

STANDING COMMITTEE REPORT NO. 13-191

RE: C.B. NO. 13-147/J&GO

SUBJECT: JEMCO BOARD

NOVEMBER 05, 2004

The Honorable Peter M. Christian
Speaker, Thirteenth Congress
Federated States of Micronesia
Fourth Regular Session, 2004

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 13-147, entitled:

C.B. No. 13-147, "A BILL FOR AN ACT TO FURTHER AMEND TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY ENACTING A NEW CHAPTER 8 THEREOF FOR THE PURPOSE OF ESTABLISHING A COMPACT IMPLEMENTATION BOARD AND AN FSM COMPACT SECRETARIAT, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

The subject bill would establish a new board for the purposes of selecting the FSM representatives to JEMCO and for overseeing the implementation of the Compact. The subject bill also would establish a secretariat to handle the day-to-day responsibilities envisaged in the Compact.

During the Fifth Special Session of the Thirteenth Congress, the subject bill was introduced and referred to your committee for further discussion. Such discussions have taken place and your committee has given this legislation further consideration. Attached to Presidential Communication No. 13-201 dated September 8, 2004, the President submitted to Congress an alternative bill that proposed to establish a Compact Economic Management Committee with similar duties and responsibilities as the Compact Implementation Board in the subject bill. On October 21, 2004, your committee held a public hearing on the subject bill and the President's bill. Your committee now submits this report.

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Based on comments about the most recent meeting of JEMCO, a change to the current regime of selecting and assisting the FSM JEMCO representatives is needed. The Compact is a very complex and important agreement for the FSM and it is essential that the implementation and management of its provisions are done in such a manner as to best preserve the rights of the people of the FSM. Given the alternative approaches suggested by Congress and the President, the comments during the public hearing and the importance and urgency of the matter, your committee submits that the subject bill and the Presidential bill should be "married". Your committee believes that a "married" bill will produce the most effective solution to the JEMCO problem.

As a result, and although agreeing with the general purpose and intent of C.B. 13-147, your committee recommends that the subject bill should be amended in a number of respects:

(1) There should be a closer link between the Board and the National Government. In its current state, C.B. 13-147 effectively creates an independent board, with little accountability to the National Government. The Attorney-General's office believes that such a structure violates the constitutional principle that the conduct of foreign affairs is a responsibility of the Executive Branch. To address this issue, the President's bill creates a committee under the authority of the Department of Foreign Affairs. Your committee believes that the Department of Foreign Affairs does not have sufficient financial expertise to effectively oversee Compact matters, therefore your committee recommends that the Board be created under the authority of the National Government, but outside of any existing Executive Department.

(2) Day-to-day Compact matters should be an executive function. The President's bill suggests that the day to day operations of the Board are handled by an Office of Economic Management and Statistics to be created from the Department of Economic Affairs, as reflected in C.B. 13-112, instead of the independent Compact Secretariat established under the subject bill. Your committee believes that some efficiencies can be gained by resting the day-to-day duties with an office of the executive, however, given the importance to the FSM of managing compact matters, your committee recommends that such day-to-day responsibilities should rest with an executive office that focuses uniquely on Compact matters and the head of such an office shall have a cabinet profile. Your committee also believes that by resting such duties with an executive office further mitigates the Attorney General's concern over constitutional issues. Therefore,

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your committee recommends that a new executive office be created and called the Office of Compact Management. Your committee believes that such an office should be directed by the Board, in order to have a certain degree of independence, and that some efficiencies can be gained by empowering such an office to advise the President on Compact matters. Your committee also notes that the creation of the Office of Compact Management will not result in any extra-administrative costs beyond that contemplated by the President's proposed executive branch reorganization. It merely places the office responsible for Compact Management in somewhat different position in the National Government structure.

