

STANDING COMMITTEE REPORT NO. 15-149

RE: C.B. NO. 15-43/J&GO

SUBJECT: PUBLIC OFFICIALS - CAMPAIGNS AND FINANCIAL DISCLOSURES

SEPTEMBER 29, 2008

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
Fifth Regular Session, 2008

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 15-43, entitled:

"A BILL FOR AN ACT TO AMEND THE CODE OF THE FEDERATED STATES OF MICRONESIA BY ENACTING A NEW TITLE 13 THEREOF FOR THE PURPOSE OF ESTABLISHING A LAW ON PUBLIC OFFICIAL FINANCIAL DISCLOSURES, AND ON POLITICAL CAMPAIGN FINANCING AND FINANCIAL REPORTING, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

"Public officials" definition

The subject bill proposes to place financial reporting requirements on FSM national public officials as well as candidates in national elections. "Public officials" are defined as all members of Congress, the President and the Vice-President, the Chief Justice and Associate Justices of the Supreme Court, Secretaries and Assistant Secretaries of all executive departments, the Public Auditor and all members of the Board of Directors of the Development Bank of the FSM.

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Statement of financial affairs required

The subject bill would require each public official and national election candidate to file a statement of financial affairs with the FSM National Election Director. The bill proposes that statements of financial affairs be filed not only on behalf of the reporting person, but also for each member of her or his immediate family. "Immediate family" is defined as including spouse, dependent children and other relatives living in the household of the reporting person.

Each financial statement would disclose the individual's occupation, each bank or credit union account with an aggregate balance of over \$1,000, the name of each creditor owed \$500 or more, all compensation received in the amount of \$500 or more, all gifts received valuing \$500 or more, names of every business in which the reporting person holds any office or ownership of 10% or more and compensation of \$1,000 or more received by the business from FSM national government, directly or as a subcontractor, lessor or vendor (although not when the person's link to the business is through appointment).

Penalties for failure to comply with reporting requirements

The subject bill proposes a civil penalty in the amount of \$1,000 a day for failure to file a financial statement on time. An individual who files an incomplete or incorrect statement may be imposed a civil fine not exceeding \$1,000. An individual who files an incomplete or incorrect statement, with the intent to deceive, or transfers any compensation to another person may be criminally charged and fined up to \$10,000 and be subject to imprisonment for a maximum of six months.

Campaign contributions

The subject bill sets out that only a candidate and the candidate's committee may accept campaign contributions or make expenditures from such contributions. Each candidate's committee must have a treasurer.

All campaign contributions are to be deposited by either the candidate or the treasurer of his committee in an account located within the FSM within 5 business days of receipt. Expenditures from campaign contributions are to be made exclusively for the election campaign for which the funds were contributed.

Candidates may receive and use a maximum of \$100 only in aggregate contributions from unidentified persons. Any contributions from unidentified donors in excess of this amount will escheat to FSM national government's general fund. No cash contributions in excess of \$25 may be accepted without a receipt. Any loans taken by the campaign in excess of \$25 must be accounted for in writing, including the terms of repayment. Finally, any surplus funds remaining after

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the election will go first to repay any debts incurred in connection with the election. Any remaining contributions must be returned to contributors and no contributor may be returned more than her or his original contribution.

Campaign record keeping

Each candidate must keep detailed books with all contributions received and expenditures made from contributions. This is to include both monetary and non-monetary contributions. All contributions and expenditures are to be recorded in the books of account within five business days of occurrence, except that any contributions and expenditures made during the last ten days of the election campaign must be entered within one day of occurrence.

Each candidate's books of account are to be made available for inspection by the National Election Director on 24 hours notice. Books of account are to be available for public inspection, by appointment, for at least two consecutive hours during each business day during the last twenty days before the election.

Contribution reports are also to be filed with the National Election Director. These will identify contributors and lenders, the amount and date of contribution and the aggregate value of all contributions received from each person at anytime during the campaign.

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Penalties for failure to comply with campaign requirements

Penalties for failure to comply with requirements regarding campaign contributions range from fines of \$1,000 to \$20,000. The penalty for knowingly making false campaign contribution reports is imprisonment for not more than six months and a maximum fine of \$20,000.

Campaign Contribution Limits

The maximum aggregate contribution per person per candidate is \$5,000 for any one campaign. Only the candidate himself has no limit on the use of his own resources, without contribution from another person.

Contributions from a business or other legal person will be attributed to the business and its CEO, President or Chairman of Board, or whoever controls more than 30% interest in business. Contributions from a person will be attributed to that person and all members of immediate family

The penalty for violations of this section is a maximum fine of \$10,000 per violation.

Public Hearings

Your Committee held public hearings in all the four states of the FSM in early 2008. A summary of comments from these hearings follows.

Kosrae

Your Committee met with members of the Kosrae State Executive on January 23, 2008. The subject bill was met with queries regarding its purpose and comments that the bill is the first of its kind in the FSM. It was explained that the subject bill would affect directly only public officials and candidates within the jurisdiction of the national government. However, committee members ventured to suggest the possibility that, if the subject bill were to pass into law, our states may be inspired to pass similar legislation.

One question raised in Kosrae was whether the representation funds Members of Congress receive as part of the FSM Congress' annual budget would fall under the bill's definition of "campaign contributions" and so be subject to the bill's strict reporting requirements. The question reflects a concern that sitting Members of Congress have a financial advantage in national elections through the substantial representation funds they control. However, members' representation funds are outside the scope of the bill's definition of campaign contributions. One response from a Kosrae state representative was that the bill would be ineffective without a consideration of Congress representation funds.

