

STANDING COMMITTEE REPORT NO. 19-215

RE: C.B. NO. 19-199 (P.C. NO. 19-563)/J&GO

SUBJECT: VETO OF CONGRESSIONAL ACT NO. 19-159

MARCH 27, 2017

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

Dear Mr. Speaker:

Your Committee on Judiciary & Governmental Operations, to which was referred Presidential Communication No. 19-563 and Congressional Bill No. 19-199, regarding the veto of Congressional Act No. 19-159, begs leave to report as follows:

Congressional Act No. 19-159 was vetoed by the President and did not become Public Law. Congressional Act No. 19-159 sought to provide the Public Auditor with the powers to investigate allegations of white collar crime, which the Public Auditor lost when the Attorney General unilaterally terminated a longstanding Memorandum of Understanding (MOU) between the two entities. The Congressional Act was then referred back to your Committee on Judiciary & Governmental Operations.

Your Committee has reviewed Congressional Act No. 19-159 and Presidential Communication No. 19-563, which comprises the veto message. The veto message contained four reasons to support the veto: one alleging a constitutional violation and three asserting policy objections. Your Committee will discuss each reason in turn.

Alleged breach of separation of powers

At the outset it should be noted that the veto message references but a single legal authority to support its broad assertion that the Act violates the Constitution's separation of powers. Before discussing that single legal authority specifically, the following general points are relevant.

First, during the public hearing held on C.B. No. 19-199 on January

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30, 2017, the Attorney General was present to testify. At no time did the Attorney General testify that the bill would, in his opinion, violate the separation of powers. Second, nowhere in his extensive written correspondence with the Public Auditor related to the termination of the MOU, which gave rise to the bill, did the Attorney General identify a violation of the separation of powers as a reason for the termination. Third, in his written correspondence the Attorney General did acknowledge that, where statutory authority exists to do so, investigative duties could be delegated. The Attorney General acknowledged this in his testimony to your Committee as well.

With respect to the single legal authority cited in the veto message, that case does not stand for the proposition that an Act of Congress granting the duties of limited preliminary inquiry and investigation to an entity other than the Department of Justice violates the separation of powers. This is not surprising given that the Constitution itself gives Congress the power to bestow upon the Public Auditor "[a]dditional duties [as] may be prescribed by statute." Article XII, Section 3(b). Congress can hardly be said to violate the separation of powers when exercising a power expressly granted to it by the Constitution.

Further, jurisdictions with similar constitutional language related to public auditors as found in the FSM Constitution (e.g. Palau and CNMI) have enacted statutes that add duties to their public auditors beyond just "auditing". Indeed, those jurisdictions have gone even further than C.B. No. 19-199 by empowering their public auditors to *prosecute* the chief executive (i.e. President or Governor) or attorney general if appropriate. These statutes have not raised separation of powers problems in those jurisdictions for the precise reason that they do not in the FSM: the constitutions allow the legislature to add duties beyond those to simply audit and inspect.

Your Committee did not find any constitutional violation in the Act.

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Policy objections

In addition to the Constitutional objection addressed above, the President's veto message raised three policy objections, which are addressed below.

Undermines independence

Your Committee agrees that the independence of the Public Auditor must be preserved. Nothing in C.B. No. 19-199 subjects the Public Auditor to the authority and jurisdiction of the Department of Justice. Rather the bill gives the Public Auditor additional duties, via the Constitutional power granted to Congress by Article XII, Section 3(b), to enhance its independence by conducting its own investigations.

Creates conflicts

During the public hearing held on C.B. No. 19-199 on January 30, 2017, the Attorney General was present to testify. At no time did the Attorney General testify that the MOU, which had been in existence since the late 1990s, had created any actual specific conflicts between the national police and investigators from the Public Auditor.

Vagueness

Although the Constitution requires that each bill contain a title, the only requirement of that title is that it expresses the one subject embraced by a bill. A title need not be perfect, but it should aid the reader by putting him on notice as to the subject matter contained in the body of the bill.

The phrase "white collar crime" so aids the reader because the phrase "white collar crime" has been in common usage since at least 1939 and is commonly understood to encompass any financial crimes committed by either business people or public officials. The use of the catchall phrase "white collar crime" thus helps maintain the balance that all bill titles must strike between the competing requirements of clarity, brevity, and comprehensiveness on the one hand and the one subject requirement on the other.

Further, Section 208 of Title 1 of the Code of the Federated States of Micronesia (Annotated) reads as follows:

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"Words and phrases, as used in this code or in any Act of the Congress or in any regulation issued pursuant thereto shall be read with their context and shall be construed according to the common and approved usage of the English language. Technical words and phrases and such other words and phrases as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to their peculiar and appropriate meaning."

1 F.S.M.C. 208 (italics added). This Section obviates the need to include definitions of phrases like "white collar crime" that are commonly understood especially when that phrase appears only in the title, not in the text of the bill.

Your Committee has determined that the above policy reasons given for the veto do not impair overriding the veto.

CONCLUSION

Your Committee has reviewed the vetoed legislation and the veto message. Your Committee finds that the Act does not violate the Constitution and that the remaining reasons are simply policy objections. Your Committee recommends overriding the veto of Congressional Act No. 19-159.

Your Committee on Judiciary & Governmental Operations is in accord with the intent and purpose of Congressional Bill No. 19-199, and recommends it be placed on the calendar for veto override.

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Respectfully submitted,

/s/ Tiwiter Aritos
Tiwiter Aritos, Chairman

/s/ Alik L. Alik
Alik L. Alik, Vice Chairman

/s/ Isaac V. Figir
Isaac V. Figir, Member

Berney Martin, Member

/s/ Wesley W. Simina
Wesley W. Simina, Member

Robson U. Romolow, Member

/s/ Esmond B. Moses
Esmond Moses, Member