

S.C.R. No. 13-51

SEPTEMBER 3, 2003

COMMITTEE ON JUDICIARY AND GOVERNMENTAL OPERATIONS

Your Committee on Judiciary and Governmental Operations, to which was jointly referred Presidential Communication No. 13-1, begs leave to report as follows:

Presidential Communication No. 13-1 concerns the National Government's proposed budget for Fiscal Year 2004 as set forth in a publication entitled National Government Proposed Budget FY 2004 ("Budget Book" ).

Pursuant to rule 7, section 4(b), of the Official Rules of Procedure of the Thirteenth Congress of the Federated States of Micronesia, your committee limited its review to those portions of the proposed budget relating to matters under its jurisdiction. These are.

- I. Operations Budget:
  - A. Department of Justice
  - B. Office of Public Defender
  - C. National Judiciary
  - D. Agencies, Boards, Authorities, Commissions and Corporations
    - 1. National Postal Services
  - E. Special Programs
    - 1. National Election Commission Office
  - F. Grants, Subsidies and Contributions
    - 1. State Joint Law Enforcement
    - 2. State Judiciaries
    - 3. Micronesian Legal Services Corporation
  
- II. Capital and Human Resource Development:
  - A. FSS Palikir Slipping

BACKGROUND

Your committee held a series of hearings on May 20, 21, and 22, 2003 with those individuals who best could provide information on the proposed budgets of the various offices and programs under your committee's jurisdiction. Based upon those hearings and further deliberations, your committee presented its "preliminary" findings and recommendations on June 2, 2003, in S.C.R. No. 13-12. Although adopted by the committee and placed on the Congressional Calendar for action, S.C.R. No. 13-12 was deferred, along with the "preliminary" reports of Congress' other standing committees, to the next session of Congress. Thereafter, each committee's preliminary FY 2004 budget report was transmitted to the President of the Federated States of Micronesia,

along with a transmittal letter indicating that, because many issues regarding budget procedures under the Amended Compact remained unresolved, each committee's standing committee report was merely "advisory" in nature.

Congress convened its Second Special Session of the Thirteenth Congress on August 25, 2003, to enact the FY 2004 budget and to conduct other business. On August 27, 2003, each committee's preliminary FY 2004 budget report was "re-committed" to the relevant committee. Accordingly, this standing committee report reflects the final recommendations of your Committee on Judiciary and Governmental Operations regarding the proposed FY 2004 budget.

### INTRODUCTORY COMMENTS

As an initial matter, your committee notes that, if there is no previously set policy about the implementation of the matters covered by this report, the provisions of this report, as adopted by Congress, must prevail. To protect the interests of our citizens, Congress has a duty to carefully review and question all requests for funding. As such, Congressional approval of committee reports detailing its reasoning for approval of each

funding request signals Congress' intent with respect to such funding and must not be taken lightly. This report, and all previous and subsequent reports by this committee, should be treated as policy for this Nation, as defined by the Congress. It is your committee's intent, therefore, that any commentary found in this report should be treated as policy for the guidance of the relevant departments, agencies and offices.

Despite the statutory mandate to enact a "balanced budget" (55 FSMC sec. 104), the FY 2004 budget proposed in the Budget Book is a "deficit" budget. The only "solution" suggested by the Executive for resolving this situation was to ask Congress to make additional cuts in the budget proposed. Given these somewhat uncertain financial times, your committee is confident each committee of Congress will do just that; but "cutting the budget" is not the only way to resolve a potential deficit, and it certainly is not the best way to resolve what could become a protracted problem. Rather, your committee would appreciate the Executive Branch suggesting more "creative", long-term solutions to the problem. For example, it would be much more helpful and productive to know: What is being done to improve our government's ability to more accurately project revenues? What actions have been taken to increase revenues? What are the government's plans to improve tax collections and the collection of judgments and fines due the National Government? What does the Executive plan to do about uncollected overtime charges that are supposed to be reimbursed by ships and other carriers to the FSM?

