December 20, 2010

The Honorable Isaac V. Figir
Speaker
16th FSM Congress
Palikir, Pohnpei State, FM 96941

Dear Speaker Figir:

I hereby transmit the following Congressional Act which became Public Law No. 16-58 pursuant to section 22, title IX, of the FSM Constitution:

Congressional Act No. 16-55, “AN ACT TO APPROPRIATE THE SUM OF $1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES.”

In my communication concerning Public Law No. 16-49, an appropriation in the amount of $2.9 million which became law on October 15, 2010, I pointed out the constitutionally defective line items, for which reason I decided to exercise the presidential power of item veto. I also discussed the legal obstacles faced by the executive branch when it comes to vague line items, which do not have legal standards for appropriate implementation. For example, some line items are for relief assistance program, with no criteria in place as to how recipients of the appropriation are selected.

If the Act becomes law, it is the duty of the Executive Branch to execute the law and administer funds to follow the guidance Congress has given them by consulting the language Congress put in the public law. See, Udot Municipality v. FSM, 10 FSM Intrm., 354 (Chk. 2001). Some of the line items in Public Law No. 16-49 “are not to be allotted and expended until there is a breakdown.” There being no indication as to the purpose of the above items, said line items are legally vague. By inserting this language in the Act, Congress in effect dictates to the Executive Branch as to how and when to implement a law. This is an encroachment into the Executive prerogative. Any attempt by one branch to usurp the powers that the FSM Constitution explicitly grants to another branch violates the FSM Constitution and is invalid. See, Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623 (Pon. 2002).

Moreover, in the Udot case, the Supreme Court expressly states, to wit: “I find that Congress, not the executive, is executing and implementing Public Law No. 11-27. Other than the senator’s involvement in choosing and approving the projects, the Commission itself is also suspect.” 9 FSM Intrm. 418, 420 (Chk. 2000.) Pursuant to the court decision in Udot, Congress cannot execute public laws, because it is a duty that is delegated to the executive branch. The same can be said for CSCIP, to which the court alluded as suspect. It is neither a public project nor a social program to begin with.
The Honorable Isaac V. Figir
December 20, 2010
Page 2

Other items for leadership travels are duplicative, because the annual budget act also provides for travel. Any additional travel fund in the form of public project is clearly inappropriate.

I communicated with Congress the foregoing constitutional defects in the public law. During a consultation with some members of Congress while in Tokyo, it was agreed that at its fifth special session in November, Congress would not override the veto but would instead cure the constitutional defects. The consultation was critical as I was of the impression that the understanding in Tokyo reflected a sense of the Congress.

But instead of curing the constitutional defects in Public Law No. 16-49, Congress continues with questionable practices by further appropriating over $1 million worth of public projects. Like its predecessor, this Congressional Act contains vague line items, such as for example, Microfinancing Program, Food Relief Assistance, Land Transportation, Housing Renovation Supplement, Transportation Needs, and many others. No standards or criteria for the selection of beneficiaries are provided, that will serve as guide for the executive branch in implementing projects. Due to absence of transparent standards, the choice of beneficiaries might then end up in the legislative branch, which under the circumstances is inappropriate because it will lend some credence to an observation made by the Office of Public Auditor in its previous report, as follows: “The public law funding CFSM projects did not clearly identify overall objectives for what it wanted public projects to achieve regarding its “social development and economic development” intent. In their selection of projects, Congress members did not require nor did they follow proposal or selection standards used by other government entities because there was no requirement for CFSM public projects to meet such standards.” ONPA No. 2008-07, December 2008.

Moreover, in spite of the court decision in Udot case, CSCIP remains funded under the Congressional Act. Clearly, the constitutional violation is far from being rectified, it instead perpetuates.

