

STANDING COMMITTEE REPORT NO. 16-63

RE: P.C. NO. 16-149/J&GO

SUBJECT: SUPPLEMENTAL REQUEST/FY 2010 BUDGET

FEBRUARY 9, 2010

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Third Regular Session, 2010

Dear Mr. Speaker:

Your committee on Judiciary and Governmental Operations, to which was jointly referred Presidential Communication No. 16-149, begs leave to report as follows:

Presidential Communication No. 16-149 concerns the National Government's proposed supplement budget for fiscal year 2010 as set forth for C.B. No. 16-70 entitled "To appropriate from the General Fund of the Federated States of Micronesia a supplemental funding in the amount of \$2,274,901 for the fiscal year ending September 30, 2010, by amending sections 1, 2, 6, 8, and 9 of Public Law No. 16-7, as amended by Public Law No. 16-20, and for other purposes".

Begs leave to report as follows:

Your Committee held public hearings on December 3, and December 5, 2009 and also on January 26 and January 28, 2010 to discuss the proposed supplemental requests. Your Committee limited its review to those portions of the proposed supplemental budget relating to matters under its jurisdiction, as found in rule 7, section 4(b) of the official Rules of Procedure of the Sixteenth Congress of the Federated States of Micronesia.

These are:

I. Supplemental Operations Budget:

1. Department of Justice

- a. Division of Immigration and Labor
 - i. Reclassification of Immigration and Labor Officers
 - ii. Blank Passports
- b. Division of Litigation
 - i. Additional staff for Field Office in Chuuk
- c. Maritime Surveillance
 - i. Dry-docking of the FSS Palikir

2. National Judiciary

- i. Medical Expenses for Chief Justice

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3. National Election Commission Office
 - i. March 2009 Election Outstanding Billings
4. Postal Service
5. Special Programs
 - i. Public Education on Constitutional Amendments

This report by your Committee should be treated as policy of 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 are as follow:

INTRODUCTORY COMMENTS

Your Committee appreciates the President's efforts to contain and reduce where possible the costs of governmental operations during the previous two fiscal years. The President expressed his goal as not exceeding the two fiscal years levels of funding and applying a 10% budget reduction on travel and non-essential expenditures for the same. Your Committee initially applauded the President's efforts, but was disappointed that supplemental requests continued to be submitted to Congress shortly after the beginning of each fiscal year. These have led to wasting of Congress time on budget matter issues during most of its sitting sessions. Congress must focus on work relating to legislation to improve the business environment in the Country and other important tasks to improve the lives of our people.

DISCUSSION OF FY 2010 SUPPLEMENTAL BUDGET

Your Committee commenced oversight hearings and the review of the Supplemental Budget in December 2009. As we continued our work into January 2010, we noted that a subsequent supplemental request received in January under Presidential Communication 16-149 changed the first submission by further increasing some of the requests and added more funding requests. There are times that your Committee feels that supplemental requests tend to change based on any carry over funds from previous years.

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Your Committee held public hearings on December 3 and December 5, 2009, and also January 26, and January 28, 2010, for discussion on the proposed supplemental requests. In attendance during the hearings were the following witnesses: representing the Department of Justice were Acting Secretary for the Department of Justice, Mr. Johnson Asher; Attorney Jun Bacalando; Chief of Litigation Ms. Pole Atanraoi; Chief of National Police, Mr. Pius Chotalilug; Assistant Secretary for the Division of Immigration and Labor, Mr. Mohner Esiel, and Administrative Assistant, Ms. Elizabeth Hallen. From the Office of the President was Mr. Pelsesar Petrus. Representing SBOC was Semensin James and Mrs. Esiri Edward, both from Budget and Tax; and Revenue Commissioner John Uwas and Mrs. Edward. Representing the Department of Finance and Administration were Acting Secretary Angie Lambert and Maria Shoniber from the Personnel Division. Representing the FSM Supreme Court were Associate Justice Denis Yamase, Chief Clerk Kohsak Keller and National Justice Ombudsman John William. Representing the Department of Health was Secretary Dr. Vita Skilling. Finally, representing MiCare were Dr. Jordel Haravilla, Ignatius Manglay and Eusebio Mangonon.

