

## J. Y. Interpretation No.391 (December 8, 1995) \*

**ISSUE:** May the Legislative Yuan, without changing the total amount of the general budget, add, delete or adjust the amount of individual items within each or among different government agencies and in the form of individual member's proposals, as in the review process of a statutory bill, without violating the Constitution?

**RELEVANT LAWS:**

Articles 63 and 70 of the Constitution (憲法第六十三條、第七十條); J. Y. Interpretation No. 264 (司法院釋字第二六四號解釋).

**KEYWORDS:**

budgetary bill (預算案); *massnahmegesetz* (law of measures) (措施性法律), responsive governance (責任政治), separation of powers (權力分立), statutory bill (法律案). \*\*

**HOLDING:** In accordance with Article 63 of the Constitution, the Legislative Yuan has the power to review budgetary bills. In reviewing the general budgetary bill of the Central Government,

**解釋文：**立法院依憲法第六十三條之規定有審議預算案之權，立法委員於審議中央政府總預算案時，應受憲法第七十條「立法院對於行政院所提預算案，不得為增加支出之提議」之限制

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\* Translator by Professor Andy Y. Sun.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

Members of the Legislative Yuan are restricted by Article 70 of the Constitution, which states that “[t]he Legislative Yuan shall not propose to increase expenditures over the budgetary bill presented by the Executive Yuan[.]” and other related Interpretations of this Yuan. While reasonable deletions and reductions may be made, in light of the difference in nature between a budgetary and a statutory bill, the review process of a budgetary bill cannot apply, *mutatis mutandis*, to the process of [enacting] a statutory bill which may be revised provision by provision and word by word, so that the designated budgetary amount for each agency may be shifted, added or reduced among different items and the originally budgetary item may be added or reduced. As far as shifting, addition or cost overrun of a budgetary item is concerned, it cannot be said that this is not a type of increase of expenditure as indicated in the Constitution. Furthermore, it involves the revision and adjustment of the contents of policy implementation and planning, which can easily result in the successfulness or failure of a policy being unaccounted for, and

及本院相關解釋之拘束，雖得為合理之刪減，惟基於預算案與法律案性質不同，尚不得比照審議法律案之方式逐條逐句增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目。蓋就被移動增加或追加原預算之項目言，要難謂非上開憲法所指增加支出提議之一種，復涉及施政計畫內容之變動與調整，易導致政策成敗無所歸屬，責任政治難以建立，有違行政權與立法權分立，各本所司之制衡原理，應為憲法所不許。

politics of accountability being difficult to establish, hence violating the separation of Executive and Legislative power and the principle of checks and balances, which shall not be permitted by the Constitution.

**REASONING:** In accordance with Article 63 of the Constitution, the Legislative Yuan has the power to review and resolve statutory or budgetary bills or bills concerning martial law, amnesty, a declaration of war and conclusion of peace or treaties. Based upon written and unwritten parliamentary rules of the Legislative Yuan concerning the review and resolution process for different kinds of bills, there are those that require Three Readings (such as budgetary and bills of act), or only Two Readings (bills other than budget and statute), or ostensibly Two Readings but do not involve substantive, provision-by-provision discussions before the final vote is cast. This [last category] normally concerns a treaty or international written agreement. Any amendment of a provision or adjustment of language to the original bill submitted by the Executive Yuan would inevitably

**解釋理由書：**立法院依憲法第六十三條之規定，有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案及條約案等之權限，立法院審議各種議案之過程及方式，依其成文或不成文之議事規則規定，有應經三讀程序者（如法律案及預算案），有僅須二讀者（法律案、預算案以外之議案），更有雖經二讀，但實質上未作逐條討論即付表決者，此類議案通常為條約或國際書面協定，蓋審議時如對行政院提出之原案作條文之修改或文字之更動，勢將重開國際談判，如屬多邊公約，締約國為數甚多，重新談判殆無可能，立法機關僅有批准與否之權。所以有上述之差異，皆係因議案性質不同之故。

reopen international negotiations. This is almost impossible if it concerns a multi-lateral convention, so the legislative body only carries the power of voting up or down [of the bill in its entirety]. These differences all result from the differences in nature of a given bill.

There are also particularities to a budgetary bill that render it different from a statutory bill: First, any and all related Yuan or Members of the Legislative Yuan may propose bills of act, but only the Executive Yuan may propose budgetary bills; Second, there is no time limitation on the proposition, review and resolution of a statutory bill; time limits do apply to the proposition and review of a budgetary bill because it concerns the government's revenues and expenditures of the entire fiscal year and must be enacted within a certain time frame; in addition, there is also a difference in the fundamental character of a budgetary and statutory bill. A statute (or law) is a set of abstract regulations concerning the rights and obligations of no particular individuals (including government agencies and the general pub-

