

July 19, 1995

**COMMITTEE ON LEGISLATIVE BRANCH AND PUBLIC FINANCE**

**REPORT NO. 6 : ARTICLE X, Taxation and Public Finance  
ARTICLE II, Section 5, Enactment of Legislation**

The Committee met on Monday, June 26, 1995, Wednesday, July 12, 1995, Friday, July 14, 1995, Monday, July 17, 1995 and Wednesday, July 19, 1995 to consider proposed amendments to Article X, Taxation and Public Finance.

The Committee considered proposals 7, 26, 43, 44, 60, 75, 78, 92, 206, 252, 254, 263, 302, 303, 304, 344, 362, 363, 365, 366, 375, 378, 380, 414, 428, 436, 445, 480 and 557 referred to it by the Committee on Organization and Procedures.

The Committee recommends deleting one section in Article X, changing six sections and adding one section. The Committee also recommends changing Article II, Section 5.

Each section that has been changed is discussed below.

**Section 1. Public Purpose.**

The Committee recommends deleting the last sentence of Section 1, added in 1985, directing the legislature to define "public purpose." The legislature has failed to enact a definition. To assist in determining whether taxes or expenditures are for a public purpose, the Committee has proposed a definition. It states that a public purpose is one which directly relates to the functions of government and benefits the people as a whole. The Committee purposely kept the definition broad, since it realizes that the limits of the definition will have to evolve in response to changing circumstances.

**Section 2. Report on Tax Exemptions.**

The Committee recommends that this section be deleted in its entirety. The section requires the governor to report every five years on the impact of tax exemptions. No such report has ever been made. The Committee does not see a constitutional need for such a report since tax exemptions are granted by the legislature and are published in the Commonwealth Code.

**Section 3. Public Debt Authorization [now Section 2]**

The Committee recommends no changes to this section.

**Section 4. Public Debt Limitation [now Section 3]**

The Committee recommends adding a prohibition against incurring public debt for the sole purpose of retiring a deficit. Incurring debt for such a purpose perpetuates the poor fiscal management that caused the deficit.

**Section 5. Real Property Taxes [now Section 4]**

The Committee recommends no changes to this section.

**Section 6. Liquidation of Deficits [now Section 5]**

The Committee recommends two major changes to Section 6. "Liquidation of Deficits," which is now renumbered Section 4 and titled "Deficit Retirement." First, the Committee recommends deleting the first two sentences, which deal with the reduction of the deficit that existed in 1985. That deficit has been retired, and there is no longer a need for this language.

However, the Committee is concerned about the large deficits that have been incurred in recent years. A deficit occurs when cash outlays exceed revenues actually collected. Deficits reflect poor fiscal management and have the undesirable effect of mortgaging the Commonwealth's future. The Committee believes that the best way to deal with deficits is to prevent them from occurring. The proposed amendments to Article III, Section 9 should accomplish this. To deal with the existing deficit and any deficit that may occur, the Committee recommends that the governor and the legislature be required to retire all deficits within two years of their occurrence. If the deficit

exceeds 10% of the Commonwealth's projected revenues during the fiscal year in which the deficit is to be retired, the government may take an extra year to retire the deficit. To illustrate, if a deficit occurs in fiscal year (FY) 1, it is likely that the full extent of the deficit will not be known until after the governor is required to submit a proposed balanced budget for FY2 to the legislature. The Committee expects the governor and the legislature to do all they can to retire the deficit during FY2. If that does not occur, the governor must submit as part of the budget submission for FY3, a plan to reduce the deficit from FY1 and any other deficit that may remain. If the outstanding deficit exceeds 10% of the projected revenues for FY 3, the deficit may be retired in FY3 and must be retired by the end of FY4. The Committee wishes to avoid a situation in which so much of the annual budget is applied to deficit reduction that essential governmental services must be curtailed.

