

July 25, 1995

REPORT OF THE COMMITTEE ON LEGISLATIVE BRANCH AND PUBLIC FINANCE

ARTICLE X: TAXATION AND PUBLIC FINANCE, SECOND READING

The Committee presents the following report to the delegates with respect to Article X: Taxation and Public Finance, on second reading.

Delegate Proposals. The Committee issued Report No. 6 on Article X on July 19, 1995, after the cut off date for delegate proposals. The Committee had considered Delegate Proposal No. 364 in preparing Report No. 5, but that proposal was inadvertently omitted from the list attached to the Report.

Floor Discussion. The Committee of the Whole discussed Report No. 6 on July 20, 1995. The Report was amended on the floor to reflect the fact that some of the unfunded programs cited in the discussion on page 5 as having been created by the legislature, had been created by executive order. The Committee disapproves of this practice for the same reasons it disapproves of the creation of unfunded programs by the legislature. The Committee intends Article II, Section 5 to prohibit unfunded programs whether created by the legislature or the governor.

Several delegates questioned whether Section 9 should include taxpayer suits seeking to enjoin spending under the United States Constitution. The Committee concluded that only taxpayer suits seeking to enjoin spending alleged to violate the CNMI Constitution should be protected in the CNMI Constitution. Other taxpayer suits shall be governed by statutes and court decisions.

One delegate suggested that the hiring freeze in Section 5 might be too restrictive. The Committee does not intend the hiring freeze to apply to the renewal of the comparatively few positions which have been filled on a contract basis. For example, if a position has been filled by an employee working under a one year contract, if a freeze is in effect at the expiration of the contract, that contract may be renewed or the position may be filled by another person who is given a similar contract. At the same time, the Committee intends that the freezes not be circumvented by converting positions into contract positions. Likewise, the Committee intends the exception for vacancies that jeopardize public health and safety not be limited to positions in the hospital or the police or fire departments. For example, if the only engineer in the Commonwealth Utilities Corporation qualified to maintain the generators retires, failure to fill that vacancy could jeopardize public health.

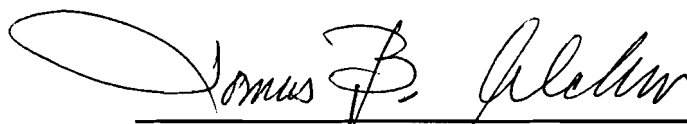
Delegate Amendments. The Committee received Delegate Amendment No. 10, which proposes that limits be placed on damages that can be recovered in public and private litigation. The Committee does not recommend this change. The Committee is not convinced that there is a need to limit damages or that it would be fair or legal to enact the proposed limits. This is a subject best addressed by the legislature which has already provided for limits on Commonwealth tort liability.

Committee Changes. The Committee recommends two further changes to this article. First, the Committee recommends that the requirement in section 4 for approval by a three fourths popular vote before non commercial real estate property taxes can be enacted be reduced to a simple majority. The Committee is mindful of the reluctance to impose real property taxes. However, the Committee is also aware that the municipalities increasingly will have to rely on local revenues to fund local services. The Committee concluded that if a majority of the voters in any senatorial district are willing to impose real property taxes on themselves, they should have that right. A three fourths majority would make it virtually impossible for the voters in any senatorial district to use real property taxes as a tool to raise local revenues.

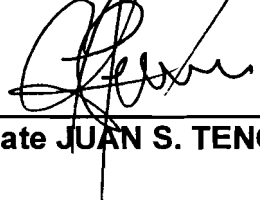
Second, the Committee recommends providing a short grace period before the freezes provided by section 5 take effect. Given the existing deficit, if this proposed amendment passes next spring, the freezes would immediately go into effect. The Committee concluded that the freezes can be best implemented following a short planning period which would coincide with the preparation of the annual budget. The Committee recommends a grace period until the start of the fiscal year following ratification be placed in the transitional section.

Summary. The Committee recommends no changes to Sections 1, 2, 3, 5, 6, 7 and 8 as passed on first reading. The Committee recommends changes to Sections 4, 9 and to the transitional section. These changes are contained in the attached revised Article II. The Committee recommends its passage on second reading.

Respectfully submitted,



Delegate TOMAS B. ALDAN, Chair

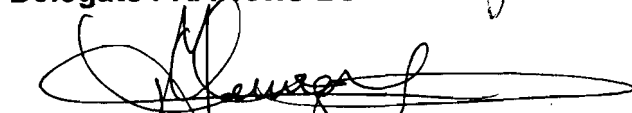


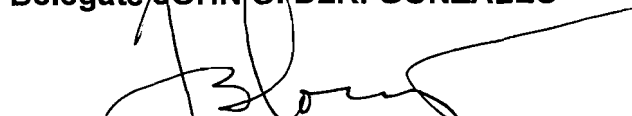
Delegate JUAN S. TENORIO, Vice Chair



Delegate VICENTE S. ALDAN

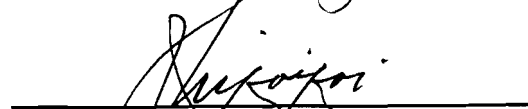

Delegate MARIAN ALDAN-PIERCE



Delegate FRANCES LG BORJA


Delegate JOHN O. DLR. GONZALES


Delegate VICTOR B. HOCOG

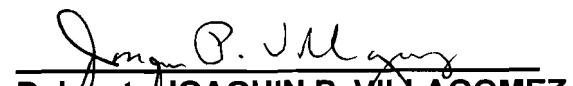

Delegate DAVID L. IGITOL


Delegate JOSE R. LIFOIFOI


Delegate JOEY P. SAN NICOLAS


Delegate BERNADITA T. SEMAN


Delegate MARYLOU ADA SIROK


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 a majority 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, subsection (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. 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.

Separate Provision for the Schedule on Transitional Matters

Section_ : Deficit Retirement

In the event there exists a deficit on the date this section becomes effective, the freeze provisions in this section shall not become effective until the start of the next fiscal year.