

STANDING COMMITTEE REPORT NO. 13-121

RE: C.R. NO. 13-105/W&M

SUBJECT: FORMULA FOR SHARING COMPACT FUNDS WITH STATES

MAY 27, 2004

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

Dear Mr. Speaker:

Your Committee on Ways and Means to which was referred C.R. No. 13-105 entitled:

"A RESOLUTION AUTHORIZING THE USE OF A FORMULA FOR SHARING OF COMPACT FUNDS AMONG THE NATIONAL GOVERNMENT AND THE STATES FOR PURPOSES OF SUBMITTAL TO THE JOINT ECONOMIC MANAGEMENT COMMITTEE OF THE FEDERATED STATES OF MICRONESIA'S FISCAL YEAR 2005 CONSOLIDATED PLAN FOR THE DIVISION OF ANNUAL ECONOMIC ASSISTANCE UNDER THE FISCAL PROCEDURES AGREEMENT WITH THE UNITED STATES.",

begs leave to report as follows:

This Report represents a revision of Standing Committee Report No. 13-121 which was earlier introduced in this Congress.

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

The amended Compact of Free Association between the Federated States of Micronesia and the United States ("Compact II"), and the Fiscal Procedures Agreement entered into in connection with Compact II, create new requirements for the preparation and submittal of proposed budgets with respect to Compact funds. The FSM internal budget procedure laws have not yet been amended to reflect these additional requirements. As a result, there are certain steps in the Compact budgeting process for which statutorily-created internal procedures do not yet exist. One of those steps involves the determination of the division of Compact funds, among the National Government and the States, that is to be used in preparing the FSM's annual submittal to the Joint Economic Management Committee.

In October, 2003, a number of the national and state leaders met, under the auspices of EPIC, to consider, among other things, a formula for dividing Compact funds among the governments. The result of that discussion was a resolution setting forth a formula. The resolution was signed by some, but not all of those in attendance. Your committee

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notes that EPIC is an organization that is not recognized by the laws of the FSM and has no legal authority. The EPIC resolution is not binding on any government. Nevertheless, the President of the Federated States of Micronesia has called upon the National Government and the state governments to base their FY 2005 Compact budgets on the EPIC formula. The FY 2005 budget submitted by the President to Congress in fact incorporates the EPIC formula.

The procedure employed in establishing the FY 2005 Compact fund division formula is entirely unsanctioned by FSM law. Further, your committee submits that this procedure violates the FSM Constitution. Article XII, section 2, of the Constitution provides that the President shall annually submit a comprehensive National Government budget to Congress, and that Congress may alter that budget in any respect. The EPIC procedure whereby the President, without approval from Congress, purports to enter into agreements limiting the amount of the Compact fund budget that can be approved by Congress is, in the opinion of your committee, clearly unconstitutional. Your committee submits that no agreement among the National Government and the states relating to their respective shares of Compact funding can be legally effective without the approval of Congress. C.R. No. 13-105 has the purpose of authorizing the President to use the EPIC formula only for the purposes of the FY 2005 submittal to JEMCO. The resolution is designed to remedy the constitutional defect that would otherwise exist in the proposed FY 2005 budget.

Your committee is not prepared to endorse the EPIC formula that has been used in preparing the FY 2005 budget. It is not supportive of the significant cut in the National Government's share of Compact II revenues, as compared with Compact I levels. Your committee is also of the understanding that the EPIC formula was based upon a commitment by the states to takeover certain financial responsibilities previously borne by the National Government---a commitment that has not been kept in the states' FY 2005 budgets.

On the other hand, your committee is aware that the FSM's submittal to JEMCO is due in little over a month from now. If, at this point, a modification were made to the sharing formula, the National Government and all the state governments would be required to immediately make significant changes to their budgets. It is doubtful that this could

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be accomplished in the time remaining.

Therefore, mindful of the substantial disruptions that would result from now changing the division formula used by the governments in preparing their FY 2005 budgets, and of the risk that such a change would cause the FSM to miss the deadline for making its submittal to JEMCO, your committee reluctantly supports action by Congress to authorize the use of the EPIC formula for the purposes of the FY 2005 budget only. The committee further urges that Congress adopt legislation, before work begins on the FY 2006 budget, to create a constitutionally-sound internal budget procedure.

In order to make the resolution more clear, your committee recommends the following changes to C.R. No. 13-105:

1. Title, line 2, beginning with "for", through line 3, ending with "of", and insert "to be used by" in lieu thereof.
2. Title, line 4, delete "'s" at the end of "Micronesia", and, following "Micronesia" insert "in its".
3. Title, line, 5, following "assistance" insert "among the sectors to be submitted to the Joint Economic Management Committee".
4. Page 1, line 6, following "assistance", insert "among the sectors".
5. Page 1, line 11, delete "for the purposes of" and insert "in" in lieu thereof.
6. Page 1, line 17, delete "for the purposes of the" and insert "as a basis for the Federated States of Micronesia's" in lieu thereof.
7. Delete, page 2, line 1, beginning with "submittal", through line 2, ending with "a".
8. Page 2, line 3, following "assistance" insert among the sectors".

With the recommended amendments, your Committee on Ways & Means is in accord with the intent and purpose of C.R. No. 13-105 and recommends its adoption in the form attached hereto as C.R. No. 13-105, C.D.1..

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Respectfully submitted,

/s/ Sabino S. Asor  
Sabino S. Asor, chairman

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

Claude H. Phillip, member

Henry C. Asugar, member

/s/ Peter M. Christian  
Peter M. Christian, member

/s/ Dohsis Halbert  
Dohsis Halbert, member

Isaac V. Figir, member