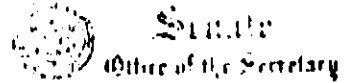



SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



'16 JAN 12 P3:00

SENATE
S. No. 3071

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
PROVIDING FOR PEOPLE'S INITIATIVE TO AMEND THE CONSTITUTION

EXPLANATORY NOTE

The Constitution, Article 17, Section 2, provides:

Sec. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein.

No amendment under this provision shall be authorized within five years following the ratification of this constitution nor oftener than once every five years thereafter. The Congress shall provide for the implementation of the exercise of this right. In the 1997 case of *Defensor Santiago v. Commission on Elections*, the Supreme Court through Associate Justice Hilario G. Davide, Jr. (later Chief Justice), held that:

This provision is not self-executory. In his book, Joaquin Bernas, a member of the 1986 Constitutional Commission, stated:

Without implementing legislation Section 2 cannot operate. Thus, although this mode of amending the Constitution is a mode of amendment, which bypasses congressional action, in the last analysis it still is dependent on congressional action.

Bluntly stated, the right of the people to directly propose amendments to the Constitution through the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation." (*Defensor Santiago v. Commission on Elections*, 270 SCRA 106, p. 136 (1997).

The foregoing brings us to the conclusion that R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned. It cannot be cured by "empowering" the Comelec "to promulgate such rules and regulations as may be necessary to carry out the purposes of the Act.

The rule is that what has been delegated, cannot be delegated or as expressed in a Latin maxim: *potestas delegate non delegari potest*. The recognized exceptions to the rule are as follows:

- (1) Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution;
- (2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;
- (3) Delegation to the people at large;
- (4) Delegation to local governments; and
- (5) Delegation to administrative bodies.

Empowering the Comelec, an administrative body exercising quasijudicial functions, to promulgate rules and regulations is a form of delegation of legislative authority under No. 5 above. However, in every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard - the limits of which are sufficiently determinate and determinable - to which the delegate must conform in the performance of his functions. A sufficient standard is one, which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.

Insofar as initiative to propose amendments to the Constitution is concerned, R.A. No. 6735 miserably failed to satisfy both requirements in subordinate legislation. The delegation of the power to the Comelec is then invalid." (*Ibid*, p. 153-154).

In President Gloria Macapagal-Arroyo's State of the Nation Address last 2005, she expressed her desire for a charter change. She said:

The other message to send is that we will address the burden that the other Philippine story imposes on our anticipated take off. I refer to the story of how our political system has now become a hindrance to our national progress. Over the years, our political system has degenerated to the extent that it is difficult for anyone to make any headway yet keep his hands clean. To be sure, the system is still capable of achieving great reforms. But, by and large, our political system has betrayed its promise to each new generation of Filipinos, not a few of whom are voting with their feet, going abroad and leaving that system behind. Perhaps we politicians have done our best; but maybe our best is not enough, given the present system. Perhaps we have strained the present political system to its final limit.

It is time to turn to the people, bring them into government-and change the way that government is done. The people want government that works for them at every level. They want good government that begins at their doorstep in the barangay, and does not end before the closed door of a bureaucrat in Metro Manila. The system clearly needs fundamental change, and the sooner the better.

It's time to start the great debate on charter change.

Dr. Jose Abueva, Consultative Commission (Con-Com) chairman, also believes that Charter change "can bring about good governance by sustainable people power." He also said that:

Instead of using people power solely to topple or immobilize an unwanted President, it can be made a sustainable force for making government more accessible, participatory, efficient, transparent, and accountable to the citizens through functional institutions, including parliamentary government, modern political parties, autonomous regions, a reformed electoral system and judiciary, and a committed civil society.

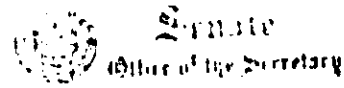
Then we can hope to replace poverty with prosperity, corruption with effective and ethical government, and insularity with global competitiveness. Then, we can have a nation worthy of our heroes, a country fit for our children-of which we can all be proud.

