

STANDING COMMITTEE REPORT NO. 15-16

RE: C.B. NO. 15-36/J&GO

SUBJECT: TO FURTHER AMEND TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTION 203, AS AMENDED BY PUBLIC LAWS NOS. 5-21, 6-62, 7-97 AND 10-55, BY FURTHER AMENDING SECTION 204, AS AMENDED BY PUBLIC LAWS NOS. 5-21, 10-55 AND 13-75, THEREOF FOR THE PURPOSE OF IMPROVING THE EFFICIENCY OF THE EXECUTIVE BRANCH.

JULY 18, 2007

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
First Special Session, 2007

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 15-36, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTION 203, AS AMENDED BY PUBLIC LAWS NOS. 5-21, 6-62, 7-97 AND 10-55, BY FURTHER AMENDING SECTION 204, AS AMENDED BY PUBLIC LAWS NOS. 5-21, 10-55 AND 13-75, THEREOF FOR THE PURPOSE OF IMPROVING THE EFFICIENCY OF THE EXECUTIVE BRANCH, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

The Executive has submitted C.B. 15-36 for the reorganization of some of the Executive departments and offices.

The bill proposes seven changes to the current structure of the Executive:

1. Dividing the current Department of Health, Education and Social Affairs into two separate departments, one for health and the other for education. Responsibility for Social Affairs will be under the proposed Department of Health.
2. Merging the functions of statistics, budget, overseas development assistance and compact management into one office, to be called SBOC.
3. The expansion of the current division of National Archives into the Office of National Archives, Culture and Historic Preservation, to be called NACH.

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4. The creation of the office of Environment and Emergency Monitoring, to be called EEM.
5. Changing the name of the current Department of Economic Affairs to the Department of Resources and Development.
6. The creation of a new division of alternative energy development under the renamed Department of Resources and Development.
7. Moving the function of the Corporate Registry from its current home with Economic Affairs to the Department of Justice.

The executive repeatedly assured your committee throughout its consultation process that the projected cost of the reorganization would be limited to \$42,000. However, on July 17, 2007, during its hearing with the Pohnpei State Legislature, your committee was informed that the new projected cost increase is \$52,195.

Your committee on Judiciary and Governmental Operations traveled to the states of Chuuk, Kosrae and Pohnpei to meet with the state governments and receive their comments and feedback on the bill. The committee was unable to travel to Yap; however, Senator Primo of the Judiciary and Governmental Operations committee was in Yap for hearings with the Department of Transportation, Communication and was able to canvass members of the Yap state government for their views on the proposed reorganization.

Your committee also met with representatives of the executive, in order to question them closely on the reasons for and goals of the proposed reorganization. The President and Vice-President also met with all Members of Congress to outline their vision behind the reorganization they propose.

Your committee will set out below some of the results of its wide consultation the bill, beginning with the states.

State Consultations

Chuuk State - Legislature

The Judiciary and Governmental Operations committee met with members of both houses of the Chuuk State Legislature on the afternoon of Monday, July 2, 2007. Ms Adolph of the Department of Economic Affairs

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was also in attendance, in order to present the bill and respond to questions.

Ms. Adolph explained the objectives behind the bill: to streamline certain functions and separate others, in order to achieve maximum government efficiency and effectiveness in service delivery. The projected overall increase to the budget is \$42,000: \$2,000 for a salary increase for the current Deputy Secretary position at the Department of HESA to become the Secretary of the new Department of Education and \$40,000 to fund the new Division of Energy. As mentioned above, this estimate has since been increased to \$52,195.

Chuuk State members commented that the bill appears to be contrary in that it proposes both streamlining and dividing. There was a comment that whereas the national government is currently asking the bicameral Chuuk State Legislature to become unicameral, in order to reduce costs, the national government seems to be unconcerned as to its own costs. The more the national government costs, Chuuk State commented, the less money there will be for the states.

