

STANDING COMMITTEE REPORT NO. 17-168

RE: C.B. NO. 17-179/R&D

SUBJECT: SOVEREIGN GUARANTEE FOR YAP RENEWABLE
ENERGY PROJECT

JANUARY 16, 2013

The Honorable Isaac V. Figir
Speaker, Seventeenth Congress
Federated States of Micronesia
Sixth Regular Session, 2013

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was jointly referred C.B. No. 17-179, entitled:

"A BILL FOR AN ACT TO AUTHORIZE THE PRESIDENT OF
THE FEDERATED STATES OF MICRONESIA, OR HIS
DESIGNEE, TO EXECUTE A SOVERIGN GUARANTEE TO
SECURE AN ASIAN DEVELOPMENT BANK LOAN FOR THE YAP
RENEWABLE ENERGY DEVELOPMENT PROJECT, AND FOR
OTHER PURPOSES.",

begs leave to report as follows:

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

The subject bill was transmitted to Congress on September 21, 2012 through Presidential Communication No. 17-301 during the Fifth Regular Session of the Seventeenth Congress. C.B. No. 17-179 is to authorize the President of the Federated States of Micronesia to execute a sovereign guarantee to secure an Asian Development Bank loan for the Yap Renewable Energy Development Project.

Your Committee conducted a public hearing on C.B. No. 17-179 on Friday, November 23, 2012. Witnesses present included Assistant AG Jun Bacalando from the Department of Justice, Rose Nakanaga, Maggie Samo, Scott Garvey and Raul Miralles from the Department of Finance and Administration,

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Evelyn Adolph, Director of SBOC and Semeon Phillip from the President's Office.

During the hearing, your Committee was informed that the project is the Yap component of a multi-state ADB energy development initiative, which consists of grid connected wind and solar power, a diesel generator, and capacity building. The proposed amount of the project is \$11.16 million, to be funded as follows: \$4.68 million from ADB's OCR funds, \$4.36 million from ADB's ADF, and \$2.12 million from Yap State and YSPC. The aim of the project is for Yap State to prioritize the use of renewable energy and to reduce the dependency on imported diesel fuels.

In order for Yap to commence on the project, a sovereign guarantee is needed by the National Government as authorized by Article IX of the FSM Constitution. As a condition of the loan to the State of Yap, the Asian Development Bank requires a sovereign guarantee that the loan will be repaid. The FSM National Government will provide a sovereign guarantee for the OCR loan and the ADF loan, in form and substance satisfactory to ADB, as a condition precedent to the effectiveness of the OCR loan and ADF loan. The Yap State Government will on-lend the proceeds of the OCR loan and ADF loan to YSPSC under subsidiary loan agreements acceptable to the ADB. The terms for on-lending the proceeds of the OCR loan and ADF loan will include the same interest rates and payments periods as that of the OCR loan and ADF loan respectively. The projected loan maturity is 16.7 years.

Your Committee was informed that Yap State Government has passed a law (YSL No. 8-23), which is a legislation in support the effort of securing this loan. This legislation is to authorize the Governor of Yap State to enter into negotiations with the FSM National Government for a back-up security agreement for the Asian Development Bank loan in the amount of \$9.04 million U.S. dollars.

The project's implementation arrangements is that YSPSC will be the executing agency (EA) of the project. A Project Management Unit (PMU) will be established within YSPSC and will be responsible for implementation of the project.

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YSPSC will provide a PMU project manager (senior technical manager), accounting support and a lands officer. The project will finance additional staff (an electrical engineer in solar, an electrical engineer in wind, an environmental specialist, a social specialist, a structural engineer, a procurement specialist and a wind monitoring specialist), equipment, and office furnishings to support the PMU for implementing the output of the project. Consultants may also be recruited. The PMU will be responsible for engaging all consulting services, equipment and civil works contracts. A project steering committee (PSC) will oversee implementation, monitor progress and provide guidance to the EA. The PSC will meet at least quarterly and will be chaired by the Lieutenant Governor. YSPSC will host the PSC and will act as the secretariat.

The project will be implemented over 4.0 years, with completion estimated by June 2016. The implementation period is December 2012. Since the implementation period was ignored, there is a need to adjust the implementation arrangement of the project.

It is important to note that these are the terms of the guarantee:

1. The State of Yap is primarily responsible for the repayment of the Asian Development Bank loan;
2. The FSM National Government's obligation as guarantor extends only to disbursements of the Asian Development Bank Renewable Energy Development Loan after the execution of an appropriate guarantee agreement;
3. The FSM National Government's obligation applies only if the State of Yap is in default of its payment obligations;
4. The State of Yap pledges its state revenues and agrees to an offset of its national revenues in the event of default by the State of Yap;
5. The State of Yap provides full indemnity to the FSM National Government to indemnify the FSM National Government whenever the latter becomes obligated to pay under the guarantee;

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6. The FSM National Government shall have subrogation rights in the event it becomes liable under its guarantee.

Your Committee would like to offer the following amendments to the bill as follows:

1. Page 1, line 3, delete "Blank", and insert "Bank" in lieu thereof.
2. Page 1, line 12, after "Fund" delete "B" and insert "F".
3. Page 2, line 7, delete "herby" and insert "hereby" in lieu thereof.
4. Page 2, line 9, delete "9,600,000" and insert "9,060,000"
5. Page 2, line 25, after "revenues", insert "and agrees to an offset of its national revenues".

Conclusion

With the offered amendments, your Committee on Resources and Development is in accord with the intent and purpose of C.B. 17-179 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 C.B. 17-179, C.D.1.

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Respectfully submitted,

/s/ Roger S. Mori
Roger S. Mori, chairman

/s/ Yosiwo P. George
Yosiwo P. George, vice chairman

Peter M. Christian, member

Florencio S. Harper, member

/s/ Bonsiano F. Nethon
Bonsiano F. Nethon, member

/s/ David W. Panuelo
David W. Panuelo, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member