Congress has raised these and related questions numerous times, to no avail. This is not the first year that such questions have been asked, and, unfortunately, probably will not be the last. In the long run, positive, specific, pro-active plans in these and related areas would do much to help Congress and the President address the issue of "declining" revenues.

Your committee is also concerned about the Executive's proposed allocation of Compact II "sector grant" funds. If this Government truly intends to become "financially self-sufficient", day-to-day operations and "core" government functions must ultimately be funded from local revenues, and sector grant allocations must be made in a logical, straightforward and transparent manner. Even with all the additional documents, meetings and discussions that have taken place since May, your committee remains at a loss as to why some programs that seem suitable for Compact grant funding are intended to be funded by local revenues and vice-versa. This problem must be alleviated in future budget proposals.

Finally, unlike your committee's reports in past years, this report makes no recommendations for individual expenditures or categories of expenditures. Rather, your committee recommends only the "total" amount it believes reasonable and justifiable for each entity under its jurisdiction. Perhaps in coming years, the FSM's "performance" budgeting system, currently the "darling" of economists and others, will be able to provide timely and sufficient reports so that your committee will finally be able to review each goal and objective on both an "input" and "output" basis. Until that happens, however, your committee is relegated to recommending "total" amounts only.

With these thoughts in mind, your committee's findings and recommendations follow.

DISCUSSION OF FY 2004 BUDGET

As noted above, your committee held hearings in May, 2003. Based on the information received, the appropriations discussed below are presented, by entity, in the order in which they appear in the Budget Book. The figures given for each department/agency include the total amount appropriated by law for FY 2003 (in italics), as set forth in Public Law No. 12-50, as amended; the amounts requested by each entity for FY 2004

(as listed under "2004 Proposed" in the Budget Book); and the total amount recommended by your committee for FY 2004 (in bold).

Based on the documents and other information received during and subsequent to the hearings, your committee makes the following recommendations, subject to available funding:

I. OPERATIONS BUDGET

A. DEPARTMENT OF JUSTICE

	FY 2003 Committee Approp.	FY 2004 Request
Recommends		

Personnel		\$1,763,134
Travel		113,920
Contract Services		107,300
Other Expenditures		694,481
Fixed Assets		-0-
Total:	\$2,986,893	\$2,678,835
	<b>\$2,673,835</b>	

#/Employees	128	128
<b>128</b>		

The amount listed in the Budget Book (under "Expense Summary") as appropriated for the Department of Justice in FY 2003 is incorrect. See Budget Book at p. 335. Public Law No. 12-50, as amended ("P.L. No. 12-50") , appropriated a total of \$2,986,893 for the Department in FY 2003. See P.L. No. 12-50 at sec. 2(7). The total amount "proposed" in FY 2004 for the Department of Justice is \$2,678,835, a reduction of approximately 10.3% over the department's FY'2003 appropriation.

The President proposes 128 total positions for the Department of Justice, to be allocated as follows:

Office of the Secretary {5 positions)	\$ 92,105
Litigation Division (3 positions)	126,874
Law Division (3 positions)	128,400
Immigration and Labor (37 positions)	460,694
National Police (80 positions)	955,061

Absent plans to reduce the size of the Government's workforce or the number' of hours worked each week, your committee agrees with the number and allocation of positions. Other areas, however, raise concerns and may require adjustment, depending on available funding.

Contrary to what is printed in the Budget Book, and based on the most recent information your committee has received (see "Federated States of Micronesia Fiscal Year 2004 Executive Summary" dated "August 2003" ["Aug. 2003 Exec. Summary"]), your committee understands that the Executive now proposes to fund \$1,315,190 of the \$2,678,835 proposed for the department in FY 2004 from local revenues and \$1,363,645 (all of the Divisions of Law, Litigation and Immigration and Labor and part of the National Police) from Compact sector funds. If sector grant funds are not available by October 1 as anticipated or if there is any disapproval

of the proposed use of such funds, this government may find itself scrambling to find available funds for "core" government operations. Accordingly, your committee reviewed the department's current budget for areas of flexibility, i.e., areas where costs might be eliminated or properly shifted to other funding sources.

