

STANDING COMMITTEE REPORT NO. 16-132

RE: C.B. NO. 16-108/J&GO

SUBJECT: AMEND TITLE 55, TO ESTABLISH A MARITIME
SURVEILLANCE REVOLVING FUND

JANUARY 27, 2011

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2011

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was jointly referred C.B. No. 16-108, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY ADDING A NEW SUBCHAPTER XII TO CHAPTER 6, TO ESTABLISH A MARITIME SURVEILLANCE REVOLVING FUND, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

The subject bill, C.B. No. 16-108, proposes to add a new subchapter XII to chapter 6 of title 55 of the FSM Code for the purpose of establishing a Maritime Surveillance Revolving Fund.

The intent is to create a new revolving fund called the Maritime Surveillance Revolving Fund (the "Fund"). The purpose of the Fund is to provide a reliable source of funding for fuel for the surveillance and patrol boats of the National Government.

Proposed Amendments

The first proposed amendment is to enact a new Section 671 of title 55 of the FSM Code, to establish a Maritime and Surveillance Revolving

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Fund, separate from the General Fund of the Federated States of Micronesia.

The second proposed amendment is to enact a new Section 672 of title 55 of the FSM Code, to clarify that the intent of the Fund is to provide reliable funding for fuel for the surveillance and patrol boats.

The third proposed amendment is to enact a new Section 673 of title 55 of the FSM Code. The intent is to determine the source of funding that should be deposited into the Fund. As proposed herein, all deposits to this Fund include all future appropriations from Congress as well as revenues received pursuant to the provisions of section 403(2) of title 24 of the FSM Code. The other intent of this proposed section is to provide a threshold amount of \$500,000. Any amount in excess of the \$500,000 shall revert to the General Fund.

The fourth proposed amendment is to enact a new Section 674 of title 55 of the FSM Code naming the President or his designee as the administrator of the Fund, and for the administrator to establish procedures that are necessary and appropriate to effectuate the implementation of the provisions of this subchapter.

Your Committee conducted a series of public hearings in each of the States on several measures including the said bill.

Chuuk State Hearing

The first public hearing on C.B. No. 16-108 was held in Chuuk State on June 29, 2010. The hearing was with the Executive Branch. Witnesses present included Governor Wesly Simina and most of his cabinet members. The witnesses from the Executive Branch expressed strong support for the bill; with the understanding, that the States shall retain their 50 percent share from fishing fines penalties.

Your Committee held a second public hearing on the said bill on June 29, 2010 at the Chuuk State Legislature Chamber. Witnesses at the hearing included President Mark Mailo and most of the Chuuk State legislators. Also, attending the hearing were members of the general public. The Legislative Branch also expressed strong support for the bill, and stated their wish that the 50 percent share of fishing violations for the National Government be deposited into the Fund and not the 50 percent for the states.

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Kosrae State hearing

Your Committee held two separate hearings in Kosrae. The first was held on July 1, 2010 at the Governor's conference room. In attendance were Governor Robert Weilbacher, Lt. Governor William Tosie, Directors Steven George, Weston Luckymis, Tiser Reynold, Attorney General J.D. Lee, staff from the Department of Resource and Economic Affairs and the Governor's Chief of Staff, Mr. Josiaha Waguk.

One of the concerns raised during the discussion on the bill is whether the proposed Fund in C.B. No. 16-108 is similar to the one in C.B. No. 16-32. The introducer of C.B. No. 16-32 intended to establish a "Fisheries Observer Revolving Fund". The President has transmitted C.B. No. 16-108, which proposes to establish a "Maritime Surveillance Revolving Fund". Your Committee wishes to take action on C.B. No. 16-108 to create the "Maritime Surveillance Revolving Fund".

The second hearing was held on July 2, 2010 at the Kosrae State Legislature chamber. Witnesses from the Legislative Branch included Senators John Martin, Albert Welly, Bob Skilling, Gibson Siba and Ilahi Abraham. Senator Martin asked for an estimated amount of fuel for the surveillance and patrol boats for a year. Your Committee informed him that it is in the neighbourhood of \$600,000 per year. With the annual appropriation of \$600,000, the Maritime Wing, which is under the Department of Justice, still comes to Congress for supplemental funding because often times the surveillance and patrol boats cannot deploy because of no funding for the operations of the patrol boats. The only time that funds can be made available is when Congress is in session to appropriate supplemental funding for fuel. In essence, the creation of this Fund is to allow the Maritime Wing to use the Fund when needed instead of waiting for Congress to appropriate supplemental funding for fuel.

