

STANDING COMMITTEE REPORT NO. 14-44

RE: P.C. NO. 13-315 JGO/J

SUBJECT: FY 2006 BUDGET

SEPTEMBER 20, 2005

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

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was jointly referred Presidential Communication No. 13-315, begs leave to report as follows:

Presidential Communication No. 13-315 concerns the National Government's proposed budget for Fiscal Year 2006 as set forth in a publication entitled *National Government Fiscal Year 2006 Proposed Budget* ("*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 has 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 & 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
 - G. Capital and Human Resources Development projects and programs related to the departments and agencies within your committee's jurisdiction

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 that any commentary found in this report should be treated as policy for the guidance of the relevant departments, agencies and offices.

Your committee's findings and recommendations follow.

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INTRODUCTORY COMMENTS

Your committee received the Department of Justice's annual plan for FY 2006 only belatedly and did not have an opportunity either to thoroughly analyze the plan or to review it with the Department before submitting this report. Section 103 of title 55 of the FSM Code requires that the annual plan for each department be submitted with its proposed budget for the year. Your committee urges the Department to comply with the statutory deadline in the future. It is difficult for your committee to fully evaluate the Department's budget request in the absence of information on what the Department intends to accomplish through the proposed expenditures.

Your committee is aware that this is the first year that annual plans have been required under section 103. We think it important, therefore, to state that we do not believe that the plan submitted by the Department fully meets the requirements of that section. It does not meet the needs and expectations of your committee. Section 103 of title 55 contemplates that each department's budget and annual plan will be companion documents. Your committee expects that the Department of Justice, each year, as part of its budgeting process, will establish its goals and objectives for the upcoming year and that the plan will reflect those goals and objectives. The budget should then identify the costs of implementing that plan. We would certainly hope that each year's targeted accomplishments would reflect a commitment by the Department to improving the effectiveness and efficiency of its operations.

Your committee is concerned that the Department's FY 2006 "plan" does not reflect any true planning. We note that the activities and outputs set forth in the plan are, in most respects, identical to those that were included in the Department's performance-based budgets for FY 2004 and 2005. To the extent that the plan identifies numerical goals for 2006, they are, for the most part, unchanged from the prior two years. If the Department has any intention, in FY 2006, to do anything different from what it was doing in 2004 and 2005, or to improve the efficiency or effectiveness of its operations, that is not apparent from the plan that has been submitted.

Your committee recognizes that, due to the nature of its work, the Department of Justice will be required to use a portion of its assets in reaction to events that can not be foreseen or planned. Still, the nation will not be well served if the Department limits itself to a strictly reactive role. The Department should provide leadership in

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establishing a legal environment within which the FSM's social and economic goals can be attained. This leadership requires planning that should be reflected in the Department's annual plan.

Your committee encourages the Department, in establishing its annual plans to give serious consideration to how the Department can contribute to the accomplishment of the nation's goals. The Strategic Development Plan and the Infrastructure Development Plan have identified numerous challenges facing the National Government in its efforts to facilitate the economic growth of the nation. The Department of Justice has a role to play in addressing those challenges. Legislation will be required to reform the FSM tax laws and to encourage foreign investment. Immigration regulations and enforcement activities must be carefully designed to, among other things, ensure that FSM businesses have an adequate supply of skilled labor, while, at the same time, protecting employment opportunities for FSM citizens. FSM fishing grounds must be protected from illegal exploitation. Your committee encourages the Department to work with the Department of Economic Affairs, the Department of Finance, NORMA and other pertinent departments and agencies to establish an agenda for the Department that supports the nation's priorities. The Department's plan for the year should then clearly identify what it will accomplish during the year in furtherance of the national goals.

DISCUSSION OF FY 2005 BUDGET

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 2005 (in italics), as set forth in Public Law No. 13-46, as amended; the amounts requested by each entity for FY 2006 (as listed under "2006 Proposed" in the *Budget Book*); and the total amount recommended by your Committee for FY 2006.