Some Chuukese questioned the need to divide the Department of HESA, noting that most of the functions of HESA are under state jurisdiction with the result that there is little left for the national government to do in terms of health and education. It was suggested that separate offices inevitably mean more levels of reporting, with the result that accountability becomes less direct.

There was a question regarding a potential conflict in including overseas development assistance in the SBOC office, as this would fall under the purview of Foreign Affairs. Another potential for conflict may lie in moving the Corporate Registry function to the Department of Justice.

Chuuk State - Executive

Your committee met with Chuuk State Governor Simina, and some members of his cabinet on the morning of Tuesday, July 3, 2007.

The witnesses commented that the proposed SBOC office may be a good way to help the states, as Compact-related submissions are regularly

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late. The merging of these functions into a new office may help them be on time and therefore be beneficial to the budget process.

Concerns were raised regarding the current Office of Compact Management in that it is understaffed and so cannot adequately fulfill its responsibilities. Congress was asked to provide funding for adequate and appropriately qualified staff.

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Kosrae State - Executive

The Judiciary and Governmental Operations committee met with Kosrae State Governor Weilbacher and some members of his cabinet on the morning of Thursday, July 5, 2007. Governor Weilbacher noted that he and his Cabinet members would offer their individual impressions of the bill only and that their views were not to be regarded as an "official" Kosrae state position.

There was considerable focus on the relatively small projected cost increase of the reorganization - at that time, \$42,000 - and a hope expressed that it would remain modest. As the State of Kosrae is currently downsizing, it hopes to see similar efforts on the part of the national government.

Support was expressed for the idea of dividing the current Department of HESA, as this may allow a clearer focus on its separate responsibilities and allow for more effective communication, particularly with our international counterparts in health and education.

A concern was raised that the national government maintain its role and functions within the limits of the Constitution and not encroach on the responsibilities of the states. For example, Kosrae State representatives suggested, the proposed move of the Corporate Registry function from the Department of Economic Affairs to the Department of Justice may be viewed as an attempt to assume some of the state function with regard to corporate registration.

A comment was made that there is insufficient staff at OCM. This affects timing, in that when grant applications are submitted late, the receipt of grant awards may also be delayed.

With regard to the proposed division to explore alternative sources of energy, the Kosrae representatives suggested only a very small staff of perhaps two. They also noted that funding from the European Union focuses on alternative energy. A suggestion was made that this new division be given a specific mandate for a short period of time only and that the staff be required to have appropriate practical or technical background in alternative energy development.

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Kosrae State - Legislature

The J&Go committee met with members of the Kosrae State Legislature on the morning of Friday, July 6, 2007.

In terms of the Department of HESA, there was a comment that there is currently too much activity at the national level and more responsibilities could be moved to the state level. There was a recommendation that all deputy secretary position be eliminated in all departments.

Support was offered for the proposal to split the Department of HESA as this would presumably make it easier for each department to monitor health and education. The Kosrae members remarked on the importance of health and education as these are the two areas the United States, our biggest donor, has singled out for special attention. There was also a comment that the number of departments is not important, so long as the overall budget is reduced and the departments work effectively and efficiently.

Another Kosrae member asked for a costs analysis of the proposed changes, noting that the states do most of the heavy work as far as health and education are concerned and that the role of the national government is largely as a coordinator. Accordingly, state capacity should be increased and the status quo regarding structure maintained.

There was a question as to if and how the new proposed structure would help the states actually get the equipment they need for education and health.

In terms of the proposed SBOC office, a concern was raised that its structure may only serve to complicate the budget process.

Pohnpei State - Executive

The J&Go committee met with members of the Pohnpei State Executive on the morning of Monday, July 9, 2007.

The Acting AG commented that it was a good idea to divide the Department of HESA. He asked that Congress be mindful of the 1975 Constitutional Convention and the national powers envisioned by the

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original framers of our Constitution, particularly as described in Committee Report No. 33 of that Convention.

