CONGRESS OF THE FEDERATED STATES OF MICRONESIA
P.O. Box PS 3
Palikir, Sokehs
Pohnpei State, FM 96941
Tel: (691) 320-2324/2325/2326/2327/2337/2338/2707
Telex: 729-6809 Fax: (691) 320-5122

COMMITTEE ON
WAYS AND MEANS

STANDING COMMITTEE REPORT NO. 22-59

RE: C.B. NO. 22-217/W&M

SUBJECT: PUBLIC AUDITOR BILL TO AMEND TITLE 55 OF THE FSM CODE.

JANUARY 18, 2023

The Honorable Wesley W. Simina
Speaker, Twenty-Second Congress
Federated States of Micronesia
Sixth Regular Session, 2023

Dear Mr. Speaker:

Your Committee on Ways and Means, to which was referred Congressional Bill No. 22-217, entitled:

> "TO FURTHER AMEND CHAPTER 5 OF TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED IN PUBLIC LAWS NOS. 19-156 AND PUBLIC LAW NO. 22-32, BY AMENDING SECTION 502 THEREOF, IN ORDER TO PROVIDE A DEFINITION OF "AUDITING STANDARDS" AND "DOCUMENT"; BY AMENDING SECTION 503 THEREOF, IN ORDER TO PROVIDE AN IMMUNITY PROVISION AND CLARIFY SALARY REQUIREMENTS; BY AMENDING SECTION 505 THEREOF, IN ORDER TO EXPAND THE DUTIES OF THE PUBLIC AUDITOR; BY AMENDING SECTION 507 THEREOF, IN ORDER TO CLARIFY THE TYPES OF AUDITS AND EXPAND POWERS OF THE PUBLIC AUDITOR; BY INSERTING A NEW SECTION 508 IN ORDER TO ESTABLISH THE OFFICE OF THE PUBLIC AUDITOR; AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

The bill was introduced on July 18, 2022. Your Committee has thoroughly reviewed the proposed amendments to chapter 5 of title 55 of the Code of the Federated States of Micronesia.

Your Committee wishes to express its concerns regarding the intent and purpose of C.B. No. 22-217. Your Committee found that the bill proposes to significantly expand the scope of the Public Auditor's duties to include inspections and evaluations, including the inspection and evaluations of the policies of the national government and its instrumentalities. Your Committee believes that the Public Auditor should not evaluate policies and should focus only on the assessment of the implementation of the national government's programs.

Your Committee also noted that the bill allows the Public Auditor to require the audited institution to report on the implementation of the Public Auditor's recommendations. This would make the recommendations of the Public Auditor mandatory directives.

Your Committee believes that these proposals, if implemented, would excessively expand the role of the Public Auditor, which it believes should remain limited to providing an independent and objective assessment of the use of public resources. Your Committee does not recommend passing C.B. No. 22-217 in its current form.

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Conclusion

Based on the above findings, your Committee on Ways and Means recommends that C.B. No. 22-217 be filed.

Respectfully submitted,

Isaac V. Figir, chairman	Victor V. Gouland, member
Dion G. Neth, member	Ferny S. Perman, member
Robson U. Romolow, member	Joseph J. Urusemal, member
Paliknoa K. Welly, member	

TWENTY-SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIFTH SPECIAL SESSION, 2022 C.B. NO. 22-217

A BILL FOR AN ACT

To further amend chapter 5 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended in Public Laws Nos. 19-156 and Public Law No. 22-32, by amending section 502 thereof, in order to provide a definition of "auditing standards" and "document"; by amending section 503 thereof, in order to provide an immunity provision and clarify salary requirements; by amending section 505 thereof, in order to expand the duties of the Public Auditor; by amending section 507 thereof, in order to clarify the types of audits and expand powers of the Public Auditor; by inserting a new section 508 in order to establish the Office of the Public Auditor; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Section 502 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 502. Definitions.

As used in this chapter[~~,~~]:

(1) "auditing standards" means generally accepted government auditing standards in the United States or international auditing standards for public sector audits.

(2) "document" means any record of information, including:

(a) anything on which there is writing or any image;

(b) anything on which there is any mark, figure, symbol, or perforation having a meaning for a person qualified to interpret it; and

(c) anything from which any sound, image or writing can be reproduced, with or without other aids; and includes documents or information created, recorded, or stored electronically by any means whatsoever, and any information derived from those documents or that information.

(3) "public funds from the National Government" means funds or reimbursements from the National Government arising from the National tax revenues, including National tax revenue shared with the states pursuant to article IX, section 5 of the Constitution of the Federated States of Micronesia, and all grants, subsidies, or contributions in the form of money, goods, or services from any source which are received from the National Government by appropriation law, or otherwise."