The Committee also recommends that general salary and hiring freezes go into effect as soon as a deficit is identified, even in the middle of a fiscal year and even if the personnel costs have already been allocated, and continue until the deficit is retired. The Committee believes that excessive personnel costs at all levels of government are a principal contributor to deficit spending in the CNMI, and believes that salary and hiring freezes will assure that the deficit is retired as quickly as possible. The Committee intends that the freezes not be evaded by indirect action, such as by contracting for services that would have been performed by employees in the frozen positions. To permit the government to function effectively during the freezes, the Committee recommends exempting from the hiring freeze positions subject to legislative confirmation, division directors, and positions that the governor and two thirds of the legislature agree are essential to public health and safety.

#### **Section 7. Government Employment [now Section 6]**

The Committee recommends deletion of the second sentence in this section, which permits employment ceilings to be changed by joint resolution. The Committee believes that the legislature and the governor together, should set employment ceilings in the annual appropriation acts. Raising employment ceilings after the budget has been enacted is poor fiscal management and leads to deficit spending.

## **Section 8. Control of Public Finance [now Section 7]**

The Committee recommends deleting the last sentence of the existing section, dealing with departmental regulations, and adding a new sentence providing that the Secretary of Finance may be removed for cause only.

The Committee concluded that the direction to the Department of Finance to promulgate regulations was legislative in nature and had been accomplished. The Committee therefore recommends it be deleted.

The Committee agrees with the recommendation of the Committee on Executive Branch and Local Government that the Secretary of Finance should be removed for cause only. This safeguard is designed to emphasize the independence of this position and to enable the Secretary to control government spending consistent with good management practices and procedures. It is not intended to eliminate the right of the incoming governor to appoint a new Secretary. Both Committees agreed that it was appropriate to insert this protection in this Section.

## **New Section 8. Tax Rebate Trust Fund.**

The Committee recognizes the importance of safeguarding tax payments held for rebate purposes. The Tax Reform Act of 1995 deleted the requirement that tax rebate funds be deposited in a trust account. Although the rebate funds continue to be deposited in a separate bank account, the Committee believes it is important to safeguard these funds as much as possible by keeping them in a trust account and preventing them from being used for any purpose other than rebates. The Committee was mindful of the recent experience in Guam, where the government had to borrow money for tax refunds. The legislature can provide for the creation and administration of the rebate trust account. Income earned by the trust account shall go into the general fund.

## **Section 9. Taxpayer's Right of Action.**

The Committee recommends authorizing taxpayer suits to enjoin any expenditure of funds in violation of this Constitution or the United States Constitution. The present language, which permits suits to enjoin public spending "for other than public purposes or for a breach of fiduciary duty"

lacks the desirable clarity. Permitting a taxpayer suit to enjoin any unconstitutional expenditure provides a clear standard for the public and the courts.

**Article II, Section 5(a). Enactment of Legislation**

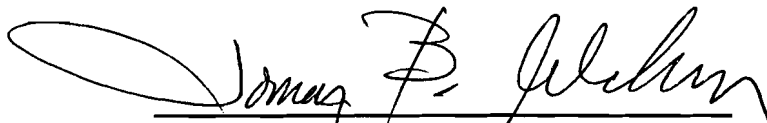
The Committee recommends adding two sentences to this section which deals with the enactment of appropriation bills.

First, the Committee recommends that every expenditure of public funds be authorized in an appropriation bill. The Committee believes it is fiscally irresponsible for expenditures to be authorized by resolutions or other devices that do not contain the safeguards built into the appropriation process.

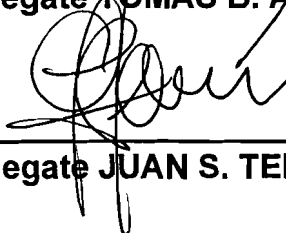
Second, the Committee believes that the legislature should not enact new or expand existing programs that require public money to be spent without funding the programs. The Committee is aware that the legislature has enacted a workers' compensation program, a tax task force, a drug control program and a youth affairs program without funding them. This unfortunately creates the impression that the legislature has responded to a public need, when, in fact, the response has been an empty one. There is no good reason for such legislative irresponsibility and the Committee recommends it be stopped.