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Yap

Your Committee met with members of both the Yap State Legislature and its Executive on January 25, 2008. Yap State representatives saw the bill as a step toward increased transparency in the FSM national government. Written comments were submitted in a letter from Yap State Governor Anefal in a letter dated February 1, 2008. Governor Anefal wrote that, given the length and novelty of the bill, his administration will require more time to study the bill and will submit comments at a later date.

Chuuk

Your Committee met with the Governor and Attorney General of the State of Chuuk on January 28, 2008. There were questions as to whether information on public officials and candidates' personal financial information, including creditor information, would be available to the public. The answer is yes, financial reports under the bill would be public documents.

One comment was that the bill is well intentioned but that it may overlap with the very private cultures and traditions of our islands. It was suggested that the bill, if it were to become law, may hinder worthy candidates from participating in elections. The overall view appeared to be that the bill is progressive and has merit but that our island cultures are not yet ready for its reporting requirements. Finally, it was suggested that the definition of "public officials" be expanded to include the heads of national agencies and all positions that are subject to confirmation by Congress.

Your Committee met with members of the Chuuk State Legislature on January 29, 2008. The Speaker said he realizes similar legislation is commonplace in other jurisdictions, including in the United States. However, he asked how this bill, if it were to pass into law, would assist the operation of our government. He asked who is suffering from the current absence of this legislation and warned that its passage into law would complicate and confuse our system of governance.

There was a comment that we, as Micronesians, must "be who we are" and a suggestion that the subject bill represents foreign influences that are imposed upon us. The provisions of the subject bill were viewed as being overly intrusive into family life.

Finally, it was suggested that the overall intentions of the subject bill are good; however, its scope is too broad. A diluted version of the current bill could have potential to improve transparency in the FSM.

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Pohnpei

Your Committee met with representatives of the Pohnpei State Executive on February 1, 2008. Here, support was expressed for the bill. Its goal of transparency was seen to override other concerns, including the privacy of public officials and candidates. It was suggested that the definition of "public officials" be expanded to embrace a greater scope of government workers.

Your Committee met with members of the Pohnpei State Legislature on February 4, 2008. Here, concerns regarding the feasibility of the subject bill were practical. There was a concern that the National Election Director may not have sufficient staff to review the required financial reports. It was asked whether material items such as pigs, sakau and yams would be subject to reporting requirements.

Guam legislation

Your Committee has reviewed similar legislation in place in Guam, Title 4, Chapter 13, "Public Official Financial Disclosure Act". This act applies to all elected officials in Guam, any person appointed to any public office and candidates to any public office. This includes all chief executive officers of all agencies of the government of Guam, whether or not confirmation by the legislature is required.

Reports are to be filed with the Election Commissioner and include a complete account of the official's or candidates gross income and that of his spouse and dependent children. The names and addresses of all persons and organizations from whom the individual received any honorarium or compensation for services are also to be included and other detailed information designed to require a reporting of global income.

The failure to file, or the filing of a false report, is defined as a misdemeanor.

Recommendations of your Committee

Your Committee has given careful consideration to the new title proposed by C.B. 15-43 and the extensive changes it will require of those who work in the FSM political sphere. Your Committee views these changes as positive ones that will ultimately bring a vast benefit to the ordinary citizens of the FSM through increased accountability for and transparency of public funds.

At the same time, your Committee recognizes that, as mentioned at public hearings in our four states, the requirements of the subject bill, though indeed commonplace in other jurisdictions, represent

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great changes for our still new nation. In order to accommodate concerns regarding family privacy, your Committee recommends amendments to the subject bill so that reporting requirements apply only to public officials and candidates themselves, and not to their immediate families. Your Committee notes, however, that the elimination of reporting requirements for immediate family is viewed as a temporary accommodation only, to facilitate the bill's enforceability. After a period of adjustment, if the subject bill is to pass into law, your Committee anticipates that financial reporting requirements will apply to the immediate families of public officials and candidates.

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Based on the foregoing reasons, your Committee agrees to amend the bill as follows:

1. Page 3, delete all entries on lines 24 and 25.
2. Page 4, delete all entries on line 1; line 2, delete "(9)" and insert "(8)" in lieu thereof; line 14, delete "(10)" and insert "(9)" in lieu thereof; line 17, delete "(11)" and insert "(10)" in lieu thereof.
3. Page 6, line 24, delete the phrase "and each member of his or her immediate family".
4. Page 7, line 4, delete the words "or persons"; line 25, delete the words "or persons".
5. Page 9, line 2, delete the phrase "or a member of his immediate family"; line 16, after the word "person", delete the word "and"; line 17, delete the phrase "his immediate family".
6. Page 21, delete all entries on line 25.
7. Page 22, delete all entries on lines 1 thru 3.

The recommended amendments are reflected in the attached CD1 version of the bill.

With the foregoing amendments, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 15-43 and recommends its passage on First Reading, and that it be placed on the calendar for Second and Final reading in the form attached hereto as C.B. No. 15-43, C.D.1.

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Respectfully submitted,

/s/ Peter Sitan
Peter Sitan, chairman

Fredrico O. Primo, vice chairman

Tiwiter Aritos, member

/s/ Isaac V. Figir
Isaac V. Figir, member

/s/ Dohsis Halbert
Dohsis Halbert, member

/s/ Moses A. Nelson
Moses A. Nelson, member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, member