(3) Expertise in matters of Compact management and implementation should be fostered and should be represented on the Board. Under the subject bill there is no consistent role on the Board or within the government where an individual can gain, develop and exercise the expertise required to maximize the benefits of the Compact to the FSM. The President's bill suggests that the Secretary of the Department Foreign Affairs be granted an automatic seat on the Board as Chairman and, your committee assumes, develop such expertise. Your committee believes that the Secretary, given his many other responsibilities, will not be able to concentrate enough of his time on Compact matters to develop such expertise and therefore suggests that an automatic seat be given on the board to the head of the proposed new Office of Compact Management. Under the proposed amendment, the President will nominate the head with advice and consent from Congress. Your committee also believes that creating such an office will eliminate any confusion as to whether a certain responsibility lies with the Department of Foreign Affairs or the Office of Economic Management and Statistics as is evident in the President's Bill.

(4) The Board requires greater national government involvement. Under both the subject bill and the Presidential bill there is a concern that too much influence has been given to the States. The concern is grounded in the fact that the Compact is a national responsibility, i.e., that National Government representatives are best able to ascertain how the issues raised by JEMCO affect the FSM as a whole. Constitutionally, there may also be an issue of delegating such responsibility to a board dominated by state representatives. Therefore, your committee recommends that the number of board members be increased from 5 to 7 and the two additional members be representatives of the national government.

(5) The terms of members should be flexible. C.B. 13-147 allows members to have a two-year term with a one renewal two-year term. Based on a comment from the Attorney General that, since the

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Compact states that the JEMCO representatives have a two-year term and the process of appointing and approving members creates uncertainty as to when terms will begin, your committee recommends that members should have a flexible term to prevent conflicts with Compact requirements. Your committee also notes that to prevent the rotating of members for short-terms, that the term of a member be for at least one year.

(6) The voting JEMCO representatives should be from the national government. For the same reasons outlined in paragraph (4), the committee recommends that only national government representatives represent the FSM on JEMCO. And, for reasons of developing expertise and consistency, your committee recommends that the automatic member, the head of the Office of Compact Management, also automatically be a JEMCO representative. Based on a comment from the Attorney General's Office, the second JEMCO representative should be appointed by the President, without the advice and consent of Congress, since Congress previously gave its advice and consent on the appointment of that Member to the Board. Your committee recommends that any vacancy of the position of JEMCO representative should be filled by the third national appointee. In order to avoid duplication of expenses, your committee also recommends that the JEMCO Representatives also be the FSM Joint Trust Fund Committee representatives.

(7) In making an appointment to the Board, preference should be given to candidates with the financial expertise and strong communication skills. Your committee recommends that the subsection in the President's bill that states that consideration should be given to a candidate's financial expertise and communication skills be adopted.

(8) Temporary vacancies on the board should be filled by appointment of the President or State Governor. Your committee recommends that the President or State Governor should be allowed to delegate responsibility for such appointments. Your committee also recommends that a member should be able to appoint an alternate if he is unable to attend a meeting but that the President or State Governor, as appropriate, must provide written consent to allow the alternate to vote on the member's behalf.

(9) The Board should have a title position of chairman. The subject bill does not discuss the selection of a head of the Board. The President's bill suggests that the Secretary of the Department of Foreign Affairs be automatically be nominated as chairman. Your committee believes that the Board should have a chairman and since the Head of the Office of Compact is

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automatically nominated as a representative to JEMCO, your committee recommends that the members of

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the Board elect the chairman, who may be a representative of the National Government or one of the States. Your committee also recommends that the powers of the chairman should be as outlined in the amended bill.

(10) Costs should be kept to a minimum. The subject bill is silent on the issue of costs or budget for the Board. The President's Bill suggests that members should not be compensated and that travel-related expenses shall be borne by the appointor. Your committee recommends that members should not be compensated and that all expenses incurred by the member shall be the responsibility of the office of the President or State Governor, as appropriate.

(11) For reasons of certainty, your committee recommends that the provisions concerning meetings in the Presidential bill should be adopted.

(12) For reasons of certainty, your committee recommends that the quorum for board meetings be set at four members including one national government representative.

(13) Since the title of the bill no longer reflects its intended purpose, your committee recommends that the title should be amended to reflect its new purpose.

(14) Your committee also recommends a number of technical amendments to improve the clarity of the subject bill as identified below.