Your Committee makes the following recommendations, subject to availability of funds:

1. DEPARTMENT OF JUSTICE

a. Division of Immigration and Labor

- i. Reclassification of Immigration and Labor Officers.
\$70,560

Mohner Esiel, Chief of Immigration and Labor, informed the Committee that the Divisions of Immigration and Labor merged in 1998; and the newly created Division has been seeking reclassification of officers since that time. The reclassification is necessary to reflect the expanded job duties and responsibilities of the Division's employees. The Division is not seeking additional positions at this time, only reclassification of the current positions to reflect the responsibilities of the Immigration and Labor Officers. In addition to Immigration duties and responsibilities, the officers now also handle job site inspections and are certified by OSHA; the combined duties require increased training and responsibilities, but the classification grades have never been changed to reflect this. The

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reclassification was not included in the FY 2010 budget originally submitted to Congress.

Your Committee was provided with the list of the positions for which reclassification is requested and the pay differential. The Representative of the Personnel Office agreed with the reclassification.

Your Committee recommends appropriating the requested amount of \$70,560.00 to support the reclassification of Immigration and Labor Officers to reflect their increased job duties and responsibilities.

ii. Blank Passports \$ 150,000

The President requested additional funds in the amount of \$150,000 to purchase additional blank passport books. Mr. Mohner Esiel from the Immigration and Labor Division testified that the amount of \$150,000 is to purchase 12,832 passport books for a 12 month period. Currently, his Office has 6,800 blank passport books left, less than a year's supply. His Office issues up to 8,000 passports a year based on previous years records. A new supply of passport books is therefore necessary to keep up with demand.

Your Committee was informed by the Immigration Office that it needs to restock in advance in order to keep up with the anticipated yearly demand. Mr. Esiel testified that the increase in a higher number of blank passports would be cheaper than the requested 12,823 blanks. He said that perhaps 35,000 blank passports would be necessary for a 3.5 years supply; we could save up to 15% from the producers. Your Committee was concerned with the higher number, due to security problems and frequent changes of passport security features.

Mr. Esiel stated that there is no full guarantee for the security of the blank passport books, but he assures your Committee that the companies who are going to produce the passport books are well known in the security field, and as such his office will be able to monitor any future breach.

Your Committee after considering the savings expected from a high volume order and the short period to use up the 12,823 blank passport books recommends allocating \$250,000 instead of the \$150,000 requested by the President.

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b. Division of Litigation

i. Additional Staff for the Field Office in Chuuk \$35,555

The President requested \$35,555 for the Department of Justice to hire two additional investigators and an office manager. The Acting Secretary of Justice, Mr. Asher and Chief Litigator Ms. Pole Atanraoi both testified that the cost of handling the many weapons violations in Chuuk continues to increase. The requested additional staff is to lessen the workload and cost associated with investigation and procedural work on Weno. Chief Litigator Ms. Atanraoi informed the Committee that travel expenses for her division for FY 2009 was \$16,000 while her travel allocation for FY 2010 is only \$9,973. Most of her travel expenses have been for travel to Chuuk for cases mostly linked with firearms prosecution.

Currently there are 24 cases in Chuuk: 4 pending weapons cases, 8 post trial criminal cases, 2 trials coming up in the next two months, and at least 8 cases still under investigation.

Your Committee was further informed that firearm offenses are within the realm of possible concurrent jurisdiction. Unlike the other states, Chuuk does not have laws to control firearm offenses. However, there are Joint Law Enforcement Agreements (JLEA) between the states and the National Government that allow the states to prosecute cases on behalf of the National Government. Such agreements have been signed with the other states, with the exception of Chuuk. Chuuk State demands more money beyond the \$50,000 allocated under the agreement.

Your Committee raised the question of whether the National Government can relegate its responsibilities with regard to firearm offenses in Chuuk, since they are concurrent subject matter to reduce costs. Your Committee was informed by the attorney witnesses that it will require in-depth research to arrive at a solid legal conclusion as firearm offenses extend into other areas of law such as inter-state commerce.

Your Committee expressed the desire that perhaps the National Government should withdraw itself from prosecution of major crime at the state level, since this matter has been delegated to the states under previous referendum. With this understanding, the Committee recommends that the National Government should set a deadline to withdraw from enforcing major crime legislation in Chuuk State.

