

by Herman T. Guerrero, Chair  
Post Convention Committee

Some critics of the proposed amendments to the Constitution are especially defensive with respect to Amendment #2 dealing with the Legislative Branch. They seem to suggest that the delegates were too tough on the Legislature and too easy on the Executive Branch. One columnist went so far as to state that "the convention's complete rewrite of the Constitution contains not a single word about reining in executive spending." This is simply wrong.

Proposed Amendment #10 deals with Executive Branch spending and imposes new and rigorous controls in order to eliminate the very large deficit that now exists in the Commonwealth. It is the job of the Executive Branch to implement and enforce the laws passed by the Legislature. But they have to do so within the confines of the available funds. Too much money has been spent by the Executive Branch (and others) in recent years -- far beyond the tax revenues available to the Commonwealth. As a result, the CNMI now has a substantial deficit -- with estimates ranging in excess of \$30-40 million.

Regardless of the exact amount, the Convention delegates were very concerned. They were aware of the consequences if the deficit is not reduced. They were also aware that the well-intentioned efforts of the 1985 Convention directed to this problem had not been successful. In proposed Amendment #10, the delegates have proposed:

- The deficit must be reduced within 3 years.
- The Governor must submit a deficit reduction plan to the Legislature as part of the annual budgetary process.
- Until the deficit is eliminated, a hiring and salary freeze goes into effect that will affect all government employees, with very limited exceptions.

Since most of the affected personnel are employed by the Executive Branch, the immediate and intended affect of Amendment #10 will principally fall on the Executive Branch. It will require the Governor and his division directors to use their personnel more effectively in order to reduce the deficit. The proposed amendment also requires that all the savings in personnel costs are to be used to reduce the deficit. If this amendment is ratified by the voters, a brief transitional period is provided before it goes into effect. Afterwards, it will up to the people to insist that these constitutional provisions be fully complied with.

Other complaints about the treatment of the Executive Branch in the proposed amendments border on the insignificant and often reflect a serious misunderstanding of the function of a constitution. For example, it has been complained that the delegates propose deleting the phrase "as provided by law" after the word "calamity" in the section in Article 3 dealing with the Governor's exercise of emergency powers. This phrase was deleted by the delegates because the Legislature had not acted in the ten years since the 1985 Convention,

which inserted this phrase, and there seemed little reason to believe that it might act in the next ten years. But the more important point is this: **THE LEGISLATURE IS NOT PRECLUDED BY THE CONSTITUTION AS AMENDED FROM ENACTING ITS OWN DEFINITION OF "CALAMITY" BY LAW IF IT WANTS TO.** If it elects to do so, and the Governor signs the law, then presumably both the Governor and the Legislature would be bound by this definition if the matter ever got to the courts. That would be so whether or not the phrase "provided by law" is in the Constitution. If the Legislature elects not to enact any definition of "calamity" and the issue ever comes up, the courts will almost certainly then look at dictionary or judicial definitions of the word and decide whether the facts at hand can be reasonably interpreted to constitute a "calamity." This is one of many examples where the phrase "as provided by law" is meaningless, which is why the delegates have proposed its deletion.

Interestingly, this particular commentator ignored the more significant proposed amendment to this section. Proposed Amendment #3 requires the Governor to report to the Legislature within 30 days after ANY exercise of emergency powers. The delegates wanted to make sure that the Legislature was fully and promptly informed regarding any such important action by the Governor. Once it is advised, it will be up to the Legislature to decide whether it should take any action in light of the Governor's exercise of emergency powers. This proposed change was one of many that the delegates believed would encourage the Executive and Legislative Branches of the Commonwealth to work more closely together.