

STANDING COMMITTEE REPORT NO. 19-227

RE: C.B. NO. 19-102/R&D

SUBJECT: AMENDMENTS TO TITLE 22 OF THE FSM
CODE TO CREATE A NEW BIOSECURITY
LEGISLATION FOR THE NATIONAL
GOVERNMENT

MARCH 04, 2017

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

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred
C.B. No. 19-102, entitled:

"A BILL TO FURTHER AMEND TITLE 22 OF THE CODE OF THE FEDERATED
STATES OF MICRONESIA (ANNOTATED), AS AMENDED BY PUBLIC LAW NO.
18-68, TO CREATE A NEW CHAPTER 4 THEREOF ENTITLED "BIOSECURITY",
TO PREVENT ANIMAL AND PLANT PESTS AND DISEASES FROM ENTERING THE
FEDERATED STATES OF MICRONESIA, TO REGULATE THE MOVEMENT OF
ANIMALS AND PLANTS AND THEIR PRODUCTS, TO CONTROL THE
ESTABLISHMENT AND SPREAD OF ANIMAL AND PLANT PESTS AND DISEASES
THAT ENTER THE FEDERATED STATES OF MICRONESIA TO FACILITATE
INTERNATIONAL COOPERATION IN RESPECT OF ANIMAL AND PLANT
DISEASES, 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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BACKGROUND

The subject bill was transmitted to Congress on November 4, 2015, through Presidential Communication No. 19-213. The purpose of the proposed bill is to repeal and replace the whole Chapter 4 of Title 22 of the FSM Code for the purpose of simplifying and clarifying the bio security protection procedures in order to prevent the introduction of invasive species with high potential of destroying the biodiversity and the environment of the Federated States of Micronesia.

According to P.C. No. 19-213, this bill was discussed and drafted through nationwide consultations in all FSM States with government officials, private sector representatives and community-based organizations. If enacted, it will harmonize regional biosecurity protocols where trade and movement of goods and services amongst the Micronesian countries will be enhanced.

Public hearings

A series of public hearings on C.B. No. 19-79 were held in each of the states. Chairman David W. Panuelo chaired the hearing in the States of Kosrae and Pohnpei and Vice Chairman Alik L. Alik chaired the hearings in Yap and Chuuk. Other members present were in those hearings were, Senators Paliknoa K. Welly, Esmond Moses, Isaac V. Figir, Josehp J. Urusemal, Robson U. Romolow and you, Speaker Wesley W. Simina. Also in attendance were the Assistant Attorney General Johnson Asher, the Executive Director Eugene Pangelinan, the Deputy Director of NORMA Mathew Chigiyal, the Program Manager for the Division of Quarantine John Wichep and the Program Manager for the Division of Trade and Investment Florian Yatilman.

During the discussion of the bill, the leaderships inquired about the fees and penalties on individuals that may violate the provisions of the proposed legislation. Also, the leadership asked whether the bill would facilitate export of produce from the states to other

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nations, and whether fumigation of crops is accommodated in the bill. The capacity of human resources to implement the legislation is also a major concern. Another inquiry was the benefit the state will receive once the bill becomes law.

Summary of the bill:

The proposed bill will repeal the entire chapter 4 of title 22 of the FSM Code and create a new chapter 4 entitled, "Biosecurity". The new chapter 4 will consist of five new subchapters of chapter 4 of title 22 of the FSM Code.

Subchapter I

Section 3 of the bill is the new subchapter I of chapter 4 entitled: "General Provisions".

Under subchapter 1 is the proposed section 401, "Short Title" – This chapter may be cited as the Federated States of Micronesia Biosecurity Act. The proposed section 402 of chapter 4 enumerated the public policy of the proposed legislation, specifically the anticipated activities that should be implemented to strengthen the national biosecurity protection for the benefit of the nation's citizens and environment.

Section 403 of the proposed bill contains the necessary definitions used for the implementation of the proposed chapter 4 of title 22 of the Code of the Federated States of Micronesia.

Section 404 of the proposed bill provides that the Secretary of the Department of Resources and Development at the National Government may by order declare any article, substance, goods or thing to be a regulated article for the purposes of this chapter.

Section 405 of the proposed bill identifies who or what should be governed by this chapter. For instance, this chapter applies to every person in the Federated States of Micronesia irrespective of

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the person's nationality or citizenship; all conveyances, containers and goods while they are in the Federated States of Micronesia, including vessels and aircraft owned or operated by the government of a foreign state; and persons, conveyances, containers and goods outside the Federated States of Micronesia to the extent needed for its effective enforcement.

Section 406 of the proposed bill explains that this chapter binds the Federated States of Micronesia, including every department of the National Government, the States Governments, every statutory authority and every person in the employment of the National Government or a State Government.

Section 407 of the proposed bill gives the Secretary of the Department of Resources and Development at the National Government the responsibility to implement the provisions of this chapter and the performance of the biosecurity functions of the National Government, within the resources available to the Department.

Section 408 of the proposed bill explain the relationship between this chapter and other laws of the Congress or of any of the State Governments to the extent of any inconsistency between this chapter and any other law of the National Government or of a State Government, every other law must be construed so as to fulfill the purpose of this chapter.

New subchapter II – Border Biosecurity Control

Section 409 of the proposed bill states that Secretary may by order declare pests or diseases to be prohibited to enter or permitted to enter the FSM. Any person who imports or attempts to import prohibited pests or disease commits a level five offense. Any person who imports or attempt to import a pest or disease, which is regulated shall commits a level five offense.

