STANDING COMMITTEE REPORT NO. 13-205

RE: PRESIDENTIAL COMMUNICATION NO. 13-247/W&M

SUBJECT: VETO OF ACT TO AMEND INTERNAL BUDGET AND FINANCE PROCEDURES

JANUARY 18, 2005

The Honorable Peter M. Christian
Speaker, Thirteenth Congress
Federated States of Micronesia
Fifth Regular Session, 2005

Dear Mr. Speaker:

Your Committee on Ways and Means, to which was referred Presidential Communication No. 13-247 conveying the President's veto of C.A. No. 13-85, an act entitled,

> "AN ACT TO FURTHER AMEND TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY REPEALING CHAPTER 3 IN ITS ENTIRETY AND ENACTING A NEW CHAPTER 3 TO BRING THE FSM'S INTERNAL BUDGET AND FINANCE PROCEDURES INTO COMPLIANCE WITH THE AMENDED COMPACT, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

Congress passed C.A. No. 13-85 (C.B. No. 13-80) during the Fourth Regular Session of the Thirteenth Congress. Through Presidential Communication No. 13-247, dated December 22, 2004, the President advised Congress that he had vetoed this act. A copy of C.A. No. 13-85 is attached.

The purpose of C.A. No. 13-85 is to amend the nation's internal budget and finance procedures so as to enable the FSM to meet its obligations under the amended Compact and the Fiscal Procedures Agreement ancillary thereto. The Act, among other things, (1) establishes a procedure for the preparation of the FSM's Compact budget request to be submitted annually to the Joint Economic Management Committee, (2) establishes procedures for the approval, appeal and rejection of sector grant awards under the Compact, (3) creates, as required by the amended Compact, a Compact Financial Assistance Fund, an Operational Reserve Fund, and an Infrastructure Maintenance Fund for the purpose of receiving and managing monies paid to the FSM under the Compact; (4) establishes procedures for the disbursement of Compact funds to the National Government and the states, (5) authorizes the reprogramming of funds to the extent permitted by the Compact; and (6) sets forth reporting and audit requirements relating to the use and

management of Compact funds.

It is indisputable that legislation is required to establish procedures for the preparation of Compact budget requests to JEMCO, for the handling of sector grant awards when received, and for the management of Compact funds. Recognizing this need, the President, in January, 2004, transmitted to Congress C.B. No. 13-80 and recommended that it be adopted promptly after ratification of the amended Compact.

The existing chapter 3 of title 55 of the FSM Code is materially inconsistent with the requirements of the Compact and the Fiscal Procedures Agreement. For example, sections 303 and 304 of title 55 currently require that the National Government and the states base their annual operations and development budgets on the Memorandum of Understanding on the Division of Grant Assistance entered into in connection with Compact I (the "Compact I MOU"). That MOU establishes a division of Compact funds among the five governments, broken down according to grant categories that do not even exist under the amended Compact. Similarly, sections 307 and 314 require the states to submit to the President appropriations legislation and drawdown schedules in August of each year, while, under the amended Compact, the FSM in not likely even to be given notice of sector grant awards until September. Section 306 of the current law creates reprogramming authority that is wholly incompatible with the terms of the amended Compact. There are numerous other instances in which the current chapter 3 is either insufficient to meet the requirements of the amended Compact or in conflict with those requirements.

Your committee strongly believes that chapter 3 of title 55 must be amended. The FSM is a nation of laws. This is particularly true in matters relating to the receipt and management of public monies. Basic principles of accountability and transparency require that the management and use of public monies not be left to the unfettered discretion of individual government employees, but, rather, be controlled by laws and regulations duly adopted under the Constitution. Yet, at present, there is no law that establishes the procedures to be followed in applying for and managing funds under the amended Compact. There is no law authorizing members of the Executive Branch to take certain actions necessary to meet the FSM's obligations under the Compact. Worse still, your committee fears, it may even be necessary for public officials to take action that is contrary to the provisions of the existing chapter 3 of title 55 in order to comply with the requirements of the amended Compact. Your committee believes

that C.A. No. 13-85 represents a responsible and effective remedy to these problems. We are disappointed that the President has chosen to veto this important legislation, leaving members of his own administration without authority and workable procedures for preparing Compact budget requests and managing Compact funds.

The President offers two principal justifications for vetoing C.A. No. 13-85:

First, the President objects to subsection 303(2) of the act, which addresses how, for the purposes of preparing the Compact budget request to JEMCO, Compact funds are to be divided among the National Government and the states. The President argues that the division of Compact funds with the states is simply "an implementation issue" under a treaty and, as such, is "solely within the prerogative of the Executive Branch". He further suggests that the creation of any role for Congress in establishing the division formula may be contrary to the Constitution. As an initial matter, your committee observes that any decision on how Compact funds are to be divided with the states could increase or reduce funds available to the National Government by millions of dollars every year. As a result, it stretches credulity to characterize that decision as merely "an implementation issue", as distinguished from a major policy issue, determinative with respect to a significant piece of the National Government budget. To put this in perspective, sector grant funds available under the amended Compact in fiscal year 2005 totalled $76.2 million. If those funds had been divided according to the Compact I formula, the National Government would have received more than $10 million. Instead, a division formula adopted by EPIC was applied, resulting in a reduction of the National Government's share to $6.5 million---a reduction of more than $3.5 million. Taking the President's argument to its logical extreme, the President, in his sole discretion, could in the future agree that all Compact monies would go to the states, removing a further $6.5 million from the National Government budget, and still, Congress would be powerless to do anything about it. Your committee believes that to vest such a major budget decision in the President, without any requirement for Congressional approval, would directly and clearly violate the principles established by our Constitution.

