Testimony by Alex Knopp in Support of the Recommendations in the Final Report of the Connecticut Commission on Fiscal Stability and Economic Growth to Revise The General Assembly's Budget Process and to Defer the "Doomsday Bond Covenant" in Sec. 706 of the November 2017 State Budget

Joint Hearing of the Appropriations Committee, Commerce Committee, Finance, Revenue and Bonding Committee, and Planning and Development Committee
March 23, 2018

[Alex Knopp served as Mayor of Norwalk from 2001-2005 and State Representative from 1987-2001. He has been a Visiting Clinical Lecturer at Yale Law School since 2006.]
alex.knopp@yale.edu - 203-554-7307

Instead of joining the vigorous debate underway today on substantive policy proposals made by the Commission, I am testifying in support of one of its procedural recommendations that ought to be considered as a "consensus proposal" as a result of its endorsement by the Commission, by the Labor Coalition that is testifying today, by Bill Cibes, former OPM Secretary and Finance Committee co-chair, by 1,000 Friends of Connecticut and by others.

I also want to sound again a fire alarm against the implementation of the unconstitutional and unworkable Doomsday Bond Covenant in Sec. 706 of the November, 2017 budget.

As the General Assembly debates how best to promote fiscal stability and economic growth, it should also re-examine its own legislative process and organizational resources to make sure that legislators are well-equipped to evaluate and to approve the best policy choices for Connecticut. That's why in my recommendations to the Fiscal Commission on January 24 and in my testimony today, I felt it would add value to the discussion to propose changes to legislative procedures and legislative structures needed to put Connecticut back on the right track.

I made this choice as a result of my experiences in Connecticut as an 8-term member of the General Assembly, as a two-term member of the Norwalk City Council, and as a staff member in both the U.S. House and U.S. Senate. My legislative service has convinced me that the inner workings and informal procedures of the Legislative Branch often have as much to do with ultimate legislative outcomes as does the merit of a proposed law.

As Connecticut grapples with its serious long-range challenges, reforms that reinforce greater transparency and accountability in the legislative process may help restore the public's understanding of governing outcomes and rescue us from the political cynicism that makes it more difficult for well-intentioned legislators to vote for hard but necessary choices or to enact productive but controversial measures.

The principle legislative issue I ask you to consider is that the General Assembly has no formal process to establish a unified spending and revenue framework each year in the Connecticut budget. Instead of a unified budget process, Connecticut has a fragmented process in which the Appropriations Committee reviews thousands of agency spending requests and the Finance Committee reviews hundreds of taxes and fees without an overall aggregate framework.

The final budget is the sum total of these thousands of separate decisions. The flaw is that both of these hard-working committees is now forced to make these individual decisions without having in place any formal fiscal framework or clear targets set in advance to guide their work.

No wonder many legislators of both parties complain about their inability to control the budget within the normal legislative process. Instead they have turned to automatic tax and expenditure limitations outside of the legislature's reach, such as in the Bond Covenant, the Bond Cap, the Spending Cap, the Volatility Cap or other artificial mechanisms.

Connecticut's recurring budget crisis is proof that the budgeting procedures currently employed by the General Assembly are insufficient to enact the type of long-range budgeting that is required to achieve fiscal stability and economic development while maintaining Connecticut's quality of life and public education system.

In the framework of a fragmented budget approach, "kicking the can down the road" may seem like a temporary victory because it allows a money committee to finish its work without raising taxes or cutting spending. But as we are now learning, the state will pay dearly for these shortsighted decisions. We need a new unified budget process to make sure that any "can kicking" will be seen as an up-front failure because the longer-term fiscal consequences will have been made part of the immediate decision-making framework.

A major budget function left unaddressed by the current committee structure is the absence of any formal legislative committee tasked with establishing the long-range fiscal plan-- the aggregate spending and revenue framework during the adoption of the biennial budget and for the so-called "out years."

Instead, there is an informal political process that sets this framework. The Governor's budget plan provides the initial political parameters. The majority legislative leadership and the Appropriation and Finance Committee co-chairs typically meet informally later in the session and agree in private and without public hearings or transparency on how much variance from the Governor's submitted budget each committee's final "package" will include.