Based on the foregoing thoughts, your committee makes the following recommendations, subject to availability of funds:

I. OPERATIONS BUDGET

A. DEPARTMENT OF JUSTICE

	<i>FY 2005 Approp.</i>	FY 2006 Request	Committee Recommends

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Personnel	\$1,808,530	\$1,797,660	\$1,837,660
Travel	110,127	150,344	117,190
Contract Services	105,800 w/suppl 186,000	200,061	138,900
Other Expenses	357,881 w/suppl 417,881	548,185	448,185
Fixed Assets	0 w/suppl 22,000	13,500	21,500
Total:	\$2,382,338 w/suppl 2,544,538	\$2,709,750	\$2,563,435
#/Employees	129	129	129

The President recommends a FY 2006 budget for the Department of Justice that is \$165,212 higher than the amount approved for FY 2005, including supplemental appropriations. The increase would be larger but for a \$40,000 reduction in the amount requested for overtime in the Immigration and Labor Division. Based on information provided at the public hearing, your committee understands that this cut is proposed in order to help balance the budget, rather than because the need for this funding has ended. In fact, this proposed cut represents a false economy. Most or all of this overtime expense is reimbursable by Continental Airlines or other carriers whose operations give rise to the need for the overtime. To the extent that this expense is ultimately born by the carriers, its elimination does nothing to help balance the budget. The only effect of the reduction is to reduce the level of service. Thus, your committee recommends that funding for overtime be restored to FY 2005 levels. We do recognize that reimbursement of these expenses can be slow, due in part to how long it takes Finance to invoice the expenses to the carriers. Your committee recommends that the Department of Immigration work with Finance to develop a process that will accelerate reimbursement.

The President's budget includes a substantial increase in funding for National Police patrol boat fuel. As expressed in our committee report on the Department's FY 2005 budget request and in discussions on the floor of Congress, the members of Congress have been concerned that, to a significant extent, the patrol boats are being used for purposes other than those for which the boats are intended. That concern caused the Thirteenth Congress to approve only a portion of the funding requested for patrol boat fuel in FY 2005. Your committee

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is of the opinion that the security of our waters is so critical to our nation's future that the patrol boats should be committed, except in emergency situations, to marine surveillance and search and rescue operations. However, information provided by the Department shows that the patrol boats are continuing to be used as a means of transportation for selected individuals. It is the intention of Congress, when it appropriates funds for the National Police, that those funds be used for police operations. It is not part of the function of the National Police to provide a ferry service. As a general proposition, your committee believes that patrol boats should not be taken away from surveillance duty in order to provide transportation services. Therefore, your committee recommends that the amount approved for patrol boat fuel be reduced, at this time, to \$200,000, subject to review later in the year. As a condition for further appropriations for this purpose, the Department should be required to report to Congress on a quarterly basis regarding the use of the patrol boats, including a description of the purpose of each trip by each boat, the duration of each trip and the account charged for the fuel.

A \$40,000 increase, over the amount approved for FY 2005, is being sought in the Department of Justice's travel budget. The Litigation Division travel budget would be increased by \$21,000 over the FY 2005 appropriation to permit more travel to Chuuk to prosecute cases. This would represent a nearly 100% increase in the litigation travel budget. The President also recommends that the Law Division receive a \$6,000 increase in its travel budget, and the Secretary's Office, a \$12,000 increase. The additional money for the Secretary's Office is to fund a trip to Germany to attend the COP-11 conference. Your committee is concerned about the priorities that are implicit in the increases being requested. At a time when the nation is struggling to find adequate resources to fund its social and economic development needs, it does not seem appropriate to be increasing the budget for lawyer travel for litigation or attendance at conferences. Your committee strongly supports enforcement of the nation's laws. At the same time, we believe that the Department's agenda should be balanced between such enforcement activities and the providing of services needed to support the nation's domestic goals. Accordingly, we recommend that the travel budgets of the Secretary's Office and Litigation Division be maintained at FY 2005 levels.

For FY 2005, the department was given \$22,500 under its contractual services budget to fund the legal internship program. For FY 2006, the President has proposed an additional \$7,500 for that program. Your committee supports this increase.

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The President recommends a \$20,400 increase in the contractual services budget for the Division of Immigration to cover additional office rental expenses. Your committee recommends that this increase be approved.

