

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
Second Regular Session

House Bill No. **9868**

Introduced by Rep. Edcel C. Lagman

EXPLANATORY NOTE

The people's initiative is an innovative mode for the people to propose directly amendments to the Constitution. It is provided for the first time in the 1987 Constitution. It is a recognition of the people's capacity, power and right to initiate reforms even to the Fundamental Law. It is the third method of proposing amendments to the Constitution in addition to the original systems of constituent assembly and constitutional convention.

Accordingly, Section 2 of Article XVII provides in full:

"Section 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."
(Emphasis supplied).

The following are the fundamental conditions for the valid exercise of people's initiative:

- a. There must be an enabling law to implement the people's exercise of said right;
- b. People's initiative is limited to amendments to the Constitution, and does not include revision thereof;

c. The signatures of twelve percent (12%) of the registered voters nationwide are necessary to support the petition for people's initiative, of which at least three percent (3%) must come from each legislative district; and

d. People's initiative cannot be exercised within five (5) years after the ratification of the 1987 Constitution and not more than once every five years thereafter.

On 04 August 1989, Republic Act No. 6735 or the "Initiative and Referendum Act" was enacted. It covers three (3) kinds of initiatives: (a) enactment or repeal of local ordinances and resolutions; (b) legislation or repeal of national statutes; and (c) proposal to amend the Constitution.

While the "Initiative and Referendum Act" is fully adequate with respect to the enactment or repeal of local ordinances and national statutes, it is inadequate as a compliant legislation for the effective exercise of people's initiative to propose amendments to the Constitution. This deficiency is patent because, among others:

1. While there are separate subtitles on local and national initiatives, there is no separate subtitle to cover people's initiative to propose amendments to the Constitution.

2. There is no requirement that the voters must sign the signature sheets supporting the petition on people's initiative to amend the Constitution before the election officer or his/her representative at designated signing stations in order to ensure the integrity of the process, unlike in local or national initiatives.

3. There is no provision for the petition to include the reasons for the amendment in order to inform the people of the purpose of the petition, unlike in local and national initiatives.

On 16 January 1991, the COMELEC issued Resolution No. 2300 purportedly to regulate, among others, the conduct of the people's initiative to propose amendments to the Constitution.

The late Senator Miriam Defensor-Santiago filed on 27 November 1995 Senate Bill No. 1290, entitled "An Act Prescribing and Regulating Constitutional Amendments by People's Initiative" to comply with the requirement of the Constitution for an enabling statute. This bill did not become a law. No similar bill was filed in the House of Representatives.

On 19 March 1997, the Supreme Court promulgated its decision in **Santiago vs. COMELEC** wherein it categorically held, with all the participating justices concurring, that the "Initiative and Referendum Act" is not a sufficient, adequate, compliant and enabling law to implement the exercise of people's initiative.

The dispositive portion in **Santiago** reads in full:

a) "WHEREFORE, judgment is hereby rendered GRANTING the instant petition;

b) **DECLARING R.A. No. 6735 inadequate to cover the system of initiative on amendments to the Constitution**, and to have failed to provide sufficient standard for subordinate legislation; (Emphasis supplied).

c) **DECLARING void those parts of Resolutions No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative on amendments to the Constitution**; and (Emphasis supplied)

d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).

The Temporary Restraining Order issued on 18 December 1996 is made permanent as against the Commission on Elections, but is LIFTED against private respondents."

The following reasons and explanations of the High Court constitute the *ratio decidende* of the decision in **Santiago**:

(1) **"The constitutional provision on people's initiative to amend the Constitution can only be implemented by law to be passed by Congress. No such law has been passed**; in fact, Senate Bill No. 1290 entitled *An Act Prescribing and Regulating Constitution Amendments by People's Initiative*, which petitioner Senator Santiago filed on 24 November 1995, is still pending before the Senate Committee on Constitutional Amendments." (Emphasis supplied).

(2) "It is true that R.A. No. 6735 provides for three systems of initiative, namely, initiative on the Constitution, on statutes, and on local legislation. However, it failed to provide any subtitle on initiative on the Constitution, unlike in the other modes of initiative, which are specifically provided for in Subtitle II and Subtitle III. This deliberate omission indicates that the matter of people's initiative to amend the Constitution was left to some future law. Former Senator Arturo Tolentino stressed this deficiency in the law in his privilege speech delivered before the Senate in 1994: "There is not a single word in that law which can be considered as implementing [the provision on constitutional initiative]. Such implementing provisions have been obviously left to a separate law."

