

STANDING COMMITTEE REPORT NO. 18-151

RE: C.B. No. 18-67/J&GO

SUBJECT: TO CLARIFY THE POWER OF AUTHORIZED
OFFICERS TO STOP AND SEARCH VESSELS

MAY 26, 2014

The Honorable Dohsis Halbert
Speaker, Eighteenth Congress
Federated States of Micronesia
Fourth Regular Session, 2014

Dear Mr. Speaker:

Your Committee on Judiciary & Governmental Operations, to which was referred C.B. No. 18-67, entitled:

"A BILL FOR AN ACT TO AMEND SECTION 603 OF TITLE 24 OF
THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS
ENACTED BY PUBLIC LAW NO. 12-34, IN ORDER TO CLARIFY
THE POWERS OF NATIONAL OFFICERS AUTHORIZED TO BOARD
VESSELS THAT ARE USED IN FISHING AND RELATED
ACTIVITIES, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

Your Committee on Judiciary & Governmental Operations held a public hearing on March 27, 2014. Representatives from the Department of Justice, the National Police, NORMA, R&D, NFC, and the President's Office were in attendance.

Your Committee notes that C.B. No. 18-67 proposes what appears to be a minor, technical change to the wording of section 603(1)(c) of title 24. Instead of reading that an authorized officer may stop and search any vessel, vehicle or aircraft that he reasonably believes may be

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"transporting fish or engaging in other related activities relating to fishing," the new wording would be, "transporting fish or engaging in related activities." Thus, "other" and "relating to fishing" would be deleted.

The Department of Justice testified that one purpose of the proposed measure was to align the language of title 24 with the language used in international treaties of which FSM is a party. Apparently, "transporting fish or related activities" is the standard phrase used in most international treaties. The use of "other" and "relating to fishing" is not standard wording. Your Committee finds that aligning the language of title 24 with the standard language of international fishing treaties is an important goal.

Furthermore, the Department of Justice expressed concern that the current language of section 603 might be used by a defense attorney to argue that a vessel engaged solely in transshipment of fish, refuelling, or resupplying illegal fishing ships is excluded from section 603. This is because "related activities" is elsewhere defined in title 24 to include transshipment of fish, refuelling, and resupplying, but the addition of "relating to fishing" might be argued to thus exclude it. While this is certainly not the intent of section 603 it would be up to a court to decide whether such an argument was meritorious. Yet, your Committee finds that closing a potential "loophole" that might be argued to free those engaged in unlawful transshipment activities is an important goal.

Your Committee notes that concern was expressed that the omission of "relating to fishing" had the potential to open the abuse of power of authorized officers to board vessels. In particular, if the statute reads, "transporting fish or engaging in related activities" instead of "transporting fish or engaging in other related activities related to fishing," could "related activities" be read expansively if it stood alone? Could passenger ships, cargo vessels, and other vehicles not intended to fall under section 603(1)(c) be searched under an expanded reading of "related activities" if C.B. No. 18-67 was passed into law?

Your Committee finds this is not a valid concern. Section 102 of

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title 24 explicitly defines "related activities." Specifically, section 102(56) of title 24 defines "related activities" as:

- "(a) transshipment;
- (b) refueling or supplying fishing vessels, selling or supplying fishing equipment, or performing either activity in support of fishing; and
- (c) on-shore storing, buying or processing fish or fish products from the time they are first landed."

Therefore, your Committee is satisfied that the change to section 603(1)(c) of title 24 proposed by C.B. No. 18-67 would maintain the intent of the boarding provisions under that subsection.

Your Committee is in accord with the intent and purpose of C.B. No. 18-67 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.

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Respectfully submitted,

/s/ Wesley W. Simina
Wesley W. Simina, chairman

/s/ Berney Martin
Berney Martin, vice chairman

Dohsis Halbert, member

Tiwiter Aritos, member

/s/ Yosiwo P. George
Yosiwo P. George, member

/s/ Isaac V. Figir
Isaac V. Figir, member

Bonsiano F. Nethon, member