Considering that R.A. No. 6735 (the Initiative and Referendum Act) governs only people's initiative for local legislation, there is a need to pass a law that will govern the process by which constitutional amendments are introduced by the people directly through people's initiative. This bill seeks to provide the enabling law to start the grand cha-cha debate.¹


MIRIAM DEFENSOR SANTIAGO
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¹ This bill was originally filed in the Fifteenth Congress, First Regular Session.

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AN ACT
PROVIDING FOR PEOPLE'S INITIATIVE TO AMEND THE CONSTITUTION

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Short Title.* – This Act shall be known as the "People's Initiative to
2 Amend the Constitution Act."

3 SECTION 2. *Declaration of Policy.* – Amendments to the Constitution may be
4 directly proposed by the people through initiative upon a petition of at least twelve
5 percent (12%) of the total number of registered voters, of which every legislative district
6 must be represented by at least three percent (3%) of the registered voters therein.

7 SECTION 3. *Definition of Terms.* – For purposes of this Act, the following terms
8 shall mean:

9 (A) "People's Initiative" is the process by which the people are empowered
10 to propose amendments to a constitution upon compliance with constitutional and
11 legal requirements;

12 (B) "Amendment" envisages an alteration of one or a few specific
13 provisions of the Constitution which do not affect the functioning of the other
14 constitutional provisions not so amended. The guiding original intention of an
15 amendment is to improve specific parts or to add new provisions deemed
16 necessary to meet new conditions or to suppress specific portions that may have
17 become obsolete or are judged to be dangerous.

1 The term "amendment" should be distinguished from "revision" which
2 imports an alteration of the basic constitutional structure or at least an alteration
3 which radically affects the functioning of various parts or agencies within the
4 Constitutional structure. In revision, the guiding original intention and plan
5 contemplates a reexamination of the entire document to determine how and to
6 what extent it should be altered;

7 (C) "Proposition" is the proposed amendments to the Constitution;

8 (D) "Petition" is the written instrument containing the proposition and the
9 required number of signatories in a form determined by and submitted to the
10 Commission on Elections, hereinafter referred to as the "Commission"; and

11 (E) "Plebiscite" is the electoral process by which the proposition to amend
12 the Constitution shall be approved or rejected by the people.

13 SECTION 4. *Requirements.* – (A) Amendments to the constitution may be directly
14 proposed by the people through initiative upon a petition of at least twelve per centum
15 (12%) of the total number of registered voters, of which every legislative district must be
16 represented by at least three per centum (3%) of the total number of registered voters
17 therein. No amendment of the Constitution through a people's initiative shall be held
18 oftener than once every five years thereafter.

19 (B) The petition shall be signed before the Election Registrar, or other designated
20 representative, in the presence of a representative of the proponents and the oppositors in
21 a public place in the barangay of the municipality, city or legislative district. Signature
22 stations may be established in as many places as may be warranted;

23 (C) The petition on the people's initiative shall be submitted to the Commission,
24 and shall state the following:

25 (1) The names and signatures of the petitioners or registered voters;

26 (2) The barangay in which the petitioners belong;

1 (3) The text of the amendment of the Constitution or any part thereof
2 sought to be proposed;

3 (4) The reason or reasons thereof;

4 (5) An abstract or summary of the proposition, printed on top of each and
5 every page of the petition; and

6 (6) Proof that public hearings and consultations were held in each of the
7 legislative districts to ensure that the people are properly informed on the
8 amendments proposed.