Article XIII, section 7, of the FSM constitution explicitly requires that on assuming office, all public officials shall take an oath to uphold, promote, and support the laws and the Constitution as prescribed by statute. It is therefore my duty, and all of the members of Congress as well, to faithfully uphold, promote and support the constitution. It is my sworn duty to insist upon compliance with the constitution. At the same time, I am mindful of the fact that while a presidential veto is warranted under the circumstances, based upon numerous experiences, Congress would override a veto without an explanation and without an attempt to rectify the defects, which only makes a presidential veto an exercise in futility. When that happens, the important presidential tool to implement the checks and balances between our
branches of government becomes a hollow mockery. Every instinct in my body abhors such action. Faced with this dilemma, I must refrain from being a party to a continuing violation of the constitution. For this reason, I withhold my approval of this Congressional Act.

I urge Congress to take a fresh look at public project appropriations when it comes back to session, and consider rectifying the constitutionally defective line items as enumerated below, based upon the foregoing explanation:

Section 2(1)(a) – Kosrae Microfinancing Program, page 1, line 11
Section 2(1)(g) – Travel for Coordinator of the Research and Extension Center to conferences, page 2, line 2
Section 2(1)(h) – Tools for Kosrae senior citizens, page 2, line 7
Section 4(1)(c) – POL, page 3, line 14
Section 4(2)(a) – St. Paul’s subsidy, page 3, line 16
Section 4(2)(d) – Transportation needs, page 3, line 19
Section 4(4)(a) – Leadership travel (municipal, state, traditional leaders), page 4, line 1
Section 5(1)(a) – Leadership travel (municipal, state, traditional, and youth leaders), page 4, line 16
Section 5(1)(b) – Food relief assistance, page 4, line 18
Section 5(1)(e) – Land transportation, page 4, line 22
Section 5(2)(a) – Leadership travel (municipal, state, traditional leaders), page 4, line 24
Section 5(2)(c) – Food relief assistance, page 5, line 2
Section 5(3)(b) – Housing renovation supplement, page 5, line 5
Section 5(4)(a) – Food and water system relief assistance, page 5, line 8
Section 5(4)(b) – Election District No. 3 operation, page 5 line 10
Section 5(4)(e) – Leadership travel (municipal, state, traditional leaders), page 5, line 14
Section 5(5)(a) – Food relief assistance, page 5, line 17
Section 5(5)(d) – Leadership travel (state and municipal leaders), page 5, line 22
Section 5(5)(e) – Election District No. 4 operation, page 5, line 24
Section 5(6)(a) – Election District No. 5 operation, page 6, line 2
Section 5(6)(b) – Transportation safety equipment/supplies, page 6, line 4
Section 5(6)(c) – Transportation needs, page 6, line 6
Section 5(7) – Chuuk State Commission on Improvement Projects (CSCIP) Administrative support services, page 6, line 7.
The Honorable Isaac V. Figir  
December 20, 2010  
Page 4

With warm personal regards, I remain,

Sincerely,

[Signature]

Manny Mori
President

Enclosures:

xc: Chief Justice, FSM Supreme Court  
Secretary, Department of Justice  
Director, Office of SBOC  
Legislative Counsel, CFSM  
Library, CFSM  
PIO, FSM
November 19, 2010

His Excellency Manny Mori  
President  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 16-55, "AN ACT TO APPROPRIATE THE SUM OF $1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES.", which was passed by the Sixteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2010, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Liwiana Ramon Ioanis  
Chief Clerk, Congress of the  
Federated States of Micronesia

Enclosures
An Act

TO APPROPRIATE THE SUM OF $1,005,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, FOR THE PURPOSE OF FUNDING PUBLIC PROJECTS AND SOCIAL PROGRAMS IN EACH OF THE FOUR STATES, AND FOR OTHER PURPOSES.

INTRODUCED BY: SENATOR DOHSIS HALBERT
DATE: NOVEMBER 18, 2010

REFERRED TO: COMMITTEE ON WAYS AND MEANS
WITHDRAWN – NOVEMBER 18, 2010
FIRST READING: NOVEMBER 18, 2010
SECOND READING: NOVEMBER 19, 2010

Liwiana Ramon Ioakis
Chief Clerk, FSM Congress
ACT NO. 16-55

(CONGRESSIONAL BILL NO. 16-161, C.D.1, C.D.2, C.D.3)

We hereby certify that on November 19 the foregoing act passed Second and Final Reading of the Sixteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2010, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Isaac V. Figir
Speaker
Congress of the Federated States of Micronesia

Liwiana Ramon Ioanis
Chief Clerk
Congress of the Federated States of Micronesia
AN ACT

To appropriate the sum of $1,005,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2011, for the purpose of funding public projects and social programs in each of the four states, and for other purposes.