I recommended to the Fiscal Commission and its members endorsed the proposal that the General Assembly make a major reform by establishing a new budgeting process based on a new leadership-driven Joint Budget Committee. The Committee would recommend overall spending and revenue targets for the biennial state budget that once approved by a majority of the House and Senate would serve as binding targets for the subsequent work of the Appropriations and Finance Committees in their consideration of line-item appropriations and taxes.

By including both public hearings and floor votes for the approval of these aggregate targets, this new process would provide important new transparency and new accountability to ensure that the new aggregate targets would effectively bind the thousands of individual decisions made subsequently by the Appropriations and Finance Committees.

A similar problem of fragmented budget authority confronted the U.S. Congress as late as the early 1970's when the "national budget" consisted of adding up the 13 individual appropriations bills passed each year with no legislative entity responsible for determining overall budget priorities. The Congressional Budget Act adopted by Congress in 1974 led to the creation of a new budgeting structure consisting of House and Senate Budget Committees, an annual Joint Budget Resolution enacted to set aggregate spending and revenue targets, and the Congressional Budget Office (similar to our OFA).

The model of a unified budget process adopted by Congress in 1974 should be researched by a legislative task force of the General Assembly to determine whether it would improve Connecticut's budget process in this era of constant fiscal crisis. The elements of a reformed budget process should include the following:

First, the creation of a leadership-driven Joint Budget Committee whether by statute or by the Joint Rules comparable to Legislative Management with the House Speaker and Senate President as co-chairs, the two Majority Leaders as Vice-Chairs, the two Minority Leaders as Ranking Members, the co-chairs and ranking members of Appropriations and Finance as members, and other members as may be needed to reflect party representation ratios. That constitutes a workable leadership Joint Budget Committee of at least 10 members.

It should be the duty of legislative leaders to recommend budget targets to the entire membership in an open committee process following public input. This new Joint Budget Committee would give them the structure to fulfill that duty instead of reverting to backroom discussions without public input.

Second, the jurisdiction of the Joint Budget Committee would be the recommendation of a Budget Resolution that sets binding biennial budget targets for revenue, spending, bonding and debt levels, and any other budget goals deemed generally appropriate, such as annual SEBAC and Teacher Pension contributions.

Third, a legislative process should be established in the calendar that requires the Joint Budget Committee to hold several public hearings following the submission of the Governor's Budget to receive public input before it adopts a Budget Resolution setting forth the hard targets.

Fourth, a majority vote by each chamber of the General Assembly to adopt or amend the Budget Resolution after it is JF'd by the Joint Budget Committee.

Fifth, the General Assembly at the beginning of each session would need to adopt a new rule requiring a super majority of 2/3 (or even 3/5) of each chamber to change or exceed any of the hard targets in the adopted Budget Resolution to effectively constrain the budget process. This requirement would establish the principal that any such "super majoritarian rule" could not be altered by a simple majority vote going forward but could be changed only by a 2/3 "supermajority" as required by current Joint Rule 29 for amending the Joint Rules after their initial adoption.

Sixth, with the budgetary framework of the Joint Budget Resolution having been adopted, the Appropriations and Finance Committees would proceed to hold hearings, review the dozens if not hundreds of bills referred to them and flesh out the line-item spending and revenue budgets within the overall aggregate framework of the hard targets.

I urge the leadership of the General Assembly to begin work on this budget process reform project as soon as possible. It is noteworthy to mention again that it is one of the few proposals to be endorsed by the Fiscal Stability Commission on March 1 and by the Labor Coalition today. It has also received the endorsement of former OPM Secretary and Finance Committee Chair Bill Cibes today and by others.

The details and deadlines of this new process could be considered by a legislative task force conducted over the summer so that a well-formulated recommendation could be presented to the next General Assembly when it convenes in January 2019.

I am also here today to re-sound a fire alarm as I did in my Commission testimony on January 24th and my CT News Junkie Op-ed last January about the unconstitutional premise, the dangerous inflexibility and the unworkable "escape clause" in what I have called the Doomsday Bond Covenant in Sec. 706 of the biennial budget adopted in November 2017. Rather than repeat my previous arguments, I am submitting supplementary testimony today outlining the significant reasons why the Doomsday Covenant at least should be deferred, even if not, as I support, totally repealed.

