

S.C.R. NO. 13-12

JUNE 2, 2003

COMMITTEE ON JUDICIARY AND GOVERNMENTAL OPERATIONS

Your Committee on Judiciary and Governmental Operations, to which was jointly referred Presidential Communication No. 13-1, begs leave to report as follows:

Presidential Communication No. 13-1 concerns the National Government's proposed budget for Fiscal Year 2004 as set forth in a publication entitled National Government Proposed Budget FY 2004 ("Budget Book"). Pursuant to rule 7, section 4(b), of the Official Rules of Procedure of the Thirteenth Congress of the Federated States of Micronesia, your committee has limited its review to those portions of the proposed budget relating to matters under its jurisdiction. These are:

I. Operations Budget:

- A. Department of Justice
- B. Office of Public Defender
- C. National Judiciary
- D. Agencies, Boards, Authorities, Commissions and Corporations
  - 1. National Postal Services
- E. Special Programs
  - 1. National Election Commission Office
- F. Grants, Subsidies and Contributions
  - 1. State Joint Law Enforcement c
  - 2. State Judiciaries
  - 3. Micronesian Legal Services Corporation

II. Capital and Human Resource Development:

- A. FSS Palikir Slipping

Initially, your committee notes that, if there is no previously set policy about the implementation of the matters covered by this report, the provisions of this report, as adopted by Congress, must prevail. To protect the interests of our citizens, Congress has a duty to carefully review and question all requests for funding. As such, congressional approval of committee reports detailing its reasoning for approval of each funding request signals Congress' intent with respect to such funding and must not be taken lightly. This report, and all previous and subsequent reports by this committee, should be treated as policy for this Nation, as defined by the Congress. It is your committee's intent, therefore, that any commentary found in this report should be treated as policy for the guidance of the relevant departments, agencies and offices.

Your committee's findings and recommendations follow.

INTRODUCTORY COMMENTS

Initially, your committee notes that, despite the statutory mandate to enact a "balanced budget" (55 FSMC sec. 104), the FY 2004 budget, as proposed by the President, is a "deficit" budget. The only "solution" suggested by the executive for resolving this situation is to ask Congress to make additional cuts in the budget as proposed.

Given these uncertain financial times, your committee is confident each committee of Congress will do just that; but "cutting the budget" is not the only way to resolve a potential deficit, and it certainly is not the best way to resolve what could become a protracted problem.

Your committee would appreciate the executive branch suggesting more "creative", long-term solutions to the problem. Why, your committee wonders, does the executive branch continue to send financial reports to Congress with (downward) "revised revenue projections" and predicted deficits, but no long-term solutions. Your committee would find it much more helpful and productive to know: What is being done to improve our government's ability to more accurately project revenue? What actions have been taken to increase revenues? What are the government's plans to improve tax collections and the collection of judgments and fines due the National Government? What does the executive plan to do about uncollected overtime charges that are to be reimbursed by carriers to the FSM?

Congress has raised these and related questions numerous times, to no avail. This is not the first year that such questions have been asked, and, unfortunately, probably will not be the last. In the long run, positive, specific, pro-active plans in these and related areas would do much to help Congress and the President address the issue of "declining" revenues.

As noted by the President, FY 2004 "is of particular significance" to the FSM because it will be the first year of funding under "Compact II", the FSM's amended Compact of Free Association with the United States. Although that document is not yet final, certain assumptions about the use and application of Compact II funds have been made by the executive in its allocation of "sector grant" funds in the proposed FY 2004 budget. See Budget Book at pp. ix to xviii. Your committee, however, is at a loss to understand the logic or rationale behind the sector allocations made by the executive, when applied to the various departments and agencies under your committee's jurisdiction.