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

1. Section 1. The sum of $1,005,000, or so much thereof as may be necessary, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2011, for the purpose of funding public projects and social programs in each of the four states. The fund shall be apportioned as follows:

   Section 2. Of the sum of $1,005,000 appropriated by this act, $255,000 is apportioned for Kosrae State for public projects and social programs.

   (1) State of Kosrae ........................ $ 255,000

   (a) Kosrae Microfinancing

   (b) Utwa Channel Improvement ........... 6,900

   (c) Kosrae Port Authority/

   (d) Kosrae Export Council

   (e) Completion of COM-FSM Kosrae

   Renovation of Kosrae Airport Terminal ............... 15,000

   Travel and Promotion of local products ............. 15,000
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<th>Description</th>
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<tr>
<td>1</td>
<td>Campus Agriculture Facility</td>
<td>$40,000</td>
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<td>(f) Supplemental for construction of a greenhouse to support the Research and Extension</td>
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<tr>
<td>3</td>
<td>Center at Kosrae COM-FSM Campus</td>
<td>$40,000</td>
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<td>4</td>
<td>(g) Travel for Coordinator of the Research and Extension Center to conferences</td>
<td>$4,000</td>
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<td>5</td>
<td>(h) Tools for Kosrae senior citizens</td>
<td>$4,800</td>
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<td>6</td>
<td>(i) Supplemental for completion of Lelu Senior Citizens Building</td>
<td>$2,300</td>
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<td>7</td>
<td>(j) Purchase of a three CY dump truck for Lelu Town Government</td>
<td>$10,000</td>
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<td>8</td>
<td>(k) Improvement of Mutunnenea to Inkoeya Inner Road</td>
<td>$67,000</td>
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<tr>
<td>9</td>
<td>(l) Purchase of vehicle for Kosrae State Public Safety</td>
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<tr>
<td>10</td>
<td>(m) POL for Kosrae State Public Safety</td>
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</tr>
<tr>
<td>11</td>
<td>Safety</td>
<td>$2,000</td>
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<tr>
<td>12</td>
<td>(n) Kosrae High School Lunch Program</td>
<td>$8,000</td>
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<td>13</td>
<td>Section 3. Of the sum of $1,005,000 appropriated by this act, $140,000 is apportioned for Yap State for public projects and social programs.</td>
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<td>(l) State of Yap</td>
<td>$140,000</td>
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<tr>
<td>15</td>
<td>(a) Balabat, Rull water extension</td>
<td>$13,440</td>
</tr>
<tr>
<td>16</td>
<td>(b) Rumuu, Fanif peninsula coastal road project, phase one (clearing and cutting)</td>
<td>$44,000</td>
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1. (c) Wulu, Fanif water extension ........................ $ 49,700
2. (d) Falalus and Seliap community
3. centers renovation supplemental ........................ 10,000
4. (e) Jubilee celebration in Woleai
5. (POL/Food and water supplies) ............................ 22,860

Section 4. Of the sum of $1,005,000 appropriated by this act, $310,000 is apportioned for Pohnpei State for public projects and social programs.

