMI  
10          Constitution should stand as is, or should Article II, Section 9 be amended.

1           The instant Legislative Initiative seeks to settle for once and for all, the  
2 issue as to who shall properly be appointed to the vacant seat of a CNMI Senator.  
3 While it is clear that the Governor shall fill the vacancy in the Legislature, by  
4 “appointing the unsuccessful candidate for the office in the last election who  
5 received the largest number of votes and is willing to serve,” the issue that then  
6 arises is: 1) which election was the relevant “last election”?

7           By treating both the House and Senate in exactly the same manner, Article  
8 II, Section 9 fails to address one of the critical differences between the CNMI  
9 House of Representatives on the one hand, and the CNMI Senate, on the other, to  
10 wit, the existence of staggered term of four years in the CNMI Senate. As a result  
11 of the staggered Senate elections, a senate “vacancy” that occurs after a  
12 subsequent election means that the term “last” election may be reasonably  
13 interpreted in two different and seriously conflicting ways. This is because of the  
14 text of Article II, Section 9.

15           Entitled, “Vacancy” Article II, Section 9 provides that,

16                   [a] vacancy in the legislature shall be filled by  
17 special election if one-half or more of the term  
18 remains. If less than one-half of the term remains,  
19 the governor shall fill the vacancy by appointing the  
20 unsuccessful candidate for the office in the last  
21 election who received the largest number of votes  
22 and is willing to serve or, if no candidate is  
23 available, a person qualified for the office from the  
24 district represented.

1           Notwithstanding the outcome in the recent case before the CNMI Supreme  
2 Court, the Legislature finds that Article II, Section 9 is seriously flawed. The  
3 language: “unsuccessful candidate for the office in the last election who received  
4 the largest number of votes and is willing to serve,” is vague and despite the  
5 recent CNMI ruling in **SUPREME COURT NO. 2013-SCC-0028-CQU**, it must  
6 be resolved by the People of the Commonwealth, not the court.

7           As the Supreme Court noted, the relevant language could reasonably be  
8 interpreted to mean that the replacement should be appointed from the 2009  
9 election wherein Senator Ayuyu was elected. Just as reasonably, the language  
10 could also be interpreted to mean that the replacement should be appointed from  
11 the 2012 election which was held “last” in terms of time.

12           The Legislature also finds that the November 2013 holding by the CNMI  
13 Supreme Court was able to address the certified question despite falling short of  
14 resolving the underlying issue before us. The Court interpreted the CNMI  
15 Constitution as it was drafted and used the instruments available to it, however,  
16 flawed, to arrive at a reasonable opinion. The Court did a commendable job  
17 considering the circumstances—where each side zealously advocated for its  
18 position, rather than what the spirit and intent of the law directed and the framer’s  
19 seemingly demanded, and stretched legal arguments to various degrees of  
20 plausibility.

21           As the final arbiter of CNMI law, the Supreme Court’s decision should be  
22 respected. As a legal decision, the response to the certified question stands unless

1 or until the law is legally and properly amended or repealed. This initiative  
 2 hereby puts the question properly before the People. Specifically, this amendment  
 3 proposes that whenever a vacancy in the Senate or House occurs, that this vacant  
 4 legislative seat shall be filled by the person who was the unsuccessful candidate  
 5 *for the office and seat in the same election* who received the largest number of  
 6 votes and is willing to serve, effectively, the *runner-up* to the vacating senator,  
 7 regardless of the timing of that election.

8 **Section 2. Legislative Initiative.** The Eighteenth Northern Marianas  
 9 Commonwealth Legislature, by the affirmative vote of three-fourths of the  
 10 members of each house present and voting, hereby proposes the following  
 11 amendment to Article II of the Constitution of the Northern Mariana Islands to be  
 12 placed before the people for ratification at the next general election:

13 **“A PROPOSED CONSTITUTIONAL AMENDMENT**

14 To amend Article II of the Northern Mariana Islands Constitution  
 15 by amending Section 9 to clarify who shall fill a legislative  
 16 vacancy; and for other purposes.

17 **a) Amendment.** CNMI Constitution Article II, Section 9:

18 Vacancy is hereby amended to read as follows:


19 **“Section 9: Vacancy.** A vacancy in the legislature  
 20 shall be filled by special election if one-half or more  
 21 of the term remains. If less than one-half of the  
 22 term remains, the governor shall fill the vacancy by  
 23 appointing the unsuccessful candidate for the office  
 24 in the last election who received the largest number

1 of votes and is willing to serve or, if no candidate is  
2 available, a person qualified for the office from the  
3 district represented. For purposes of this section,  
4 the term "last election" shall mean the election for  
5 the same office and seat wherein the vacating  
6 senator or representative was duly elected,  
7 regardless of whether that election was the most  
8 recent in time."

9 **Section 3. Adoption and Transmittal.** The Speaker of the House and  
10 the President of the Senate shall certify, and the Clerks of the House and Senate  
11 shall attest to the passage of this Legislative Initiative. The House Clerk shall  
12 then cause the Initiative to be transmitted to the Governor and the Board of  
13 Elections. Pursuant to Article XVIII, Section 5 of the Commonwealth  
14 Constitution, the Board shall place this Legislative Initiative, with the Findings  
15 and Purpose section herein, before the people of the Commonwealth for  
16 ratification vote in the next regular general election.

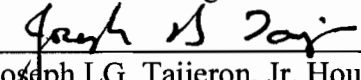
*perfiled: 2/28/14*

Date: *2/28/14*

Introduced By: 

Rep. Christopher D. Leon Guerrero

Reviewed for Legal Sufficiency by:

  
Joseph LG. Taijeron, Jr. House Legal Counsel