There were extensive comments on the proposed SBOC office; in particular, that the implementation of our responsibilities under the Compact, mostly in terms of budget consolidation and annual reporting, are our weakest areas. OCM lacks the technical staff to meet their responsibilities in a timely fashion. The biggest hurdle is the annual report. A competent technical person is needed to put statistics together and compile annual reports. If OCM cannot comply with its requirements under the Compact, funds may be withheld by the United States. In addition, future funding may depend on how well we comply with Compact requirements.

Regarding the proposed move of the Corporate Registrar function to the Department of Justice, there was a concern regarding the constitutionality of this move, if the power to issue corporate charters is reserved to the states and the national government may do this only in trust for the states.

Finally, the Governor sent a letter to the Chairman endorsing the restructuring legislation, but also emphasizing that the key to the success of the reorganization will be the people chosen to head the departments and offices.

Pohnpei State - Legislature

Your committee met with the Pohnpei State Legislature on the afternoon of Tuesday, July 17, 2007. Again in attendance was Ms. Adolph of the Department of Economic Affairs.

As did other states, Pohnpei asked what increases the proposed changes would mean for the FY 2008 budget. Ms Adolph introduced the increased figure of \$52,195, as previously discussed in this report. This represents over \$46,000 for the proposed division of alternative energy, a small salary increase for the Secretary of the proposed Department of Education and a salary increase for the Director of the proposed Environment and Emergency Management Office.

With regard to the proposed Environment and Emergency Management Office, Ms Adolph pointed out that, in its current position with the

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Department of Economic Affairs, environment is in the company of sectoral resource people for fisheries and agriculture, as well as tourism. Elevating it to an office would cause it to lose this benefit of close proximity. The intent of the executive is to give environment more emphasis by establishing the proposed office.

Ms. Adolph noted that the proposed restructuring should not affect our FY 2008 Compact budget, which has already been submitted to JEMCO. She pointed out the national government receives Compact funds only for its HESA Department and that the rest of the national government is funded through domestic revenues. As far as HESA is concerned, the proposal is only to shift the Deputy Secretary position to a new department of education. This should not affect the national governmental Compact budget request in any significant way.

Finally, Pohnpei State Legislature asked for time, until Friday, uly 20, 2007, to put together a formal written response, with recommendations, to the proposed changes.

Yap State - Executive

Yap state commented that the US may welcome the division of HESA as this will assist in defining its responsibilities. He said, however, that the most important factor is the people who work there, rather than the structure of the department. If there is no commitment to delivering services, the division will not be effective.

There was a question regarding potential conflict of interest in the proposed move of the Corporate Registrar to the Department of Justice in the event that a corporation should be prosecuted.

Meeting with President and Vice-President

Your committee, along with other members of Congress, met in the afternoon of Tuesday, July 10, 2007 with President Mori and Vice-President Alik to hear the goals and strategies behind the proposed reorganization.

President Mori explained that the Office of Statistics, Budget, Overseas Development Assistance and Compact Management (SBOC) is the major impetus of the proposal. SBOC would have the capacity to respond immediately to the needs of the states. The law that

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established the current Office of Compact Management is to be repealed; this would include the repeal of procedures by which JEMCO representatives are appointed. New appointment procedures will have to be drafted.

Members raised concerns regarding timing of the reorganization, as the proposed FY 2008 budget had already been submitted to Congress in April 2007 for review and the Compact portion of that budget has already been approved by Congress and submitted to JEMCO.

Members also questioned the need for the Environmental and Emergency Management Agency, as the national government has little environment to manage, other than Palikir and the Exclusive Economic Zone. It was asserted, however, that although the national government has no real property, it still has certain policy, bilateral and international responsibilities with regard to the environment.

Clearly, the primary concern of your committee, and the members of Congress as a whole, is the cost of the reorganization. President Mori assured members he would not consider the reorganization if it involved budget increases other than the projected \$42,000. Your committee again notes that the estimate has since increased to \$52,195. The President added that the proposed split of the Department of HESA may even result in a decrease in the number of national government employees. The President also said this reorganization plan is the first phase of possible further restructuring of FSM public corporations and foreign offices. Work by the executive on possible future restructuring has not begun.

