

STANDING COMMITTEE REPORT NO. 17-105

RE: C.B. NO. 17-33/J&GO

SUBJECT: ALLOWING FOR THE APPOINTMENT OF A SPECIAL
PROSECUTOR

MARCH 26, 2012

The Honorable Isaac V. Figir
Speaker, Seventeenth Congress
Federated States of Micronesia
Third Special Session, 2012

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 17-33, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 12 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY ADDING A NEW CHAPTER 18 TO ALLOW FOR THE APPOINTMENT OF A SPECIAL PROSECUTOR TO INDEPENDENTLY INVESTIGATE AND PROSECUTE CLAIMS OF ALLEGED NATIONAL FELONIES COMMITTED BY GOVERNMENT OFFICIALS, AND FOR OTHER PURPOSES." ,

begs leave to report as follows:

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

State hearings were held on this bill in Yap on September 25, 2011, in Chuuk on September 27, 2011, in Kosrae on September 31, 2011, and in Pohnpei on February 8, 2012. Participants at all of these hearings, including representatives of the executives and legislatures of the states, voiced general support for the bill. Some witnesses in Chuuk, however, stated that they believed the existing judicial framework to be sufficient for the prosecution of crimes by public officials. Witnesses in both Yap and Kosrae expressed concerns about budget appropriations for a special prosecutor becoming politicized, and

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suggested establishing a fund insulated from the general appropriations process to support the work of any special prosecutor. Witnesses also suggested that the bill should specify minimum qualifications for a special prosecutor, and that its scope should include misdemeanors as well as felonies.

A national hearing was held on this bill in Palikir on February 7, 2012, and was attended by representatives of the FSM Supreme Court, the Department of Justice, and the President's office.

Witnesses from the Supreme Court spoke in support of the objectives of the bill, and stated that ensuring crimes committed by government officials were prosecuted would enhance public confidence in government institutions. They stated their belief that the Attorney General's office was not always willing to pursue such cases.

With respect to the composition of the judicial panel, they noted that the Supreme Court currently has only four justices. They were open to the possibility of having state judges serve on the panel, but noted that although they had previously used judges from other jurisdictions, that practice was currently limited to retired Justice Benson.

They acknowledged that there would be some increase in the Court's costs if the bill were to pass, specifically for the special prosecutor and associated costs such as travel and supplies. They emphasized the need for the funding and the position of special prosecutor to be secure from political interference.

Representatives from the Department of Justice expressed support for the intent of the bill and acknowledged the need for an alternative mechanism for the prosecution of crimes by public officials in cases where the DOJ has a conflict. The Department expressed some reservations about constitutional issues, specifically whether the bill complied with the constitutional appointment clause and separation of powers principles, but stated that they needed more time to make a determination.

In response to members' questions with respect to how the DOJ handles potential violations revealed by reports from the National Public Auditor, the witnesses from the DOJ acknowledged that there was a

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degree of discretion involved, stating that the Auditor sends the case to the Department, where the Secretary's office reviews the matter and determines whether there is a prima facie case to go forward. From 2003 to the present, 113 cases had been referred to the investigation division in the Public Auditor's office. 34 of these had been referred to the DOJ. Of the 34, 6 had been prosecuted, 6 were time barred or settled administratively, and 22 were pending. The witnesses stated they were currently working hard to clear up a backlog of referrals from the Public Auditor's office.

Your Committee recommends the following amendments to the bill as follows:

1. Page 1, line 10, delete "2011" and insert "2012" in lieu thereof.
2. Page 2, line 19, delete "justices" and insert "judges" in lieu thereof.
3. Page 2, lines 22 to 25, delete subsection (5).
4. Page 3, line 9, delete "appoint three Justices" and insert "assign three judges" in lieu thereof.
5. Page 3, line 14, after "the vacancy occurs.", insert: "At least one member of the judicial panel shall be a current associate justice of the Supreme Court, and shall chair the panel. The remaining two members of the panel shall be current associate justices or judges of the Supreme Court of the Federated States of Micronesia, retired Supreme Court justices, judges of state or other courts, or any combination thereof. Assignments to the judicial panel shall not be subject to congressional disapproval pursuant to title 4, section 104 of this Code."

Your Committee on Judiciary and Government Operations is in accord with the intent and purpose of C.B. No. 17-33, 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. No. 17-33, C.D.1.

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Respectfully Submitted,

/s/ David W. Panuelo
David W. Panuelo, chairman

/s/ Bonsiano F. Nethon
Bonsiano F. Nethon, vice chairman

Tiwiter Aritos, member

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

/s/ Yosiwo P. George
Yosiwo P. George, member

/s/ Dohsis Halbert
Dohsis Halbert, member

/s/ Roger S. Mori
Roger S. Mori, member