

HOUSE OF REPRESENTATIVES
TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
SECOND REGULAR SESSION, 2000

TENTH DAY

August 23, 2000

The House of Representatives of the Twelfth Northern Marianas Commonwealth Legislature convened in its Tenth Day, Second Regular Session, on Wednesday, August 23, 2000, at 3:30 p.m., in the House Chamber, Capitol Hill, Saipan, Commonwealth of the Northern Mariana Islands.

The Honorable Benigno R. Fitial, Speaker of the House presided.

A moment of silence was observed.

In accordance with Rule XIII, § 2(a), thirteen members were present. Representatives Martin B. Ada, David M. Apatang, Jesus T. Attao, Diego T. Benavente and Dino M. Jones were excused.

Speaker Fitial: A quorum is duly constituted for the Tenth Day of our Second Regular Session. All members absent are excused.

The House went into recessed at 3:32 p.m.

RECESS

The House reconvened at 3:34 p.m.

Speaker Fitial: The House shall reconvene. Adoption of Journals.

ADOPTION OF JOURNALS

The Chair recognized the Floor Leader.

Floor Leader Babauta: Mr. Speaker, I move for the adoption of the Seventh Day, Second Regular Session journal.

7th Day, Second Regular Session (8/18/00)

Speaker Fitial: Discussion? Representative Palacios?

Rep. Palacios: I just want to clarify, I think last Friday – I know I was kind of late and I was put absent in the journal, I wonder if that can be corrected?

Floor Leader Babauta: No objection.

Speaker Fitial: You were absent on the roll when it was taken, but the House Clerk kept note that you came in late.

The motion to adopt the Seventh Day, Second Regular Session journal was seconded and carried by voice vote.

Speaker Fitial: The motion carries.

INTRODUCTION OF BILLS

H. B. NO. 12-256: A Bill for an Act to establish an adult deferred prosecution program; and for other purposes.

Offered by: Rep. Rosiky F. Camacho and three others

Referred to: Committee on Judiciary and Governmental Operations

INTRODUCTION OF RESOLUTIONS

None

REPORTS OF STANDING COMMITTEES

The Chair recognized the Floor Leader.

Floor Leader Babauta: Thank you. We have one standing committee report for adoption. I move for the adoption of Standing Committee Report No. 12-154, relative to House Legislative Initiative No. 12-1.

S. C. R. NO. 12-154: Reporting on House Legislative Initiative No. 12-1, entitled, “To amend Article XV, Section 1(e) of the Constitution of the Commonwealth of the Northern Mariana Islands.” *Your Committee on Education recommends that the House pass the initiative.*

The motion was seconded and carried by voice vote.

Speaker Fitial: The motion carries.

RESOLUTION CALENDAR

None

BILL CALENDAR

The Chair recognized the Floor Leader.

Floor Leader Babauta: With the adoption of Standing Committee Report No. 12-154, I move for the suspension of Rule IX, Sections 9 and 10 for the placement and passage on First and Final Reading House Legislative Initiative No. 12-1.

The motion was seconded and carried by voice vote.

Speaker Fitial: The motion carries. Passage motion, Floor Leader?

Floor Leader Babauta: Mr. Speaker, just a typo -- as noted on the Bill Calendar, that 25% is the – so please take note and correct that. I so move, Mr. Speaker, for the passage on First and Final Reading House Legislative Initiative No. 12-1.

The motion was seconded.

H. L. I. NO. 12-1: TO AMEND ARTICLE XV, SECTION 1(e) OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

Speaker Fitial: Discussion? Representative Tony Camacho?

Rep. A. Camacho: Mr. Speaker, I really support all funding on education, but let us face realities. In case we are in a crisis again, are we going to live till death so we can accommodate 25% mandate. If abundance, I don't question that. In times of transshipping where do we get the funds to accommodate other department needs such as self-services? I am asking questions so I need some answers.

Speaker Fitial: Does any member wish to respond? Representative Pangelinan?

Rep. Pangelinan: Thank you, Mr. Speaker. The initiative bill with percentage and at any time the economy is not good – let's say, if the revenues collected are \$100,000,000.00, twenty-five percent of that \$100,000,000.00 will be mandated to PSS, that will be \$5,000,000.00. Whether the economy is not good or it boils with luxury, the percentage

figure remains constant. So, I don't think it will help in any, it will jeopardize the economy and many others. What it does is to provide hopeful, more guaranteed funding for PSS. And when we talk about investment for long term period, we are talking about this industry providing more guaranteed funding for PSS, but it will not in anyway jeopardize the economy on the island in terms of whether it is not good whether it goes down to \$500,000,000.00. The percentage figure is a constant figure. It goes to \$10,000,000.00 economy event the 25% will remain a constant.

