



The President
Palikir, Pohnpei
Federated States of Micronesia

PRESIDENTIAL COMM. NO. 16-332
FSM CONGRESS

December 20, 2010

The Honorable Isaac V. Figir
Speaker
16th FSM Congress
Palikir, Pohnpei State, FM 96941



Dear Speaker Figir:

I hereby transmit the following Congressional Act which became Public Law No. 16-58 pursuant to section 22, title IX, of the FSM Constitution:

Congressional Act No. 16-55, "AN ACT TO APPROPRIATE THE SUM OF \$1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES."

In my communication concerning Public Law No. 16-49, an appropriation in the amount of \$2.9 million which became law on October 15, 2010, I pointed out the constitutionally defective line items, for which reason I decided to exercise the presidential power of item veto. I also discussed the legal obstacles faced by the executive branch when it comes to vague line items, which do not have legal standards for appropriate implementation. For example, some line items are for relief assistance program, with no criteria in place as to how recipients of the appropriation are selected.

If the Act becomes law, it is the duty of the Executive Branch to execute the law and administer funds to follow the guidance Congress has given them by consulting the language Congress put in the public law. See, Udot Municipality v. FSM, 10 FSM Intrm., 354 (Chk. 2001). Some of the line items in Public Law No. 16-49 "are not to be allotted and expended until there is a breakdown." There being no indication as to the purpose of the above items, said line items are legally vague. By inserting this language in the Act, Congress in effect dictates to the Executive Branch as to how and when to implement a law. This is an encroachment into the Executive prerogative. Any attempt by one branch to usurp the powers that the FSM Constitution explicitly grants to another branch violates the FSM Constitution and is invalid. See, Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623 (Pon. 2002).

Moreover, in the Udot case, the Supreme Court expressly states, to wit: "I find that Congress, not the executive, is executing and implementing Public Law No. 11-27. Other than the senator's involvement in choosing and approving the projects, the Commission itself is also suspect." 9 FSM Intrm. 418, 420 (Chk. 2000.) Pursuant to the court decision in Udot, Congress cannot execute public laws, because it is a duty that is delegated to the executive branch. The same can be said for CSCIP, to which the court alluded as suspect. It is neither a public project nor a social program to begin with.



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Other items for leadership travels are duplicative, because the annual budget act also provides for travel. Any additional travel fund in the form of public project is clearly inappropriate.

I communicated with Congress the foregoing constitutional defects in the public law. During a consultation with some members of Congress while in Tokyo, it was agreed that at its fifth special session in November, Congress would not override the veto but would instead cure the constitutional defects. The consultation was critical as I was of the impression that the understanding in Tokyo reflected a sense of the Congress.

But instead of curing the constitutional defects in Public Law No. 16-49, Congress continues with questionable practices by further appropriating over \$1 million worth of public projects. Like its predecessor, this Congressional Act contains vague line items, such as for example, Microfinancing Program, Food Relief Assistance, Land Transportation, Housing Renovation Supplement, Transportation Needs, and many others. No standards or criteria for the selection of beneficiaries are provided, that will serve as guide for the executive branch in implementing projects. Due to absence of transparent standards, the choice of beneficiaries might then end up in the legislative branch, which under the circumstances is inappropriate because it will lend some credence to an observation made by the Office of Public Auditor in its previous report, as follows: "The public law funding CFSM projects did not clearly identify overall objectives for what it wanted public projects to achieve regarding its "social development and economic development" intent. In their selection of projects, Congress members did not require nor did they follow proposal or selection standards used by other government entities because there was no requirement for CFSM public projects to meet such standards." ONPA No. 2008-07, December 2008.

Moreover, in spite of the court decision in Udot case, CSCIP remains funded under the Congressional Act. Clearly, the constitutional violation is far from being rectified, it instead perpetuates.

