

STANDING COMMITTEE REPORT NO. 22-12

RE: C.A. NO. 22-17 (P.C. NO. 22-56)/J&GO

SUBJECT: VETO OVERRIDE

JULY 26, 2021

The Honorable Wesley W. Simina
Speaker, Twenty-Second Congress
Federated States of Micronesia
First Special Session, 2021

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred Presidential Communication No. 22-56, regarding the veto of 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.",

begs leave to report as follows:

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

Your Committee has reviewed Congressional Act No. 22-17, and the accompanying veto message (P.C. No. 22-56). Your Committee notes the President's comments in P.C. No. 22-56, including concerns of constitutional conflicts and potential ambiguity in the Act. Your Committee has carefully reviewed these matters and disagrees with the concerns expressed by the President.

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Your Committee notes that the statutory language used in Congressional Act No. 22-17 replicates long-standing existing statutory language used in a similar provision of law; as such your Committee finds that under the constitutional law doctrine known as the presumption of validity, current statutory language is presumed constitutional until found otherwise by a court. Your Committee also finds there is no ambiguity in the Act. Your Committee has determined a veto override would be legally sound.

More specifically the President's veto focuses on two grounds:

1. If the Vice President disagrees with a finding of disability by the President, the matter is sent to the Supreme Court to decide by a "majority or tie" vote. The President's claims that it is unconstitutional for the court to decide in case of a tie vote; and
2. It is unclear how the Vice-President would start a case in the Supreme Court because the law is silent

On point number 1. the objection is not well taken because the language adopted by Congress is an exact copy of the existing provision on referral to the Supreme Court in case of the President's disability. 3 F.S.M.C. section 104(3) states:

"(3) ...If the Supreme Court determines by majority or tie vote that the President is unable to discharge the powers and duties of his or her office the Vice President shall become President."

In this act Congress just modified the clause to address the case of the Vice President using the exact same language. There is in Constitutional Law a doctrine named the Presumption of Validity that states what is already in the law is presumed constitutional until a court says otherwise. What the AG thinks about the language is irrelevant.

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On point 2, the provisions for disability of the President do not specify either how to start such a matter with the Supreme Court. 3 F.S.M.C. section 104. What is normally the case is for the Court to specify by court rule the exact procedures to follow. Note that this is a special proceeding, not a civil or criminal case. The court is free to specify exactly, by petition, motion, or anything else, how to start the case. The objection of the President is therefore not well taken either.

CONCLUSION

Your Committee has reviewed the veto of Congressional Act No. 22-17 and the veto message. Your Committee has determined the reasons stated in P.C. No. 22-56 for the veto to be legally unsubstantiated, and that there are no legal or constitutional defects of the Act. Your Committee recommends overriding the veto of Congressional Act No. 22-17.

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Respectfully submitted,

Robson U. Romolow, chairman

/s/ Peter M. Christian
Peter M. Christian, vice chairman

/s/ Wesley W. Simina
Wesley W. Simina, member

/s/ Tiwiter Aritos
Tiwiter Aritos, vice chairman

/s/ Isaac V. Figir
Isaac V. Figir, member

/s/ Ferny S. Perman
Ferny S. Perman, member

Paliknoa K. Welly, member