

STANDING COMMITTEE REPORT NO. 13-118

RE: C.B. NO. 13-26/J&GO

SUBJECT: EXEMPTING NATIONAL WEATHER SERVICE EMPLOYEES
FROM THE PUBIC SERVICE SYSTEM

MAY 24, 2004

The Honorable Peter M. Christian
Speaker, Thirteenth Congress
Federated States of Micronesia
Third Regular Session, 2004

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 13-26, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 52 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTION 117 TO EXEMPT EMPLOYEES OF THE NATIONAL WEATHER OR METEOROLOGICAL SERVICES FROM THE NATIONAL PUBLIC SERVICE SYSTEM, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

This bill was transmitted to Congress by way of Presidential Communication No. 13-12. The Committee held a public hearing on the bill on May 16, 2004. Witnesses from the Department of Justice, the Department of Finance and Administration, and the National Weather Services Office in Pohnpei were in attendance.

Title Two, Article II, Section 211 of the proposed Amended Compact provides to the FSM, among other things, the services and related programs of the United States Weather Service. That section also provides that the "United States Departments and Agencies named or having responsibility to provide the services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement".

Under contract number 50ABNW200011 between the U. S. National Weather

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Service (NWS) and the Federated States of Micronesia, the latter pays on a reimbursable basis the cost of operating the FSM National Weather Service Offices in Pohnpei, Chuuk, and Yap. On top of the dollar to dollar reimbursements, the FSM has been receiving from the NWS 10% of the total operation costs. The use of that 10% is unrestricted.

Since 1977, the law creating the Early Retirement Program eliminated annual step increases for all public service system employees, including the FSM National Weather Services Office (NWSO) employees. This bill is an attempt to exempt those employees from the public service system, so that they may no longer be subject to the salary freeze and be able to receive their annual increments.

The information gathered at the public hearing showed that the amount of grant award given to the FSM to operate the NWSO in the three FSM states is about three times more than the amount they actually used because of the freeze. For example, for this FY 2004 the total award for personnel for the three offices is \$600,311, but because of the freeze the most they can use is anticipated to be only \$192,000. Thus, in terms of the 10% overhead fee, the FSM would receive at the end of this fiscal year only \$19,200 from the personnel line budget, instead of the maximum \$60,031. See, document entitled "Estimate Costs: Pohnpei, Chuuk, and Yap, FSM: FY 2002-2006, attached.

Your Committee has reviewed the bill and considered what adverse effect it may cause to the rest of the public service system employees (especially those who are paid under U. S. Federal Programs), who will continue to not receive annual step increases. The potential adverse effect on their work morale was a serious concern. However, the Assistant Secretary for Personnel indicated that the issue has lingered for sometime and that the President had finally determined that it is in the interest of the National Government that the NWSO employees be excluded from the salary freeze. That determination is based on several reasons. First, the NWSO employees are distinguished from other employees. To the extent that their three offices are not identified in the Executive organizational structure, it is unclear whether they are public service system employees or not. Presently, the NWSO is not referenced anywhere in the FSM Code. However, its employees enjoy the rights and benefits given to public service employees. To provide a clear legal basis for treating them as such, the President in his transmittal letter expressed his intention to further amend Presidential Order No. 1 to place the NWSO in the Executive organizational structure. By specifically mentioning the

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NWSO employees in the proposed amendment to section 509 of title 52, this bill- coupled with their placement in the Executive Organizational structure- will help clarify that the NWSO employees are public service system employees.

Additionally, and as stated above, the NWS reimburses the entire amount the FSM pays for the operating expenses of the NWSO. On top of that it also pays 10% of the NWSO's total operation costs to the FSM.

Moreover, the NWS has encouraged the FSM to lift the salary freeze and allow the employees of the NWSO in the three FSM States to receive their annual increments. It has also indicated that there are sufficient funds in the FY 2004 budget of the NWSO to pay retroactive compensations for the employees' annual increments. See, letter of R. J. LaDouce of February 24, 2004 also attached hereto.

Based on the foregoing information, your Committee concluded that the benefits that may be realized as a result of this bill would far outweigh its potential adverse consequences.