Your committee strongly suggests that any travel not related to the core functions of the department (e.g., travel related to attendance at international conferences, meetings, and training) be cut from the budget of each division or charged to the requesting agency/office. For example, attendance at meetings such as the FFA meeting in Honiara should be undertaken by the relevant department or agency (e.g., fisheries personnel) and not by attorneys from the department. If an attorney from the department is requested, the requesting agency should bear the entire cost of that attorney's attendance. Likewise, unless the Secretary of Justice is a member, by law, of a particular board or commission, the costs of attendance at such meetings by attorneys for the government should be borne by the relevant board or commission. Finally, the costs associated with organizing and/or attending "training"-related conferences and meetings (e.g., PILOM, MRLC, inspectors conference, SPCPC, etc.), whether in the FSM or elsewhere, should be funded by outside sources or skipped this year. This advice applies to the budget of each and every entity under your committee's jurisdiction.

Similarly, the use of FSM surveillance boats for non-surveillance activities interferes with important work of the department and drains department resources. Your committee was informed that the amounts calculated for surveillance boat operations in the FY 2004 budget are based on surveillance activities only, as they should be. Thus, ANY use of the surveillance boats for non-surveillance activities must be paid for by the requesting entity, including the President and Vice President. Any other arrangement is unfair to both the Department of Justice and those entities and organizations that do pay for use of the boats. This is especially important if costs associated with day-to-day surveillance operations are to be funded with U.S. sector grants.

One program that seems "ripe" for sector grant funding is the department's Legal Intern program, whereby the department hires Micronesian law students and law graduates to work in the department during semester breaks or while preparing to take the FSM bar exam. The department is to be commended for its dedication to this program, which is generally funded under "Contracts". It is a prime example of the type of project that could, and should, be funded with "capacity building" grant money.

The Administration is strongly encouraged to continue seeking funding from other sources to complement the projects and programs of the department. For example, during your committee's oversight hearings, the Chief of Immigration and Labor again stated that the division has received a commitment from the Australian government for a \$700K grant to establish a fully-computerized immigration system at each of the 4

major airports in the FSM. As explained to your committee, the project requires the FSM and the States to contribute a total of \$100,000 toward the project, to construct the necessary facilities at each airport. In addition, it will require equipment to "digitalize" FSM passports. However, nothing in the proposed FY 2004 budget addresses these critical projects. Your committee does not know if this was an oversight or purposeful. Whichever the case, the FSM should not miss this opportunity.

Not only should the Administration continue to see whether the FSM can benefit from such funds as U.S. "Homeland Security" funds (since, e.g., the program involves screening travelers to/from Guam, Kwajalein, etc.), it should also insure that these projects are included in the FSM's development plan and, as applicable, each State's development plan. Your committee was told that at least one State (Kosrae) has already agreed to revise their development priorities to construct the necessary facilities by January first.

THE DEPARTMENT ITSELF SHOULD ALSO BE LOOKING AT HOW BEST TO INCREASE REVENUES. ONE OBVIOUS AREA WHERE IMPROVEMENT MIGHT BE MADE IS WITH RESPECT TO LITIGATION .MORE MUST BE DONE TO COLLECT UNPAID JUDGMENTS AND FINES. IN ADDITION, SETTLING CASES WORTH THOUSANDS OF DOLLARS IN POTENTIAL PENALTIES AND FINES FOR "PENNIES ON THE DOLLAR" IS COUNTER-PRODUCTIVE. ALTHOUGH SETTLING A CASE CAN OFTEN SAVE THE GOVERNMENT MONEY IN THE LONG RUN (AN ARGUMENT OFTEN USED TO JUSTIFY SETTLEMENT), SETTLING CASES WITHOUT CONSIDERING THE TOTAL AMOUNT OF POTENTIAL FINES AND PENALTIES HURTS THE GOVERNMENT IN THE LONG RUN AND LEADS TO REDUCED RESPECT FOR OUR LAWS AND OUR NATION. THE DEPARTMENT MUST GIVE GREATER CONSIDERATION TO THE VALUE OF THE LITIGATION IT BRINGS WHEN SETTLING CASES. IF IT DOES NOT, CONGRESS MAY BE FORCED TO PLACE LIMITS ON THE DEPARTMENT'S ABILITY TO SETTLE CASES.