Rep. A. Camacho: Mr. Speaker, I understand that. In the case \$10,000,000.00 generation of revenues, we have to relax ourselves and try to give the other departments also the necessities, the essentials. Earmarking revenues resources may be is dilemma. Let the Legislature handle the priority of the departments. At this time, we are supporting the education of our children's, scholarships, colleges, secondary education no question about it, seeking funds to give them the benefits. We have no choice but to give them that matching. At least people that matches, if they approve this 25%. We have no choice. Let them come to the Legislature and ask for more if there is a need for more, then it will be competitive also.

Speaker Fitial: Representative Hofschneider?

Rep. Hofschneider: Thank you, Mr. Speaker. I think that everyone, if everyone have a chance to discuss this, a proposed amendment, but everyone would be consistent in supporting public schools request or a minimum funding level. The problem is the practical art of government budgeting. It would have been lot easier for the government if we receive the money, we have it first, and then appropriate the budget according to what we have first. As we all know, people pay their taxes on a quarterly basis, and inavailability of cash governs how you disburse those cash available even though we budget beyond what we have in terms of our ability to collect taxes. This initiative was introduced in the Eleventh Legislature, we wanted to support it; however, when we found out that the Administration will not be inclined to defend it, or support it, simply because we were at the truck of our economic problems. We held off on this initiative. Indeed as it may, I think we all agree that in government, there are three essential services that no one can argue, that is health, public safety and education. What strikes me is, at the current level we are exiting, I believe 18%, is more prevailing essence. Increasing the floor up to 25% would govern how the other agencies, such Public Safety and Health, would receive their annual funding. What is interesting is if you compare the submission by the Governor, we all have packages submitted by the Governor, and under their submission, Public School wish to receive \$27.2 million. You compare that and add up the federal portion, the federal portion today is \$15 million. So, basically, PSS is receiving \$42.2 million; however, the federal side there in some restrictions just to count PSS is able to use them, you can't really do anything in shortfall that responded primarily by local funds. One of the question that I have -- if we turn to page 1, on the provision, and this is relating to PSS basics, on lines 17, 18, 19 and 20, beginning with the words, "budgetary appropriation may not be reprogrammed for other purposes", this is the old language in the Constitution that created this ambiguous in nature.

The ambiguous part is by whom? The restriction on reprogramming is imposed on the Executive or within PSS. Because if we allow PSS to reprogram it the way they see fit, then they have a greater flexibility on the annual appropriation. But if the language is intended to be strict, the Governor once he issues the allotment, then I think that it is time to make it clear, that the reprogramming from the Executive Branch may not be permitted. Because if you read further, it complicates the intention by allowing unencumbered fund balance in the end of fiscal year of the appropriation. Therefore, there is impetus by the Executive Branch in the old certain percentage of the allotment. At the end, the fiscal surplus would be contained or remain with the Executive or Finance, or re-appropriation because it provides for a language in the Constitution. If we clarify this and the allotment goes through to PSS with no reprogramming authority given through the Executive Branch or the Governor, then I believe that PSS having the full allotment may be able to attend to its needs, even with the 18% budgetary allotment today. I see that the annual appropriation, without this proposed language, it is continually rising in terms of percentages for the approval of appropriated amounts for government operation. I would like to see that we clarify this, Mr. Speaker, before we support this initiative so that once and for all, we clarify the allotment provision on a quarterly basis that ones it leaves the Executive Branch or Finance that they have no authority to reprogram it back. The allotment can always be reduced that no matter if you include the 25%. And if the Governor has the authority under the Constitution to withhold and allot, then the same complications will again repeats itself. I know PL 3-68 governs that particular portion but if we include it in the initiative, it would clarify and once and for all have PSS in proper standing to argue whatever the reduction in allotments. In terms of the Chairman's remarks that, what if the economy goes down appropriately by percentages? The Governor has the authority to reduce everyone. But the critical part is, so long as they control the allotment over, they can always withhold back a certain percentage that they see new positions that are unfilled. They withheld those in Finance, therefore, if you relieve that and say that the allotment shall be guaranteed, you don't need to have a 25% increase in funding, because it relief's that particular ability for meeting the actual cast to get into the hands of PSS. That is the part that has always placed PSS. It is not really the matter of whether we set at the floor of 15%, 25% or 30%, its carrying through with the appropriate distribution of the quarterly allotments and not withholding back everything that is already distributed equally. My suggestion, Mr. Speaker, is that we clarify that particular sentence and rest this issue of quarterly allotment. That is the critical part. If PSS receive the quarterly allotment in full, then they are able to catch up with the ordering of books for instance, because the fiscal year on the calendar is not coinciding and that is why they are asking to be given advance allotment in most cases every year. So that they can purchase the books based on the school calendar year not on our fiscal budget. That is the kernel of the problem over in terms of management in financing.