The recommendation at least to defer the effective date of Sec. 706 has been supported by the Fiscal Stability Commission, by Governor Malloy and Secretary Barnes, by Comptroller Lembo, by Bill Cibes and many others. I commend to you the excellent and authoritative testimony submitted today against Sec. 706 by Jesse Marks on behalf of CT Voices for Children and the Yale Law School Legislative Advocacy Clinic.

Originally I had not attempted to make any linkage between a new budget process and repeal or deferral of the Doomsday Bond Covenant. The Joint Budget Process I am proposing stands on its own as a meaningful and workable reform. But I would like to offer you the following observations of linkage in the spirit of compromise.

While there may be substantial agreement that the Doomsday Bond Covenant is unworkable, some of its well-meaning supporters may ask: if we repeal Sec. 706, what will take its place to constrain the uncontrollable spending habits of the government? How can we "tie" the hands of legislators if the covenant device is repealed?

My answer to those well-meaning supporters is that the revised budget process I have recommended can install all of the useful aspects of the budget-constraining tools of the Bond Covenant without any of the destructive anti-democratic characteristics of depending on bond covenants to constrain legislative action.

Here is a brief comparison between the operations of the Bond Covenant and the newly proposed Joint Budget Process to explain how they reach approximately the same destination of imposing budget discipline but arrive by very different routes:

First, the Covenant device violates Article Third, Sec. 1 of the Connecticut Constitution by abdicating clearly legislative budget-setting powers to bondholders for up to ten years. The Joint Budget Process alternatively retains all budget-setting power within the General Assembly by creating a new internal institutional budget process.

Second, the Covenant device delegates budget enforcement powers to the outside agency of bondholders by empowering them to "tie the hands" of legislators. The Joint Budget Process empowers legislators to "tie their own hands" by providing new legislative rules and procedures for adopting and implementing hard budget targets.

Third, the Covenant attracts some legislative support by requiring a "super majority" vote of the General Assembly (among other requirements) to suspend the Covenant. The Joint Budget Process also would require a "super majority" vote both to amend the Joint Rules to prevent weakening the budget discipline process and to revise the hard budget targets in each Resolution. Therefore, both the Covenant and the Joint Budget Process "tie the hands" of legislators but do it in very different ways.

Fourth, the Covenant puts the state's economic recovery at risk by imposing an impossibly long period of up to 10 years to lock in the current terms of the revenue volatility cap, the bond cap, the spending cap and other limitations. The Joint Budget Process allows a legislative "supermajority" at least the opportunity to respond to changing economic conditions as they occur without suffering through an extended decade of delay or complicated withdrawal procedures,

Fifth, the Covenant attempts to control budget outcomes by anti-democratic means because it allows legislators elected in 2016 to dictate to legislators elected over the next ten years in 2018, 2020, 2022, 2024 and 2026 that they cannot change any language in any of the budget caps. The Joint Budget Process on the other hand strengthens democracy in Connecticut by requiring majority-rule votes of then-elected legislators to set budget targets when the Resolution is first adopted and only subsequently does it require a supermajority to alter them. Each newly elected General Assembly should have the right and opportunity to establish its own hard budget targets and to be held accountable after appropriate public hearings for both setting and altering them.

Finally, the Covenant includes an unworkable and indecipherable "escape clause" that is more onerous in terms of executive and legislative branch approvals than either amending the Connecticut Constitution or changing the definitions for the Constitutional Spending Cap and so vague in terms of offering assurances to bondholders that it would be tied up in court litigation for years. The "escape clause" in the Joint Budget Process, on the other hand, can be exercised solely within internal legislative procedures without reliance on consent by outside bondholders as long as the "super majoritarian" vote is accomplished.

We can be sympathetic with the self-professed goals of the authors of Sec. 706 of "living within our means" or "controlling runaway spending" or "tying the hands of legislators." But these goals, even if laudable, cannot be achieved in a manner that violates our Connecticut Constitution or undermines democratic elections of future General Assemblies. By repealing the Doomsday Bond Covenant and enacting a new Joint Budget Process, we can achieve the benefits of greater fiscal stability without weakening the role of the General Assembly as a democratic institution serving the public interest.

Thank you for your attention.

#