Section 2. Section 503 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 503. Appointment—Tenure—Removal—Salary. The appointment, tenure, removal, and salary of the Public Auditor for the National Government of the Federated States of Micronesia shall be as follows:

(1) Appointment. The Public Auditor shall be appointed by the President with the advice and consent

of Congress.

(2) Tenure. The Public Auditor shall serve for a term of four years and until a successor is confirmed. An individual may be reappointed for an additional term or terms with the advice and consent of Congress.

(3) Removal. The Congress may remove the Public Auditor from office for cause by a two-thirds vote. In the event of such removal, the President of the Federated States of Micronesia shall appoint an Acting Public Auditor until a successor is confirmed.

(4) Salary. The Public Auditor shall receive an annual salary of $70,000. Such salary shall not be reduced during the Public Auditor's term of office. In the event of removal or of a vacancy in the office, the successor or Acting Public Auditor shall be entitled to the salary attendant to the office as of the date of succession.

(5) Immunity. Neither the Public Auditor nor any employee of the Public Auditor acting under the Public Auditor's authority shall be subject to personal civil or criminal liability for any act or omission in carrying out his or her duties in good faith."

Section 3. Section 505 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 505. Duties.

The duties of the Public Auditor shall be as follows:

(1) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government and of other public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organizations receiving public funds from the National Government.

(2) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records associated with any project, program, and activity receiving funding in whole or in part from public funds of the National Government.

(3) The Public Auditor shall perform audits as otherwise specifically required by statute.

<u>(4) The Public Auditor may at any time perform an inspection or evaluation of the design, implementation, or results of the operations, programs, or policies of the National Government and any instrumentality of the National Government as referred to in subsection (1). An inspection or evaluation shall be performed in conformity with standards issued by the Council of the</u>

Inspectors General on Integrity and Efficiency in the United States, to the extent the Public Auditor determines the standards to be practicably applicable.

[~~(4)~~] (5) The Public Auditor shall have the discretion to perform audits, inspections, or evaluations, or assist in the performance of audits, upon request by the States.

[(5)] (6) The Public Auditor shall have the exclusive audit jurisdiction over public funds of the National Government of the Federated States of Micronesia, including loans or grants from international organizations but he shall have the authority to contract for independent auditing, inspection or evaluation services to be performed under his supervision in instances where specialized expertise is required, or where auditing, inspections, or evaluation requirements are beyond the capacity of the Public Auditor's staff and separate funding is available.

[~~(6)~~] (7) The Public Auditor shall file a report at least once a year with the Congress. The Public Auditor may file other reports at such other times as he may determine. All reports of the Public Auditor shall be made available to the public.

~~(7)~~ (8) The Public Auditor may submit recommendations with his audit and inspection or evaluation reports which shall be confined to matters within the jurisdiction of the Public Auditor, including compliance or noncompliance with laws governing the expenditure of public moneys, and the need for amendments or new laws to secure the efficient expenditure of public funds.

(9)Upon receipt of an audit report or a report on an inspection or evaluation, the public entity being audited, inspected, or evaluated must respond to any recommendations, in writing to the Public Auditor, by indicating the action or actions the entity will immediately take to address the recommendations and any action or actions the entity will take on recommendations not immediately addressed. The public entity must file a monthly report with the Public Auditor indicating its progress in addressing the recommendations until the entity can report to the Public Auditor that all recommendations have been addressed, which period shall not exceed one year.

(10) The Public Auditor may in his report to Congress under subsection (7) refer to any public entity which has, in the Public Auditor's opinion, failed without reasonable justification to address recommendations or to comply with its obligations under subsection (9).

[~~(8)~~] (11) The Public Auditor shall keep a complete and accurate record or file of all audit reports, inspections, investigations, releases, audit work papers, and other materials pertaining to the work of the Office of the Public Auditor."

Section 4. Section 506 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 506. Powers.

The powers of the Public Auditor shall be as follows:

(1) The Public Auditor may examine and inspect all books, records, files papers, documents, and all financial affairs of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government, as well as other public legal entities, including state and non-profit organizations receiving funds from the National Government.

(2) The Public Auditor may audit the records of any contractor performing public work on cost-reimbursement-type contracts for the National Government [~~of the Federated States of Micronesia~~] to verify the cost charged to a public contract. Any contractor performing public work pursuant to a contract with the National Government [~~of the Federated States of Micronesia~~] shall keep and maintain records adequate to establish the validity of costs charged to the National Government.

(3) The Public Auditor may by subpoena summon persons to appear at a reasonable time before him and administer oaths to such persons. He may question such persons, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the due execution of the duties vested in the Public Auditor by this chapter.

(4) The Public Auditor may issue subpoena *duces tecum* within a reasonable time requiring the production of books, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

(5) Any subpoena or subpoena *duces tecum* issued under the authority of the Public Auditor shall run in the name of the Federated States of Micronesia and shall be addressed to the chief or other officer of the Division of Security and Investigation of the Office of the Attorney General of the National Government of the Federated States of Micronesia. The subpoena or subpoena *duces tecum* shall be signed by the Public Auditor and shall identify the witness to be served or the books, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection and audit<u>, or inspection or evaluation, as the case may be</u>.