Speaker Fitial: Well, not only PSS. Almost all the other agencies, most of the government agencies are allotted out the buck of it in the first two quarters. Why? Because if those involve purchases, it takes time for those purchases to be place in order and then to arrive. That is why most of the budget especially for purchases are allotted out first and second quarters. So, that is why the allotment, most of it occurs in the first two quarters. You got a

point there. But the most important point here that I would like to share with you is that this earmarking or setting floor allocation for any government agencies is a very dangerous thing to do. Why? Because it promotes loose management, then we have the responsibility, duty to allocate financial resources based on needs. Here, once we have the people vote on this constitutional legislative initiative and they approve it then we don't have any more responsibility after. Because it is already set, the floor is set. So, the Legislature will not be bothered with anymore with the budget of the education.

Floor Leader Babauta: Mr. Speaker?

Speaker Fitial: Representative Lee Torres, do you have something to share?

Rep. W. Torres: No.

Speaker Fitial: Floor Leader?

Floor Leader Babauta: I was just wondering – clarification starting from lines 19 to 20, it says, “shall be available for re-appropriation”, I guess this is where Representative Hofschneider is coming from – I don't know if that is clarified yet, but, re-appropriation by whom? By the Legislature or the Public School System Board?

Speaker Fitial: The Governor has reprogram authority and unless we provide also the authority in this initiative or in the law for PSS to reprogram any unencumbered, unobligated balances of this 25% allocation then those authorities will prevail. But right now, it is not specifically stated who is responsible for reprogramming any balances from such allocation. Representative Lee Torres?

Rep. W. Torres: The points raised by colleagues Hofschneider and Babauta, I think are valid points. When I was a Commissioner and the way we handled this is, we interpret this and PSS solely has that authority and nobody else, not even the Governor, not even the Legislature. That has been the case under my administration and that, you are correct, colleague Hofschneider, that only PSS can distribute and nobody else. It hasn't been challenge but we have opinion that backs it up in support of the position of PSS, a legal opinion.

Speaker Fitial: Representative Lee Torres, PL 3-68 that is the Planning and Budgeting Act of 1982, gives the authority to the Governor to reprogram resources from every agency of the Government 25%, so that is a law that is still very valid in the books and that would be the bible for the Governor, he will be using that to assure his authority.

Rep. W. Torres: Mr. Speaker, that may be the case, but this is a constitutional provision. I think the constitutional provision will prevail over any statute.

Speaker Fitial: It is true. If this thing approves by the people then this supercedes PL 3-68, but right now PL 3-68 is in control.

Rep. W. Torres: But this is already approved, Mr. Speaker, back in 1985. This is the current language.

Speaker Fitial: Then the current language is defective because it does not specify who has the authority.

Rep. W. Torres: But, Mr. Speaker, that has been the way we have been operating and even Finance backed off in doing any reprogramming because of the very strong language on this provision, even the Attorney General backed off. So, I think that the problem being raised are valid points, it is a policy issue. I was a member of the Second ConCon and I was part of the enactment.

Rep. Hofschneider: May I just clarify what he is leading to, Mr. Speaker?

Speaker Fitial: Proceed.

Rep. Hofschneider: The trick is, he's right. It hasn't been challenged on that, it is almost a room now that once you allot it, you budget PSS no one seems to be daring enough to do anything about the budget except by PSS. So, here is the trick, Mr. Speaker, that is happening, the 25% quarterly allotment for instance \$15,000,000.00, now, they don't allot PSS the whole 5%, 10%, so long as you hold it back and don't use it, don't reprogram it, but following that sentence, provides for the mechanism for re-appropriation. Now, after the fiscal year ends, the Administration then identifies that as new source of funding for appropriation. That is handicapping PSS. Because the trick is, the language is ambiguous enough to hold back the percentage and give PSS the remaining portion. When they hold it back, they kept it intact in Finance and do not reprogram it because it is out of their hand. And that, at the end of the fiscal year, they intentionally lapse that particular withholdings for re-appropriation and that is what Representative Torres is saying, that once it gets to PSS no one – and no one has challenged this authority or the language itself, that no one is authorized to reprogram not even the Governor. So, the only request for the Governor is to hold back 5% or 10% and at the end of the year that is a lapse. Technically, that is a lapse in the appropriation provided forth in the sentence provision in the Constitution. So, they are creating a surplus by sort changing the PSS, they have to clarify that.