For example, your committee does not understand why the day-to-day operations of some entities under its jurisdiction are to be funded entirely with sector grants, while the activities of other entities -- activities that clearly seem to fall within a given sector -- are not to be funded at all with Compact funds; Compare, e.g., sector allocations for the Department of Justice, Public Defender, National Judiciary, grants to State Judiciaries, FSS Palikir slipping, etc. In your committee's opinion, on-going "core" government operations (e.g., most employee salaries and benefits, police investigations, trials and appeals, protection of government officials and property, elections, etc.) should be funded from domestic revenues, while certain projects and programs within each department/agency (e.g., National Judicial Conference, training programs, Legal Intern programs, patrol boat slipping, building improvements, new department/agency initiatives, etc.) arguably could be funded this year with sector funds. How and why sector fund allocations were made remains a mystery to your committee. Therefore, it is difficult to review the FY 2004 budget, as proposed, with any certainty. Nonetheless, your committee has tried to do so and the following represents your committee's recommendations **subject to available funding**.

Unlike your committee's reports in past years, this report makes no recommendations for individual categories of expenditure. Rather, your committee recommends only the "total amount" it believes reasonable and

justifiable for each entity under its jurisdiction. Your committee emphasizes that these figures are "recommendations" only and may change, depending on available resources, prior to the start of the new fiscal year.

## DISCUSSION OF FY 2004 BUDGET

Your committee held a series of public hearings on May 20, 21, and 22, 2003 with those individuals who could best provide information on the proposed budgets of the various offices and programs under your committee's jurisdiction. The witnesses called before your committee included the Secretary of the Department of Justice and key staff, the Chief Justice of the FSM Supreme Court and key staff, the FSM Public Defender and key staff, MLSC, the FSM Postmaster General and key staff, and appropriate representatives from the President's Office, the Department of Finance and Administration, and the Budget Review Committee. In addition, various National and State entities submitted written comments that were much appreciated by your committee.

The appropriations discussed below are presented, by entity, in the order in which they appear in the budget book. The figures given for each department/agency include the total amount appropriated by law for FY 2003 (in italics), as set forth in Public Law No.12-50, as amended; the amounts requested by each entity for FY 2004 (as listed under "2004 Proposed" in the Budget Book); and the total amount recommended by your committee for FY 2004 (**in bold**).

Because of the uncertainty of available revenues for FY 2004 and, as noted above, the questionable application of potential sector grants under Compact II, your committee declines, at this point in time, to further delineate its FY 2004 recommendations for each department/agency. Rather, your committee, in the accompanying commentary, notes its thinking and concerns about each organization's proposed budget and the allocation of sector grants.

Based on the documents and other information received during and subsequent to the hearings, your committee makes the following recommendations, **subject to available funding**:

I. OPERATIONS BUDGET

A. DEPARTMENT OF JUSTICE

	<i>FY 2003 Approp.</i>	FY 2004 Request	<b>Committee Recommends</b>
Personnel		\$1,763,134	
Travel		113,920	
Contract Services		107,300	
Other Expenditures		694,481	
Fixed Assets		-0-	
Total:	<i>\$2,986,893</i>	\$2,678,835	<b>\$2,678,835</b>
 #/Employees	 <i>128</i>	 128	 <b>128</b>

The amount listed in the Budget Book under "Expense Summary" as appropriated for the Department of Justice in FY 2003 is incorrect. See Budget Book at p. 335. Public Law No. 12-50, as amended ("P.L. No. 12-50"), appropriated a total of \$2,986,893 for the Department in FY 2003. See P.L. No. 12-50 at sec. 2(7). The total amount "proposed" for the Department of Justice in FY 2004 is \$2,678,835, a reduction of approximately 10.3% over the department's FY 2003 appropriation.

The President proposes 128 total positions for the Department of Justice, at a cost of \$1,763,134, to be

allocated as follows:

Office of the Secretary (5 positions)		\$ 92,105
Litigation Division (3 positions)	126,874	
Law Division (3 positions)	128,400	
Immigration and Labor (37 positions)	460,694	
National Police (80 positions)	955,061	

Absent plans to reduce the size of the government's workforce or the number of hours worked each week, your committee agrees with the number and allocation of positions. Other areas, however, raise concerns and may require serious adjustment, depending on available funding.