9. State of Pohnpei ........................................... $310,000
10. (1) Pohnpei at Large .................................. $50,000
11. (a) Imwen Keiru ........................................... $5,000
12. (b) Festival of Pohnpei
13. Arts and Culture .......................................... $25,000
14. (c) POL .................................................. $20,000
15. (2) Election District No. 1 .......................... $30,000
16. (a) St. Paul School subsidy .......................... $10,000
17. (b) Road Maintenance ................................. $10,000
18. (c) Sports activities .................................. $5,000
19. (d) Transportation needs .......................... $5,000
20. (3) Election District No. 2 .......................... $50,000
21. (a) Administrative Support
22. Services ................................................... $25,000
23. (b) Fisheries projects .................................. $15,000
24. (c) Parao civic center ................................. $10,000
25. (4) Election District No. 3 .......................... $180,000
1 (a) Leadership travel (municipal, state, tradition leaders) ......................... $ 10,000
2 (b) Student financial assistance ... 10,000
3 (c) Nett Municipal Government subsidy .................................................. 70,000
4 (d) U Municipal Government subsidy ......................................................... 40,000
5 (e) Pingelap Municipal Government subsidy ................................................... 25,000
6 (f) Mwoakil Municipal Government subsidy .................................................. 25,000
7 Section 5. Of the sum of $1,005,000 appropriated by this act, $300,000 is apportioned for Chuuk State for public projects and social programs.
8 State of Chuuk ............................................ 300,000
9 (1) Chuuk at Large ......................... 50,000
10 (a) Leadership travel (municipal, state, traditional, and youth leaders) ................. 10,000
11 (b) Food relief assistance .............. 15,000
12 (c) Contractual services for project coordinators ........................................ 5,000
13 (d) Fishing project ......................... 10,000
14 (e) Land transportation ................... 10,000
15 (2) Election District No. 1 ................. 35,000
16 (a) Leadership travel (municipal, state, traditional leaders) ......................... 4,000
17
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<td>(a) Fishing equipment</td>
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<td>5</td>
<td>(b) Housing renovation supplement</td>
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<td>6</td>
<td>(c) Municipal leaders travel</td>
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<td>7</td>
<td>(4) Election District No. 3</td>
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<td>(a) Food and water system relief assistance</td>
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<td>9</td>
<td>(b) Election District No. 3</td>
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<td>(c) Sewing project</td>
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<td>12</td>
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<td>(e) Leadership travel (municipal, state, traditional leaders)</td>
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<td>(5) Election District No. 4</td>
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<td>15</td>
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<td>16</td>
<td>(b) Faichuk Development Authority</td>
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<tr>
<td>17</td>
<td>Administration subsidy</td>
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<td>18</td>
<td>(c) Purchase of vehicle for Tol</td>
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<td>19</td>
<td>municipal government</td>
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<tr>
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<td>(d) Leadership travel (state and municipal leaders)</td>
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<tr>
<td>21</td>
<td>(e) Election District No. 4</td>
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<tr>
<td>22</td>
<td>operation</td>
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1 (6) Election District No. 5 ............ $ 40,000
2 (a) Election District No. 5
3 operation ............................................. 10,000
4 (b) Transportation safety
5 equipment/supplies ............................... 10,000
6 (c) Transportation needs ............... 20,000
7 (7) Chuuk State Commission on Improvement
8 Projects (CSCIP) Administrative support services .... 25,000
9
10 Section 6. Allotment and management of funds and lapse
date. All funds appropriated by this act shall be allotted,
managed, administered and accounted for in accordance with
applicable law, including, but not limited to, the Financial
Management Act of 1979. The allottee shall be responsible for
ensuring that these funds, or so much thereof as may be
necessary, are used solely for the purpose specified in this
act, and that no obligations are incurred in excess of the sum
appropriated. The allottee of funds appropriated under
sections 2 and 4 of this act shall be the President of the
Federated States of Micronesia or his designee. The allottee
of funds appropriated under section 3 of this act shall be the
Governor of Yap State. The allottee of funds appropriated
under subsections 5(1)(2)(4)(5)(6) and (7) of this act shall be
the Chuuk State Commission on Improvement Project (CSCIP). The
allottee of funds appropriated under subsection 5(3) of this
act shall be the Executive Director of the Northern Namoneas
Social and Economic Development Authority. The funds appropriated by this act shall remain available until fully expended.

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.

__________________________, 2010

Law w/out Signature
12-20-10

Manny Mori
President
Federated States of Micronesia