Article XIII, section 7, of the FSM constitution explicitly requires that on assuming office, all public officials shall take an oath to uphold, promote, and support the laws and the Constitution as prescribed by statute. It is therefore my duty, and all of the members of Congress as well, to faithfully uphold, promote and support the constitution. It is my sworn duty to insist upon compliance with the constitution. At the same time, I am mindful of the fact that while a presidential veto is warranted under the circumstances, based upon numerous experiences, Congress would override a veto without an explanation and without an attempt to rectify the defects, which only makes a presidential veto an exercise in futility. When that happens, the important presidential tool to implement the checks and balances between our



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branches of government becomes a hollow mockery. Every instinct in my body abhors such action. Faced with this dilemma, I must refrain from being a party to a continuing violation of the constitution. For this reason, I withhold my approval of this Congressional Act.

I urge Congress to take a fresh look at public project appropriations when it comes back to session, and consider rectifying the constitutionally defective line items as enumerated below, based upon the foregoing explanation:

- Section 2(1)(a) – Kosrae Microfinancing Program, page 1, line 11
- Section 2(1)(g) – Travel for Coordinator of the Research and Extension Center to conferences, page 2, line 2
- Section 2(1)(h) – Tools for Kosrae senior citizens, page 2, line 7
- Section 4(1)(c) – POL, page 3, line 14
- Section 4(2)(a) – St. Paul's subsidy, page 3, line 16
- Section 4(2)(d) – Transportation needs, page 3, line 19
- Section 4(4)(a) – Leadership travel (municipal, state, traditional leaders), page 4, line 1
- Section 5(1)(a) – Leadership travel (municipal, state, traditional, and youth leaders), page 4, line 16
- Section 5(1)(b) – Food relief assistance, page 4, line 18
- Section 5(1)(e) – Land transportation, page 4, line 22
- Section 5(2)(a) – Leadership travel (municipal, state, traditional leaders), page 4, line 24
- Section 5(2)(c) – Food relief assistance, page 5, line 2
- Section 5(3)(b) – Housing renovation supplement, page 5, line 5
- Section 5(4)(a) – Food and water system relief assistance, page 5, line 8
- Section 5(4)(b) – Election District No. 3 operation, page 5 line 10
- Section 5(4)(e) – Leadership travel (municipal, state, traditional leaders), page 5, line 14
- Section 5(5)(a) – Food relief assistance, page 5, line 17
- Section 5(5)(d) – Leadership travel (state and municipal leaders), page 5, line 22
- Section 5(5)(e) – Election District No. 4 operation, page 5, line 24
- Section 5(6)(a) – Election District No. 5 operation, page 6, line 2
- Section 5(6)(b) – Transportation safety equipment/supplies, page 6, line 4
- Section 5(6)(c) – Transportation needs, page 6, line 6
- Section 5(7) – Chuuk State Commission on Improvement Projects (CSCIP) Administrative support services, page 6, line 7.

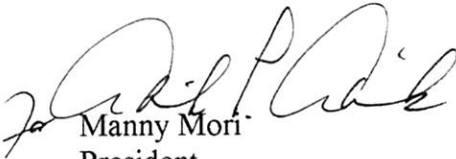


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With warm personal regards, I remain,

Sincerely,


Manny Mori
President

Enclosures:

xc: Chief Justice, FSM Supreme Court
Secretary, Department of Justice
Director, Office of SBOC
Legislative Counsel, CFSM
Library, CFSM
PIO, FSM



CONGRESS OF THE FEDERATED STATES OF MICRONESIA

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PRESIDENTIAL COMM. NO. 16-332
FSM CONGRESS

Office of the Chief Clerk

November 19, 2010



His Excellency Manny Mori
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 16-55, "AN ACT TO APPROPRIATE THE SUM OF \$1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES.", which was passed by the Sixteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2010, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Liwiana Ramon Ioanis".

Liwiana Ramon Ioanis
Chief Clerk, Congress of the
Federated States of Micronesia

Enclosures



PRESIDENTIAL COMM. NO. 16-332
FSM CONGRESS

SIXTEENTH CONGRESS OF THE
FEDERATED STATES OF MICRONESIA
FIFTH SPECIAL SESSION
NOVEMBER 15 – 24, 2010

PUBLIC LAW No. 16-58

An Act

TO APPROPRIATE THE SUM OF \$1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES.