(3) "COMELEC Resolution No. 2300, adopted on 16 January 1991 to govern 'the conduct of initiative on the Constitution and initiative and referendum on national and local laws', is *ultra vires* insofar as *initiative* on amendments to the Constitution is concerned, since the COMELEC has no power to provide rules and regulations for the exercise of the right of initiative to amend the Constitution. Only Congress is authorized by the Constitution to pass the implementing law."

(4) "R.A. No. 6735 is deficient and inadequate in itself to be called the enabling law that implements the people's initiative on amendments to the Constitution. It fails to state (a) the proper parties who may file the petition, (b) the appropriate agency before whom the petition is to be filed, (c) the contents of the petition, (d) the publication of the same, (e) the ways and means of gathering the signatures of the voters nationwide and 3% per legislative district, (f) the proper parties who may oppose or question the veracity of the signatures, (g) the role of the COMELEC in the verification of the signatures and the sufficiency of the petition, (h) the appeal from any decision of the COMELEC, (i) the holding of a plebiscite, and (g) the appropriation of funds for such people's initiative. Accordingly, there being no enabling law, the COMELEC has no jurisdiction to hear Delfin's petition."

(5) "The deficiency of R.A. No. 6735 cannot be rectified or remedied by COMELEC Resolution No.

2300, since the COMELEC is without authority to legislate the procedure for a people's initiative under Section 2 of Article XVII of the Constitution. That function exclusively pertains to Congress. Section 20 of R.A. No. 6735 does not constitute a legal basis for the Resolution, as the former does not set a sufficient standard for a valid delegation of power." (Emphasis supplied).

(6) **"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."** (Emphasis supplied).

(7) **"There was, therefore, an obvious downgrading of the more important or the paramount system of initiative. RA. No. 6735 thus delivered a humiliating blow to the system of initiative on amendments to the Constitution by merely paying it a reluctant lip service."** (Emphasis supplied).

(8) **"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. Its lacunae on this substantive matter 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.'"** (Emphasis supplied).

(9) **"This petition must then be granted, and the COMELEC should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system."** (Emphasis supplied).

(10) **We feel, however, that the system of initiative to propose amendments to the Constitution should no longer be kept in the cold; it should be given flesh and blood, energy and strength. Congress should not tarry any longer in complying with the constitutional mandate to provide for the implementation of the right of the people under that system.** (Emphasis supplied).

COMELEC Resolution No. 10650 (Revised Rules and Regulations Governing the Conduct of: 1) Initiative on the Constitution; and 2) Initiative and Referendum on National and Local Legislations) dated 31 January 2020, like its predecessor Resolution No. 2300, is *ultra vires* insofar as it covers "Initiative on the Constitution" because only Congress can legislate the adequate enabling law.

The case of **Lambino vs. COMELEC** (G.R. No. 174153) promulgated on 25 October 2006 did not abandon or reverse the **Santiago** ruling. In **Lambino** the Supreme Court ruled that:

"3. A Revisit of Santiago v. COMELEC is Not Necessary.

a) The present petition warrants dismissal for failure to comply with the basic requirements of Section 2, Article XVII of the Constitution on the conduct and scope of a people's initiative to amend the Constitution. There is no need to revisit this Court's ruling in **Santiago** declaring RA 6735 "incomplete, inadequate or wanting in essential terms and conditions" to cover the system of initiative to amend the Constitution. An affirmation or reversal of **Santiago** will not change the outcome of the present petition. Thus, this Court must decline to revisit **Santiago** which effectively ruled that RA 6735 does not comply with the requirements of the Constitution to implement the initiative clause on amendments to the Constitution.

b) This Court must avoid revisiting a ruling involving the constitutionality of a statute if the case before the Court can be resolved on some other grounds. Such avoidance is a logical consequence of the well-settled doctrine that courts will not pass upon the constitutionality of a statute if the case can be resolved on some other grounds."

The principal issue in **Lambino** was whether a people's initiative can propose a **revision** of the Constitution like removing the presidential form of government and installing the parliamentary system. Since the **Lambino** petition can be resolved and denied on the ground that people's initiative is limited to **amendments** only to the Constitution and does not encompass revision thereof, perforce a review, much more an abandonment, of the **Santiago** ruling was absolutely not necessary.

Thus the Supreme Court ruled that:

"This drives home the point that the people's initiative is not meant for revisions of the Constitution but only for amendments. A shift from the present Bicameral-Presidential to a Unicameral-Parliamentary system requires harmonizing several provisions in many articles of the Constitution. Revision of the Constitution through a people's initiative will only result in gross absurdities in the Constitution.

