

STANDING COMMITTEE REPORT NO. 14-106

RE: C.B. NO. 14-62/HESA

SUBJECT: PREFERENCE TO QUALIFIED MICRONESIANS
IN COM HIRING POLICY

JULY 10, 2006

The Honorable Peter M. Christian
Speaker, Fourteenth Congress
Federated States of Micronesia
Fourth Special Session, 2006

Dear Mr. Speaker:

Your Committee on Health Education and Social Affairs, to which was jointly referred C.B. 14-62 entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 40 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTION 722 THEREOF TO REQUIRE THAT PREFERENCE BE GIVEN TO CITIZENS OF THE FEDERATED STATES OF MICRONESIA IN RECRUITMENT OF EMPLOYEES FOR THE COLLEGE OF MICRONESIA, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The subject bill would require the College of Micronesia ("COM") to give preference to qualified Micronesians when recruiting. COM would be obliged to advertise all positions for a minimum of 30 days within the FSM and could only hire a non-Micronesian if, after the 30 day period, no qualified Micronesian had applied. The bill provides an exception for temporary positions lasting up to 180 days.

Background

A public hearing was held in relation to the subject bill on January 20, 2006. During the hearing, witnesses from COM expressed concern that the proposed amendments may jeopardize federal program funding and COM's accreditation status.

By way of background, COM provided your Committee with a list of each position at the five COM campuses and the nationality of the staff member currently in the position. In summary, 23% of all COM staff are non-Micronesian and 69% of all non-citizens working at COM are faculty members with specialized educational expertise.

The subject bill was withdrawn from your Committee on May 18, 2006 and passed first reading on that date. On May 19, 2006, action on C.B. No. 14-62 was deferred to enable this Committee to examine the issues in more detail.

Your Committee and staff have had a number of discussions with COM staff and they have provided a submission in relation to this bill. The submission, essentially reiterates COM's concerns in relation

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to Federal funding and accreditation. However, it does provide some more detailed analysis of the issues and copies of the relevant documents. Your Committee thanks the staff at COM for their efforts.

Accreditation

COM's principal concerns regarding accreditation relate standards set by the Western Association of Schools and Colleges ("WASC"), in particular, the requirements relating to academic integrity, fairness of employment policies, valuing diversity and the independence of the governing body.

It is COM's position that by requiring the organization to give preference to a qualified Micronesian, even when there is a more qualified candidate from elsewhere, COM's compliance with the WASC standards would be undermined.

Your Committee accepts that the proposed amendments may be contrary to the spirit of accreditation standard IIIA which states "Consistent with its mission, the institution demonstrates its commitment to the significant educational role played by persons of diverse backgrounds". However, your Committee is satisfied that commitment to diversity may be demonstrated in a variety of ways. In addition, it is not anticipated that the amendments proposed by the subject bill would have a significant affect on the diversity of the COM faculty, rather, its affects are more likely to be seen in relation to administrative staff.

COM has also raised concerns about the subject bill's curtailment of the academic independence of the College. However, your Committee is satisfied that this is not the case. COM will remain the sole arbiter of the qualifications required to fill a particular position. COM will continue to have sole responsibility for its own recruitment and COM staff will remain independent of any government agency.

Academic integrity and fairness in all employment procedures are mandated under the Eligibility Requirements for Accreditation and the Accreditation Standards. However, the Committee continues to have reservations about COM's submission that the legislation would affect its overall compliance. In particular, your Committee believes that accurate qualification requirements that set the bar appropriately high for a given position and effective staff development programs would go a long way to meeting these concerns.

Unfortunately, your Committee understands that while COM has requested input from WASC on this issue, it has not yet received a response. As such, any assessment of how the subject bill would affect COM's accreditation is speculative to some extent.

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Federal Program Funding

COM's has expressed the view that continued eligibility for a number of federal programs including Pell Grants, FSEOG and Work-study would be jeopardized by enactment of the subject bill. The basis for this assertion is that the Terms and Conditions of the Program Participation Agreement require recipients to comply with title VI of the Civil Rights Act of 1964 (US) prohibiting discrimination on the basis of race, color or national origin. However, your Committee notes that, with some exceptions not relevant in this instance, title VI requirements do not apply to hiring practices.

Your Committee notes that in relation to the TRIO federal programs, including Upward Bound, Student Support Services and Talent Search, it can find no guidelines that would be contravened by the enactment of C.B. No. 14-62.

Once again, your Committee understands that COM has not received a response to its request for feedback from the relevant US federal agencies. However, it is the view of this Committee that C.B. No. 14-62 would be unlikely to be found to contravene federal program obligations.

Concluding remarks

C.B. 14-62 is intended to improve the limited employment prospects for Micronesians who choose to remain in the FSM. Your Committee cautiously supports this intention. In the current employment climate, your Committee continues to be concerned that COM positions requiring little or no specialized training such as secretaries, clerks, researchers, student services assistants and junior librarians continue to be filled by non-citizens. Furthermore, your Committee questions the commitment of COM to capacity building through the training of able Micronesians.

In general, your Committee does not find the assertions COM has made about the affect of the subject bill on accreditation and Federal Program funding persuasive.

Nevertheless, without direct input from the accreditation body and federal agencies your Committee does not recommend immediate passage of the bill. Even the possibility that the proposed changes would jeopardize COM's ongoing accreditation and eligibility for the Federal Funding worth almost \$9,000,000 annually is sufficient for this Committee to recommend additional scrutiny before further action is taken on C.B. No. 14-62.

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Respectfully submitted,

/s/ Resio S. Moses
Resio S. Moses, chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, vice chairman

/s/ Dohsis Halbert
Dohsis Halbert, member

Roosevelt D. Kansou, member

Manny Mori, member

/s/ Ramon Peyal
Ramon Peyal, member

/s/ Claude H. Phillip
Claude H. Phillip, member