The President, along with Attorney General Jack, assured members that there is no conflict in the proposed move of the corporate registry function from the Department of Economic Affairs to Justice, as corporate charters are issued by the President.

Meeting with Executive Staff

Your committee met with Cabinet members and other staff of the executive on July 12, 2007. Your committee was disappointed that, although individuals with the Division of Education were present in force, no one from the Division of Health attended, even though the meeting had been announced widely and in a timely manner.

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The President's Chief of Staff delivered a message from President Mori asking Congress to approve the bill with an effective date of October 1, 2007. This would cause the proposed changes to coincide with the FY 2008 fiscal year.

Division of HESA

Representatives of the Division of Education said they support the division of the current Department of HESA, for the reasons that the Department is too large to be effectively overseen by one person only.

SBOC Office

The proposed SBOC office was presented as an attempt to make Compact implementation easier through the "macro-management of national economic development". The objective is increased accountability to donors. The current set up, the executive stated, results in a duplication of effort. This will be remedied by SBOC's consolidation of functions.

Members asked pointed questions as to how the proposed office would be organized and its cost. The response from the executive was tentative, alerting your committee to the possibility that the executive has not yet fully planned fundamental aspects of the structure and costs of the proposed office. This is cause for deep concern among your committee.

As to concerns regarding what the transfer of Overseas Development Assistance to SBOC would mean for the Department of Foreign Affairs, the executive said the goal is to coordinate Compact financial assistance with other foreign aid and to ultimately coordinate all foreign assistance with our Strategic Development Plan. The Department of Foreign Affairs will still have the diplomatic responsibility of identifying and negotiating foreign aid. There is currently one grant writer with the Department of Economic Affairs. This position will be moved to the SBOC office and will constitute the "O" portion of SBOC.

The current Director of OCM offered his assessment of the proposal. He agreed with the states in saying the weakness of OCM is its shortage of appropriately qualified staff. He suggested the optimal

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solution would be to properly and fully staff OCM. If this is not possible, he is prepared to accept SBOC as a "second-best" proposal.

Attorney General Jack noted that the subject bill repeals the OCM establishing legislation. Accordingly, the director of SBOC would not automatically be a JEMCO member. The executive is working to fill this gap.

NACH Office

The current spaff of historic preservation with the Division of Social Affairs said he supports the establishment of NACH as it would provide that office with direct access to the President for the advancement of its work. Although the national government has no jurisdiction over historic sites, its role is as a coordinator. National laws are in place for historic sites, setting out specific duties and responsibilities.

Analysis and Conclusions

After having reviewed its consultations with the states and the justifications of the executive for its proposed restructuring plan, your committee makes the following comments and observations regarding the subject bill:

1. The proposed division of the Department of HESA appears to your committee to be of little consequence. There are as many arguments, all compelling, for maintaining the status quo as there are for dividing the department. Your committee notes that the department has previously been divided and reunited more than once, with little measurable effect on its effectiveness. However, as a gesture of deference to the expressed vision of the new administration, your committee is prepared to support the proposal, with the proviso that your committee will decline to consider any future supplemental funding requests related to the division of HESA.
2. Your committee agrees with President Mori that the proposed merging of the functions of statistics, budget, overseas development assistance and compact management into one office, SBOC, are at the heart of the reorganization plan. During your committee's hearing with the executive, the current director of OCM stated that he reluctantly supported the proposed merger. It may be more effective

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than the current arrangement, he said, but more effective still would be the simple provision of appropriate staff for OCM. Barring that, he supports the merger of the functions. Your committee tends to agree with the OCM director and so supports, with some reservations, the proposal for the SBOC office. In addition, your committee is confident that the move of overseas development assistance to SBOC will not usurp the diplomatic function of the Department of Foreign Affairs but, rather, simply allow foreign assistance funds to be administered by SBOC.

3. Your committee supports the initiative behind the proposed expansion of the current division of National Archives into the Office of National Archives, Culture and Historic Preservation, NACH.