The President's budget includes \$229,850 for the National Police, which amount is described in the Budget Book as being for the purpose of paying overtime. Current law does not permit the National Police to be paid for overtime. The Department advises that this item in fact relates to sea pay and hazard pay premiums. Your committee encourages the Department to work with Finance to find a way that this item can be appropriately described in the budget. Your committee has received complaints that the National Police may be making hiring decisions based upon the state from which the applicant comes, rather than on qualifications. We urge the National Police, if they are not already doing so, to make sure that their hiring process is fair to all applicants and that the most qualified applicants are hired, without regard to the state from which they come.

Two items that are included in the FY 2006 Budget Book have already been funded by P.L. No. 13-87, a supplemental appropriation from the FY 2005 general fund: (1) a copier for the Secretary's Office at \$12,000, and (2) \$61,161 in overdue docking fees for the National Police. These expenses may therefore be excluded from the FY 2006 budget. The President, through Presidential Communication No. 13-334 has requested that the \$61,161 instead be appropriated to "Fixed Assets" to be used to purchase three motor vehicles for the National Police: two for Palikir, one for the Chuuk field office. Your committee recommends that this amount be reduced to \$20,000 to permit the purchase of one new vehicle for Pohnpei. We do not understand why a vehicle is needed in Chuuk, but would be prepared to reconsider this item after receiving an explanation.

In FY 2005, the total number of positions in the Department of Justice was 129. The President proposes no change in that number. Your committee agrees with the number and allocation of the positions.

Except for the increases and decreases of funding levels recommended above, your committee agrees with the President's proposed budget for the Department of Justice.

B. OFFICE OF THE PUBLIC DEFENDER

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The proposed FY 2006 for the Public Defender's Office is reduced by \$28,338 from the total appropriation for FY 2005. That reduction is accomplished in part by eliminating from the budget \$16,000 that Congress appropriated in FY 2005 to permit the payment of a professional premium to one or more qualified lawyers. There is also a \$14,800 reduction in the budget for office furniture and equipment. The Public Defender advises that a \$2,024 salary adjustment was omitted from the Budget Book and requests that this amount be added to the Office budget. The totals set forth below reflect that increase.

Your committee therefore recommends the funding levels indicated below:

	<i>FY 2005 Approp.</i>	FY 2006 Request	Committee Recommends
Personnel	\$426,921 w/suppl. \$442,921	436,915	\$438,939
Travel	128,154	130,000	130,000
Contract Services	54,043	39,486	39,486
Other Expenditures	34,545	37,700	37,700
Fixed Assets	17,850	3,050	3,050
Total:	\$661,513 w/suppl \$677,513	\$647,151	\$649,175
#/Employees	23	23	23

C. NATIONAL JUDICIARY

The total amount requested by the Judiciary and recommended by the President for FY 2006 is \$1,191,409. That figure is not materially changed from the FY 2005 appropriation:

	<i>FY 2004 Approp.</i>	FY 2005 Proposed	Committee Recommends
Personnel	\$689,312	\$705,901	\$705,901
Travel	169,088	165,371	165,371
Contract Services	128,500	126,900	126,900
Other Expenditures	175,820	165,748	165,748
Fixed Assets	28,335	27,489	27,489
Total:	\$1,191,055	\$1,191,409	\$1,191,409

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#/Employees	30	31	31

Although, except for the increase in the benefit expense, the total amount requested for personnel is not materially different from FY 2005, there are a number of significant, offsetting changes within that account. Provision is made for an additional state justice ombudsman at an annual salary of \$14,263. The budgeted salary for the currently-vacant national justice ombudsman position is reduced from \$40,660 to \$18,728. The legal webmaster position and one secretary/court reporter position are upgraded and the salaries increased by approximately \$5,000 each. There are also small decreases in the amounts budgeted for several positions.

The FY 2006 proposed budget for other expenses is approximately \$10,000 lower than the FY 2005 appropriation.

Your committee supports the proposed Judiciary budget and commends the Court for submitting a budget request that includes no increase over the level of FY2005 funding.

