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COMMITTEE ON JUDICIARY AND GOVERNMENTAL OPERATIONS

STANDING COMMITTEE REPORT NO. 21-71

RE: C.B. 21-331 SPECIAL POLLING PLACES/J&GO

SUBJECT: REQUESTING AN AMENDMENT TO THE ELECTION LAW REGARDING SPECIAL POLLING PLACES

NOVEMBER 17, 2020

The Honorable Wesley W. Simina
Speaker, Twenty-First Congress
Federated States of Micronesia
Eighth Special Session, 2020

Dear Mr. Speaker:

Your Committee on Judicial and Governmental Operations, to which was referred C.B. 21-331, entitled:

> "A BILL FOR AN ACT TO TEMPORARILY SUSPEND VOTING AT SPECIAL POLLING PLACES FOR THE MARCH 2021 NATIONAL ELECTION DUE TO THE PREVALENT CORONAVIRUS-19 PANDEMIC BY AMENDING FURTHER SECTION 605 OF TITLE 9 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS ENACTED BY PUBLIC LAW 14-76, AND AMENDED BY PUBLIC LAWS NOS. 14-98 AND 15-2, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

Public Hearing

Your Committee held a public hearing on 15 October 2020. Present were the Acting Elections Director, the Elections Directors Assistant, Jun Bacalondo, Chief of Staff, and representing your Committee on Judiciary and Governmental

STANDING COMMITTEE REPORT NO. 21-421

RE: C.B. 21-131 SPECIAL POLLING PLACES/1660

SUBJECT: REQUESTING AN AMENDMENT TO THE ELECTION LAW REGARDING SPECIAL POLLING PLACES

NOVEMBER 4, 2020

The Honorable Wesley W. Simms
Speaker, Twenty-first Congress
Federated States of Micronesia
Eighth Special Session, 2020

Dear Mr. Speaker:

Your Committee on Judicial and Governmental Operations, to which was referred C.B. 21-331, entitled:

"A BILL FOR AN ACT TO TEMPORARILY SUSPEND VOTING AT SPECIAL POLLING PLACES FOR THE MARCH 2021 NATIONAL ELECTION DUE TO THE PREVALENT CORONAVIRUS-19 PANDEMIC BY AMENDING FURTHER SECTION 505 OF TITLE 9 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (AMENDED), AS ENACTED BY PUBLIC LAW 14-79, AND AMENDED BY PUBLIC LAWS NOS. 14-98 AND 15-1, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

Public Hearing

Your Committee held a public hearing on 12 October 2020. Present were the Acting Elections Director, the Election Directors Assistant, Ten Buenaventura, Chief of Staff, and representing your Committee on Judiciary and Governmental

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Operations was Chairman Romolow, Speaker Simina, Chairman Figir, Chairman Urusemal and Floor Leader.

Chairman Romolow welcomed the witnesses and expressed his appreciation on their attendance for this important hearing. He noted that no official communication had been received from the President's Office and the only reason Congress was aware of the alleged changes were due to people viewing a public posting of a press release from the President's office regarding the matter, indicating voting will only be by absentee ballot by mail.

Speaker inquired as to whether the public posting is accurate and if so, what executive action was utilized to make this change?

The Acting Elections Director responded that he met with the President and because of the pandemic they decided that it would be in the best interest of FSM citizens and poll workers to conduct the election by absentee mail.

Speaker noted then, that this is an official action of the President. He noted that the election is not until March of next year. He asked if the decision was made due to the pandemic causing people to care more about safety, or is there a prohibition in each jurisdiction forbidding this?

The Acting Elections Director responded that it is based on the current situation with the pandemic. Speaker noted that the situation could change by March. He noted that the restrictions within each jurisdiction may change. The Acting Elections Director responded that they will return to the "regular" voting if the situation with the pandemic changes.

Chairman Romolow noted that he is concerned with the decision being made at the current time, noting it is subject to change. He suggested that absentee ballots would have been sent out by mail, how would they be able to

change mid-course to special polling places and ensure the integrity of the ballot system? How will they ensure there is no duplicate voting?