As discussed above, the intention of this bill is to enable the NWSO employees to receive their annual step increases. However, in the form in which it was presented and introduced, it does more than that. By classifying them as exempt employees, it also effectively takes away their rights to be given reasonable notice and opportunity for a hearing before disciplinary actions are imposed against them. Furthermore, it takes away their eligibility to earn, accumulate and use leave hours provided in the Public Service System Act and its implementing regulations.

Since it is not the intention of this bill to strip the NWSO employees of those benefits and rights, it is recommended that the bill be amended to address its actual intent and purpose. For that reason, your Committee offers the following amendments:

1. Page 1, title-- after "amend" delete "of".

2. Page 1, title-- after "section" delete "117 to exempt employees of the National Weather or Meteorological Services from the National Public Service System", insert "509 for the purpose of exempting the employees of the National Weather Services from the salary freeze".

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3. Page 1-- delete lines 1 to 19 in their entirety.

4. Page 2-- delete lines 1 to 25 in their entirety.

5. Page 3-- delete lines 1 to 21 in their entirety and insert the following in lieu thereof.

"Section 1. Section 509 of title 52 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 9-155 and amended by Public Laws Nos. 10-62, 10-118, 10-151, 11-41, and 11-52 is hereby further amended to read as follows:

'Section 509. Freeze on salary increases; compensatory time and overtime compensation. Notwithstanding any other applicable law, there is hereby enacted:

(1) a freeze on annual salary step increases of all employees in the public service system; and

(2) compensatory time, with which employees in the public service system shall be credited in lieu of receiving overtime compensation as otherwise authorized under the National Public Service System Act and regulations promulgated thereunder. Compensatory time means those hours authorized in advance and worked by an employee outside established work hours and for which the employee is credited with one hour in the form of leave with pay for each hour of work an employee is directed to work and performs in excess of the regular 40 hour workweek as provided by law. Compensatory time shall be accrued by National Government public service employees and shall be included in the compensation received by a program participant pursuant to subsection (4)(c) of section 506 of this chapter; except that any accumulation of time in excess of 280 hours shall be forfeited unless taken before the end of the calendar year in which the excess was accumulated. For purposes of computing whether a program employee's accrued compensatory and/or annual leave hours are in excess of 280 hours, accrued compensatory time and annual leave shall be included in computing the 280-hour ceiling.

(3) Notwithstanding the provisions of this section, an employee shall be entitled to receive overtime differential, retroactive to the effective date of Public Law No. 9-155, as authorized under the National Public Service System Act, for:

(a) time worked in the event that the National Government would be entitled to compensation for payment of

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such differential under section 115 of title 50 and section 416 of title 22;

(b) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with a legal entity that seeks to provide relief from emergency conditions, as long as the time worked is directly related to efforts to provide emergency relief, in accordance with an emergency declared by the President under article X, section 9, of the Constitution of the Federated States of Micronesia;

(c) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with the Water Users Corporation, as long as the time worked is directly related to management and maintenance of the Capital Water System; or

(d) time worked as follows:

(i) by personnel within the Division of Budget in preparation of the annual budget submission at the discretion of the Secretary of the Department of Finance and Administration;

(ii) by accounting personnel within the Division of Treasury in preparing the annual financial statements for the FSM National Government, at the discretion of the Secretary of the Department of Finance and Administration;

(ii) by accounting personnel within the Division of Treasury in preparing reports pursuant to section 226 of title 55 of the Code of the Federated States of Micronesia, or a successor provision, at the discretion of the Secretary of the Department of Finance and Administration. Notwithstanding section 164 of this title, persons working hours entitling them to overtime differential pursuant to paragraph (d) of subsection (3) of this section shall receive compensation at straight time for those hours.

(4) Notwithstanding other provisions of this section, the employees of the National Weather Services may receive annual increments retroactive to the effective date of Public Law No. 9-115.'"

With those proposed amendments, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 13-26 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. 13-26, C.D.1.

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Respectfully submitted,

/s/ Dohsis Halbert
Dohsis Halbert, chairman

/s/ Roosevelt D. Kansou
Roosevelt D. Kansou, vice chairman

/s/ Alik L. Alik
Alik L. Alik, member

/s/ Henry C. Asugar
Henry C. Asugar, member

/s/ Jack Fritz
Jack Fritz, member

Peter M. Christian, member

/s/ Ramon Peyal
Ramon Peyal, member