Senator Skilling expressed a concern whether establishment of the Fund is a good policy because the implementation of the Fund is susceptible to misuse. He commented that the responsible individuals that will administer the Fund might use the funding unnecessarily. Consequently, Congress is required to appropriate money into the Fund if the amount in the Fund is less than the amount needed. On this issue, it was recommended that a control mechanism be put in place to control the use of the Fund.

Mr. James Movick commented that by establishing the Fund, the Department of Justice, especially the Maritime Wing, will be extra

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effective in pursuing violators in the Exclusive Economic Zone in its surveillance operation just to generate revenue into the Fund. He also commented that this will allow a zealous protection of the EEZ pursuant to title 24 of the FSM Code, which may include minor infractions against the fishing vessels, the captains or the owners. Thus, this kind of over protection practice may affect fishing companies that are already engaged in fishing business in the FSM or those that will be coming to the FSM. Hence, it is a disincentive to the fisheries development of this Nation.

Yap State Hearing

Your Committee held a joint public hearing in Yap State on July 6, 2010 at the Yap Legislature Chamber. Witnesses included, Governor Sebastian Anefal, members of his cabinet, Speaker Charles Chieng, members of the Yap State Legislature, and interested members of the public.

During the hearing, there was a brief explanation of the purpose of the hearing including a brief explanation of C.B. No. 16-108. Speaker Chieng and Governor Anefal jointly welcomed the members of Congress including the staff to Yap State.

Governor Anefal then inquired on the rational of the bill, and inquired why are we shifting gears, whether the Maritime Wing received less funding generated from fishing fines and violations? Your Committee informed the Governor that currently, the Department of Justice, especially the Maritime Wing is tasked to patrol the EEZ, and find vessels that are fishing illegally. To deploy three patrol boats, for fuel only, the estimate is around \$600,000 per year. Often times, there are unscheduled trips of the patrol boats, which are not budgeted. Consequently, the patrol boats cannot deploy at sea, but anchor at the dock because of not enough fuel. So the intent here is to establish a fund to provide reliable funds for the operational needs of the surveillance and patrol boats.

Speaker Chieng then inquired on the intent of the proposed section 673. He commented that the United States has technologies that it can offer the FSM for the surveillance of the FSM waters. Therefore, there is a need for FSM to come up with an agreement with United States in this regard. He indicated that this approach will save money. Your Committee informed the Speaker that his recommendation is noted, and the Committee will consult with the appropriate authorities at the National Government.

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After a detailed explanation of the bill, Senator Raglmar-Subolmar commented that appropriations from Congress should be the last source of funding that will be deposited into the Fund. Generally, the leadership of Yap supported the intent of the bill.

Pohnpei State hearing

Your Committee held another joint public hearing in Pohnpei State on July 27, 2010. In attendance were Governor John Ehsa, Attorney General Scott Garvey, Vice Speaker Berney Martin, Senators Magdalena A. Walter, Dahkar D. Daniel, Aurelio Joab, Robert Nakasone and Naiten O. Phillip, FFA consultant James Movick, Patricia Jack from NORMA, and Peltesar Petrus, the President's emissary.

During the discussion on the bill, Vice Speaker Martin asked whether section 403(2) of title 24 of the FSM Code is the appropriate section to tap funding from, and deposit it into the Fund. Your Committee indicated that there is a need to further research on the appropriate section of title 24 and discuss it with the Department of Justice whether section 403(2) of title 24 is the appropriate section.

Mr. Movick commented that if the Maritime Wing ran out of funding, the program may try to capture more vessels that are fishing illegally in the FSM waters. A zealous practice of apprehending, even a minor infraction, indicated in title 24 may indicate that the Maritime Wing needs funding so it needs to capture more vessels engaged in illegal fishing activities. He indicated that the intent of the bill is good for effective management of the fish stock in our EEZ, but from the industries' perspective, this proposal seems to tell the Maritime Wing to go out there and apprehend fishing violators to generate revenues into the Fund. This same sentiment was echoed by Ms. Patricia Jack from NORMA. A response to this was that fishing violations are not guaranteed all the time, but fishing fees are guaranteed. Attorney Scott Garvey commented that if the bill becomes law, Congress should ensure that only the 50 percent share of the National Government from fishing fines and violations is touched, and not the states, share.

