

STANDING COMMITTEE REPORT NO. 16-72

RE: C.B. No. 16-26/T&C

SUBJECT: AMENDING TITLE 21 OF THE FSM CODE
RELATING TO FSM TELECOMMUNICATIONS
CORPORATION BOARD OF DIRECTORS

FEBRUARY 15, 2010

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Third Regular Session, 2010

Dear Mr. Speaker:

Your Committee on Transportation and Communications, to which was referred C.B. No. 16-26 entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 21 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMENDING SECTIONS 210, 211, 212, 213 AND 218 THEREOF RELATING TO THE APPOINTMENT AND COMPOSITION OF THE BOARD OF DIRECTORS OF THE TELECOMMUNICATION CORPORATION OF THE FEDERATED STATES OF MICRONESIA, ESTABLISHING TERM LIMITS FOR APPOINTIVE BOARD MEMBERS, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of C.B. No.16-26 are expressed in its title.

Currently, there are five members on the Board of Directors of the FSM Telecommunications Corporation. Four members representing the four states are appointed by the pertinent Governors and confirmed by each of the pertinent four State legislatures. The National Government representative on the Board is appointed by the President and confirmed by Congress.

The first proposed amendment in C.B. No.16-26 is to amend section 210 to modify the appointment and confirmation procedures for all Board members of the FSM Telecommunications Corporation by having all members on the Board be appointed by the President with the advice and consent of Congress. The appointment of any state representative on the Board shall be upon the recommendation to the President by the Governor of the pertinent State. Appointments shall include at least one member with knowledge of financial matters by virtue of having training or work experience as an accountant, business financial manager, banker or regulator. On any nomination to the Board of the FSM Telecommunications Corporation, the respective Governor and the President must recommend individuals with experience or training relating to telecommunications, business management, accounting or

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finance with a college degree and five years of related work experience. This will allow the Board to effectively assess the operation and activities of the Management of the Corporation.

The second proposed amendment is to amend section 211, which is the organizational meeting of the Board. During the month of September, October or November on such dates as agreed by the Board, the Board shall meet to select its officers and conduct business.

The third proposed amendment is to amend section 212 to allow for staggered terms for Board members so that no more than two of the five terms expire in one year. In addition, the rights and powers of a member whose term has expired are to remain in effect until a successor is appointed and confirmed, except no member shall remain in office in this manner for longer than one year after the end of his or her term. A member of the Board shall serve no more than two consecutive terms.

The fourth proposed amendment is to amend section 213 to require the Presiding Officer of the Board to notify the President or the Governor of the state represented of any vacancy on the Board not less than ninety days ahead of the vacancy. Furthermore, any vacancy on the Board shall be filled in the same manner as provided in section 210.

The fifth proposed amendment is to amend section 218 to lessen the required quorum of the Board to transact business from five to four. Your Committee held a public hearing on C.B. No. 16-26 on February 2, 2010. Present at the hearing were Chairman Dion G. Neth, members Joseph J. Urusemal, Paliknoa K. Welly, Peter M. Christian, Peter Sitan, Dohsis Halbert, Vice Speaker Fredrico O. Primo, Secretary of the Department of Transportation, Communication and Infrastructure Mr. Francis I. Itimai and his key staff, CEO for the FSM Telecommunications Corporation and his staff, Board Members Esmond Moses and Sasao Gouland, and Congress staff Alik Jackson.

During the discussion on the bill, it was clear that the witnesses from the Corporation dislike the proposed amendments and want to retain the status quo. Board Member Esmond Moses indicated that the change of administration of the State Government is like staggered terms for the Board Members. Furthermore, he indicated that the states had contributed their resources to establish the Corporation and the states should be allowed to confirm their own representatives to the Board.

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Board Member Sasao Gouland commented that the proposed amendments in the bill contain constitutional defects; however there was no specific provision in the FSM Constitution upon which he based his justification. Your Committee opined that there is no constitutional defect in the proposed bill.

The Vice Speaker Fredrico Primo commented on the bill and indicated that the Corporation is doing fine. He concluded with this comment, "Why try to fix something that is not broken?"

Your Committee after digesting the testimony presented at the hearing wishes to take action on the bill. The Committee strongly supports the idea that the FSM Telecommunications Corporation is a National Corporation and its affairs should be scrutinized by Congress. On this note, Congress must have the prerogative to confirm whoever is nominated to the Board of the Corporation. The states still can participate in the affairs of the Corporation by recommending their representative to the President to be confirmed by Congress.

On February 11, 2010, the Committee also conducted an executive meeting to decide whether to take action on C.B. No. 16-26 during the Third Regular Session of Congress. Present at this executive meeting were: Chairman Dion G. Neth, members Peter M. Christian, Floor Leader Joe N. Suka, Joseph J. Urusemal, Claude H. Phillip, Senator Paliknoa K. Welly and staff Alik Jackson.

During this executive meeting, Senator Peter M. Christian supported the fact that only Congress has the power to confirm members on the Boards of national public corporations.

Senator Urusemal raised a concern on the liability issue. Your Committee wishes to note that section 207 of title 21 of the FSM Code clearly states that the debts and obligation of the Corporation shall not be the debts and obligations of the Federated States of Micronesia, nor shall the Government of the Federated States of Micronesia be responsible for any such debts or obligations.

Your Committee decided to take action on the bill based on a survey on the current FSM Telecommunications services that was conducted by the FSM Department of Transportation, Communication and Infrastructure. The result of the survey revealed that the current FSM Telecommunications services need improvement. For instance, customers do complain but there has never been an established procedure for action on complaints. Furthermore, the representatives on the Board are not addressing the telecommunications services problems currently

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experienced in each of the states. Therefore, there is a need to have an effective Board that will be able to address these problems and raise them to the Management. It was a general observation that the Board is powerless because it was controlled by the Management of the Corporation. The Committee concurs with this observation and supports the changes offered in this bill.

However, the Committee recommends that if the bill become law, it will become effective as the term of each of the current members expires. Therefore the Committee recommends amendments to the bill as follows:

1. Title, line 2, after "amended" insert "by Public Law No. 14-54".
2. Title, line 5, delete "appointive" and insert "appointing" in lieu thereof.
3. Page 1, line 11, delete "One".
4. Page 1, lines 12 and 13, delete in their entirety.
5. Page 1, line 14, delete "member representing each of the States." and insert "The states must be fairly represented on the Board. There shall be one member from each state who shall be recommended by the Governor of the pertinent state; and there shall be one member from the National Government who shall be appointed by the President of the Federated States of Micronesia".
6. Page 1, line 18, delete "The" at the end of the line.
7. Page 2, lines 1 through 3, delete in their entirety.
8. Page 2, line 4, after "that", insert "at".
9. Page 2, line 5, delete "July 1, 2007", and insert July 1, 2010" in lieu thereof.
10. Page 3, line 17, after "Micronesia" insert ", as amended by Public Law No. 14-54,"; and after "hereby", insert "further".
11. Page 4, line 9, after "Micronesia" insert "as, amended by Public Law No. 14-54,", and after "hereby", insert "further"
12. Page 5, between lines 6 and 7, insert a new Section to read as follows:
"Section 6. This act shall become effective as the term of each current member of the Board of Directors of the FSM Telecommunications Corporation expires."
9. Page 5, line 7, delete "6", and insert "7" in lieu thereof.

Your Committee on Transportation and Communication is in accord with the intent and purpose of C.B. No. 16-26, as hereby amended, 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. 16-26, C.D.1.

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Respectfully submitted,

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

/s/ Tony H. Otto
Tony H. Otto, vice chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

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

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

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

Joseph J. Urusemal, member