Specifically, your committee recommends the following amendments to C.B. No. 13-147:

1. Title - delete "Implementation" and insert "Management" in lieu thereof.
2. Title - following "Board and", insert "to amend section 204 of title 2 of the Code of the Federated States of Micronesia for the purpose of creating".
3. Title - delete "FSM Compact Secretariat" and insert "Office of Compact Management" in lieu thereof.
4. Page 1, line 3 - delete "Implementation" and insert "Management" in lieu thereof.
5. Page 1, line 4 - delete "(a)".

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6. Page 1, line 9 - delete "; and (b) establishing an FSM Compact Secretariat with the purpose of supporting the work of the Compact Implementation Board".

7. Page 1, line 11 - following "Board.", insert a new section 2 to read as follows:

"Section 2. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 801 to read as follows:

Section 801. Definitions. When used in this chapter:

(1) "Appointing Authority" means the President or State Governor, as appropriate, given the right to appoint a Member pursuant to section 803 of this chapter.

(2) "Board" means the Compact Management Board as established by section 802 of this chapter.

(3) "Chairman" means the chairman of the Board appointed pursuant to subsection 804(1) of this chapter.

(4) "Compact" means the Compact of Free Association, as amended, and its related agreements, entered into by and between the Government of the Federated States of Micronesia and the Government of the United States, as ratified on May 26, 2004.

(5) "JEMCO" means the Joint Economic Management Committee established pursuant to the Compact.

(6) "JEMCO Representative" means a voting member representing the Federated States of Micronesia on JEMCO.

(7) "Member" means an individual appointed to the Board pursuant to section 803 of this chapter.

(8) "Meeting" means a meeting of the Board duly constituted pursuant to subsection 805(2) of this chapter.

(9) "National Government" means the National Government of the Federated States of Micronesia.

(10) "State" means a state of the Federated States of Micronesia.

(11) "Trust Fund Committee" means the Joint Trust Fund Committee established pursuant to the Compact."

8. Page 1, line 12 - delete "2" and insert "3" in lieu thereof.

9. Page 1, line 14 - delete "801" and insert "802" in lieu thereof.

10. Page 1, line 15 - delete "801" and insert "802" in lieu thereof.

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11. Page 1, line 16 - delete "Implementation" and insert "Management" in lieu thereof.
12. Page 1, line 17 - delete "within the Federated States of Micronesia" and insert "under the authority of the National Government" in lieu thereof.
13. Page 1, line 19 - delete "3" and insert "4" in lieu thereof.
14. Page 2, line 2 - delete "802" and insert "803" in lieu thereof.
15. Page 2, line 3 - delete "802" and insert "803" in lieu thereof.
16. Page 2, line 4 - delete "comprise" and insert "consist of" in lieu thereof.
17. Page 2, line 4 - delete "five" and insert "seven".
18. Page 2, line 4 - following "five members", insert:
 - " , appointed in the following manner:
 - (a) The Head of the Office of Compact Management, appointed as provided in section 207 of title 2 of the Code of the Federated States of Micronesia;
 - (b) "
19. Page 2, line 4 - delete "One" and insert "Two" in lieu thereof.
20. Page 2, line 4 - delete "member" and insert "Members" in lieu thereof.
21. Page 2, line 6 - delete "with" and insert "on" in lieu thereof.
22. Page 2, line 7 - following "Congress", delete "." and insert "; and"
 - (c) "
23. Page 2, line 7 - delete "of the four States of the Federated States of Micronesia" and insert "State" in lieu thereof.
24. Page 2, line 10 - following "(2)", insert "Members shall be appointed with consideration given to their knowledge of

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finance, accounting and economic principles and written and verbal communication skills.

(3)".

25. Page 2, line 10 - delete "member of the Board" and insert "Member" in lieu thereof.
26. Page 2, line 10 - delete "be appointed for a term of two years, and may continue to serve on the Board until a replacement member has been duly appointed. Members may be reappointed to a second two-year term." And insert "serve at the pleasure of its Appointing Authority, however, such term shall be no less than one year.

(4)".