Assistant Attorney General Bacalondo responded that they are aware of the difficulty being faced currently. He suggested that the policy in the Press release may not end up being pursued. He affirmed that the law requires special polling places shall be provided. He noted things could change, the pandemic may change things, the lockdowns in Guam and Hawaii could change. He suggested that a cut off date needs to be established, prior to the ballots being sent out. He noted that there is a risk of duplication and we don't want citizens to cast their vote twice. He is aware that the current voter ID will allow citizens to vote without requesting in advance.

Chairman Romolow asked what the plan is to avoid the possibility of duplicate votes? He noted that if a decision is made to change to special polling place, there is a high risk of duplicate voting. The Elections Director's assistant responded that a list can be sent to the special polling place of those who have already requested a mail in ballot. She suggested setting a specific date for a decision to be made. She suggested the decision should be made before Jan 31, which is the last date to request to vote at a special polling place. Anyone who has requested to vote by mail, will have to be prior to this date. Once a decision is made, it needs to be adhered to.

Chairman Romolow noted that if the situation changes after January 31, they should not change the decision. He noted that this is her opinion, but a decision needs to be formally made. She noted that they had requested the law be amended, but it has not happened. Chairman Romolow noted that the official press release was published and people are responding, even though the request to amend the law has not been received.

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Chief of Staff noted that the discussion started regarding the current situation with the pandemic and the risks associated with the type of activities that would be involved with special polling places. He noted that we don't know what will happen in the next 6 months, however, he noted that the election office had the foresight to plan for a response to the pandemic if it does not settle down and allow for special polling places. He shared that there needed to be something put in place to alert citizens that this may be the way things have to happen and advise them of the plan. The timeline for absentee voting, and to change how voting is done in Guam and Hawaii, needed to be communicated early to prepare them. The election office has been in the process of updating their website with current information. He noted that Chairman Romolow is correct that the election office wrote a letter with some proposed amendments that would accommodate the plan. He noted that they will undertake to push out information in cycles so they are aware of what is ongoing, and they will draft legislation for Congress to consider changes. He noted that there does need to be a cut off date due to ongoing concerns. This has been discussed, but has not been decided on. He suggested that they would like members to know they are diligently working on the process and they needed to get started because of the timelines in place. This type of response has never occurred so they are trying to keep everyone aware and prepared.

Chairman Romolow noted that he is concerned that a date for a decision needing to be set. Nov. 2 is the date requests to vote by mail begins. If things change by January, citizens may not end up getting their ballot as requested, and they may not be able to vote at a special polling place because they requested mail in ballot.

Chief of staff noted that all of the concerns of members are shared by the executive. They will do all they can to ensure a clean election and avoid pitfalls to the best of their ability. He noted that they do need a plan in place

to response if they cannot utilize special polling places, especially if there are local restrictions in place. He noted that the plan needs to be flexible to respond to potential changes that may arise. He noted that things don't seem to be calming down in various relevant jurisdictions.

Chairman Romolow noted another concern regarding the presidential action that was taken to make these changes. The special polling places were created by law, and he questioned if this action is legal? AAG Bacalondo noted that they are analyzing the changes that need to occur with legislation to address these concerns. He noted that the provision regarding special polling places and some other sections may need to be amended. As it reads now, the special polling places are mandatory. He noted that the provisions were set up without anticipating an emergency situation. He noted that in the emergency declaration there is a reference to exceptional circumstances, addressing the infringement on civil rights in response to the emergency. He noted that we need to coordinate our efforts to ensure people are able to safely vote and there will be several amendments needed.

