

STANDING COMMITTEE REPORT NO. 19-226

RE: C.B. NO. 19-257/R&D

SUBJECT: AMENDING EXISITNG SECTIONS OF TITLE  
18 OF THE FSM CODE AND INSERTING  
ADDITIONAL SECTIONS THAT ESTABLISH  
ADDITIONAL MARITIME ZONES, AND  
BRING TITLE 18 IN CONFORMITY WITH  
CONTEMPORARY NORMS AND PRACTICES  
UNDER INTERNATIONAL LAW

APRIL 04, 2017

The Honorable Wesley W. Simina  
Speaker, Nineteenth Congress  
Federated States of Micronesia  
Eighth Special Session, 2017

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred C.B. No. 19-257, entitled:

"A BILL FOR AN ACT TO AMEND TITLE 18 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA BY AMENDING EXISTING SECTIONS THEREOF AND INSERTING ADDITIONAL SECTIONS THAT ESTABLISH ADDITIONAL MARITIME ZONES, EXTENSION OF CONTINENTAL SHELF AND BASELINES AS RECOGNIZED BY THE LAW OF THE SEA CONVENTION, TO BRING TITLE 18 IN CONFORMITY WITH CONTEMPORARY NORMS AND PRACTICES UNDER INTERNATIONAL LAW, TO INCORPORATE TREATY OBLIGATIONS ASSUMED BY THE FEDERATED STATES OF MICRONESIA SUCH AS MARITIME BOUNDARY DELIMITATION TREATIES WITH NEIGHBORING NATIONS, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

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

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C.B. No. 19-257 was transmitted to Congress on September 14, 2016 through Presidential Communication No. 19-420. In Presidential Communication 19-420, the President urged Congress to favorably consider the bill.

The purpose of C.B. No. 19-257 is to update title 18 of the FSM Code to align it with the United Nations Convention on the Law of the Sea (UNCLOS) and maritime boundary delimitation treaties concluded with neighboring nations. Passing the bill will also incorporate sovereign rights of the FSM over continental shelf claims made in accordance with article 76 of UNCLOS.

Under Article 76 of UNLCOS, "continental shelf" of a coastal state comprises "*the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance*".

The Committee held a series of public hearings on the bill in each of the states. During these hearings, the Committee informed the leaderships that title 18 of the FSM Code is the legislation that determines the maritime boundaries of the FSM with other adjacent maritime boundaries of other countries, i.e. the Republic of the Marshall Islands, the Republic of Palau, the Territory of Guam, Papau New Guinea, Indonesia and Nauru. Before UNCLOS, there are a number of maritime boundaries disputes and by establishing our maritime boundaries, the FSM will have strong claims against other countries.

The technical staff from the National Oceanic Resource Management Authority who travelled with the Committee to the states explained that historically speaking how far a cannon ball can go is how the maritime boundaries are measured. As for the current title 18, the charts used by the Japanese

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were used to measure the maritime boundaries of the FSM.

Hence, the FSM maritime boundaries were provisionally established, and this would be the first time to amend title 18 to update with new information to give legal effect to strengthen our claims to the International Community. The Committee informed the leaderships that the FSM has already completed the maritime boundaries between the Republic of the Marshall Islands, the Territory of Guam, Papua New Guinea and the Republic of Palau. By completing the maritime boundaries with our neighboring countries, the FSM need to enact laws to incorporate internationally accepted language.

**A brief summary of the bill**

Section 101. The intent of the amendment is to provide alternative in presenting the baselines of the FSM. Currently, section 101 authorizes the use of large-scale charts to measure baselines, which is consistent with article 5 and article 6 of the UNCLOS. However, article 16 of UNCLOS allows charts and lists of geographical coordinates of points specifying the geodetic datum. The amendment being proposed reflects the alternative in article 16 of UNCLOS. This "alternative" is discussed in Article 16(1) of UNCLOS, and it reads. *"The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts of a scale or scales adequate for ascertaining their position.* Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted."

Furthermore, the amendment incorporates means to determine baselines other than normal baselines, which is recognized by UNCLOS. For example, archipelagic baseline is expressly recognized by article 47 of UNCLOS.

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Section 102. This is a minor change that incorporates contemporary practice of using capital "M" to mean nautical mile.

Section 102A. This is a new section to officially recognize the use of archipelagic baselines in accordance with article 47 of UNCLOS. Section 1 of article 1 of the FSM Constitution makes explicit reference to the "waters connecting the islands of the archipelago" as internal waters regardless of dimensions. This new section 102A will give effect to this constitutional provision.