Of the \$2,678,835 proposed for the department in FY 2004, the executive proposes to fund all but \$161,278 (the budget for the Secretary's immediate office) from Compact sector funds. Your committee can only say, "Good luck." If sector grant funds cannot be applied as proposed, this government may find itself scrambling, come October 1, to find available funds for core government operations. Accordingly, your committee reviewed the department's current budget for areas of flexibility, i.e., areas where costs might be eliminated or properly shifted to other funding sources.

Your committee strongly suggests that any travel not related to the core functions of the department (e.g., travel related to attendance at international conferences, meetings, and training) be: (1) cut from the budget of each division, (2) shifted for this year to appropriate sector grants, or (3) charged to the requesting agency/office. For example, attendance at meetings such as the FFA meeting in Honiara should be undertaken by the relevant department or agency (e.g., fisheries personnel) and not by attorneys from the department. If an attorney from the department is requested, the requesting agency should bear the entire cost of that attorney's attendance. Likewise, unless the Secretary of Justice is a member, by law, of a particular board or commission, the costs of attendance at such meetings by attorneys for the government should be born by the relevant board or commission. Finally, the costs associated with organizing and/or attending "training"-related conferences and meetings (e.g., PILOM, MRLC, inspectors conference, SPCPC, etc.), whether in the FSM or elsewhere, should be included under appropriate sector grants. This advice applies to the budget of each and every entity under your committee's jurisdiction.

Similarly, the use of FSM surveillance boats for non-surveillance activities interferes with important work of the department and drains department resources. Your committee was informed that the amounts calculated for surveillance boat operations in the FY 2004 budget are based on surveillance activities only, as they should be. Thus, ANY use of the surveillance boats for non-surveillance activities must be paid for by the requesting entity, including the President and Vice President. Any other arrangement is unfair to both the Department of Justice and those entities and organizations that do pay for use of the boats. This is especially important if costs associated with day-to-day surveillance operations are to be funded with U.S. sector grants.

One program that seems "ripe" for sector grant funding is the department's Legal Intern program, whereby the department hires Micronesian law students and law graduates to work in the department during semester breaks or while preparing to take the FSM bar exam. The department is to be commended for its dedication to this program, which is generally funded under "Contracts". It is a prime example of the type of project that could, and should, be funded with "capacity building" grant money.

The Administration is strongly encouraged to continue seeking funding from other sources to compliment the projects and programs of the department. For example, during your committee's oversight hearings, the Chief of Immigration and Labor again stated that the division has received a commitment from the Australian Government for a \$700K grant to establish a fully-computerized immigration system at each of the 4 major airports in the FSM. As explained to your committee, the project requires the FSM and the States to contribute a total of \$100,000 toward the project, to construct the necessary facilities at each airport. In addition, it will require equipment to "digitalize" FSM passports. However, nothing in the proposed FY 2004 budget addresses these critical projects.

Not only should the Administration continue to see whether the FSM can benefit from such funds as U.S. "Homeland Security" funds (since, e.g., the program involves screening travelers to/from Guam, Kwajalein, etc.), it should also insure that these projects are included in the FSM's development plan and, as applicable, each State's development plan. Your committee was told that at least one State (Kosrae) has already agreed to revise their development priorities to construct the necessary facilities by January first.

The Department itself should also be looking at how best to increase revenues. One obvious area where improvement might be made is with respect to litigation. More must be done to collect unpaid judgments and fines. In addition, settling cases worth thousands of dollars in potential penalties and fines for "pennies on the dollar" is counterproductive. The department must seriously consider the "value of the litigation" it brings when settling cases.

An area of concern to your committee is that of continuing complaints from airlines and other carriers and from fishing vessels about the number of employees used and the time charged for clearing Customs and Immigration. Your committee encourages the department to continue working with the private sector to develop a mutually-satisfying solution to this "nagging" problem and is confident a solution to the situation can be in place by the beginning of the fiscal year.