An area of concern to your committee is that of continuing complaints from airlines and other carriers and from fishing vessels about the number of employees used and the time charged for clearing Customs and Immigration. Your committee encourages the department to continue working with the private sector to develop a mutually-satisfying solution to this "nagging" problem and is hopeful a solution to the situation will be in place by the beginning of the fiscal year.

#### B. OFFICE OF THE PUBLIC DEFENDER

FY 2003	FY2004	Committee
Approp.	Request	Recommends

Personnel		\$409,723	
Travel		16,451	
Contract Services		21,343	
Other Expenditures		31,045	
Fixed Assets		1,800	
Total:	\$537,157	\$480,362	<b>\$480,362</b>
#/Employees	23	23	<b>23</b>

The amount requested for the Public Defender's Office for FY 2004 (\$480,362) is a reduction of approximately 10.6% from the FY 2003 appropriation. Although the Chief Public Defender asked for additional funding during your committee's oversight and budget hearing, given the current state of the proposed budget, your committee is unable to accommodate those additional requests.

The Chief Public Defender advised your committee that 3 positions are currently vacant: 2 in Chuuk (attorney and Public Defender Representative) and 1 in Kosrae (attorney). Your committee reminds the Chief Public Defender that each State's citizens must have access to the services of a licensed attorney. In particular, your committee is concerned about the absence of an attorney in the Kosrae office for such an extended period of time. This situation should be remedied at the earliest opportunity.

Another area of concern is the high cost of the office leases in Chuuk and Yap. While your committee recognizes it is often difficult to find appropriate office space in each of our States, your committee also

believes each State should be contributing to the cost of providing Public Defender services to its citizens, just as it does for MLSC services. The time has come for the Chief Public Defender to engage in active dialogue with each State about the financial realities of providing public defender services in that State. The idea of "free" legal services, provided solely by the National Government, may soon become "a thing of the past". The time to begin preparing for this possibility is now.

Finally, as with the National Judiciary, your committee is disturbed that no sector funds were allocated for projects or programs of the Public Defender's Office. Such things as Conduct of the Annual Public Defender Conference and books for each office's law library should be considered for sector grant funding. The Executive must be more creative, consistent, and fair in its proposed allocation of sector grant funds.

C. NATIONAL JUDICIARY

FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
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Personnel		\$596,803		
Travel		143,149		
Contract Services		120,800		
Other Expenditures		142,800		
Fixed Assets		23,000		
<b>Total:</b>	<b>\$998,630</b>	<b>\$1,026,552</b>	<b>\$969,070</b>	
 #/Employees	 26	 27	 27	

As printed in the Budget Book, the amount "proposed" for the National Judiciary for FY 2004 (\$1,026,552) represents an increase of almost 3% over the amount appropriated in FY 2003. The president, on the other hand, recommends a 9.3% reduction from FY 2003 (\$938,427).

Your committee is fully cognizant of, and dedicated to, the principle of "judicial independence", and recognizes the vitally important role an independent judiciary plays in our system of government. For this reason, your committee is loathe to comment on or tamper with the Court's goals and objectives, as stated in the FY 2004 Budget Book. And while both Congress and the Executive Branch understand the need to protect the Court's independence, in these turbulent financial times, it is important for all branches of the government to work together and suffer equally needed reductions in expenditures.