D. BOARDS, COMMISSIONS & AUTHORITIES

1. National Postal Service

For FY2006, the National Postal Service seeks a \$12,564 increase over its FY 2005 appropriation. Of that amount, \$6,200 is attributable to the increase in benefit costs. The other major component of the increase is an additional \$4,400 being sought for travel. Those additional funds would be used primarily to permit two employees, rather than just one, to participate in the annual audit. Your committee declines to make any changes either upward or downward on the budget for the National Postal Service recommended by the President and as indicated below:

	<i>FY 2005 Approp.</i>	FY 2006 Proposed	Committee Recommends
Personnel	\$396,286	\$402,488	\$402,488
Travel	36,248	40,692	40,692
Contract Services	97,255	98,273	98,273
Other Expenditures	84,000	84,900	84,900
Fixed Assets	-0-	-0-	-0-
Total:	\$613,789	\$626,353	\$626,353

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#/Employees	38	38	38

There is no increase or decrease in the number of positions allocated for the National Postal Service.

E. SPECIAL PROGRAMS

1. National Election Director's Office

The proposed budget for the National Election Director's Office is substantially reduced from the amount appropriated for FY 2005. Your committee notes however that, because FY 2005 was an election year, the budget for that year does not provide a useful point of comparison for this office's FY 2006 budget. FY 2004, a non-election year, was more comparable. Congress approved an FY2004 budget of \$237,850 for the National Election Director's Office. The National Election Director now seeks an FY 2006 appropriation of \$305,807, representing a 28.5 % increase over FY2004. The Director proposes significant increases, over FY 2004 levels, in every expense category with the exception of personnel. It is noted that the President made no recommendation on the National Election Director's Office proposed budget.

Your committee recommends approval of the budget submitted by the National Election Director, but does so with serious reservations. The election process in March, 2005 was fraught with problems. There have been numerous complaints about both the process and the performance of election officials. It is likely that Congress will be considering legislation to reform the election laws. It is not clear, at this point, how that might affect the budget of the election office. The committee also notes that the Office's budget includes \$16,000 for implementation of system to create voter identification cards. The planning of such a system has not been finished and appropriate approvals have not been obtained. It is possible that this budget item will be substantially increased, or deleted altogether.

	<i>FY 2005 Approp.</i>	FY 2005 Proposed	Committee Recommends
Personnel	\$176,550	\$180,081	\$180,081
Travel	33,777	13,326	13,326
Contract Services	163,025	27,100	27,100
Other Expenditures	107,766	37,800	37,800

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Fixed Assets	-0-	47,500	47,500
Total:	\$481,118	\$305,807	\$305,807
#/Employees	11	11	11

There is no increase or decrease in the number of regular positions allocated to this Office.

F. GRANTS, SUBSIDIES, AND CONTRIBUTIONS

1. State Law Enforcement

The President has recommended \$150,000 for "State Law Enforcement" in FY 2006. For FY 2005, the President initially requested and Congress approved \$100,000 for this purpose. Subsequently, Congress approved the President's request for an additional \$35,000. Your committee agrees with the President's recommended amount for FY 2006 and the recommended purpose of the proposed request.

	<i>FY 2005 Approp.</i>	FY 2006 Proposed	Committee Recommends
Total:	\$100,000 w/suppl \$135,000	\$150,000	\$150,000

2. State Judiciaries

The President recommends that \$120,000 be appropriated to "subsidize the operations of the State Judiciary Branches". This would represent a reduction of \$33,500 from the amount approved for FY 2005. The President also proposes to change the distribution of the funds as shown below:

	<i>FY 2005 Approp.</i>	FY 2006 Proposed	Committee Recommends
Kosrae	\$37,500	\$25,000	\$37,500
Pohnpei	40,500	35,000	40,500
Chuuk	40,500	35,000	40,500

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Yap	35,00*	25,000	35,000*
Court congestion relief projects			60,000
Total:	\$153,500	\$120,000	\$213,500

*See note below re use of funds appropriated for Yap.

Your committee supports reduction of National Government funding for the state judiciaries. 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. Your committee believes, however, that the states should be given ample notice that this reduction is coming so that they may plan, rather than leaving them to find this out when the annual budget is approved shortly before the beginning of the fiscal year. Thus your committee recommends restoring this funding to FY 2005 levels, with notice to the states that this amount will be significantly reduced in the FY 2007 budget.