27. Page 2, line 15 - delete "member as provided in subsection (1), by the President, in the case of a vacancy in the position on the Board appointed by the National Government, or by the Governor of the appropriate State, in the case of a vacancy in the position on the Board appointed by the National Government, or by the Governor of the appropriate State, in the case of a vacancy in the position appointed by that State" and insert, in lieu thereof, "Member:
 - (a) In the case of a Member appointed pursuant to subsection (1)(b), by the President or his designee; or
 - (b) In the case of a Member appointed pursuant to subsection (1)(c) by the Governor of the appropriate State or his designee".
28. Page 2, line 20 - delete "(3)" and insert "(5)" in lieu thereof.
29. Page 2, line 20 - delete "The member of the Board" and insert "A Member" in lieu thereof.
30. Page 2, line 20 - delete "by the National Government" and insert "pursuant to subsection (1)(b)" in lieu thereof.
31. Page 2, line 21 - following "Board by", insert "resolution and".
32. Page 2, line 22 - delete "member of the Board" and insert "Member".
33. Page 2, line 24 - following "State.", insert a new subsection

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6 to read as follows:

"(6) Members shall not be entitled to compensation for their position on the Board. All related expenses incurred by a Member shall be the responsibility of the office of its Appointing Authority."

34. Page 2, line 25 - delete "3" and insert "5" in lieu thereof.

35. Page 3, line 1 - delete "803" and insert "804" in lieu thereof.

36. Page 3, line 2 - delete "803" and insert "804" in lieu thereof.

37. Page 3, line 4 - following "responsibilities" insert a new subsection (1) to read as follows:

(1) To formulate guidelines and policies for the JEMCO Representatives.

38. Page 3, line 5 - delete "(1)" and insert "(2)" in lieu thereof.

39. Page 3, line 5 - delete "represent the interests of the Federated States of Micronesia" and insert "support the JEMCO Representatives".

40. Page 3, line 6 - delete "of Free Association between the Federated States of Micronesia and the United States, as amended ("the Compact").

41. Page 3, line 9 - delete "(2) to appoint, as described more fully in section 804 hereof, one of the members of the Joint Economic Management Committee ("JEMCO") and the Trust Fund Board created under the Compact;".

42. Page 3, line 13 - delete "(3) To meet and consult with representatives of the National Government and the State Governments on matters relating to the Compact".

43. Page 3, line 16 - delete "(4)" and insert (3) in lieu thereof.

44. Page 3, line 16 - delete "on behalf" and insert "in the best interests" in lieu thereof.

45. Page 3, line 19 - delete "implementation" and insert "the

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management" in lieu thereof.

46. Page 3, line 20 - delete "either".
47. Page 3, line 22 - delete "any of".
48. Page 3, line 22 - delete "governments or" and insert "National Government or the States,".
49. Page 3, line 23 - following "Strategic Plan" and insert ", as such terms are defined in the Compact," in lieu thereof.
50. Page 3, line 24 - delete ", and further provided that a vote of a majority o the Board members shall be required to approve positions or actions to be taken by the Board".
51. Page 4, line 2 - delete "(5)" and insert "(4)" in lieu thereof.
52. Page 4, line 2 - delete "submit" and insert "coordinate the submission" in lieu thereof.
53. Page 4, line 2 - following "United States", insert "of".
54. Page 4, line 4 - delete "for Sector Grant Awards,".
55. Page 4, line 5 - delete "to support".
56. Page 4, line 6 - delete "on issues relating to implementation of the Compact".
57. Page 4, line 8 - delete "(6)" and insert "(5)" in lieu thereof.
58. Page 4, line 8 - preceding "reports", insert "all".
59. Page 4, line 8 - following reports, insert "and other documents".
60. Page 4, line 10 - delete "(7)" and insert "(6)" in lieu thereof.
61. Page 4, line 11 - delete "to conduct" and insert "including the conducting of" in lieu thereof.
62. Page 4, line 14 - delete "(8)" and insert "(7)" in lieu thereof.