One searches the Constitution in vain for any language that would support the assertion that the President has the sole discretion to divide Compact monies with the states. To the contrary, the Constitution, in our view, clearly mandates that any such division be

subject to Congressional approval. The Constitution creates a preeminent role for Congress in establishing the fiscal policies of the National Government. Article XII, section 2(a) provides that the President shall submit an annual budget to Congress, including "a complete plan of proposed expenditures, anticipated revenues, and other money available to the national government". It then states that "[t]he Congress may alter the budget in any respect." This section was described by the Constitutional Convention as giving Congress "the power to alter, increase or decrease, add or omit items within the Executive's plan." The President, in his veto message, claims that he, in fact, has the exclusive power to decide, on behalf of the National Government, on the division of Compact funds---i.e., on the amount of Compact money to be included in the National Government budget. He would, therefore, deny the Congress any ability to "increase" or "add" to that portion of the President's budget to be funded from Compact monies. Your committee firmly believes that such action by the President would violate the Constitution.

The President's current argument on this matter represents a serious departure from the long-standing understanding within the FSM regarding the respective roles of the President and the Congress in establishing a division formula for Compact funds. As mentioned above, the division formula for Compact I funds was established through a Memorandum of Understanding among the National Government and the states. Rather than being treated as a matter within the "sole prerogative" of the President, the MOU was submitted for approval by Congress. By C.R. No. 4-60, Congress approved the MOU. Then, through P.L. No. 4-77, Congress required that the operations and development budget be based on the MOU, effectively denying the President authority to alter the division formula without approval of Congress. Your committee believes that the approach taken under Compact I, unlike the position now asserted by the President, is Constitutionally sound.

Your committee fully supports the propositions that (a) the substantial majority of Compact funds should go to the states and (b) there is an important role for the President and the states in establishing a division formula. Section 303 of the proposed new chapter 3, in fact, encourages negotiations between the Executive and the states and authorizes them to enter into a binding division agreement, so long as the National Government's share is not reduced below ten percent of available Compact funds. Such an agreement may be for a single year or for a longer period. It is only if the National

Government's share is reduced below ten percent that further Congressional approval is required.

After giving the President's argument thorough consideration, your committee continues to believe that C.A. No. 13-85 addresses the division issue in a manner that is both Constitutionally and fiscally sound.

Second, the President expresses concern that subsection 307(2) creates the risk that the decision of one state government not to accept receipt of a portion of a sector grant could cause the United States to withhold the entire grant, to the disadvantage of the remaining governments. Your committee is surprised by the President's position on this subject. C.B. No. 13-80, as originally transmitted by the President, would have allowed any state to reject outright its portion of any grant, requiring the President to immediately notify the United States of the rejection. Congress, in order to avoid the very problem that now concerns the President, amended the bill to prevent the rejection of a grant, or any part thereof, without the approval of Congress. In place of the President's proposed language, Congress substituted a provision permitting the FSM to receive an entire grant, even if one of the states is dissatisfied with it. The state my then elect not to draw down its portion of the funds until its concerns are resolved. In the opinion of your committee, this amendment substantially reduces the risk presented by the bill as originally transmitted. It should also be noted that the concern expressed by the President is entirely speculative. The United States has not, to the knowledge of your committee, indicated that the decision of one state not to accept its portion of a grant would cause the withholding of funds awarded for projects in other states. In any event, the provisions of section 307(2) will have no application until sector grants are next awarded in September, 2005, leaving the FSM ample time to address this issue with the U.S. and adopt amending legislation if necessary. Your committee does not believe that this question justifies a veto of this act that provides the nation with badly-needed budget and finance procedures.

The President, in addition to the two major issues discussed above, has also raised two technical problems relating to the bill. Your committee does not understand that the President presents those items as providing a reason for vetoing the bill. Your committee will not, therefore, discuss them here other than to observe that, once C.A. No. 13-85 becomes law, both items can quickly and easily be fixed through

amending legislation.

In summary, your committee believes that it is in the best interests of the nation that C.A. No. 13-85 becomes law.

Accordingly, your Committee on Ways and Means remains in accord with the purpose and intent of C.A. No. 13-85 and recommends that the President's veto of that act, as communicated through Presidential Communication No. 13-247, be overridden.

Respectfully submitted,

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

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

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

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

Isaac V.Figir, member

Claude H. Phillip, member

/s/ Dohsis Halbert
Dohsis Halbert, member