

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
S. No. 1733

Introduced by Senator Miriam Defensor Santiago

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 section 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 is lacunae on this substantive are fatal and 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 delegata 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 quasi-judicial 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, amps 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.*


MIRIAM DEFENSOR SANTIAGO
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* This bill was originally filed during the Thirteenth Congress, Second Regular Session.

Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 PROVIDING FOR PEOPLE’S INITIATIVE TO AMEND THE CONSTITUTION

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

5 SECTION 1. *Short Title.* – This Act shall be known as the “People’s Initiative to
6 Amend the Constitution Act of 2007.”

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

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

13 (A) “People’s Initiative” is the process by which the people are empowered to propose
14 amendments to a constitution upon compliance with constitutional and legal
15 requirements;

16 (B) “Amendment” envisages an alteration of one or a few specific provisions of the
17 Constitution which do not affect the functioning of the other constitutional provisions
18 not so amended. The guiding original intention of an amendment is to improve
19 specific parts or to add new provisions deemed necessary to meet new conditions or
20 to suppress specific portions that may have become obsolete or are judged to be
21 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 what
6 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 required
9 number of signatories in a form determined by and submitted to the Commission on
10 Elections, hereinafter referred to as the “Commission”; and

11 (E) “Plebiscite” is the electoral process by which the proposition to amend the
12 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* (12%) of
15 the total number of registered voters, of which every legislative district must be represented by at
16 least three *per centum* (3%) of the total number of registered voters therein. No amendment of
17 the Constitution through a people’s initiative shall be held oftener than once every five years
18 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 a
21 public place in the barangay of the municipality, city or legislative district. Signature stations
22 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, and
24 shall state the following:

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

26 (2) The barangay and which the petitioners belong to;

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

1 (4) The reason or reasons thereof;

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

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

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

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

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

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

22 SECTION 5. *Appeal.* – The Decision of the Commission regarding the sufficiency or
23 insufficiency of the petition may be appealed to the Supreme Court within thirty (30) days from
24 the notice thereof, provided, that this provision shall be effective only upon the advice and
25 concurrence of the Supreme Court in accordance with the Constitution, Article 6, Section 30.

26 SECTION 6. *Special Registration.* – There shall be special registration of voters at least
27 forty five (45) days before the scheduled plebiscite for those who will attain fifteen (15) to
28 eighteen (18) years of age on the date of the scheduled plebiscite. Two separate lists of those age

1 ranges from fifteen (15) to seventeen (17). The second list consists of those who would have
2 attained eighteen (18) years of age on the day of plebiscite.

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

6 SECTION 8. *Conduct and Date of Initiative or Referendum.* – The Commission shall call
7 and supervise the conduct of the plebiscite on the people’s initiative within a period of thirty (30)
8 days from the certification of the sufficiency of the petition, the Commission shall publish the
9 same in Filipino and English at least three (3) times in a newspaper of general and local
10 circulation and set the date of the plebiscite on the initiative, which shall be held not earlier than
11 sixty (60) days nor later than ninety (90) days after the certification of the sufficiency of the
12 petition.

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

16 SECTION 10. *Effectivity of the Constitutional Amendments.* – Any amendment proposed
17 by people’s initiative shall be valid and effective when ratified by a majority of the votes cast in
18 a plebiscite which will be held not earlier than sixty (60) days nor later than ninety (90) days
19 after the certification by the Commission on Elections of the sufficiency of the petition.

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

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

1 SECTION 13. *Appropriations.* – The amount necessary to defray the cost of the people’s
2 initiative as prescribed in this Act shall be charged against the Contingent Fund in the General
3 Appropriations Act of the year when the initiative is to be conducted. Thereafter, the sums
4 necessary for the implementation of this Act shall be included in the annual General
5 Appropriations Act.

6 SECTION 14. *Separability Clause.* – If any provision or part hereof, is held invalid or
7 unconstitutional, the remainder of the law of the provision not otherwise affected shall remain
8 valid and subsisting.

9 SECTION 15. *Repealing Clause.* – Any law, presidential decree or issuance, executive
10 order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent
11 with, the provisions of this Act is hereby repealed, modified or amended accordingly.

12 SECTION 16. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
13 publication in at least two (2) newspapers of general circulation.

14 Approved,