Speaker Fitial: The Governor cannot do that because the language here does not allow the Governor to withhold the 25% allocation. Because the word here is, "guaranteed" so the guaranteed does not allow any withholdings or reserved by the Governor.

Rep. Hofschneider: The trick is, 15% then they prorated the difference between 16.8% current budget and the Constitution provides for 15%, so 1.8%, they divide that into four

quarters, and with all that, it is still in compliance with the constitutional 15% -- that is the trick.

Floor Leader Babauta: Point of clarification, Mr. Speaker.

Speaker Fitial: State your point.

Floor Leader Babauta: I am glad that you brought that up, Representative Hofschneider, maybe Representatives Pangelinan and Torres can shake microphones... -- like previous concern that there shall be available for reappropriation that, if recollection serves me well, there was never reappropriation at the end of fiscal year. For that matter, passed a fiscal year additional reappropriation for PSS -- and that is why I am asking, who appropriates with certain percentage is lapse like a total of 15% of the whole fiscal year, is it --?

Rep. W. Torres: It is PSS.

Floor Leader Babauta: It is PSS who appropriates?

Rep. W. Torres: Yes.

Floor Leader Babauta: And that was my concern. So, it is only period after “re-appropriation”, but by whom?

Speaker Fitial: Representative Torres already explained that earlier. But he also qualified it that that practice has never been challenged. In other words, there is still uncertainty as to who is the authority to reprogram.

Floor Leader Babauta: In addition to that, I know it’s never been challenged because Amendment 38, which is the present language state’s the same version, it says, “shall be available for re-appropriation”, but my question is, who is authorize for re-appropriation from the unencumbered surplus – and now, Representative Torres, states that it is Public School System Board that does the appropriation.

Rep. Hofschneider: Point of clarification, Mr. Speaker.

Speaker Fitial: State your point.

Rep. Hofschneider: In reading the text of the Constitution, it is stated, “re-appropriation”, it is clear that the Constitution is talking about the legislative creation, except as otherwise in that particular article, it is specifically mentioned that the appropriation process is given to PSS and none of it is really mentioned. So, reading the text of that section of the Constitution is alluding to the legislative appropriation policies.

Speaker Fitial: Short recess.

The House recessed at 4:04 p.m.

RECESSED

The House reconvened at 4:18 p.m.

Speaker Fitial: The House shall reconvene. We are still discussing the passage motion --

Floor Leader Babauta: Mr. Speaker?

Speaker Fitial: Floor Leader?

Floor Leader Babauta: Since we are still in discussion, there's a propose amendment to be included to this Initiative, I move that we place House Legislative Initiative No. 12-1, on First Reading only.

The motion was seconded and carried by voice vote.

Speaker Fitial: The motion carries. So, we have House Legislative Initiative No. 12-1 on First Reading. Was that a motion to pass it on First Reading?

Floor Leader Babauta: Yes.

Speaker Fitial: Discussion? Ready?

The motion to pass House Legislative Initiative No. 12-1, on First Reading, was seconded and carried by voice vote.

Speaker Fitial: The motion carries. So, you expect to take up this Initiative tomorrow morning? There being no further Bills on the Calendar. Any good words for Jojo today? Miscellaneous.

MISCELLANEOUS BUSINESS

None

ANNOUNCEMENTS

The Chair recognized Chairman A. Camacho.

Chairman A. Camacho: Mr. Speaker, the Committee on Ways and Means will have a meeting tomorrow at 1:00 p.m. on the finalization of the budget.

Speaker Fitial: Further announcement? Chairman Deleon Guerrero?

Chairman Deleon Guerrero: Mr. Speaker, Commerce and Tourism Committee will be having a meeting at 9:00 tomorrow morning.

Speaker Fitial: Can you make that earlier? Because by the time you start the meeting, we will be going to have the session.

Floor Leader Babauta: Mr. Speaker, this is a brief one only.

Chairman Deleon Guerrero: Short.

Speaker Fitial: Further announcement? Chairwoman Peter?

Chairwoman Peter: (*inaudible*)

Speaker Fitial: Recess motion?

Floor Leader Babauta: So move, Mr. Speaker, until tomorrow morning at 10:00.

The motion was seconded and carried by voice vote.

Speaker Fitial: The House stands recess until 10:00 a.m. tomorrow.

The House recessed at 4:21 p.m.

Respectfully submitted,

Joan P. Kaipat, Journal Clerk
House of Representatives