National Government hearing

Your Committee held another hearing on the bill on Friday, November 19, 2010 at the Congress Committee hearing room. In attendance were Chairman Peter Sitan, Senators Roger S. Mori, Tony Otto, Paliknoa Welly, Peter Christian and Joseph J. Urusemal. Witnesses included: Secretary Maketo Robert, Department of Justice; Secretary Marion Henry, Department of Resources and Development; Assistant Attorney

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General Jun Bacalando; Assistant Attorney General Pole Atanraoi; Captain Johnny Santos; Surveillance Officer Paul Ruhl; Executive Officer Maxon Mark; Commander FSS Micronesia Steward Peter; Executive officer Kodak David; Commander, Maritime Wing, Robert Lauweirang; and Marine Management Billy Edward.

Chairman Sitan greeted the witnesses and opened the floor for general statements. Secretary Maketo Robert indicated that the annual appropriation of around \$600,000 from Congress for the operational needs of the surveillance and patrol boats is inadequate. He further stated that there is a need to ascertain the exact provision in title 24, to clarify whether section 403(2) is the appropriate section being requested because the initial intent when the bill was drafted was to tap a percentage of the fishing-licensing fee.

Assistant Attorney General Ms. Atanroei briefly explained a summary of the number of fishing violations in the EEZ from the 2000 to 2010. On the fines collected per year, it may range from a low of \$200,000 to almost \$2 million. Generally, ninety percent (90%) of these fishing violators would be from fishing licensed vessels, while ten percent (10%) would be from illegal unlawful unregulated (IUU) fishing vessels.

Assistant Attorney General Mr. Bacalando commented that the Maritime Wing always requests for additional fuel; therefore, the establishment of this Fund will ease the problem. Commander Robert Maluweirang explained that there are thirty-five patrol days in a quarter for one patrol boat to do surveillance of 125 kilometers of water area. With three patrol boats, the number of patrol days is around 300 days per year.

Your Committee asked the Department to clarify where the money should be coming from, whether from the fifty percent (50%) share of the National Government from fishing violations or from fishing access agreements. Secretary Maketo Robert indicated that the proposed fees should come from both the National Government's fifty percent (50%) share of the civil and criminal fines from fishing violations and also from the access agreements.

Secretary Robert informed the Committee that the Vessel Monitoring System (VMS) can only detect licensed vessels, and not the unlicensed vessels. Your Committee asked the Commander of the Maritime Wing how many times the boats cannot be deployed for surveillance because of no

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fuel. Commander Robert explained that due to unscheduled search and rescue requests, needed maintenance of the boats, and unscheduled runs of the boats, the boats patrol accordingly if there is fuel. On the question, he remembered that there was one occasion that the boats could not go out because of no fuel. He further explained that one tank of fuel costs around \$70,000. The provisioning, maintenance or slipping is not included in the \$70,000.

Senator Christian suggested a reimbursement system for preparedness of the patrol boats. He further explained that the vigilance of the patrol boats to apprehend fishing vessels, for instance minor infractions of title 24 may have negative consequences to the development of our fishing industry. He also wanted to know how much the states or agencies of the National Government owed for fuel.

Your Committee agreed to tap only the National Government share of the fifty percent from criminal fines and civil fines for fishing violation and appropriations from the FSM Congress as the sources of funding for this Maritime Surveillance Revolving Fund.

Senator Sitan suggested that there is a need to get a certain percentage of the revenue from access agreements to be deposited into the Fund, like NORMA did in taking \$3,000 from each vessel for the observer program. He also commented that the Forum Fisheries Agency has benefited too much from the FSM Access agreements, and such benefits should be considered because the fish are caught not at FFA but in the FSM.

After a lengthy discussion on this bill, your Committee agreed that the source of funding for this Maritime and Surveillance Revolving Fund should come from criminal fines and civil fines from fishing violations. In addition, the sole intent of this Funds is to provide for fuel only for the surveillance and patrol boats, and should not be used for operation of the program, salaries or overtime.

Recommendations

After much deliberation and consideration of the bill, your Committee recommends the following amendments:

1. Page 1, line 16, delete "to support the".
2. Page 1, line 17, delete "operational needs of" and insert "for" in lieu thereof.

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3. Page 1, line 19, after "Micronesia." insert "The Fund shall not be used for salaries or overtime".
4. Page 2, line 5, insert an "s" at the end of "section", and also after "section", delete "403(2)", and insert "901 and 902" in lieu thereof.

With these amendments, your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 16-108 and, upon concurrence of your Committee on Ways and Means, 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. 16-108,C.D.1.

Respectfully submitted,

/s/ Peter S. Sitan
Peter S. Sitan, chairman

Tiwiter Aritos, vice chairman

Isaac V. Figir, member

/s/ Dohsis Halbert
Dohsis Halbert, member

Fredrico O. Primo, member

/s/ Roger S. Mori
Roger S. Mori, member

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