

STANDING COMMITTEE REPORT NO. 13-203

RE: PRESIDENTIAL COMMUNICATION NO. 13-237/W&M

SUBJECT: VETO OF ACT EXPANDING THE DUTIES OF THE REGISTRAR OF  
CORPORATIONS

DECEMBER 15, 2004

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

Dear Mr. Speaker:

Your Committee on Ways and Means, to which was jointly referred Presidential Communication No. 13-237 conveying the President's veto of C.A. No. 13-74, entitled,

"AN ACT TO FURTHER AMEND TITLE 36 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTION 201 THEREOF TO EXPAND THE DUTIES OF THE REGISTRAR OF CORPORATIONS, BY ADDING NEW SECTIONS 207, 208 AND 209 THERETO, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

Congress passed C.A. No. 13-74 (C.B. No. 13-135, C.D.3) during the Fourth Regular Session of the Thirteenth Congress. Through Presidential Communication No. 13-237, dated December 10, 2004, the President advised Congress that he had vetoed this act. A copy of C.A. No. 13-74 is attached.

C.A. No. 13-74 is a companion act to C.A. No. 13-70. The purpose of the two acts, taken together, is to create a tax on "major corporations", as that term is defined in C.A. No. 13-70. C.A. No. 13-74 would amend title 36 of the FSM Code to expand the duties of the Registrar of Corporations to include the retention of a "Registration Agent" to assist in promoting the formation of "major corporations" that would be subject to the new corporate income tax. The subject act also sets forth certain

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parameters relating to the compensation of the Registration Agent, including a provision barring payment to the Registration Agent from any funds other than those collected under the tax created by C.A. No. 13-70.

Your committee's observations and recommendations regarding C.B. No. 13-135 were set forth in SCR No. 13-178. Your committee continues to believe that the subject act and C.A. No. 13-70 present an opportunity for the FSM to generate much-needed revenues, partially offsetting scheduled decrements in Compact funding.

The President, in his veto message, takes issue with the language of C.A. No. 13-74 that would require that the contract with the Registration Agent be "exclusive". He states that the act would require that the FSM use a single agent "for all major corporations regardless of their country of origin. In fact, the act does not say that, nor was that the intention of your committee in recommending its passage. On its face, the act requires nothing more than that the Registration Agent be provided with exclusivity within the scope of the area for which its services are retained.

Your committee believes that it would not be beneficial either to the FSM or to the implementation of the corporate income tax to have multiple agents approaching the same international corporations and purporting to represent the FSM. Confusion and inconsistency would inevitably result. It is vastly preferable that, when the Agent communicates with a corporation, it does so in the role of the "exclusive agent" for the FSM. On the other hand, nothing in C.A. No. 13-74 requires that anyone be designated as the exclusive agent for the entire world. The exclusivity provision of the Agent's contract could be limited, consistent with the terms of the act, to corporations with home offices in a single, specified country or region, or even to corporations in a single industry. The purpose of C.A. No. 13-74 is, in fact, to allow the Executive Branch substantial latitude in negotiating the geographic and temporal scope, and other provisions of the agency agreement. Your committee does not agree that the act inappropriately ties the Executive's hands in retaining a Registration Agent.

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The President also expresses concerns about a constitutional issue relating to the distribution of revenues from the new corporate income tax. Your committee observes that this concern is entirely speculative. The act itself does not address how the revenues are to be distributed and, therefore, does not offend the constitution in any way. Your committee submits that there will be ample time to consider this question before any revenues are received. There is no reason why it must be resolved now. The most important objective is to realize these potential revenues, regardless of which government or governments benefit. No one will gain by killing the tax now.

The benefits to the FSM of the corporate income tax and the related expansion of the duties of the Registrar of Corporations were discussed in SCR Nos. 13-178 and 13-179. That information will not be reiterated here. Suffice it to say that your committee continues to support the adoption of an income tax on major corporations, and the expansion of the Registrar's duties as necessary to effectively implement that tax.

Accordingly, your Committee on Ways and Means remains in accord with the purpose and intent of C.A. No. 13-74 and recommends that the President's veto of that act be overridden, subject to a concurring report from your Committee on Resources and Development.

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Respectfully submitted,

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

Roosevelt D. Kansou, vice chairman

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

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

Isaac V. Figir, member

/s/ Dohsis Halbert  
Dohsis Halbert, member

Claude H. Phillip, member