Finally, your committee would be remiss if it did not comment on the conduct of some of the department's employees with respect to investigations and litigation. Your committee is concerned about the potential liability to this nation for employee actions that may not be well thought-out ahead of time, and encourages all department employees to remember to exercise prudence and restraint in the performance of their duties.

**B. OFFICE OF THE PUBLIC DEFENDER**

	<i>FY 2003 Approp.</i>	FY 2004 Request	<b>Committee Recommends</b>
Personnel		\$409,723	
Travel		16,451	
Contract Services		21,343	
Other Expenditures		31,045	
Fixed Assets		1,800	
<b>Total:</b>	<b>\$537,157</b>	<b>\$480,362</b>	<b>\$480,362</b>
<b>#/Employees</b>	<b>23</b>	<b>23</b>	<b>23</b>

The amount requested for the Public Defender's Office for FY 2004 (\$480,362) is a reduction of approximately 10.6% from the FY 2003 appropriation. Although the Chief Public Defender asked for

additional funding during your committee's oversight and budget hearing, given the current state of the proposed budget, your committee is unable to accommodate these additional requests.

The Chief Public Defender advised your committee that 3 positions are currently vacant: 2 in Chuuk (attorney and Public Defender Representative) and 1 in Kosrae (attorney). Your committee reminds the Chief Public Defender that each State's citizens must have access to the services of a licensed attorney. In particular, your committee is concerned about the absence of an attorney in the Kosrae office for such an extended period of time. This situation should be remedied at the earliest opportunity.

Another area of concern is the high cost of the office leases in Chuuk and Yap. While your committee recognizes it is often difficult to find appropriate office space in each of our States, your committee also believes each State should contribute to the cost of providing Public Defender services to its citizens, just as it does for MLSC services.

Finally, as with the National Judiciary, your committee is disturbed that no sector funds were allocated for projects or programs of the Public Defender's Office. Such things as conduct of the Annual Public Defender Conference and books for each office's law library should be considered for sector grant funding. The executive must be more creative and consistent in its proposed allocation of sector grant funding.

C. NATIONAL JUDICIARY

	<i>FY 2003 Approp.</i>	FY 2004 Proposed	<b>Committee Recommends</b>
Personnel		\$596,803	
Travel		143,149	
Contract Services		120,800	
Other Expenditures		142,800	
Fixed Assets		23,000	
Total:	<i>\$998,630</i>	\$1,026,552	<b>\$898,767</b>
 #/Employees	 26	 27	 <b>27</b>

The amount proposed by the National Judiciary for FY 2004 (\$1,026,552) represents an increase of almost 3% over the amount appropriated in FY 2003. The President, on the other hand, recommends a 9.3% reduction from FY 2003 (\$938,427).

In these turbulent financial times, it is important for all branches of the government to work together to suffer equally the requested reductions. Every part of the government has been asked to reduce budgets by at least 10% and neither the Judiciary nor the Congress should be an exception. For this reason, your committee

recommends a total budget of \$898,767 for the National Judiciary, which is a 10% reduction from the Judiciary's FY 2003 appropriation.

Your committee notes that, for a number of years now, the Court has asked for an additional position. A Secretary-Court Reporter position is desperately needed in Chuuk, where the Court's offices literally must shut-down every time the Court is in session because every employee is needed in the courtroom at that time

that down every time the Court is in session because every employee is needed in the courtroom at that time. For this reason, your committee recommends allowing the Court to add a position for Chuuk, but cautions the Court that funding for the position must be found within the recommended budget authorization. Likewise, the Chief Justice, who is to be commended for driving the same vehicle for the past 10 years, has asked for funds to purchase a new vehicle. Assuming the funds can be found within the recommended budget amount, your committee has no objections.

