July 8, 2021

The Honorable Wesley W. Simina
Speaker
Twenty-Second Congress
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Speaker Simina:

I am transmitting the enclosed congressional act, which I have vetoed for the reasons stated below:

Congressional Act No. 22-17, entitled: “AN ACT TO AMEND TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED, BY INSERTING A NEW SECTION 106 THEREOF, TO CLARIFY THE PROCEDURES FOR SUCCESSION IN THE EVENT THAT THE VICE PRESIDENT IS UNABLE TO DISCHARGE THE DUTIES OF THE OFFICE, AND FOR OTHER PURPOSES.”

I appreciate the effort of the 22nd FSM Congress in setting up the procedures for succession in the event of vacancy of the office of the Vice President. I am also conscious that in doing so, always the provisions of the constitution must be observed. Any conflict with the constitution will render the procedures invalid.

This act states that the Court shall decide the Vice President’s incapacity or otherwise “...by a majority or tie vote.” Textual interpretation of the Constitution shows that this provision in the act is contrary to our Constitution, in particular, section 2 of article XI, which states that a court decision “…is by majority of those sitting.” Allowing the Supreme Court to vote on this important issue on the capacity of the Vice President different from a majority vote is, in my view, unconstitutional. I would therefore recommend that the Congress reconsider this act and take action to rectify this apparent conflict next session.

Moreover, I wish to note that whereas the procedure set out in the act is similar to the procedure already in place for the succession to the presidency, the difference is that, in the procedure for the succession to the vice presidency, the President, instead of the members of Congress, will be making the written declaration to the Speaker of Congress that the Vice President is unable to discharge his/her duties. I also wish to point out that the Supreme Court is called upon to decide the issue in the event that the President submits a second written declaration on the incapacity of the Vice President.
There appears to be an ambiguity here given that it is unclear as to who should initiate a case to the Supreme Court. The rules of court provide that “a civil case is commenced by filing a complaint with the Court.” Rule 3, FSM Rules of Civil Procedure. Given that the act does not oblige anyone to initiate a complaint, no one is under obligation to do so; and in the absence of a complaint filed, there will be no case that the Supreme Court could take action upon. Once again, I would invite the FSM Congress to reconsider this matter and rectify the ambiguity.

For the reasons stated above, I have decided to veto this Act. I also recommend that the honorable Members of Congress review the act and readjust its provisions to address the issues raised. Thank you.

Sincerely,

David W. Panuelo
FSM President
June 09, 2021

His Excellency David W. Panuelo
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Panuelo:

I have the honor to transmit herewith Congressional Act No. 22-17, "AN ACT TO AMEND TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED, BY INSERTING A NEW SECTION 106 THEREOF, TO CLARIFY THE PROCEDURES FOR SUCCESSION IN THE EVENT THAT THE VICE PRESIDENT IS UNABLE TO DISCHARGE THE DUTIES OF THE OFFICE, AND FOR OTHER PURPOSES", which was passed by the Twenty-Second Congress of the Federated States of Micronesia, First Regular Session, 2021, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

[Signature]

Jessica Lynn Reyes
Chief Clerk, Congress of the Federated States of Micronesia

Enclosures
An Act

TO AMEND TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED, BY INSERTING A NEW SECTION 106 THEREOF, TO CLARIFY THE PROCEDURES FOR SUCESSION IN THE EVENT THAT THE VICE PRESIDENT IS UNABLE TO DISCHARGE THE DUTIES OF THE OFFICE, AND FOR OTHER PURPOSES.

INTRODUCED BY SENATOR: WESLEY W. SIMINA

DATE: MAY 21, 2021

REFERRED TO: COMMITTEE ON WAYS AND MEANS

WITHDRAWN – JUNE 03, 2021
FIRST READING: – JUNE 03, 2021
SECOND READING: – JUNE 04, 2021

Jessicaalyn Reyes
Chief Clerk, FSM Congress
ACT NO. 22-17

(CONGRESSIONAL BILL NO. 22-23)

We hereby certify that on June 4 the foregoing act passed Second and Final Reading of the Twenty-Second Congress of the Federated States of Micronesia, First Regular Session, 2021, 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.

Wesley W. Simina
Speaker
Congress of the Federated States of Micronesia

Jessica Lynn Reyes
Chief Clerk
Congress of the Federated States of Micronesia
AN ACT

To amend title 2 of the Code of the Federated States of Micronesia (Annotated), as amended, by inserting a new section 106 thereof, to clarify the procedures for succession in the event that the Vice President is unable to discharge the duties of the office, and for other purposes.

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

1. Section 1. Purpose. Pursuant to article X, section 6, of the Constitution of the Federated States of Micronesia, Congress shall provide by statute for succession if the President or Vice President is unable to discharge the duties of the office.

2. Section 104 of title 2 of the Code of the Federated States of Micronesia (Annotated), as amended, currently provides for the succession procedure if the President is unable to discharge the duties of the presidency; however, there is no current statute that provides for the succession procedure if the Vice President is unable to discharge the duties of the vice presidency. This act amends title 2 of the Code of the Federated States of Micronesia (Annotated), as amended, by inserting a new section 106 thereof to clarify that procedure.

3. Section 2. Title 2 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 106 thereof to read as follows:

   "$106. Declaration of the Vice President's inability to serve. (1) The President, by transmitting a written
declaration to the Speaker of the Congress, may declare that the Vice President is unable to discharge the powers and duties of the office. The written declaration must set forth the basis for the President's declaration and declare the Vice Presidency vacant.

(2) Congress shall, within 30 days of receipt of the declaration, elect a Vice President in accordance with the provisions of article X, section 5, of the Constitution of the Federated States of Micronesia, convening for that purpose if not in session, and declare a vacancy in Congress.

(3) If, prior to Congress acting under paragraph (2) of this section, the Vice President transmits to the Speaker of the Congress a written declaration that no inability exists, the Vice President shall, four days thereafter, resume the powers and duties of the office, unless the President shall sooner transmit to the Speaker of the Congress a second written declaration that the Vice President is unable to discharge the powers and duties of the office.

(4) If the President submits a second declaration to the Speaker pursuant to paragraph (3) of this section, the Supreme Court shall convene within three days to decide the issue, shall hear evidence for a period not
to exceed seven days, and shall issue its decision within three days after the close of evidence. If the Supreme Court determines by majority or tie vote that the Vice President is unable to discharge the powers and duties of the office, the office shall be deemed vacant and Congress shall elect a Vice President pursuant to paragraph (2) of this section. Otherwise, the Vice President shall resume the powers and duties of the office."

Section 3. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

_____________________, 2021

David W. Panuelo
President
Federated States of Micronesia

Disapproved 7/8/21