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63. Page 4, line 14 - following "work", insert ", in conjunction with the President,".
64. Page 4, line 14 - delete "FSM Compact Secretariat established by section 805 hereof and to appoint the staff of the Secretariat" and insert "Office of Compact Management".
65. Page 4, line 17 - delete "(9)" and insert "(8)" in lieu thereof.
66. Page 4, line 19 - delete "(11)" and insert "(9)" in lieu thereof.
67. Page 4, line 21 - delete "Board" and insert "Committee".
68. Page 4, line 22 - following "Compact.", insert a new subsection 11 to read as follows:

"(10) To use its best efforts to ensure that the obligations of the Federated States of Micronesia under the Compact are satisfied and the rights of the Federated States of Micronesia under the Compact are preserved and upheld."

69. Page 4, line 22 - following "Compact.", insert a new section 4 to read as follows:

"Section 6. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 805 thereof to read as follows:

Section 805. Chairman of the Board.

(1) The Members shall elect, as the first order of business at the first Meeting, a Chairman.

(2) The Member elected Chairman shall serve as Chairman until the Members elect another Member as Chairman.

(3) In the case of vacancy in the office of Chairman, the Member appointed pursuant subsection 803(1)(a) of this chapter shall serve as Chairman.

(4) The duties and powers of the Chairman shall include calling a Meeting to order, setting the agenda for a Meeting, directing the voting process of the Board as outlined in section 806 of this chapter, designating the time and place of the next Meeting and providing reasonable notice to the Members of such time and place of the next Meeting.

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(5) The Chairman must call a Meeting to order when a majority of the Members present request that such Meeting be called.

(6) Where a majority of the Members at a Meeting request that the next Meeting be designated at a specific time and/or place, the Chairman must designate the next Meeting at such time and/or place. The Chairman must also designate the time and place of the next Meeting as the time and/or place specified in a written request signed by a majority of the Members and delivered to the Chairman."

70. Page 4, line 22 - following "Compact.", insert a new section 7 to read as follows:

"Section 7. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 806 thereof to read as follows:

Section 806. Meeting of the Board.

(1) The Board shall conduct a Meeting at least once a year.

(2) A Meeting is duly constituted when at least 4 Members are present, including at least one of the Members appointed pursuant to subsections 803(1)(a) or (b) of this chapter, and called to order by the Chairman.

(3) Members may be present by means of telephone provided that each Member present is able to clearly hear each and every other Member present.

(4) If a Member is unable to attend a meeting, such Member may designate an alternate to attend the meeting on that Member's behalf. An alternate may vote at a meeting provided that a written authorization is signed by the appropriate Appointing Authority and delivered to the Chairman prior to the vote."

71. Page 4, line 22 - following "Compact.", insert a new a section to read as follows:

"Section 8. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 807 thereof to read as follows:

Section 807. Voting.

(1) All policies, guidelines and positions formulated by the Board shall be approved and all elections by the Board shall be determined by a majority vote of its

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Members present at a duly constituted meeting.

(2) All votes are to be conducted in the manner determined by the Chairman."

72. Page 4, line 23 - delete "4" insert "9" in lieu thereof.
73. Page 4, line 25 - delete "804" insert "808" in lieu thereof.
74. Page 4, line 26 - delete "804" and insert "808" in lieu thereof.
75. Page 4, line 26 - delete "Board Members" and insert "Committee Representatives".
76. Page 5, line 2 - preceding "The member", insert "(1)".
77. Page 5, line 2 - delete "The member of the Board appointed by the National Government shall also serve as a one of the members of JEMCO and of the Trust Fund Board, representing the Federated States of Micronesia." and insert "The Member appointed pursuant to subsection 803(1)(a) of this chapter shall serve as a JEMCO Representative." in lieu thereof.
78. Page 5, line 5 - preceding "The Board", insert "(2)".
79. Page 5, line 5 - delete "The Board shall select, by a vote of a majority of its members, one of its members to also serve as a member of JEMCO, representing the Federated States of Micronesia." and insert "The President shall appoint one of the Members appointed pursuant to subsection 803(1)(b) to serve as a JEMCO Representative" in lieu thereof.
80. Page 5, line 8 - preceding "The Board", insert "(3)".
81. Page 5, line 8 - delete "The Board shall select one of its members to serve as a member of the Trust Fund Board, which member may, but need not be the same person chosen to serve on JEMCO." and insert "JEMCO Representatives shall serve a two-year term, or such other term as may be provided in the Compact".
82. Page 5, line 11 - following "JEMCO.", insert new subsections 4, 5 and 6 to read as follows:

"(4) JEMCO Representatives may be re-appointed.

