

STANDING COMMITTEE REPORT NO. 16-25

RE: C.R. NO. 16-27/EX.AFF

SUBJECT: ¥200,000,000 FINANCIAL GRANT, FROM THE
GOVERNMENT OF JAPAN

SEPTEMBER 25, 2009

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Second Regular Session, 2009

Dear Mr. Speaker:

Your Committee on External Affairs, to which was referred Presidential Communication No. 16-55 regarding C.R. No. 16-27, a resolution entitled:

"A RESOLUTION APPROVING AND ACCEPTING THE ¥200,000,000 FINANCIAL GRANT, AND ALL THE TERMS AND CONDITIONS OF SAID GRANT, FROM THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA.",

begs leave to report as follows:

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

This resolution is for the approval of a grant from Japan. The subject grant is a "non-project" grant of Yen \$200,000,000 (approximately USD 2 million) that was generously awarded by the Government of Japan subsequent to the visit of former Prime Minister Mori of Japan to the FSM with a view to strengthen friendly and cooperative relations between the FSM and Japan. The grant was officialized by an exchange of notes between the Embassy of Japan and the Department of Foreign Affairs on January 21, 2009.

The grant is not tied to a specific project and can be used for a wide variety of eligible goods and services at the discretion of the government of the FSM. Examples of eligible products are feed stuff for animals, rubber latex, coal, petroleum products, pulp paper, heating and cooling equipment, electrical machinery etc. The exchange of note states the purpose of the grant as:

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"[...] contributing to promotion of the economic structural adjustment efforts by the Government of the Federated States of Micronesia as well as mitigation of the economic difficulties, including indebtedness, of the Federated States of Micronesia."

Your Committee is informed that by internal agreement, the Executive branch has indicated that it wants to use to proceeds to purchase fuel, and to distribute such fuel in accordance to a formula arrived at the Chief Executives Conference among the President and the Governors.

Your Committee held a public hearing on September 22, 2009. Witnesses included Deputy Secretary Jane Chigiya and Assistant Secretary Kandhi Elieisar of the Department of Foreign Affairs. Also appearing was Assistant Attorney General June Bacalando of the Department of Justice.

Secretary Chigiya gave a history of the grant, how it was given as a result of former Prime Minister's Mori visit to the FSM, and how Congress approval's of the loan is crucial to show the appreciation of the FSM for such generous gesture.

Your Committee's questions focused on the divisions of the proceeds of the grant. Assistant Attorney General Bacalando testified that when there are no specific provisions on distribution, as is the case with the present grant, the Constitution dictates that the grant be divided equally among the five governments (national and the four states). Mr. Elieisar disagreed, stating that the committee should consider that the grant, even though worded generally, was given in response to Mr. Mori's visit to Chuuk.

Your Committee held another hearing on September 24, 2009. Appearing again were Mr. Bacalando for the Department of Justice, and Mr. Elieisar for the Department of Foreign Affairs. Also testifying were Feliciano Perman, General Manager of the Pohnpei Utilities Corporation and Jared Morris, CEO of Petro Corp.

Mr. Elieisar reiterated the needs for prompt approval of the grant. The Department of Foreign Affairs has submitted charts showing suggested distributions of the proceeds but Mr. Elieisar did not know how the distribution formulas was arrived at, and that maybe they were the same as the Compact distribution formula.

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Mr. Bacalando stated that reviewing the paperwork in his possession, including the proposed distribution, he still is of the opinion that the constitutional provision of equal distribution should apply, unless Foreign Affairs can supply additional information pertaining to the donor's intent. Your Committee also pointed out a provision in the grant restricting the source of goods to be purchased with the grant to those outside the FSM, and asked Mr. Bacalando whether the proceeds of the grant can be used to purchase fuel from Petro Corp in light of that provision. Mr. Bacalando stated that he will look into the matter.

Mr. Perman from PUC asked that Congress expedite approval of the grant, explaining that the delay may be costly because of the continuing rise in fuel price.

Mr. Morris from Petro Corp echoed the sentiment. He explained that the distribution formula was based on the idea of giving the entire grant to a national government entity, which would allocate the fuel based on the needs of the individual states.

Your Committee is aware of the sensitivity of the distribution of this grant, but is foremost concerned that the actions of Congress, with all due respect to the CEC, be consistent with the FSM Constitution. Your Committee therefore recommends accepting the grant with additional language stating that Congress accepts the grant provided that the distribution of the proceeds follow the Constitution

In that respect, your Committee recommends the following amendment to C.R. No. 16-27.

1. Page 2, line 20, insert the following:

WHEREAS, the Constitution of the Federated States of Micronesia governs the division of proceeds of foreign financial assistance;
and

2. Page 3, line 3, insert the following:

BE IT FURTHER RESOLVED, that the Congress reiterates its intent to follow the Constitution in respect to the division of proceeds of this grant; and

Your Committee is extremely grateful for the Government of Japan for making such a generous grant and recommends adoption of the resolution as amended.