4. Your committee supports the creation of the office of Environment and Emergency Monitoring, EEM.

5. Your committee sees little effect in changing the name of the current Department of Economic Affairs to the Department of Resources and Development, but is prepared to support this change. Your committee acknowledges that the reorganization plan would remove the functions of environment and statistics from the current Department of Economic Affairs, thus altering its mandate somewhat.

6. Your committee supports, with some reservation, the proposed creation of a new division of alternative energy development under the renamed Department of Resources and Development. Your committee applauds the initiative behind this proposal and agrees that it is time for the FSM to explore alternative sources of energy; for example, coconut oil is already being used, on a small scale, on the island of Pohnpei as fuel in diesel engines.

At the same time, your committee understands that the actual function of this division has not yet been set out. Your committee would like to see and review a mandate for this office, with goals that are specific and attainable. Your committee also agrees that staff for this proposed office should be limited to two people and that its travel budget should be minimal. In addition, your committee recommends that staff for this office have relevant background and

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appropriate technical skills to allow them to make a meaningful contribution to the growing field of alternative energy.

7. Your committee supports the proposal to move the function of the Corporate Registry from its current home with Economic Affairs to the Department of Justice.

Costs Assessment

Along with its support of the changes proposed by the bill, your committee strongly asserts that the most important factor in its consideration of the subject bill is projected costs. Your committee is wary of accepting the assurances of the President, Vice-President and their administration that the costs of the reorganization will be limited to \$52,000. This optimistic projection appears to be unsupported by any in-depth, comprehensive or truly thoughtful planning or analysis of the potential hidden costs of the reorganization plan. Your committee has repeatedly insisted upon and requested a detailed costs assessment from the executive but has yet to receive any such submission.

Indeed, your committee's sense that the reorganization would cost more than the originally projected \$42,000 was borne out during its hearing with the Pohnpei State Legislature, when a representative of the current administration informed your committee that the new projected cost of the proposal is \$52,195. Your committee is wary that this may be the first of further "eleventh hour" increases.

At the same time, your committee acknowledges the faith the new administration has expressed in its proposal, as well as its determination and commitment to seeing it through. Your committee also holds the view that it is reasonable, to a certain extent, for the executive to determine the most effective and efficient organization of its own departments and offices. Your committee also has reluctantly accepted the improbability of receiving any meaningful costs assessment without first approving the reorganization plan.

For these reasons, despite your committee's awareness that our role in this government is not to join hands with the executive in a leap of faith, your committee recommends the approval of the proposed plan, with the proviso that the bill is to be effective on October 1, 2007,

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the first day of the FY 2008 fiscal year. Between now and the effective date, your committee expects to receive a detailed and comprehensive assessment as to the projected costs of the proposed plan. In addition, your committee expects to receive a revised budget submission for FY 2008, incorporating any changes precipitated by the reorganization, both in terms of costs and any potential downsizing of staff. Congress will then have an opportunity to consider, and either approve or alter, the proposed FY 2008 budget.

Finally, your committee is mindful of the practical realities of the budget process, particularly time considerations. Congress is already well behind schedule on its FY 2008 budget deliberations and wishes to avoid any further delay. Accordingly, your committee urges the executive to submit its revised FY 2008 budget on or before August 1, 2007, as Congress requires considerable time to thoroughly review the budget, hold hearings with the various departments, offices and agencies and prepare committee reports. All this work must be completed before October 1, 2007. If a comprehensive FY 2008 budget is not received on or before August 1, 2007, your committee will recommend approval of the already submitted FY 2008 budget.

Accordingly, with the reservations and requirements outlined above, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 15-36 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. 15-36.

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Respectfully submitted,

/s/ Peter Sitan
Peter Sitan, chairman

/s/ Fredrico O. Primo
Fredrico O. Primo, vice chairman

Isaac V. Figir, member

/s/ Dohsis Halbert
Dohsis Halbert, member

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

/s/ Tiwiter Aritos
Tiwiter Aritos member

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