

STANDING COMMITTEE REPORT NO. 14-85

RE: C.B. NO. 14-115/J&GO

SUBJECT: ELECTION LAW

MARCH 2, 2006

The Honorable Peter M. Christian  
Speaker, Fourteenth Congress  
Federated States of Micronesia  
Second Special Session, 2006

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations ("J&GO"), to which was referred C.B. No. 14-115 entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 9 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY REPEALING CHAPTERS 1 THROUGH 9 IN THEIR ENTIRETY AND ENACTING NEW CHAPTERS 1 THROUGH 8, AND FOR OTHER PURPOSES."

begs leave to report as follows:

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

Fair and efficiently administered elections are a critical element of any healthy democracy. Your Committee is extremely concerned that national elections in the FSM continue to be plagued by irregularities. We consider that the problems experienced in the past have stemmed in part from deficiencies in the law, however, there have also been failures on the implementation side. Your Committee is satisfied that overall the subject bill will go a significant way to eliminating future problems in relation to elections. Nevertheless, your Committee urges the Election Director to focus on effective implementation by: selecting election workers who are unbiased and will act with integrity; improving education and training for election workers; ensuring that the public receives sufficient information to enable them to exercise their democratic rights; improving the accuracy of the information held in relation to registered voters; and eliminating duplicate or false entries from the national voter register.

### **Background**

The subject bill would repeal the existing title 9 of the FSM Code in its entirety and substitute a new title in its place. There are a number of significant proposed changes to the election law including:

- the creation of an election revolving fund;

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- the creation of a number of new felonies relating to breaches of title 9;
- reporting on campaign contributions and expenditures;
- improved procedures for maintaining voter lists including a single unified national voter register;
- improved procedures for identifying voters, including the introduction of a voter identification card;
- election commissioners to be appointed by the national election director without the advice and consent of Congress;
- strengthening and consolidating the powers of the national election director; and
- the elimination of special polling places outside the FSM.

During the January 2006 session of Congress, the J&GO Committee held a public hearing on the above bill. At the hearing the Committee examined each of the proposed changes and the National Election Director and Assistant Attorney General Matthew Olmsted explained the rationale behind them.

In addition, the Postmaster General has been consulted on the revised deadlines for absentee voting by mail and has indicated that they are both reasonable and workable.

Comments have also been solicited from the States and Your Committee thanks the national election commissioner for Pohnpei for his thoughtful observations on the subject bill.

Your Committee has been advised that the Executive would need approximately 12 months to fully implement the proposed changes ahead of the March 2007 Elections.

#### **Recommendations of your Committee**

Your Committee has given careful consideration to the proposed amendments in CB 14-115 considers that, overall, they represent a significant improvement upon the existing law. However, after extensive consultations and deliberations, we recommend a number of amendments to the bill which are set out in detail below and reflected in the attached CD1 version of the bill.

1. Due to inadvertent clerical errors, the bill as introduced differs from the bill transmitted by the President in a number of

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respects. Your Committee therefore recommends certain amendments to rectify this.

2. Your Committee also recommends a number of technical amendments to rectify typographical errors and to clarify the language of the bill.
3. Under the current law, general elections are held on the first Tuesday in March, with the organization of Congress taking place during the following May. This arrangement leaves a very short window of opportunity in which to resolve challenges to election results. On this basis, your Committee recommends that general elections be held on the first Tuesday in February in order to reduce the likelihood of Congress having to rule on the qualifications of its members before such disputes are resolved.
4. After careful consideration of the proposal for an elections revolving fund, your Committee recommends that elections continue to be funded by direct appropriations at least until March 2007. During the hearing the Executive indicated that anticipated revenues from fees associated with issuing voter identification cards ("VICs") were the principal reason for proposing an elections revolving fund. At this stage it is not clear how much revenue will be generated by charging fees for issuing Voter Identification Cards, particularly in light of the amendment recommended by your Committee at item 5 below. We therefore suggest that no elections revolving fund be created at present, but that the proposal be reviewed in a year's time once a clearer picture of the revenues generated pursuant to title 9 and the regulations thereto is available.
5. During the public hearing on CB 14-115, your Committee heard testimony that the VIC would significantly reduce the possibility of election fraud. As such, it is desirable that as many registered voters as possible are issued with VICs. In order to facilitate this process, your Committee recommends that VICs be issued to voters free of charge in the first instance, but that there be a fee for issuing a replacement card.
6. Section 108 of the proposed bill provides that no public property shall be made available without cost to a candidate for campaign activities. In addition, the provision would require that any

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public property made available to one candidate must be made available to other candidates on the same terms.

The intention behind this provision, to 'level the playing field' for all candidates, is admirable. However, the discussion of this provision during the public hearing raised some significant questions in regard to how effective it would be in practice. Despite some reservations, your Committee, supports this amendment with one minor change, that is, a blanket prohibition on the use of national government vehicles for campaigning purposes.

7. Section 112 of the bill, provides that the Act shall be interpreted so as to prefer the true will of voters rather than strict enforcement of the formalities of procedure. This language seems to open the way for more uncertainty rather than less. Your Committee therefore recommends that the said language be deleted.
8. Section 205 of the bill provides that candidates shall file reports on campaign contributions and expenditures. In addition, section 303 empowers the Election Director to require reporting on campaign financing and section 111 would make it a criminal offence to knowingly file incomplete or inaccurate information. While your Committee considers that the intention behind these provisions is admirable, we are concerned obligations imposed on candidates are vague and open to interpretation. In any event, the Department of Justice does not currently have the resources to prosecute the full range of offences within its jurisdiction. Your Committee therefore is concerned that the creation of new offences of this kind will unacceptably strain the limited resources of the Department of Justice.
9. Elections advisor...
9. Section 302 of the bill, as transmitted by the President, would eliminate the advice and consent role for Congress in the appointment of national election commissioners. Your Committee recommends that the role of Congress be retained.
10. Section 602 provides that a request to vote in a general election absentee by mail must be submitted no later than 30 days before

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election day, the election commissioner must then ensure that a ballot is sent to the voter at least 25 days before an election. Voters must then ensure that the relevant state's National Election Commissioner receives their ballots by the closing of the polls on Election Day. In light of the delays routinely experienced in sending mail to and from the FSM, it seems possible that this time frame may lead to the exclusion of a significant number of absentee ballots. On this basis, your Committee recommends that the deadline for requesting to vote absentee by mail be increased to 40 days, and the deadline for sending a ballot to an absentee voter be increased to 30 days prior to a general election.

10. Revision of judicial review provisions.
11. removed prohibition on court orders staying/preventing revotes and recounts.

With the foregoing changes, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 14-115 and recommends its passage on First Reading, and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. 14-115 CD1.

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Respectfully submitted,

/s/ Dohsis Halbert  
Dohsis Halbert, chairman

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

/s/ Alik L. Alik  
Alik L. Alik, member

/s/ Tiwiter Aritos  
Tiwiter Aritos, member

Peter M. Christian, member

/s/ Moses A. Nelson  
Moses A. Nelson

/s/ Ramon Peyal  
Ramon Peyal, member