Section 103. This amendment gives explicit reference to sovereign rights over the archipelagic waters as defined in section 102A.

Section 104. This is a minor amendment to replace "nautical miles" with a capital "M" as referenced in the amendment of section 102 to be in line with contemporary practice.

Section 105A. This is a new section that defines the contiguous zone in accordance with article 33 of UNCLOS. The amendment defines this zone as composed of those areas of the sea that are beyond and adjacent to the territorial sea, which is not more than 24 M seaward of the baseline. The purpose of the contiguous zone is the application of control with respect to the prevention of infringement of customs, fiscal and immigration or sanitary laws and regulation and to impose punishment for violation. It is important to note that national controls are recognized under UNCLOS.

Section 105B. This is a new section to officially recognize the regime of continental shelf. The section defines the inner and outer boundaries of the continental shelf, which are consistent with article 76 of UNCLOS that governs the manner of delineating the outer limit of the continental shelf beyond the area traditionally known as exclusive economic zone (EEZ).

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Section 105C. This new section reinforces the recognition given to continental shelf beyond the 200-mile limit of the exclusive economic zone. The intent of this amendment is to domesticate article 76 of UNCLOS that explicitly recognizes sovereign rights over the continental shelf areas beyond the exclusive economic zone. These areas are the Ontong Java Plateau, the Mussau Ridge and the Eauripik Rise.

Section 106. This amendment is to correct a minor typographical error.

Section 107. This amendment empowers the President or his designee to promulgate regulations that establish the appropriate baselines, contiguous zone, and continental shelf. It is noted that while these concepts or zones are formally recognized in title 24 of the FSM Code, they also need to be defined in terms of coordinates, which the President should be allowed to do so by regulation. This is the rationale behind this amendment.

Section 107A. The intent of this amendment is to accord official status of such charts that are in the custody of NORMA and certified by the President. These are the charts referred to in article 16 of UNCLOS and section 101 of this title.

Section 108. Additional terms used in the amendment are being defined for the purpose of clarity. These terms are archipelago, continental shelf, convention, geodetic datum, island, low-water, low-tide, mile, straight line, territorial sea, and zones.

Your Committee wishes to offer the following amendments to the bill as follows:

1. Title, line 1, after "amend", insert "sections 101, 102, 103, 104, 106, 107 and 108 of", and delete "by".

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2. Title, line 1, after "Micronesia", insert "(Annotated)".
3. Title, lines 2, 3, 4, 5, 6 and 7 in their entirety, and insert ", and inserting new sections 102A, 105A, 105B, 105C, 105D and 107A to establish additional maritime zones, an extension of the continental shelf and baselines as recognized by the Law of the Sea Convention, to bring title 18 in conformity with contemporary norms and practices under international law, to incorporate treaty obligations assumed by the Federated States of Micronesia, such as maritime boundary delimitation treaties with neighboring nations, and for other purposes" in lieu thereof.
4. Page 1, line 1, delete "24", and insert "18" in lieu thereof.
5. Page 3, line 7, delete "24", and insert "18" in lieu thereof.
6. Page 3, line 20, delete "24", and insert "18" in lieu thereof.
7. Page 4, line 6, delete "24", and insert "18" in lieu thereof.
8. Page 4, line 18, delete "24", and insert "18" in lieu thereof.
9. Page 5, line 5, delete "24", and insert "18" in lieu thereof.
10. Page 6, line 6, delete "24", and insert "18" in lieu thereof.
11. Page 7, line 6, delete "24", and insert "18" in lieu thereof.
12. Page 7, line 14, delete "24", and insert "18" in lieu thereof.
13. Page 8, line 7, delete "24", and insert "18" in lieu thereof.
14. Page 8, line 14, delete "24", and insert "18" in lieu thereof.

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15. Page 8, line 24, delete "24", and insert "18" in lieu thereof.
16. Page 9, line 8, delete "24", and insert "18" in lieu thereof.

Your Committee on Resources and Development has carefully reviewed Congressional Bill No. 19-257. Your Committee is in accord with the intent and purpose of C.B. No. 19-257 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. 19-257, C.D.1.

Respectfully submitted,

/s/ David W. Panuelo  
David W. Panuelo, chairman

/s/ Alik L. Alik  
Alik L. Alik, vice chairman

/s/ Victor V. Gouland  
Victor V. Gouland, member

Florencio S. Harper, member

Berney Martin, member

Joseph J. Urusemal, member

/s/ Robson U. Romolow  
Robson U. Romolow, member