The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

Respectfully submitted,



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Delegate TOMAS B. ALDAN, Chair



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Delegate JUAN S. TENORIO, Vice Chair

*Vicente S. Aldan M.D.*

Delegate VICENTE S. ALDAN

*Marian Aldan-Pierce*

Delegate MARIAN ALDAN-PIERCE

*Frances LG Borja*

Delegate FRANCES LG BORJA

*John O. DLR. Gonzales*

Delegate JOHN O. DLR. GONZALES

*Victor B. Hocog*

Delegate VICTOR B. HOCOG

*David L. Jitol*

Delegate DAVID L. JITOL

*Jose R. Lifoifoi*

Delegate JOSE R. LIFOIFOI

*Bernadita T. Seman*

Delegate BERNADITA T. SEMAN

*Marylou Ada Sirok*

Delegate MARYLOU ADA SIROK

*Joaquin P. Villagomez*

Delegate JOAQUIN P. VILLAGOMEZ

ARTICLE X: TAXATION AND PUBLIC FINANCE

Section 1: Public Purpose.

A tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. A public purpose is one which is directly related to the functions of government and benefits the people as a whole.

Section 2: Public Debt Authorization.

Public debt may not be authorized or incurred without the affirmative vote of two-thirds of the members in each house of the legislature.

Section 3: Public Debt Limitation.

Public indebtedness other than bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking 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 retiring a deficit or for operating expenses of the Commonwealth government or its political subdivisions.

Section 4: Real Property Taxes.

No tax may be levied upon any owner-occupied single family residential, agricultural, or unimproved real property, unless approved by three-fourths of the votes cast in an election conducted in the senatorial districts in which the tax is to be levied.

Section 5: Deficit Retirement

A deficit shall be retired within two fiscal years following the fiscal year in which it is incurred or within three years if the aggregate deficit exceeds ten percent of the Commonwealth's anticipated revenues for the next fiscal year. The governor shall submit a deficit retirement plan to the legislature pursuant to the provisions of article III, section 9(a). Until the deficit is eliminated, Commonwealth funds shall not be used, directly or indirectly, to increase salaries or to fill any vacant positions

or create any new positions, except for those requiring legislative confirmation, for division directors, or for vacancies which the governor certifies would jeopardize public health or safety and the legislature fills by joint resolution requiring a two-thirds vote of the members of each house. All resulting savings in personnel costs shall be applied toward retiring the deficit.

Section 6: Government Employment.

In the annual appropriations acts, the legislature shall establish ceilings on the number of persons that may be employed by each branch, department, agency, authority and public corporation of the Commonwealth to which public funds are appropriated.

Section 7: Control of Public Finance.

The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The Secretary of Finance may be removed by the governor only for cause.

Section 8: Tax Rebate Trust Fund.

The percentage of income taxes collected that the Secretary of Finance anticipates will be necessary to provide tax rebates as provided by law, shall be maintained in a trust fund and used only for tax rebates. Income from the trust fund shall go into the general fund.

Section 9: Taxpayer's Right of Action.

A taxpayer may bring an action against the government or one of its instrumentalities in order to enjoin the expenditure of public funds in violation of this Constitution or the United States Constitution. The court shall award costs and attorney fees to any person who prevails in such an action in a reasonable amount relative to the public benefit of the suit.



Article II

Section 5: Enactment of Legislation.

a) Appropriation and revenue bills may be introduced only in the house of representatives. Other bills may be introduced in either house of the legislature. The legislature shall hold joint hearings on all appropriation bills and on all bills involving public debt, taxation or revenue. Every expenditure of public funds must be authorized in an appropriation bill. The legislature shall not enact a law which requires the expenditure of public funds without also appropriating the funds.

b) A bill shall be confined to one subject except bills for appropriations or bills for the codification, revision or rearrangement of existing laws. Appropriation bills shall be limited to the subject of appropriations. Legislative compliance with this subsection is a constitutional responsibility not subject to judicial review.

c) The legislature may not enact a law except by bill. Each bill shall be read at least twice on two separate days in each house before it is voted upon. No bill may be enacted without the approval of at least a majority of the votes cast in each house of the legislature.

d) The legislature shall enact no law which increases the class of nonaliens, except as to those persons defined in Covenant Section 506(c).