(5) In the event of a vacancy of the JEMCO Representative, the Member appointed pursuant to

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subsection 803(1)(b) who is not a JEMCO Representative shall become the JEMCO Representative until such vacancy is filled.

(6) JEMCO Representatives shall also serve as the representatives of the Federated States of Micronesia on the Trust Fund Committee."

83. Page 5, line 11 - following "JEMCO.", insert new section 10 to read as follows:

"Section 10. Section 204 of title 2 of the Code of the Federated States of Micronesia, as amended by Public Law No. 10-55, is hereby further amended to read as follows:

"Section 204. Other Executive Offices. There shall be the following executive offices:

- (1) Office of the Public Defender; and
- (2) Office of Compact Management."

84. Page 5, line 12 - delete "5" and insert "11" in lieu thereof.

85. Page 5, line 14 - delete "805" and insert "809" in lieu thereof.

86. Page 5, line 15 - delete "805" and insert "809" in lieu thereof.

87. Page 5, line 15 - delete "Establishment of the FSM Compact Secretariat" and insert "Office of Compact Management" in lieu thereof.

88. Page 5, line 17 - delete "There is hereby established an FSM Compact Secretariat ('the Secretariat'), which shall operate under the direction of the Board." and insert "In addition to advising the President on Compact matters, the Office of Compact Management shall provide assistance to and take direction from the Board." in lieu thereof.

89. Page 5, line 19 - delete "functions of the Secretariat" and insert "duties that may be asked of the Office of Compact Management by the Board" in lieu thereof.

90. Page 6, line 5 - delete "Secretariat" and insert "Office of Compact Management" in lieu thereof.

91. Page 6, line 6 - following "actions", insert "taken".

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92. Page 6, line 7 - delete "Board" and insert "Committee" in lieu thereof.

93. Page 6, line 10 - delete "and" and insert a new subsection 5 to read as follows:

"(5) To assist representatives of the National Government and the State Governments on matters relating to the Compact; and"

94. Page 6, line 11 - delete "(5)" and insert "(6)" in lieu thereof.

95. Page 6, line 12 - following "Board.", insert a new section 12 to read as follows:

"Section 12. Until such time as Public Law No. 13-19 is amended to reflect the reorganization effected by this title, the budget authority as provided therein shall be to be transferred in proportion to the reassignment of personnel, functions and responsibilities effected pursuant to this title."

96. Page 6, line 12 - following "Board.", insert a new section 13 to read as follows:

"Section 13. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 810 thereof to read as follows:

"Section 810. Appointment of the Head of the Office of Compact Management. The Head of Office of Compact Management shall be appointed pursuant to section 207 of title 2 of the Code of the Federated States of Micronesia."

97. Page 6, line 13 - delete "6" and insert "14" in lieu thereof.

98. Page 5, line 15 - delete "806" and insert "811" in lieu thereof.

99. Page 5, line 16 - delete "806" and insert "811" in lieu thereof.

100. Page 6, line 19 - delete "Secretariat" and insert "Office of Compact Management" in lieu thereof.

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101. Page 6, line 24 - following "government", insert "or any of its departments or agencies".

102. Page 7, line 1 - delete "7" and insert "15" in lieu thereof.

With the foregoing amendments, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. 13-147 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. 13-147, C.D.1.

Respectfully submitted,

/s/ Dohsis Halbert
Dohsis Halbert, chairman

/s/ Roosevelt D. Kansou
Roosevelt D. Kansou, vice
chairman

Henry C. Asugar, member

/s/ Peter M. Christian
Peter M. Christian, member

Alik L. Alik, member

/s/ Ramon Peyal
Ramon Peyal, member