INTRODUCED BY: SENATOR DOHSIS HALBERT

DATE: NOVEMBER 18, 2010

REFERRED TO: COMMITTEE ON WAYS AND MEANS
WITHDRAWN – NOVEMBER 18, 2010

FIRST READING: NOVEMBER 18, 2010

SECOND READING: NOVEMBER 19, 2010

Liwiana Ramon Ioanis
Chief Clerk, FSM Congress



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OFFICE OF THE SPEAKER

PRESIDENTIAL COMM. NO. 16-332
FSM CONGRESS

ACT NO. 16-55

(CONGRESSIONAL BILL NO. 16-161, C.D.1,
C.D.2, C.D.3)

We hereby certify that on November 19 the foregoing act passed Second and Final Reading of the Sixteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2010, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

A handwritten signature in black ink, appearing to read "Isaac V. Figir".

Isaac V. Figir
Speaker
Congress of the
Federated States of Micronesia

A handwritten signature in black ink, appearing to read "Liwiana Ramon Ioanis".

Liwiana Ramon Ioanis
Chief Clerk
Congress of the
Federated States of Micronesia

SIXTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIFTH SPECIAL SESSION, 2010

CONGRESSIONAL BILL NO. 16-161, C.D.1,
C.D.2, C.D.3

PUBLIC LAW No. 16-58

AN ACT

To appropriate the sum of \$1,005,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2011, for the purpose of funding public projects and social programs in each of the four states, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. The sum of \$1,005,000, or so much thereof as
2 may be necessary, is hereby appropriated from the General Fund
3 of the Federated States of Micronesia for the fiscal year
4 ending September 30, 2011, for the purpose of funding public
5 projects and social programs in each of the four states. The
6 fund shall be apportioned as follows:

7 Section 2. Of the sum of \$1,005,000 appropriated by this
8 act, \$255,000 is apportioned for Kosrae State for public
9 projects and social programs.

10	(1) State of Kosrae	\$ 255,000
11	(a) Kosrae Microfinancing	
12	Program	25,000
13	(b) Utwa Channel Improvement	6,900
14	(c) Kosrae Port Authority/	
15	Renovation of Kosrae Airport Terminal	15,000
16	(d) Kosrae Export Council	
17	Travel and Promotion of local products	15,000
18	(e) Completion of COM-FSM Kosrae	

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1	Campus Agriculture Facility	\$ 40,000
2	(f) Supplemental for construction	
3	of a greenhouse to support the Research and Extension	
4	Center at Kosrae COM-FSM Campus	40,000
5	(g) Travel for Coordinator of the	
6	Research and Extension Center to conferences	4,000
7	(h) Tools for Kosrae senior citizens	4,800
8	(i) Supplemental for completion	
9	of Lelu Senior Citizens Building	2,300
10	(j) Purchase of a three CY dump truck	
11	for Lelu Town Government	10,000
12	(k) Improvement of Mutunnenea to	
13	Inkoeya Inner Road	67,000
14	(l) Purchase of vehicle for Kosrae	
15	State Public Safety	15,000
16	(m) POL for Kosrae State Public	
17	Safety	2,000
18	(n) Kosrae High School Lunch Program	8,000
19	Section 3. Of the sum of \$1,005,000 appropriated by	
20	this act, \$140,000 is apportioned for Yap State for	
21	public projects and social programs.	
22	(1) State of Yap	140,000
23	(a) Balabat, Rull water extension ..	13,440
24	(b) Rumuu, Fanif peninsula coastal	
25	road project, phase one (clearing and cutting)	44,000

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1	(c) Wulu, Fanif water extension ..	\$ 49,700
2	(d) Falalus and Seliap community	
3	centers renovation supplemental	10,000
4	(e) Jubilee celebration in Woleai	
5	(POL/Food and water supplies)	22,860
6	Section 4. Of the sum of \$1,005,000 appropriated by this	
7	act, \$310,000 is apportioned for Pohnpei State for public	
8	projects and social programs.	
9	State of Pohnpei	310,000
10	(1) Pohnpei at Large	50,000
11	(a) Imwen Keiru	5,000
12	(b) Festival of Pohnpei	
13	Arts and Culture	25,000
14	(c) POL	20,000
15	(2) Election District No. 1	30,000
16	(a) St. Paul School subsidy	10,000
17	(b) Road Maintenance	10,000
18	(c) Sports activities	5,000
19	(d) Transportation needs	5,000
20	(3) Election District No. 2	50,000
21	(a) Administrative Support	
22	Services	25,000
23	(b) Fisheries projects	15,000
24	(c) Parao civic center	10,000
25	(4) Election District No. 3	180,000