Section 410 give the Secretary the power to prohibit the importation

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of regulated articles from all countries if the importation would be a biosecurity risk to the Federated States of Micronesia.

Sections 411 and 412. The Secretary may designate biosecurity points of entry and departure and holding areas. These may be the seaports, airports and post offices and any land or water adjacent to those entry and departure areas. However, prior to designating biosecurity point of entry and departure or holding areas, the Secretary must first secure the consent and written agreement of the Governor of the state where the proposed biosecurity point of entry and departure is located.

Section 413. This section focuses on the management of biosecurity holding areas. Only the authorized biosecurity officers are allowed to enter and exit the holding areas. No person shall be allowed to enter or exit the holding areas. Any individual who violated this section commits a level six offense.

Section 414. The biosecurity clearance agents are those that are designated by the importers or exporters. The Secretary can dismiss a biosecurity clearance agent if the Secretary found out that the agent's conduct in the performance of functions under this chapter renders the agent unacceptable for purposes of this chapter.

New subchapter III – Biosecurity Administration

Section 415. The Secretary must in writing designate four or more suitable or qualified public officers as biosecurity officers for the purposes of this chapter. These public officers may be selected from the respective departments of the National Government. Once the public officers are identified, the Secretary shall equip them with a badge, card or other form of official identification that clearly identifies them as biosecurity officer of the National Government.

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Section 416. After the bill becomes law or one year after the passage of this bill, the Secretary must, in consultation with other National and State governments departments and statutory authorities, prepare a Biosecurity Emergency Response Plan to deal with incursions of regulated pests and diseases in the Federated States of Micronesia. The Plan must be reviewed biannually and should have the manual of standard operating procedures to guide biosecurity officers in their duties under this chapter or regulations to be promulgated.

Section 417. Secretary may delegate any of the Secretary's functions, powers and duties under this chapter to another public officer or officers employed by the Department. The delegation under this section continues in force until revoked.

Sections 418 and 419. The Secretary must maintain a biosecurity register and other records needed for the administration of this chapter. The biosecurity register and other records must be kept, consistent with any other law relating to public records.

Section 420. The fines, fees and charges payable under this chapter are to be paid into the General Fund.

Sections 421 and 422. The Secretary may enter into memoranda of understanding or other agreements with State Governments, other National Government departments and statutory authorities, and with private organizations in the Federated States of Micronesia for the effective implementation of this chapter. In doing so, there should be coordination of functions between those officers of the state governments, other national government department and statutory authorities, in respect to the implementation of this chapter. For instance, biosecurity officers should notify officers of the customs and immigration services of any breach of custom or immigrations law that comes to their notice and also officers of the customs and immigration services and of the postal services should also notify biosecurity officers of importation or proposed exportation of any uncleared regulated article that comes to their notice.

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Section 423. The facilities at biosecurity points of entry and departure should be satisfactory for the purpose of this chapter and to the satisfaction of the Secretary.

Section 424. The Secretary may enter into a written agreement with an importer, exporter, producer or any other person in connection with the application of this chapter.

Section 425. The Secretary may in writing approve the premises where the inspection, testing and treatment of regulated articles can take place and also approve specified action being taken in the approved premises.

New subchapter IV – Powers of Biosecurity Officers

Section 426. To fulfill the Federated States of Micronesia's obligations under international agreements in the field of biosecurity, the Secretary must exchange information with other countries and international organizations standards and requirements relating to implementation of biosecurity in the FSM, designate one or more officers in the Department as the point of contact and notification authority as required by IPPC, the OIE, the PPPO and any other international agreement relating to biosecurity to which the Federated States of Micronesia is a party to.

Section 427. The Secretary may issue a notice stating that specified pest or disease is known to exist in the Federated States of Micronesia. The Secretary shall specify the classification, name or identity by which any animal, animal product, plant, plant product, pest or disease is known in the Federated States of Micronesia.

Sections 428-439. The powers of biosecurity officers are enumerated in these sections. The standard administrative procedures, which regulate the functions of biosecurity officers, the responsibility of importer and exporters, the duty of biosecurity clearance agents, and all appropriate individuals, statutory authorities and officers in

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the implementation of this chapter are also provided.

New subchapter V – Offenses and Penalties

Sections 440-446. These sections specify the appropriate offenses and penalties for those that are in violation of the implementation of this chapter as well as the dereliction of biosecurity officers in their duty to enforce or implement this chapter.

New subchapter VI – Miscellaneous Provisions

Sections 447-

455. Subchapter five of chapter 4 the administrative procedure in regards to abandoned goods, the charges payable for the abandoned goods disposition at the holding area, compensation to or by responsible individuals in relation to claims, appeals from decisions from the Secretary or biosecurity officers in regards from an aggrieved person, the limited liability of the Secretary or biosecurity officers in their duties to implement this chapter, evidence to be used in courts, specifications of documents used by the Secretary or biosecurity officers, necessary regulations for the effective implementation of this chapter, the transitional provisions and consequential amendments to this proposed legislation.

Recommendations of your committee

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 19-102 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. 19-173.

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Respectfully submitted,

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

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

/s/ Victor Gouland
Victor Gouland, member

Florencio S. Harper, member

Berney Martin, member

Joseph J. Urusemal, member

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