Your committee was surprised and disappointed at the executive's failure to allocate any sector funds to Judiciary projects or programs. As noted above, all costs not associated with core Court operations (e.g., travel to attend judicial conferences, meetings and training, conduct of the FSM Judicial Conference, Law Day Debates, etc.) should be considered for funding by appropriate sector grants. In addition, the Court should be encouraged to establish a program similar to that employed by the Department of Justice, namely, to hire Micronesian law students and law graduates. Such a program would do much to build the "legal" capacity of this country and reduce the dependence on foreign lawyers. If such can be funded by sector grants and other revenues become available, your committee would happily entertain a request for limited supplemental funding in August.

Finally, your committee wishes to commend the Court for its dedication in developing a strong body of FSM judicial precedent. Court decisions that take into account custom and tradition and the social and geographical configuration of our Nation only add to the great respect with which our citizens view the Court. Your committee encourages the Court to continue to develop "Micronesian" judicial precedent.

**D. BOARDS, COMMISSIONS AND AUTHORITIES**

1. National Postal service

	<i>FY 2003 Approp.</i>	FY 2004 Proposed	<b>Committee Recommends</b>
Personnel		\$394,597	
Travel		34,563	
Contract Services		96,673	
Other Expenditures		83,000	
Fixed Assets		-0-	
<b>Total:</b>	<b>\$680,597</b>	<b>\$608,833</b>	<b>\$612,537</b>
 #/Employees	 38	 38	

Again, the figures listed in the Budget Book as appropriated for FY 2003 are incorrect. The total amount appropriated for the National Postal Service in FY 2003 is \$680,597. See P.L. No. 12-50 at sec. 6(5). The amount proposed for FY 2004 (\$608,833) represents an overall reduction of approximately 10.6% from FY 2003. Your committee recommends a flat 10% reduction (\$612,537).

As usual, the Postal Service's budget presentation was straightforward and more than responsive to the President's request for cuts. The Postmaster General and his staff are to be commended again for their dedication and willingness to "do more with less" each and every year. Others should learn from them.

**E. SPECIAL PROGRAMS**

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1. National Election Director's Office

	<i>FY 2001 Approp.</i>	FY 2002 Proposed	<b>Committee Recommends</b>
Personnel		\$116,550	
Travel		9,348	
Contract Services		15,900	
Other Expenditures		51,980	
Fixed Assets		10,500	
Total:	<i>\$516,644</i>	\$264,278	<b>\$237,850</b>
 #/Employees	 <i>11</i>	 11	 <b>11</b>

Your committee declines to make any specific recommendations for the National Election Director's Office, other than recommending a 10% cut in the amount requested. Too many questions remain about the need for full-time operation of State National Election Commissioner offices in non-election years, and the "detail" set forth in the Budget Book merely adds to existing questions.

For example, in its alleged "performance" budget for FY 2004, \$29,746 is assigned to "Post Election Conference", but no election is scheduled to take place in FY 2004. Any "post election conference", if needed, should have been planned for, and take place during, FY 2003 when not one, but two elections were scheduled.

Equally disturbing, under "Other Current Expenses", the office seeks a whopping \$51,590, \$25,000 of which is for "telephone, fax and e-mail accounts". If your committee made detailed recommendations at this time, your committee would recommend not more than \$12,500 for communications. Your committee would also recommend significant reductions in "Personnel" costs.

Your committee implores the President to take a long, hard look at the operation of State National Election Commissioner offices and come back in August (when the Congress is scheduled to make its final recommendations on the budget, based on available resources) with firm recommendations on how these offices should be operated. Should they be full-time or part-time? Five days a week or fewer days a week? 8 hours a day or 1/2 days? Should all of the employees listed in the Budget Book be full-time "ungraded", exempt employees? What is actually needed in non-election years? Your committee's initial thinking is that the on-going work of registration and maintenance of the National Election Register, which is based on each State Election Register is not a full-time job in non-election years.