In sum, there is no doubt whatsoever that the Lambino Group's initiative is a revision and not an amendment. Thus, the present initiative is void and unconstitutional because it violates Section 2, Article XVII of the Constitution limiting the scope of a people's initiative to '**[A]mendments to this Constitution.**'"

The claim of some that the **Lambino** case abandoned the ruling in **Santiago** because in the brief Resolution dated 21 November 2006, which denied petitioners' motions for reconsideration and upheld with finality the main ruling of the Court, there was a passing statement that ten magistrates were in favor of abandoning the **Santiago** ruling. This position is incorrect because an incidental comment is an *obiter dictum*, which does not constitute the *ratio decidende* or rationale for the decision, neither does it constitute a precedent. It is an "aside commentary" with scant jurisprudential value.

In a recent Senate investigation related to people's initiative, former Supreme Court Justice Antonio Carpio, the **ponente** in **Lambino**, and former Supreme Court Justice Adolf Ascuna, who joined the majority decision, confirmed that the **Santiago** ruling has not been abandoned in **Lambino**, and that an *obiter dictum* is never controlling. Moreover, they underscored that the dispositive portion in **Lambino** did not rule on the reversal or abandonment of the **Santiago** ruling on the absence of a sufficient enabling law.

The dispositive portion of the decision in **Lambino** simply dismissed the petition:

“WHEREFORE, we DISMISS the petition in G.R. No. 174153.”

Accordingly, the prevailing jurisprudence or case law is that there is no compliant and enabling law implementing the people’s right to propose amendments to the Constitution via people’s initiative.

Neither the COMELEC nor the Supreme Court can fill the void, which deficiency is patent on the face of the “Initiative and Referendum Act”. Only the Congress under Section 2 of Art. XVII is empowered to enact the adequate and compliant enabling legislation to fully implement the people’s right to initiate directly proposals to amend the Constitution.

This bill is introduced to provide that enabling and compliant law so that our people can validly and properly exercise their right of initiative to propose amendments to the Constitution.

Approval of this bill is earnestly urged.

EDCEL C. LAGMAN

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
Second Regular Session

House Bill No. 9868\

Introduced by Rep. Edcel C. Lagman

AN ACT
PRESCRIBING THE ENABLING LEGISLATION FOR THE
PEOPLE TO EXERCISE THEIR RIGHT TO DIRECTLY
PROPOSE AMENDMENTS TO THE CONSTITUTION VIA
PEOPLE'S INITIATIVE

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

SECTION 1. **Declaration of National Policy.** – The national policy is to guarantee the right of the people to propose directly amendments to the Constitution via a system of people's initiative as enshrined in Section 2 of Article XVII of the 1987 Constitution which reads in full:

“Section 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.”

SEC. 2. – **Short Title.** - This Act shall be known as the “Enabling Law on People's Initiative to Propose Directly Amendments to the Constitution.”

SEC. 3. **Definition of Terms.** – As used in this Act:

1. Amendment – An amendment to the Constitution is a process which entails a simple or singular change, alteration or deletion of a word, phrase or provision in the Constitution which does not affect or impact on the system or form of government as well as on the ideals or principles underlying the Constitution.

2. People’s Initiative – A mode or system of amending the Constitution wherein the people directly propose such amendments under Section 2 of Article XVII of the Constitution and pursuant to the processes provided for in this Act.

3. Petition – A verified initiatory pleading on people’s initiative filed with the Commission of Elections containing the ultimate averments, data, and attachments required under Sec. 5 of this Act.

4. Petitioner/s – Any natural person or group of persons who are Filipino citizens, of legal age, registered voters and residents of the Philippines who file with the Commission on Elections the petition required under Sec. 5 of this Act.

5. Plebiscite – The electoral process by which an initiative on proposed amendments to the Constitution is submitted for the approval or rejection by the people.

6. Proponent/s – Any natural person or group of persons, including juridical persons or organizations with legal personality to sue and be sued, who are spearheading and conducting the people’s initiative to amend the Constitution.

7. Oppositor/s – Any natural person or group of persons who are Filipino citizens, of legal age, registered voters and residents of the Philippines opposing the petition on people’s initiative who file a verified formal opposition with the Commission on Elections.

8. Signature Forms – Signature sheets wherein registered voters affix their respective signatures in support of the people’s initiative, which forms shall contain the data prescribed in Sec. 5 of this Act.

9. Signature Stations – Areas designated by the proponents where voters affix their signatures on signature forms in the presence of the election officer or his/her representative as well as the voluntary presence of the proponents and oppositors.

10. Revision – A revision of the Constitution is a thorough or radical change in the form or system of government institutionalized in the Constitution, as well as in the overriding rationale of significant provisions, thus requiring a more comprehensive and participatory discussions which would necessitate the calling for a constituent assembly or constitutional convention.