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Based on the testimonies and further inquiries regarding Chuuk State, your Committee noted that the State Police are handling the investigation of major crimes in Chuuk. The prosecution aspect, however, is lacking due to the State Attorney General's minimum role in prosecution. It is therefore the view of your Committee that for the time being further Chuuk State assistance should be sought through the JLEA arrangement instead of the requested additional national staff in Chuuk. Accordingly, your Committee does not approve the expenses for additional staff in Chuuk.

c. Maritime Surveillance

i. Dry-docking of FSS Palikir \$ 250,000

The President requested the amount of \$250,000 to cover the costs of dry-docking for the FSS PALIKIR in Australia. The Chief of National Police, Mr. Chotailug, stated that this request was originally for the FSS Independence back in 2009. However, since FSS Independence is now due for the Life Extension Program for which the Australian Government provides the funds, Mr. Chotailug asked that the requested funds be spent on FSS PALIKIR, as she was due for dry-docking over a year ago.

Your Committee did not question the request expense for the dry-docking and therefore recommends the requested amount of \$250,000 for the above purpose.

2. National Judiciary

a. Medical Referral for Chief Justice \$20,000

The President submitted a \$20,000 request for defraying the medical expenses for the referrals of the Chief Justice to Hawaii. Associate Justice Dennis Yamase testified that the requested amount was put forward for supplementing payment of the expenses for the Chief Justice. Associate Justice Yamase during the hearing also alerted the Committee that the situation has changed since information has been received about the passing of the Chief Justice in Hawaii on the 26th of January 2010. With this new information, Justice Yamase was asked by the Chairman to also provide possible funeral expenses for the Chief Justice. The Committee asked Associate Justice Yamase to provide further information in writing in a timely manner.

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Focusing on the \$20,000 supplemental request, representatives from MiCare informed the Committee that the Chief Justice was on Supplement Benefit under the Program. An amount of \$50,000 would be available to cover medical expenses in Hawaii and local expenses prior to the referral. MiCare estimated that on island expenses would be about \$2,000 or less.

The Secretary for the Department of Health and Social Affairs, Dr. Skilling explained that the \$ 20,000 requested earlier was to be spent on two procedures. However, the Chief Justice underwent one procedure only. Dr. Skilling believed that an additional \$50,000 would be needed to cover the overall expenses incurred by the Chief Justice both on and off island.

The Committee requested Dr. Skilling and the representatives from MiCare to provide the Committee with the final medical expenses as soon as the billings arrive at MiCare Office.

Your Committee believes that it will take some time before all the medical expenses are available. Given the fact that about \$48,000 plus are available for medical costs associated with the referral of the Chief Justice, your Committee recommends that the additional \$20,000 requested be delayed until an actual amount is available to Congress.

3. National Election Commission Office

a. March 2009 Election Outstanding Bills \$29,975

In the President's supplemental budget he requests that \$29,975 be allocated for the Office of the Election Director. The purpose of the request is to pay outstanding billings from the March 2009.

Election Director Kimiuo Kimiuo informed the Committee that the National Election Commission Office (NECO) has sought the funding necessary to settle these outstanding billings since the last election. Director Kimiuo stated that the original budget request for NECO for FY2009 was insufficient to cover the actual costs associated with the 2009 General Election and was known very early on.

The Election Regulations were amended and additional poll workers and Central Board Members were needed to comply with the regulations. He stated that it was necessary to amend the Regulations and bring in

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additional poll workers to complete the Election in a timely manner. Additionally, there were the unexpected costs associated with the lawsuits brought by former Senator Moses Nelson. NECO was informed by the Attorney General's Office that NECO was not going to be represented by the National AG, and private counsel was sought and paid for.

Director Kimiuo testified that these funds are necessary to pay people who worked during the March 2009 Election and have not yet received compensation. Director Kimiuo assured the Committee that when the FY 2011 budget is submitted by NECO, he will ask for funding necessary to cover all of the required costs associated with an election year.

Your Committee has concerns regarding the timing of the regulations that required additional workers; the regulations were amended after the budget was already approved. NECO knew well in advance that there would be insufficient funds to hire the additional workers, and questions why NECO was committing and spending more funds than appropriated by Congress. Congress asserts that the correct approach should have been to first seek the additional funding needed for FY09, then amend the regulations after the NECO had the necessary funding.

Your Committee also notes a need for improvement at the polling places in Guam and Honolulu, and questions why there was no polling place in Saipan the during the last election.