(6) Any officer to whom such subpoena or subpoena *duces tecum* is directed shall forthwith serve or execute the same upon delivery thereof to him.

(7) Any person who will fully fails or refuses to appear upon receiving service of subpoena, or who willfully fails or refuses to produce any books, records, documents, or other relevant financial papers or objects designated in a subpoena *duces tecum* properly issued by the Public Auditor, upon conviction thereof, shall be fined not more than $1,000.00, or imprisoned for not more than one year, or both. Failure by the Public Auditor to comply in any material respect with the requirements of this chapter shall relieve any person of the obligation to appear or the obligation to produce designated materials, and such failure shall be defense in any proceeding against such person for punishment.

(8)Any person subject to a *subpoena duces tecum* shall have only those privileges against producing books, records, documents, or other relevant financial papers or objects which are authorized under the rules of evidence of the Supreme Court of the Federated States of Micronesia, the Constitution of the Federated States of Micronesia, the Trust Territory Bill of Rights, or other applicable law.

(9) The Public Auditor, when he receives an allegation of non-compliance in public office, misuse of public resources, financial crime, financial corruption, or any other breach of the national law or regulations involving, in whole or in part, public funds from the National Government, including funds received from a development organization by loan or grant, from the National Government, may authorize the Compliance Investigation Division to conduct a preliminary inquiry to ascertain whether there is a reasonable cause to warrant an investigation into the allegation.

(10) The Public Auditor, when [~~he as part of~~] in the performance of his duties has a reasonable cause to suspect non-compliance in public office, misuse of public resources, financial crime, financial corruption, or any other breach of the national law or regulations involving, in whole or in part, public funds from the National Government, may authorize the Compliance Investigation Division to investigate such matters.

(11) The Compliance Investigation Division, when conducting a preliminary inquiry or an investigation, shall liaise with the Department of Justice during the course of conducting such preliminary inquiry or investigation and advise the Department of Justice of the results of such a preliminary inquiry or

investigation."

Section 5. Section 507 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 507. Types of audits and audit standards. The types of audits and applicable audit standards shall be as follows:

(1) [~~Three types of audits may be performed~~] The Public Auditor may perform:

(a) Financial audits and compliance audits. Financial audits and compliance audits include, but are not limited to, audits performed under section 505(1) and (2). This type of audit determines whether the financial statements of an audited entity present fairly the financial position and results of financial operations in accordance with generally accepted accounting principles and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(b) [~~Economy and efficiency.~~] Performance audits. This type of audit determines whether an entity is managing and utilizing its resources effectively, economically and efficiently, the cause of inefficiencies or uneconomical practices, and whether the entity has complied with laws and regulations concerning effectiveness, economy and efficiency.

(c) Program results. This type of audit determines whether the desired results or benefits established by the Congress or other authorizing body are being achieved and whether the program administrators have considered alternatives that might yield desired results at a lower cost.

(2) Any given audit or review may include one or more of the objectives in subsection (1) of this section in the reasonable exercise of the Public Auditor's discretion.

(3) The Public Auditor shall perform audits in conformity with auditing standards, to the extent the Public Auditor determines the standards to be both relevant and practicably applicable to the audit." [~~generally accepted audit standards as established by the American Institute of Certified Public Accountants."~~]

Section 6. Chapter 5 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended by inserting new section 508 to read as follows:

"Section 508. Office of the Public Auditor.

(1) Office of the Public Auditor for the Federated States of Micronesia shall be headed by the Public Auditor. The Office of the Public Auditor exists

independently of the National Government and shall be independent of administrative and political control, direction and influence.

(2) The Public Auditor shall be responsible for management and authorization of expenditures for the operation of the Office within the limits of the congressional appropriation provided by law for the operation of the Office. The Public Auditor may establish organizational divisions in the Office, including the Compliance Investigation Division, as the Public Auditor determines appropriate. The Public Auditor may prescribe the duties and responsibilities of Office divisions. The Public Auditor may enter an administrative arrangement with the Finance Department for the administration of the Office's finances and to ensure that all expenditure under appropriation that has been authorized by the Public Auditor is certified and paid according to the applicable legal requirements.

(3) Within the congressional appropriation provided for the operation of the Office, the Public Auditor may employ such staff that the Public Auditor considers necessary for the effective functioning of the Office and the performance of the Public Auditor's duties under Chapter 5 of Title 55 of the Code. In employing staff, the Public Auditor must comply with Title 52 of the

Code, including but not limited to, human resources management and management of recruitment processes."

Section 7. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 7/18/22 Introduced by: Wesley S. Simina