9 (D) The Commission, through its office in the local government unit concerned,
10 shall certify as to whether or not the required number of signatures has been obtained.
11 Failure to obtain the required number of signatures is a defeat of the proposition;

12 (E) After the Commission finds that the petition has complied with the above
13 requirements, it shall then proceed with the verification and authentication of the
14 signatures of the registered voters contained' therein. Accredited watchers from both the
15 proponents and oppositors shall be present and be allowed to observe the process of
16 verification and authentication;

17 (F) After the signatures shall have been verified by the Commission the same shall
18 be posted in the barangay hall of each of the legislative district for at least sixty (60) days
19 to allow interested parties to examine the same and allow the filing of the necessary
20 protest or to challenge to the authentication within the same period. Any challenge or
21 protest shall be ruled upon within sixty (60) days from the date of filing of such protest or
22 challenge;

23 (G) The Commission shall issue a certification on the sufficiency of the petition
24 upon the resolution of all protest and challenges filed.

25 SECTION 5. *Appeal.* – The Decision of the Commission regarding the sufficiency
26 or insufficiency' of the petition may be appealed to the Supreme Court within thirty (30)

1 days from the notice thereof, provided, that this provision shall be effective only upon the
2 advice and concurrence of the Supreme Court in accordance with the Constitution,
3 Article 6, Section 30.

4 SECTION 6. *Special Registration.* – There shall be special registration of voters at
5 least forty five (45) days before the scheduled plebiscite for those who will attain fifteen
6 (15) to eighteen (18) years of age on the date of the scheduled plebiscite. Two separate
7 lists of those age ranges from fifteen (15) to seventeen (17). The second list consists of
8 those who would have attained eighteen (18) years of age on the day of plebiscite.

9 SECTION 7. *Verification of Signatures.* – The Election Registrar shall verify the
10 signatures on the basis of the registry list of voters, voter's affidavit and voter's
11 identification cards used in the immediately preceding election.

12 SECTION 8. *Conduct and Date of Initiative or Referendum.* – The Commission
13 shall call and supervise the conduct of the plebiscite on the people's initiative within a
14 period of thirty (30) days from the Certification of the sufficiency of the petition, the
15 Commission shall publish the same in Filipino and English at least three times in a
16 newspaper of general and local circulation and set the date of the plebiscite on the
17 initiative, which shall be held not earlier than sixty (60) days nor later than ninety (90)
18 days after the certification of the sufficiency of the petition.

19 SECTION 9. *Authority of the Courts.* – Nothing in this Act shall prevent or
20 preclude the proper courts from declaring null and void any proposition approved
21 pursuant to this Act for violation of the Constitution.

22 SECTION 10. *Effectivity of the Constitutional Amendments.* – Any amendment
23 proposed by people's initiative shall be valid and effective when ratified by a majority of
24 the votes cast in a plebiscite which will be held not earlier than sixty (60) days nor later

1 than ninety (90) days after the certification by the Commission on Elections of the
2 sufficiency of the petition.

3 SECTION 11. *Applicability of the Omnibus Election Code.* – The Omnibus
4 Election Code and other election laws not inconsistent with the provisions of this Act
5 shall be applicable.

6 SECTION 12. *Rules and Regulations.* – The Commission on Election is hereby
7 empowered to promulgate such rules and regulations as many be necessary to carry out
8 the purposes of this Act.

9 SECTION 13. *Appropriations.* – The amount necessary to defray the cost of the
10 people's initiative as prescribed in this Act shall be charged against the Contingent Fund
11 in the General Appropriations Act of the year when the initiative is to be conducted.
12 Thereafter, the sums necessary for the implementation of this Act shall be included the
13 annual General Appropriations Act.

14 SECTION 14. *Separability Clause.* – If any provision of this Act is held invalid or
15 unconstitutional, the same shall not affect the validity and effectivity of the other
16 provisions hereof.

17 SECTION 15. *Repealing Clause.* – All laws, decrees, orders, and issuances, or
18 portions thereof, which are inconsistent with the provisions of this Act, are hereby
19 repealed, amended or modified accordingly.

20 SECTION 16. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
21 after its publication in the *Official Gazette* or in two (2) newspapers of general
22 circulation.

Approved,

/lfd 27Nov2015