Your Committee recommends appropriating the requested amount for the purpose of paying the outstanding billings of the Election Office. Your Committee believes it is crucial to compensate the electoral aides, poll workers and tabulators who provided their services in the March 2009 election, and who have had to wait an unacceptably long time for their pay. The Committee will continue to provide extensive oversight of the National Election Director's Office. The Committee is very concerned and disappointed with the Election Office obligating money absent appropriation, and strongly believes this should not have occurred. Your Committee has additional concerns regarding the questionable legality of these actions. Your Committee sincerely hopes this situation never again arises.

Your Committee on Judiciary and Government Operations recommends funding the supplemental budget request of \$29,975 for NECO to settle outstanding billings from the March 2009 election.

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Your Committee has just recently received new billings from the Election Commission Office in relation to work undertaken by Genesis Computer Systems on behalf of the FSM Election Office from five years ago. The amount owed to the said company is \$3,093.00. In view of this additional figure, your Committee recommends the original supplemental budget request of \$29,975, plus the \$3,093.00. The total recommended amount therefore is \$33,068.

4. Postal Service

The President submitted a supplemental request in the amount of \$15,338 for the Postal Service.

Your Committee wishes to express its concern regarding the supplemental request when the FY10 Appropriations Act was so recently passed, and Congress having appropriated an amount in excess of what was proposed by the Executive.

Representatives of the Postal Service explained that they are expecting and planning in advance for additional expense anticipated as a result of a Diplomatic Note currently being negotiated between the FSM and the US Governments, including travel that may take place in January. The Postal Service was budgeted \$32,961 in travel and has already expended \$20,000 of that, although it was noted that the annual meeting in Guam around Christmas time has already occurred, and that is always a big expense for travel.

When asked if the Postal Service has adequate travel funds to last through January 2010, the Postal representatives responded "yes".

Your Committee also has concerns about what appears to be overspending in a relatively short time frame compared to last year's spending levels at this time.

Your Committee further asked the Postal representatives to renegotiate the banned temporary items with the US Government for their reinstatement in the postal service system.

Your committee recommends the requested amount of \$15,338 be granted to the Postal Service.

5. Public Education on Constitutional Amendments

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The Committee was not convinced on the breakdown details and further asked the witness to provide additional information, including expenses of past referendums.

On February 2, 2010, your Committee received new figures from the President's Office, however, without details. There was a lump-sum of \$125,000 from the last referendum.

In view of the lack of information and the need to commence the preparation of educating the public on the issues concerning the referendum, your Committee recommends an amount of \$150,000 for the initial public education on the referendum. Your Committee further recommends that public educators should utilize MS VOYAGER, during regular schedules, to minimize expenses. Your Committee stands ready to provide further assistance when the need arises.

CONCLUSION

The table below summarizes the requested amounts and amounts recommended by your Committee.

Department/Office	Requested Amount	Recommended Amount
1. Dept. of Justice		
a. Immigration & Labor Division		
i. Reclassification	\$70,560.00	\$70,560.00
ii. Blank Passports	\$150,000.00	\$250,000.00
b. Division of Litigation		
i. Additional staff in Chuuk	\$35,555.00	\$-0-
c. Maritime Surveillance		
i. Dry-dock FSS Palikir	\$250,000.00	\$250,000.00
2. National Judiciary		
i. Medical Referral for the Chief Justice	\$20,000.00	\$-0-
3. National Election Office		
i. March 2009 Election outstanding Bills	\$29,975.00	\$33,068.00
4. Postal Service	\$15,338.00	\$15,338.00
5. Public Education on Constitutional Amendments	\$500,000.00	\$150,000.00

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Total	\$1,071,428.00	\$768,966.00
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With the modifications identified above, your Committee on Judiciary and Governmental Operations recommends authorizing those portions of the FY 2010 Supplemental Budget relating to matters under its jurisdiction, subject to the availability of funds, as determined by your Committee on Ways and Means.

Respectfully submitted,

/s/ Peter Sitan
Peter Sitan, chairman

/s/ Fredrico O. Primo
Fredrico O. Primo, member

/s/ Dohsis Halbert
Dohsis Halbert, member

/s/ Isaac V. Figir
Isaac V. Figir, member

/s/ Setiro Paul
Setiro Paul, member

Roger S. Mori, member

Paliknoa K. Welly, member