預算案亦有其特殊性而與法律案不同；法律案無論關係院或立法委員皆有提案權，預算案則祇許行政院提出，此其一；法律案之提出及審議並無時程之限制，預算案則因關係政府整體年度之收支，須在一定期間內完成立法程序，故提案及審議皆有其時限，此其二；除此之外，預算案、法律案尚有一項本質上之區別，即法律係對不特定人（包括政府機關與一般人民）之權利義務關係所作之抽象規定，並可無限制的反覆產生其規範效力，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所須之經費，每一年度實施一次即失其效力，兩者規定之內容、拘束之對象及持續性完全不同，故預算案實質上為行政行為之一種，但基於民主憲政之原理，預算案又必須由立法機關審議通過而具有法律之形式，故有稱之為措施性法律（Massnahmegesetz）者，以

lic), and can generate its regulatory effect repetitively and without limitation. A budgetary bill contains concrete figures that indicate the expenses needed to maintain the normal operations and carry out all kinds of policy planning of a government agency, which expires once every year after being implemented once. Thus, the content of regulations, subject matter to be regulated and continuity of the two are different. Substantively, a budgetary bill is a type of administrative act but because of the principle of constitutional democracy, it must be reviewed and resolved by the legislative body in order to have the form of a law. Hence, it may be referred to as law of measures (*Massnahmegesetz*) in light of its differences from an ordinary statutory bill. Current practices of the Legislative Yuan in its review of a budgetary bill often contain a resolution under the item of a certain government agency that the total [budget] is to be reduced by a certain dollar amount, with details to be adjusted ab initio by that agency. This further demonstrates the fundamental differences in the review and resolution process of a budgetary bill and

有別於通常意義之法律。而現時立法院審議預算案常有在某機關之科目下，刪減總額若干元，細節由該機關自行調整之決議，亦足以證明預算案之審議與法律案有其根本之差異，在法律案則絕不允許法案通過，文字或條次由主管機關自行調整之情事。是立法機關審議預算案具有批准行政措施即年度施政計畫之性質，其審議方式自不得比照法律案作逐條逐句之增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目，實質上變動施政計畫之內容，造成政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理。

a statutory bill: in a statutory bill, under absolutely no circumstances may an enforcing agency adjust *ab initio* the language or sequence of a statute after it has already being enacted. Therefore, the review and resolution process concerning a budgetary bill possess the nature of granting an approval to certain administrative measures, i.e., annual policy planning and implementation, and cannot apply, *mutatis mutandis*, to the review process of a statutory bill which may be revised provision by provision and word by word, so that the designated budgetary amount for each agency may be shifted, added or reduced among different items and the originally budgetary item may be added or reduced. Such has in substance changed the contents of policy implementation and planning, which can result in the successfulness or failure of a policy being unaccounted for, and politics of accountability being difficult to clarify, hence violating the constitution principle of the separation of Executive and Legislative power.

Furthermore, Article 70 of the Constitution stipulates, “[t]he Legislative

又憲法第七十條規定：「立法院對行政院所提預算案不得為增加支出之

Yuan shall not propose to increase expenditures over the budgetary bill presented by the Executive Yuan.” In reviewing and resolving the general budget of the Central Government, the Legislative Yuan shall be restricted by this provision. Nor may the Legislative Yuan propose to increase the expenditures outside of a budgetary bill and in the form of a member’s proposal, as [clarified] by this Yuan’s Interpretation No. 264. While the total amount of the general budget is not subject to change in the review process of the Legislative Yuan, only the designated budgetary amount for each agency may be shifted, added or reduced. Yet as far as shifting, addition or cost overrun of a budgetary item is concerned, it cannot be said that this is not a type of increase of expenditure as indicated in the Constitution. This is not much different in substance from the situation where the general budgetary amount may not have been increased, but addition of expenditures is nevertheless made outside of a budgetary bill and in the form of a member’s proposal. This involves the change and adjustment of policy planning and imple-

提議」，立法院審議中央政府總預算案應受此一規定之限制，而立法院不得在預算案之外以委員提案方式為增加支出之提議，復經本院釋字第二六四號解釋示有案。立法委員於審議預算案時，雖不變動總預算金額，僅對各機關原編預算之數額在款項目節間作移動增減，然就被移動而增加或追加之原預算項目言，要難謂非上開憲法所指增加支出提議之一種，其情形與不增加總預算金額，在預算案之外，以委員提案方式為增加支出之提議，實質上亦無不同，既涉及施政計畫內容之變動與調整，易導致政策成敗無所歸屬，責任政治難以建立，尚非憲法之所許。至立法委員對行政院所提預算案所顯示之重要政策如不贊同時，自得就其不贊同部分，依憲法所定程序決議移請行政院變更，其相關之預算項目，自亦隨之調整；或於審議預算案時如發現有不當之支出者，復得逕為合理之刪減，均足達成監督施政，避免支出浮濫致增人民負擔之目的。

mentation, which can result in the successfulness or failure of a policy being unaccounted for, and politics of accountability being difficult to establish, which is not permitted by the Constitution. If the Legislative Yuan should not concur with an important policy as reflected in the budgetary bill submitted by the Executive Yuan, it may, [by resolution,] transmit the portion in question to the Executive Yuan for policy alteration in accordance with the constitutionally mandated process, and the related budgetary items will naturally be adjusted accordingly. Or in the event improper expenditures are discovered in the review of a budgetary bill, reasonable reduction or deletion can be made so that the goals of monitoring the implementation of policies and avoidance of abusive expenditure that results in the overburdening of the people can be accomplished.

Justice Chung-Mo Cheng filed dissenting opinion in part.

Justice Jyun-Hsiung Su filed dissenting opinion, in which Justice Tieh-Cheng Liu joined.

本號解釋城大法官仲模提出部分不同意見書；蘇大法官俊雄、劉大法官鐵錚共同提出不同意見書。