Chairman Romolow took note of the fact there will be amendments coming. He asked if the decision that was made in advance of requesting the amendments is legal, noting that Congress may not approve the requested amendments. He noted that the action to suspend the special polling places has occurred in advance of these changes. AAG Bacalondo noted that the decision will need to complimentary adjustment to the law and regulations in order for it to be legally effective. Chairman Romolow again asked if it was legal for the President and the Elections Director to make the decision prior to the changes. AAG Bacalondo noted that he did not have a discussion within the executive prior to the publication of the press release. He suggested that the press release noted that there would need to be complimentary legislation. He noted that there

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is a paragraph that references that the support of Congress will be needed by the amendment of the relevant laws.

Speaker inquired regarding Guam and Honoloulu and previous elections, how many votes were cast by absentee mail and at the special polling places for each of the states. The election office does not have the numbers with them, they can provide the numbers. Chairman Romolow noted 10,000 in Guam from Chuuk.

Speaker expressed concerned that this may cause a lot of confusion that may result in people not casting their votes. He noted that by the time we get to a special session, it may be mid-November, but not sure. He is concerned that we are getting close to deadlines and it will cause even more confusion. He suggested his thoughts to AAG Bacaldono, for the President to submit decree to address concerns and changes. AAG Bacalondo indicated they will look into this and speak with Secretary of Justice.

Chief of Staff noted that in whatever form the decision is released, there is still a lot of uncertainty and they need to be prepared. He noted that the special session in November is being considered. He noted if there are critical amendments needed, the President could make the call for session.

Speaker noted that the Pohnpei extra polling places are not consider special polling place, however, if the virus arrives, it may also be affected. He also inquired as to whether the current voting in the US and restrictions related to voting could affect the decisions being made. Chief responded that it could affect our voting, but as of yet, has not. He noted that whatever local jurisdictions are putting in place could have an impact, and we do not have to do the same as what the US is doing. There is a big issue in the US regarding mail in ballots and we don't know what the outcome will be. Response must be to mitigate

risk and afford citizens their constitutional right to vote.

Chairman inquired to the Acting Elections Director as to what happens if the requested amendments are not approved by Congress? What is the plan B?

The Acting Elections Director noted that they do not want to violate the law. If the amendment is not approved, would have to utilize special polling places. He noted that staff is ready to go out if needed. Speaker noted that this is the correct response and it is up to Congress to ensure citizens are safe and healthy. Chairman Romolow expressed appreciation to the acting ED for his response.

Chairman Figir also noted that Congress needs to ensure citizens are safe and healthy, but also noted that they need to wait to see what the amendment contains before making any decisions.

Chairman Romolow inquired as to whether there has been discussion regarding whether the special polling can be disallowed by the US government. Has there been any indicated from Guam and Honolulu as to whether they may not allow the special polling places. The Acting Elections Director noted that have not received any information regarding this. Speaker noted that they will see in three weeks if they are voting at polling places in Guam on November 2.

Speaker asked if the changes will implicate funding for the election budget. He noted that there will be an increase in printing of ballots and envelopes, stamps, affidavits, etc. The Elections Director's Assistant noted that as of now, the budget is ok. Chief of Staff noted that they had considered the budgetary impact. He noted that the current position is that the budget is ok, however, if we change back to a polling place, they would need to re-evaluate the budget because it would involve more in personnel because

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of verifying, security, social distancing, etc. However, for now, if the absentee ballot model is followed, there will be travel funds and other categories of funds that could be changed to cover expenses.

Chairman Romolow thanked everyone for their participation. He noted that Congress welcomes the requested amendments and we will do our best to ensure the health and safety of our citizens, while ensuring they have their constitutional right to vote.

Conclusion:

Although your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. 21-331, its cannot recommend its passage in it's current form. The Committee finds that the legislation does not encompass all of the intentions discussed at the hearing, specifically regarding allowing for a change that would allow the special polling places if the pandemic impact decreases prior to the election. The Committee recommends that the Elections Director develop a timeline and language that will allow for in person voting at the special polling places, should the pandemic allow.

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Respectfully submitted,

Robson U.Romolow, chairman,

Peter M. Christian, vice chairman

Tiwiter Aritos, member

Isaac V. Figir, member

Ferny S. Perman, member

Wesley W. Simina, member

Paliknow K. Welly, member