SEC. 4. *Jurisdiction of the Commission on Elections.* –

(a) The Commission on Elections, herein after referred to as the Commission, shall exercise jurisdiction over the petition on people’s initiative upon the official filing of the same.

(b) If within ten (10) days from filing, the Commission *en banc* finds the petition not compliant with the Constitution and this Act, it shall *motu proprio* dismiss it, without prejudice to the petitioner or petitioners filing an appeal with the Supreme Court within fifteen (15) days from notice of the dismissal.

(c) If the Commission finds *prima facie* that the petition appears to be in order, it shall accordingly cause the publication of said petition in Filipino and English in two (2) newspapers of national and local circulation.

(d) The Commission shall direct the petitioner/s to submit the signature sheets to the respective election officers who shall validate the authenticity of the signatures and ascertain the fact that the voters who signed the same have active registration records, which verification shall be completed within forty-five (45) days from the issuance of the Commission’s order. The verification process shall be attended by the proponents, petitioners and oppositors who may submit their written observations to the election officer or representative concerned.

(e) After the publication of the petition and the submission of the signature validation reports, the Commission *en banc* shall set the petition and opposition, if any, for hearing within ten (10) days from the submission of the signature validation reports.

(f) The hearing of the petition shall continue for ten (10) consecutive working days, if necessary, after which it shall be submitted for resolution with or without the memoranda of the parties who may submit the same simultaneously within ten (10) days after the termination of the hearing.

(g) The Commission shall resolve the petition within thirty (30) days after the expiration of the parties' submission of their respective memoranda.

(h) Any party who may be aggrieved by the Commission's resolution shall have the right to appeal to the Supreme Court within fifteen (15) days from the receipt of the resolution.

(i) For purposes of the certification on the total number of registered voters, the Commission shall not conduct a special registration of voters considering the effectivity of the continuing registration under R.A. No. 8189.

SEC. 5. **Petition.** – The verified petition on people's initiative to be filed with the Commission shall contain the following:

a. A concise statement of the proposed amendment and the reasons and justifications for making such proposal.

b. A verified report from the authorized official of the Commission stating the latest total number of registered voters nationwide, as well as the verified reports of the respective election officers on the latest total number of registered voters per legislative district.

c. A separate statement under oath by the petitioner/s that the signatures of at least twelve percent (12%) of the total number of registered voters nationwide have been legally secured and obtained, of which three percent (3%) represents the number of registered voters per legislative district.

d. Proof that public hearings and consultations were held in each of the legislative districts to ensure that the people are sufficiently informed on the proposed amendments or revisions.

e. The signature forms have been signed by the requisite number of registered voters in the presence of the election officer or his/her representative and the voluntary presence of the proponent/s and oppositor/s at designated signature stations.

f. The requisite filing and allied fees have been paid.

SEC. 6. **Opposition.** – Within the period of not more than fifteen (15) days after the publication of the petition on people's initiative, any oppositor may file a verified opposition with the Commission.

SEC. 7. *Implementing Rules and Regulations (IRR).* – The Commission shall within sixty (60) days from the effectivity of this Act shall issue the implementing rules and regulations following strictly the provisions of the Constitution and of this Act, without in any way modifying, augmenting or reducing the provisions and import of this Act.

SEC. 8. *Conduct and Date of Plebiscite.* – The commission shall call and supervise the conduct of the plebiscite on the people’s initiative.

Within a period of thirty (30) days for the certification of the sufficiency of the petition, the Commission shall publish the same in Filipino and English at least three (3) times in newspapers of general and local circulation and set the date of the plebiscite on the initiative, which shall be held not earlier that sixty (60) days nor later than ninety (90) days after the certification of the sufficiency of the petition.

SEC. 9. *Effectivity of the Constitutional Amendment.* – The proposed amendment shall be submitted to the electorate and shall be approved or rejected by a majority of the votes cast by all registered voters in the plebiscite held for the purpose. In case of approval, the amendment shall take effect fifteen (15) days after the Commission shall have officially proclaimed the final result.

SEC. 10. *Applicability of the Omnibus Election Code.* – The Omnibus Election Code and other election laws not inconsistent with the provisions of this Act shall be applicable in the implementation thereof.

SEC. 11. *Appropriations.* – The amount necessary to defray the cost of the people’s initiative as prescribed in this Act shall be charged against the Contingent Fund in the General Appropriations Act of the year when the initiative is to be conducted, unless it has been seasonably allocated in the General Appropriations Act of the year. Thereafter, sums necessary for the implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 12. *Separability Clause.* – If any part or provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain in force and effect.

SEC. 13. *Repealing Clause.* – All laws, executive orders, issuances, decrees, rules and regulations inconsistent with or

contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 14. **Effectivity.** – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved.