

STANDING COMMITTEE REPORT NO. 17-45

RE: P.C. NO. 17-94/J&GO

SUBJECT: FY 2011 SUPPLEMENTAL APPROPRIATION

SEPTEMBER 22, 2011

The Honorable Isaac V. Figir
Speaker, Seventeenth Congress
Federated States of Micronesia
Second Regular Session, 2011

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was jointly referred Presidential Communication No. 17-94, begs leave to report as follows:

Presidential Communication No. 17-94 concerns the shortfall in personnel budgets anticipated by the National Government for the current fiscal year. Pursuant to rule 7, section 4(b) of the Official Rules of Procedure of the Seventeenth Congress of the Federated States of Micronesia, your Committee has limited its review to that portion of the Presidential Communication relating to matters under its jurisdiction, namely a projected deficiency of \$191,827 in the personnel budget of the Department of Justice.

Your Committee held a hearing in Palikir on September 21, 2011, which was attended by representatives of the Department of Justice, SBOC, the Department of Finance and Administration, and the Division of Personnel.

The Acting Secretary of the Department of Justice presented details of the anticipated shortfall. Referring to Presidential Communication No. 17-94, he stated that all the Divisions of the Department, with the exception of the Division of Law, were anticipating overruns in their personnel budgets, as follows:

	Budget Amount	Total Expenditure	Supplemental Funds needed
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		as of 8/30/11	to end FY11
Administration	107,464	99,593	3,251
Registrar of Corporations	31,644	31,701	3,852
Litigation	139,031	128,280	3,511
National Police	845,656	865,387	125,175
National Police Overtime	279,815	260,525	9,931
Immigration and Labor	450,684	444,306	46,108
Total	1,854,294	1,829,792	191,827

The Acting Secretary explained that the projected overruns in the Divisions of Administration and the Registrar of Corporations were a result of the increase in fringe benefits from 9 percent to 11 percent of base salary. The overrun in the Division of Litigation was caused both by the fringe benefit increase and a payment of a contract renewal bonus to an expatriate employee.

Members of the Committee queried when the Department had learned of the fringe benefit increase, and pointed out that the law increasing social security contributions effective October 2010 had been enacted before departments had submitted their budget proposals for FY11 to the President. They also asked why the increase was 2 percent when the increase in the employer's portion of social security was only 1 percent.

The representative of SBOC explained that the prior 9 percent figure had not been sufficient to cover the full cost of benefits and the new figure was more realistic. The representative of the Department of Finance stated that a supplemental proposal had been submitted after the FY11 budget had been approved to allow for the increase to 11 percent, but that it had not been approved. There was no explanation of why the increase had not been anticipated by the Executive Branch prior to the submission of the budget.

Turning to the budget for the National Police, the Acting Secretary stated that the shortfall was due to several factors, in addition to the increase in fringe benefits previously noted. First, funds that had originally been appropriated for FY11 had been reprogrammed to cover personnel costs incurred in FY10. Second, nothing had been budgeted for night work, hazardous work, and sea duty differentials. Third, unbudgeted overtime had been incurred by, for example, the provision of additional maritime patrols requested by state governments. The Chief of Immigration and Labor also stated that the deficit in his division was due to FY11 funds being reprogrammed to cover FY10 costs.

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Members of the Committee questioned why the Department had not adjusted its spending so as to work within the budget Congress had approved. The Acting Secretary stated that the Division of Immigration and the National Police were putting new policies in place to control overtime in response to the report on FY10 budget overruns recently issued by the Office of the National Public Auditor. He also stated that a new legal opinion had disapproved the prior practice of paying a two-hour minimum for each period of overtime, rather than actual time worked.

Members of the Committee sought the witnesses' views on whether it would be more appropriate or efficient to lift restrictions on reprogramming funds, as suggested by the President, or to appropriate funds currently available in the General Fund to cover the deficit. The Acting Secretary and the representative of SBOC opined that it would be quicker to lift the restrictions.

In executive session following the hearing, the Committee determined that a supplemental appropriation could be effected at least as quickly, if not more so.

Your Committee notes that there are a number of issues of serious concern that it intends to take up in upcoming oversight hearings with the Department.

CONCLUSION

Your Committee on Judiciary and Governmental Operations is unimpressed by the explanations offered for the projected overruns in the personnel budget for the Department of Justice. These overruns could largely have been avoided had the Department included clearly foreseeable expenses, such as the increase in benefits and the eligibility of police officers for pay differentials, in its initial budget submission. The Committee notes that it has recommended in its report on the FY2012 budget that funds be provided for these particular expenses, and consequently expects there to be no repetition of this last-minute supplemental request at the end of the next fiscal year.

Moreover, the Committee is extremely concerned by an apparent mindset within the Department that when Congress makes an appropriation that the Department considers not to be enough to meet its needs, it is up

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to Congress to supplement its appropriation rather than for the Department to adjust its obligations and cut its spending accordingly. Such a position has been expressed or implied to your Committee on numerous occasions by representatives of the Department of Justice, and is of particular concern coming from a Department which has a unique function in upholding the laws and constitution of the Nation and which should be well-versed in the principle of separation of powers and the role of Congress in setting the Government's budget. We expect that in future the Department will endeavor to follow the law and limit its expenditures to the amounts appropriated by Congress.

Your Committee understands that staff of the Department have been going without paychecks for at least one pay period thus far, and believes it would be unfair to allow the Department's staff and their families to continue to suffer as a result of the Department's apparent mismanagement. We are reluctant, however, to abrogate Congress's budget-setting responsibility by a general lifting of restrictions on reprogramming to allow the Executive Branch to make up the deficit by transferring surpluses from other Departments as the President suggests.

Your Committee on Judiciary and Governmental Operations therefore recommends a supplemental appropriation of \$191,827 be made to cover the projected shortfall in the personnel budget of the Department of Justice, subject to the availability of funds as determined by your Committee on Ways and Means, and in the knowledge that any surpluses elsewhere will revert to the General Fund at the end of the current fiscal year.

Respectfully Submitted,

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

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

/s/ Tiwiter Aritos

/s/ Isaac V. Figir

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Tiwiter Aritos, member

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