

STANDING COMMITTEE REPORT NO. 15-50

RE: C.B. NO. 15-82/R&D

SUBJECT: TO AMEND PUBLIC LAW 15-08 TO PROVIDE AN ALTERNATIVE PROCEDURE FOR DIVESTMENT OF THE FSM PETROLEUM CORPORATION ASSETS AND OPERATIONS

NOVEMBER 21, 2007

The Honorable Isaac V. Figir  
Speaker, Fifteenth Congress  
Federated States of Micronesia  
Third Special Session, 2007

Dear Mr. Speaker:

Your committee on Resources and Development, to which was referred Congressional Bill No. 15-82, entitled:

"A BILL FOR AN ACT TO AMEND TITLE 27 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA AS ENACTED BY PUBLIC LAW NO. 15-08 BY AMENDING SECTION 265 THEREOF TO PROVIDE AN ALTERNATIVE PROCEDURE FOR DIVESTMENT OF ASSETS AND OPERATIONS OF THE FEDERATED STATES OF MICRONESIA PETROLEUM CORPORATION TO THE STATES IN WHICH THEY ARE LOCATED, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

**DISCUSSION:**

On September 11, 2007 CB 15-39 was signed into law by the President and became Public Law No. 15-08. That law created the new FSM Petroleum Corporation that was given the power to purchase and take over management and operation of the fuel storage and distribution facilities within the Federated States of Micronesia and enter into fuel supply agreements.

During hearings held in each of the States it became clear a key issue for certain of them was the terms and conditions under which the fuel assets acquired from MOMI would be returned to State ownership and control.

Public Law 15-8 places the authority to make the divestment determination with the "Executive Council" of the Corporation which consists of the President and all four of the State Governors. By definition, a divestment or capitalization instruction by the Executive Council requires the unanimous consent of the Council members under the current law.

Both Yap and Pohnpei submitted proposed draft amendments to the Bill intended to modify the "divestment" provisions. However, because of

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the bargaining position of MOMI at that time and the financing negotiations that were occurring, the Committee was satisfied that any substantial change to the divestment provision of the Bill could jeopardize the initial goal of gaining control of the fuel distribution facilities in Yap, Chuuk and Pohnpei and the ultimate goal of lowering fuel supply prices through competitive open market sources.

It should be noted that this Committee has always been sympathetic to the desire of the States to own the fuel distribution facilities themselves. In the "Conclusion" of S.C.R. No. 15-23, it was stated:

"While the Committee agrees with the ultimate goal of State ownership and management of the fuel distribution facilities, it believes any subsequent full or partial divestment must occur under circumstances that will not compromise the overall purpose of the Corporation to provide a secure and economical fuel supply to all citizens of the nation."

The position of Mobil Oil Micronesia continues to be that it will not sell any of its facilities in the FSM unless it sells all of them. It has been unwilling to deal with multiple parties. The loans from the Bank of Guam to the Petroleum Corporation, necessary to pay for the asset purchase and start up costs, are conditioned on a four state operation. The Committee recognizes that these factors make a "unilateral divestment" to any one of the FSM States impossible at the present time without returning to the starting point in negotiations with both MOMI and with the Bank. Because existing fuel supply agreements for three of the States have already lapsed, beginning anew is not an option.

C.B. No. 15-82 is proposed in recognition that after the initial goals for the Petroleum Corporation are realized, circumstances may develop sooner than anticipated that would make divestment to State governments or corporations possible. It removes the requirement for a unanimous consent of the Executive Council for a partial divestment while maintaining protections for the remaining State Governments, the National Government and the surviving operations of the Corporation.

**PUBLIC HEARING:**

A public hearing on C.B. No. 15-82 was held on Saturday, November 17, 2007. It was held in conjunction with the hearing on CB. No. 15-80

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relating to the National Government guaranty of Petroleum Corporation indebtedness. Discussions overlapped.

Senator Dion G. Neth, Chairman of the Standing Committee on Resources and Development chaired the meeting. Other committee members present were Senators Peter Sitan, Paliknoa Welly, Joe N. Suka and Joseph J. Urusemal and Vice Chairman Satiro Paul. Also in attendance was Speaker Isaac V. Figir. Peter Christian, Chairman of the Interim Board of Directors of the FSM Petroleum Corporation, Maderson Ramon, Director of the Division of Energy of the Department of Resources and Development, Loretha Barnett, Assistant Attorney General with the Department of Justice, Jared Morris, energy advisor to the corporation and Noel Pascua and Secretary Finley Perman of the Department of Finance were present by invitation.

Much of the discussion centered around whether the proposed amendment would satisfy the concerns and desires of all of the States sufficiently to insure their participation in this joint endeavor. The consensus of the Committee was that the removal of the unanimous consent requirement under the conditions set forth in the Amendment was a sound legislative decision at this time but that any further revisions to the Petroleum Corporation statute to address individual State concerns will necessarily require more a extensive process providing a full opportunity for all States to participate.

Chairman Neth summarized the discussions. Removal of the unanimous approval requirement for divestment of Corporation assets to a state is an improvement and represents a compromise between a one member veto power and placing a unilateral power with any one State. Whether the Amendment is sufficient to satisfy all of the desires of all of the states at this time is not as important as sending a message that this Congress is willing to listen to the concerns of each of the States.

After the immediate goals for this venture are realized and the Corporation has had a chance to transition the facilities from MOMI management and control, Chairman Neth stated this Committee will stand ready to hear all requests and suggestions for further improvements.

**RECOMMENDATION:**

Your Committee on Resources and Development recommends adoption of C.B. No. 15-82, as requested by the President in his Presidential Communication No. 15-107.

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Respectfully submitted,

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

Resio S. Moses, member

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

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

/s/ Setiro Paul  
Setiro Paul, vice chairman

/s/ Peter Sitan  
Peter Sitan, member

/s/ Joseph J. Urusemal  
Joseph J. Urusemal, member