F. GRANTS, SUBSIDIES, AND CONTRIBUTIONS

1. State Law Enforcement

<i>FY 2003</i>	FY 2004	<b>Committee</b>
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	<i>Approp.</i>	Proposed	<b>Recommends</b>
Kosrae JLE	\$50,000		
Pohnpei JLE	85,000		
Chuuk JLE	95,000		
Yap JLE	60,000		
Total:	<i>\$290,000</i>	\$-0-	<b>\$145,000</b>

Funds appropriated under this item in the budget have always been designated for "State Joint Law Enforcement". Without comment in P.C. No. 13-1, the President failed to recommend any amount under "Joint Law Enforcement" for FY 2004. Your committee recommends allocating \$145,000 for "State Law Enforcement", but declines to restrict it to "State 'Joint' Law Enforcement".

Much discussion has taken place over the past few years about the appropriate use of funds designated as "Joint Law Enforcement" funds. There appear to be two schools of thought: (1) the funds are general "grants" to the States to support State law enforcement (similar to that given to support State Judiciaries) and therefore may be applied to off-set any type of expense associated with State law enforcement; and (2) the funds are grants to the States to off-set a State's costs related to "joint law enforcement" activity only and therefore must be applied to that type of expense only.

Your committee believes the President should be the allottee of these funds and that he should decide whether the funds are to be used as a "general grant" to each State to support its State law enforcement activities or a grant to be used strictly for a State's "joint law enforcement" activities undertaken pursuant to 12 FSMC sec. 1201 *et. seq.*

2. State Judiciaries

	<i>FY 2003 Approp.</i>	FY 2004 Proposed	<b>Committee Recommends</b>
Kosrae unrestricted	<i>\$25,000</i>	\$58,500	\$65,000
-law school schol.	<i>40,000</i>		
Pohnpei unrestricted	<i>72,000</i>	81,000	<b>81,000.</b>
-law school schol.	<i>18,000</i>		
Chuuk unrestricted	<i>72,000</i>	81,000	<b>81,000</b>
-law school schol.	<i>18,000</i>		
Yap unrestricted	<i>40,000</i>	63,000	<b>63,000</b>
-law school schol.	<i>30,000</i>		
Total:	<i>\$315,000</i>	\$283,500	<b>\$290,000</b>

The amount proposed by the President for each State's Judiciary represents a 10% decrease over the amount of the grant in FY 2003. However, because your committee believes strongly in the importance of the law school

scholarship programs conducted by two of the four State Courts, your committee recommends maintaining the FY 2003 level of funding for both Kosrae and Yap. These Courts are to be commended for their excellent law school scholarship programs and for actively supporting Micronesian law students.

Your committee encourages the President to remind each State that, in these difficult times, every level of government should be expected to assume a greater share of the cost of their government operations, including State Court operations. While the Constitution states that Congress "shall" contribute to the financial support of State Judiciaries (FSM Const. art. XI, sec. 10), it does not say "how much". In this era of dwindling National Government resources, the States must assume more of the on-going costs of their courts.

3. Micronesian Legal Services

	<i>FY 2003 Approp.</i>	FY 2004 Proposed	<b>Committee Recommends</b>
Total:	\$150,000	\$150,000	<b>\$150,000</b>

Your committee thanks the Pohnpei office of the Micronesian Legal Services for its detailed information on the funding mechanisms available to MLSC and on the use of the funds appropriated each year by the FSM. Along with the Public Defender's Office, MLSC provides much-needed services to the citizens of the FSM. Your committee encourages MLSC management to make sure that each State is making its annual contribution to MLSC.

II. CAPITAL AND HUMAN RESOURCES DEVELOPMENT

A. FSS Palikir Slipping

	<i>FY 2003 Approp.</i>	FY 2004 Proposed	<b>Committee Recommends</b>
Total:	N/A	\$200,000	<b>\$200,000</b>

As already noted, the total amount attributed to slipping of the FSS Palikir should be funded by Compact II sector grant money.

CONCLUSION

With the modifications identified above, your Committee on Judiciary and Governmental Operations recommends authorizing those portions of the FY 2004 budget relating to matters under its jurisdiction, subject to the availability of funds, as determined by your Committee on Ways and Means.

Signed by Senators Halbert, Kansou, Asugar, Asor and Christian