Although every part of the government has been asked to reduce budgets by at least 10% and neither the Judiciary nor the Congress should be an exception, your committee believes so strongly in the work of the Judiciary that it recommends a total budget of \$969,070 for the National Judiciary for this fiscal year. This amount is about 3% less than that appropriated for the Court in FY 2003, but more than that recommended by the President for FY 2004. Hopefully, the money will be found to fund this recommendation.

Your committee notes that, for a number of years now, the Court has asked for an additional position. A Secretary-Court Reporter position is desperately needed in Chuuk, where the Court's offices literally must shut-down every time the Court is in session because every employee is needed in the courtroom at that time. For this reason, your committee recommends allowing the Court to add a position for Chuuk, but cautions

the Court that funding for the position must be found within the recommended budget authorization. Likewise, the Chief Justice, who is to be commended for driving the same vehicle for the past 10 years, has asked for funds to purchase a new vehicle. Assuming

the funds can be found within the recommended budget amount, your committee has no objections.

Your committee was surprised and disappointed at the Executive's initial failure to allocate any sector funds to Judiciary projects or programs. Now, however, your committee understands that a significant portion of the Court's FY 2004 budget is to be funded with Compact sector funds. See Aug. 2003 Exec. Summary at p.9. Unfortunately, what projects and programs are actually to be funded by Compact sector funds remains a mystery.

Finally, your committee wishes to commend the Court for its dedication in developing a strong body of FSM judicial precedent. Court decisions that take into account custom and tradition and the social and geographical configuration of our Nation only add to the great respect with which our citizens view the Court. Your committee encourages the Court to continue to develop "Micronesian" judicial precedent. Your committee also looks forward to once again receiving copies of the Court's monthly statistical reports, starting October 2003, detailing the number of cases filed, disposed of, etc.

#### D. BOARDS, COMMISSIONS AND AUTHORITIES

##### 1. National Postal Service

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Personnel		\$394,597	
Travel		34,563	
Contract Services		96,673	
Other Expenditures		83,000	
Fixed Assets		-0-	
Total:	\$680,597	\$608,833	<b>\$612,537</b>
 #/Employees	 38	 38	 <b>38</b>

Again, the figures listed in the Budget Book as appropriated for FY 2003 are incorrect. The total amount appropriated for the National Postal Service in FY 2003 is \$680,597. See P.L. No. 12-50 at sec. 6(5). The amount proposed for FY 2004 (\$608,833) represents an overall reduction of approximately 10.6% from FY 2003. Your committee recommends a flat 10% reduction (\$612,537).

As usual, the Postal Service's budget presentation was straightforward and more than responsive to the President's request for cuts. The Postmaster General and his staff are to be commended again for their

dedication and willingness to "do more with less" each and every year. Others should learn from them. One item of concern, however, involves reports of delayed payments for expenses incurred by State post offices.

The Postmaster General is asked to personally review the procedures used by headquarters to process payment of State post office bills so that, beginning immediately, such bills are paid in a more efficient and timely manner.

## E. SPECIAL PROGRAMS

### 1. National Election Director's Office

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Personnel		\$176,550	
Travel		9,348	
Contract Services		15,900	
Other Expenditures		51,980	
Fixed Assets		10,500	
Total:	\$516,644	\$264,278	<b>\$237,850</b>
#/Employees	<i>11</i>	11	<b>11</b>

Your committee declines to make any specific recommendations for the National Election Director's Office, other than recommending a 10% cut in the amount requested. Too many questions remain about the need for full-time operation of State National Election Commissioner offices in each State during non-election years, and the "detail" set forth in the Budget Book merely adds to existing questions.

For example, in its alleged "performance" budget for FY 2004, \$29,746 is assigned to "Post Election Conference", but no election is scheduled to take place in FY 2004. Any "post election conference", if needed, should have been planned for, and taken place during FY 2003 when not one, but two elections were scheduled.

Equally disturbing, under "Other Current Expenses", the office seeks a whopping \$51,590, \$25,000 of which is for "telephone, fax and e-mail accounts". If your committee made detailed recommendations at this time, your committee would recommend not more than \$12,500 for communications. Your committee would also recommend significant reductions in "Personnel" costs.

