

STANDING COMMITTEE REPORT NO. 15-75

RE: C.B. NO. 15-73/R&D

SUBJECT: TO AMEND TITLE 24 OF THE FSM CODE TO ESTABLISH A LIMIT OF TWO TERMS FOR MEMBERS OF THE NATIONAL OCEANIC RESOURCE MANAGEMENT AUTHORITY (NORMA) AND TO LIMIT THE PERIOD OF TIME A MEMBER MAY SERVE AFTER EXPIRATION OF A TERM.

FEBRUARY 12, 2008

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
Third Regular Session, 2008

Dear Mr. Speaker:

Your committee on Resources and Development, to which was referred Congressional Bill No. 15-73, entitled:

"A BILL TO FURTHER AMEND TITLE 24 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTIONS 201 AND 202 TO ESTABLISH A TWO TERM LIMIT FOR MEMBERS OF THE NATIONAL OCEANIC RESOURCE MANAGEMENT AUTHORITY OF THE FEDERATED STATES OF MICRONESIA AND TO LIMIT THE PERIOD OF TIME A MEMBER MAY SERVE AFTER EXPIRATION OF A TERM TO SIX MONTHS, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

DISCUSSION:

The National Oceanic Resources Management Authority is created by chapter 2 of title 24 of the FSM Code, as amended by Public Law Number 12-34. The Authority is composed of five members, "each discharging a national duty". All members are appointed by the President with the advice and consent of Congress. One member must be from each of the FSM States and be nominated "in consultation" with the respective Governor. Terms are for two years and there currently is no limit on how many terms an individual may serve. Section 202 currently provides that the "rights and powers" of a member "shall remain in effect until the date of the first meeting of the Authority following the effective date of the term of office of that member's successor."

In November this committee held hearings and submitted reports on three nominations to the Authority. In those reports it was noted that the terms of the sitting members had expired in early 2006.

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They had, at that time served, almost a full additional term without standing for reappointment. One of the persons submitted by the President for appointment was an "incumbant" who failed to receive the necessary number of votes in Congress for confirmation. Accordingly, that person was unable to commence new term on the Authority but under the clear language of section 202 may continue to serve on an extension of his old term.

PUBLIC HEARING:

A public hearing on C.B. No. 15-73 was held on Friday, February 8, 2008. Senator Dion G. Neth, Chairman of the Standing Committee on Resources and Development chaired the meeting. Other committee members present were Senators Paliknoa Welly, and Joseph J. Urusemal. Deputy Director Eugene Pangelinan appeared on behalf of NORMA. Also in attendance were Assistant Attorney General Tomoci Romanu and Mr. Pelsesar Petrus, Special Assistant to the President for Legislative Matters.

Chairman Neth opened the meeting by welcoming those present and expressing his disappointment that Executive Director Bernard Thoulag was not in attendance. He invited Deputy Director Pangelinan to make an opening statement.

Mr. Pangelinan first explained that the executive director was currently traveling. He stated that the Notice of the hearing had not arrived before the Director was on his way to the airport.

The Deputy Director stated he was not clear on the reasoning for the Bill and felt it would create some difficulties for the Board. He explained that NORMA has extensive and complicated responsibilities involving both planning and negotiations. The learning curve for a new member can often make a member's first term a period of indoctrination before he becomes more active and involved during a second term. It was his belief that with a two term limit NORMA would be denied the benefit of a more experienced Board and would spend too much time orienting new members.

With regard to the 6 month limit on the period a sitting member may continue to exercise the powers and duties of membership after expiration of a term, Mr. Pangelinan also

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perceived a problem. He stated that with the 6 month limit, the Board may occasionally find itself without a quorum.

Chairman Neth thanked the witness for his comments and acknowledged the importance to Congress of hearing the views of those responsible for implementing the laws. He went on to explain that the Bill was intended to stimulate a healthier relationship between the appointed Members of the Authority and management and to make management more responsive to the Members rather than the members simply "rubber stamping" the initiatives of management. He emphasized the intention of the law is for management to work for the Authority and that the infusion of "new blood" through a two term limit for members will help to bring new ideas and vision into the process. It was his position that a motivated nominee should be able to become knowledgeable of NORMA responsibilities and issues in less than three months rather than take two years.

With regard to limiting service beyond the expiration of a term, Chairman Neth suggested that might cause management to be more diligent in providing timely notifications to the President of expiring terms and working with the President to insure timely nominations.

The Deputy Director stated that the policy of the Authority is that the Members meet at least every quarter however travel constraints due to budget concerns have made that difficult. Consequently the rate at which a new member gains experience is slower. Members have both negotiation and planning responsibilities and the Authority has been "piggy backing" negotiating sessions and planning sessions out of financial necessity.

Chairman Neth observed that the Executive Director had chosen to engage in travel during Session and that perhaps the priorities of NORMA needed review.

Senator Welly asked whether there is a review process to monitor the performance of the Members of the Authority and also whether any Member has ever been removed for cause pursuant to the provisions of the law. Mr. Pangelinan responded that the two year period for a "term" provides that review process in the form of the advice and consent requirement for appointments and reappointments. He further

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stated that although there have been resignations, over his 18 years with NORMA he was not aware of a Member ever being removed. Senator Welly observed the advice and consent exercise loses significance if members are serving three or four years before without standing for re-appointment.

It was discussed that all sitting members of NORMA have been serving well beyond the expiration of their current terms and at least one of them has been a member of NORMA for more than 6 or 8 years. The present members were last subject to Congressional review during the Thirteenth Congress in January, 2004. Mr. Pangelinan explained the past Administration had deferred making new nominations toward the end of its term as a courtesy to an incoming Administration.

Senator Urusemal voiced his support for limiting the period a Member may continue to serve after expiration of a term. He explained it had not been the intention of Congress that a sitting member denied approval for a subsequent term would be allowed to continue as a member. Deputy Director Pangelinan stated that his office had requested a legal opinion from the Attorney General and that the law as currently written requires that unintended result. He further confirmed that outgoing members continue to serve following confirmation of their replacement by Congress until the next organizational meeting. Those meetings have not generally been called until after all of the members have been confirmed. There has not been an organizational meeting since the two new members were confirmed in November.

The Committee believes that the law as it currently exists has resulted in unintended consequences and is in need of correction.

RECOMMENDATION:

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 15-73 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. 15-73.

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Respectfully submitted,

/s/ Dion G. Neth
Dion G. Neth, chairman

/s/ Setiro Paul
Setiro Paul, vice chairman

Resio S. Moses, member

/s/ Peter Sitan
Peter Sitan, member

/s/ Joe N. Suka
Joe N. Suka, member

Joseph J. Urusemal, member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, member