Of the \$35,000 originally appropriated to Yap for FY 2005, \$10,000 was subsequently re-appropriated to the Public Defenders Office for use in funding law school scholarships. Your committee recommends that, for FY 2006, the full amount of Yap's portion of these funds be earmarked for that purpose.

Your committee also recommends that an additional \$60,000 be appropriated to assist state judiciaries in funding programs and projects designed to reduce case backlog and accelerate the disposition of cases. In at least some of our states, court congestion is resulting in long delays in the resolution of cases. There is a good deal of truth to the old saying "justice delayed is justice denied." Your committee encourages the state judiciaries to be imaginative and aggressive in taking steps to reduce case backlogs. Your committee has been informed that additional law clerks may be necessary in one or more of the courts. The implementation of mandatory mediation programs has also been suggested as a means to address this problem. The best approach may differ from state to state and, in any event, it is not for Congress to tell the state courts how to manage their caseloads. We can, however, appropriately provide financial assistance for those state courts that need it in order to reduce court congestion. It is our recommendation that the \$60,000 be earmarked for projects and programs undertaken for the

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specific purpose of reducing case backlogs. We also recommend that the Chief Justice of the FSM Supreme Court be designated as the allottee of these funds, so that he may determine which state court projects and programs qualify for such financial assistance.

The President has not requested any funds for law school scholarships in FY 2006. Although, except as discussed above relating to Yap, your committee is not recommending that any specific part of the appropriation for the state judiciaries be earmarked for such scholarships, it strongly urges the state courts to use a portion of their funds for that purpose. Your committee is informed that there are few Micronesians who have qualified for membership in the FSM bar. The nation continues to be dependent on expatriate lawyers to fill key legal positions in both the government and the private sector. The President recently vetoed C.A. No. 13-96, a bill to set minimum standards for membership on the FSM Supreme Court, on the ground that there are not "a sufficient number of suitably qualified local professionals." The nation will be well served by providing financial assistance to qualified students who wish to attend law school. Congress could directly appropriate funds for law school scholarships, but your committee believes that such financial support may be more effective if administered by the courts in the states where the students live. This question may need to be revisited in the future, but, at present, your committee recommends that Congress continue to appropriate funds that may be used for this purpose by the state courts.

3. Micronesian Legal Services

Congress originally appropriated \$100,000 to contribute to the support of Micronesian Legal Services in FY 2005. During the course of the year, concerns developed that the operations of this important agency could be impaired if additional funding was not made available. Accordingly, a supplemental appropriation of \$50,000 was approved. The President requests that, as in 2005, \$150,000 be appropriated for MLS in FY2006. Your committee agrees.

	<i>FY 2006 Approp.</i>	FY 2006 Proposed	Committee Recommends
Total:	<i>\$100,000 w/suppl \$150,000</i>	\$150,000	\$150,000

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G. CAPITAL DEVELOPMENT PROJECTS

The President recommends the following capital development projects for FY 2006:

4. Patrol Boat Slipping--\$200,000
5. Expansion and Renovation of Kosrae Public Defenders Office--\$20,000
6. Retaining Wall Construction, Pohnpei Public Defenders Ofc.--\$5,000
7. Renovation of Yap Post Office--\$50,000
8. Renovation of Chuuk Post Office--\$50,000

Your committee recommends approval of all of these items, with the following qualifications:

a) the funding for the Kosrae PD Office renovation should be subject to the condition that the expansion/renovation project must make it possible for the Election Commissioner's Office to share the same building with the PD's Office; and

b) the amount approved for the retaining wall work at the Pohnpei PD Office should be reduced to **\$4,000**.

CONCLUSION

With the modifications identified above, your Committee on Judiciary and Governmental Operations recommends authorizing those portions of the FY 2006 budget relating to matters under its jurisdiction, *subject to the availability of funds*, as determined by your Committee on Ways and Means.

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Respectfully submitted,

Dohsis Halbert, chairman

Roosevelt D. Kansou, vice chairman

Alik Alik, member

Tiwiter Aritos, member

Moses A. Nelson, member

Peter M. Christian, member

Ramon Peyal, member