Your committee implores the President to take a long, hard look at the operation of State National Election Commissioner offices and make firm recommendations to Congress on how these offices should be operated.

F. GRANTS, SUBSIDIES, AND CONTRIBUTIONS

1. State Law Enforcement

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Kosrae JLE	\$ 50,000		
Pohnpei JLE	85,000		
Chuuk JLE	95,000		
Yap JLE	60,000		
Total:	\$290,000	\$-:0-	<b>\$145,000</b>

Funds appropriated under this item in the budget have always been designated for "State Joint Law Enforcement". Without comment in P.C. No. 13-1, the President failed to recommend any amount under "Joint Law Enforcement" for FY 2004. Your committee recommends allocating \$145,000 for "State Law Enforcement", but declines to restrict it to "State 'Joint' Law Enforcement".

Much discussion has taken place over the past few years about the appropriate use of funds designated as "Joint Law Enforcement" funds. There appear to be two schools of thought: (1) the funds are general "grants" to the States to support State law enforcement (similar to that given to support State Judiciaries) and therefore may be applied to off-set any type of expense associated with state law enforcement; and (2) the funds are grants to the States to off-set a State's costs related to "joint law enforcement" activity only and therefore must be applied to that type of expense only.

Your committee believes the President should be the allottee of these funds and that he should decide whether the funds are to be used as a "general grant" to each State to support its State law enforcement activities or a grant to be used strictly for a State's "joint law enforcement" activities undertaken pursuant to 12 FSMC sec. 1201 et. seq.

2. State Judiciaries

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Kosrae		\$ 58,500	<b>\$ 65,000</b>
-unrestricted	\$25,000		
-law school schol.	40,000		
Pohnpei		81,000	<b>81,000</b>
-unrestricted	72,000		
-law school schol.	18,000		

Chuuk		81,000	<b>81,000</b>
-unrestricted	72,000		
-law school schol.	18,000		
Yap		63,000	<b>70,000</b>
-unrestricted	40,000		
-law school schol.	30,000		
Total:	\$315,000	\$283,500	<b>\$297,000</b>

The amount proposed by the President for each State's Judiciary represents a 10% decrease over the amount of the grant in FY 2003. However, because your committee believes strongly in the importance of the law school scholarship programs conducted by two of the four State Courts, your committee recommends maintaining the FY 2003 level of funding for both Kosrae and Yap. These Courts are to be commended for their excellent law school scholarship programs and for actively supporting Micronesian law students.

Your committee encourages the President to remind each State that, in these difficult times, every level of government should be expected to assume a greater share of the cost of their government operations, including State Court operations. While the Constitution states that Congress "shall" contribute to the financial support of State Judiciaries (FSM Const. art. XI, sec. 10), it does not say "how much". In this era of dwindling National Government resources, the States must assume more of the on-going costs of their courts.

### 3. Micronesian Legal Services

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Total:	\$150,000	\$150,000	<b>\$150,000</b>

Your committee thanks the Pohnpei office of the Micronesian Legal Services for its detailed information on the funding mechanisms available to MLSC and on the use of the funds appropriated each year by the FSM. Along with the Public Defender's Office, MLSC provides much-needed services to the citizens of the FSM. Your committee encourages MLSC management to make sure that each State is making its annual contribution to MLSC.

## II. CAPITAL AND HUMAN RESOURCES DEVELOPMENT

### A. FSS Palikir Slipping

	FY 2003 Approp.	FY 2004 Proposed	Committee Recommends
Total:	N/A	\$200,000	<b>\$200,000</b>

## CONCLUSION

With the modifications identified above, your Committee on Judiciary and Governmental Operations recommends authorizing those portions of the FY 2004 budget relating to matters under its jurisdiction, subject to the availability of funds, as determined by your Committee on Ways and Means.

Signed by Senators Halbert, Alik, Christian, Peyal and Fritz