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1	(a) Leadership travel (municipal,	
2	state, tradition leaders)	\$ 10,000
3	(b) Student financial assistance ...	10,000
4	(c) Nett Municipal Government	
5	subsidy	70,000
6	(d) U Municipal Government subsidy .	40,000
7	(e) Pingelap Municipal Government	
8	subsidy	25,000
9	(f) Mwoakil Municipal Government	
10	subsidy	25,000
11	Section 5. Of the sum of \$1,005,000 appropriated by this	
12	act, \$300,000 is apportioned for Chuuk State for public	
13	projects and social programs.	
14	State of Chuuk	300,000
15	(1) Chuuk at Large	50,000
16	(a) Leadership travel (municipal,	
17	state, traditional, and youth leaders)	10,000
18	(b) Food relief assistance	15,000
19	(c) Contractual services for	
20	project coordinators	5,000
21	(d) Fishing project	10,000
22	(e) Land transportation	10,000
23	(2) Election District No. 1	35,000
24	(a) Leadership travel (municipal,	
25	state, traditional leaders)	4,000

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1	(b) Student land transportation ... \$	11,000
2	(c) Food relief assistance	20,000
3	(3) Election District No. 2	40,000
4	(a) Fishing equipment	15,000
5	(b) Housing renovation supplement ..	15,000
6	(c) Municipal leaders travel	10,000
7	(4) Election District No. 3	45,000
8	(a) Food and water system relief	
9	assistance	15,000
10	(b) Election District No. 3	
11	operation	10,000
12	(c) Sewing project	5,000
13	(d) Fishing project	6,000
14	(e) Leadership travel (municipal,	
15	state, traditional leaders)	9,000
16	(5) Election District No. 4	65,000
17	(a) Food relief assistance	20,000
18	(b) Faichuk Development Authority	
19	Administration subsidy	10,000
20	(c) Purchase of vehicle for Tol	
21	municipal government	5,000
22	(d) Leadership travel (state and	
23	municipal leaders)	10,000
24	(e) Election District No. 4	
25	operation	20,000

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1 (6) Election District No. 5 \$ 40,000
2 (a) Election District No. 5
3 operation 10,000
4 (b) Transportation safety
5 equipment/supplies 10,000
6 (c) Transportation needs 20,000
7 (7) Chuuk State Commission on Improvement
8 Projects (CSCIP) Administrative support services 25,000
9 Section 6. Allotment and management of funds and lapse
10 date. All funds appropriated by this act shall be allotted,
11 managed, administered and accounted for in accordance with
12 applicable law, including, but not limited to, the Financial
13 Management Act of 1979. The allottee shall be responsible for
14 ensuring that these funds, or so much thereof as may be
15 necessary, are used solely for the purpose specified in this
16 act, and that no obligations are incurred in excess of the sum
17 appropriated. The allottee of funds appropriated under
18 sections 2 and 4 of this act shall be the President of the
19 Federated States of Micronesia or his designee. The allottee
20 of funds appropriated under section 3 of this act shall be the
21 Governor of Yap State. The allottee of funds appropriated
22 under subsections 5(1)(2)(4)(5)(6) and (7) of this act shall be
23 the Chuuk State Commission on Improvement Project (CSCIP). The
24 allottee of funds appropriated under subsection 5(3) of this
25 act shall be the Executive Director of the Northern Namoneas

PUBLIC LAW No. 16-58

1 Social and Economic Development Authority. The funds
2 appropriated by this act shall remain available until fully
3 expended.

4 Section 7. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

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10 _____, 2010

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*Law w/out Signature
12-20-10*

Manny Mori
President
Federated States of Micronesia