Public Law No. 5-70

FIFTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
THIRD SPECIAL SESSION, 1988
CONGRESSIONAL BILL NO. 5-323, C.D.1, C.D.2

AN ACT

To further amend Public Law No. 2-73, as amended by Public Law No. 3-36, sections 101 through 108, 201 through 905, and 1101 of which are codified as sections 101 through 108, 201 through 905, and 109 respectively of title 9 of the Code of the Federated States of Micronesia, by amending sections 108, 109, 203, 302, 501, 504, 506, 603 through 606, 701, 703, 704, 807, and 901 through 904 of title 9 of the Code of the Federated States of Micronesia, and by adding a new section 906 of title 9 of the Code of the Federated States of Micronesia, for the purpose of amending the law relating to National elections, and for other purposes.

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

1. Section 108 of title 9 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

   "Section 108. Affidavit to be sworn. The affidavits required pursuant to this title shall be sworn to before any officer or person authorized by law to administer oaths except for the affidavit accompanying absentee ballots which does not need to be witnessed."

2. Section 109 of title 9 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

   "Section 109. Regulations. The National election commissioners may, from time to time, issue regulations not inconsistent with law to implement this title. Such regulations shall be promulgated in accordance with chapter 1 of title 17 of the Code of the Federated States of Micronesia."

3. Section 203 of title 9 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

   "Section 203. Nomination by petition. Nomination of candidates shall be made by petition initiated by a candidate; provided, that said nomination petition shall specify whether the candidate is seeking a four-year or a two-year term of membership of the Congress. The name of
any candidate for election shall be printed on an official
ballot to be used for choosing candidates only if, at least
45 days prior to such election, a nomination paper shall
have been filed in the office of the national election
commissioner of the State concerned and signed by at
least twenty-five qualified voters of the State or
single-member congressional district wherein he seeks
election, as the case may be. There shall be deposited
with the nomination paper a filing fee of twenty-five
dollars, which shall be paid over to the General Fund of
the Federated States of Micronesia as a local revenue
available for appropriation by the Congress. Any person
who is elected as a write-in candidate, shall after
certification of the election results, pay a twenty-five
dollar fee. The national election commissioner of the
State concerned shall, upon receipt of the nomination
paper, endorse thereon the day, hour, and minute that such
nomination paper is received."

Section 4. Section 302 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 302. Powers and duties of national election
commissioner. A national election commissioner shall have
responsibility for the overall supervision and administra-
tion of the election within his State and shall perform
such duties as are prescribed by law, which include, but
are not limited to the following:

(1) to appoint all members of the several boards of
election in his State as provided for in this title;

(2) to designate special polling places in other
States of the Federated States of Micronesia or abroad
upon request received by his office at least 20 days
prior to the election day, and to appoint a board of
election therefore consisting of not less than two
members;

(3) to require such reports from the several boards
as may be required by law or regulation or as he may
deem necessary;

(4) to review and examine voting irregularities
or violations of any election laws in accordance with
the provisions of chapter 6 of this title;

(5) to establish voting precincts within each
election district and designate appropriate polling
places within each voting precinct, upon recommendations
of the members of the board of election of the
particular election district;

(6) to receive nomination petitions;

(7) to list all candidates for election on the
ballot for each election district in alphabetical order;

(8) to register or cause to be registered all the
voters in his State and to maintain the General State
Register as provided in this title;

(9) to prepare from the General State Register a
registered voters list for each voting precinct prior
to any election;

(10) to implement rules, regulations, and
instructions for absentee ballots for the conduct of the
election; and

(11) to determine and prescribe forms of ballots
and the forms of all blanks, cards of instruction,
pollbooks, tally sheets, and all forms and blanks
required by the provisions of this title for use by
candidates, boards, committees, and voters, and supply
the same to the boards of election."

Section 5. Section 501 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 501. When required. New registration of voters
for election of Members of the Congress of the Federated
States of Micronesia shall not be required; provided, that
the following are complied with:

(1) that the General State Registers maintained
heretofore by the election commissioners of Kosrae,
Pohnpei, Truk, and Yap shall be used to determine
registered voters for the purpose of election of
Members-at-large therefrom; provided, that those voters
from Kosrae and Yap, whose names appear on their
respective registers, shall be entitled to also elect
a Member of the Congress for a two-year term;

(2) that for the purpose of election of Members
for two-year terms from Pohnpei and Truk, only those
registered voters of a municipality which has been
apportioned as part of a single-member congressional
district shall be entitled to elect one Member therefrom;

(3) that new voter registration will be required
every ten years commencing with registration for the
1989 election;

(4) that unregistered persons eligible to vote,
including those attaining legal voting age between
decennial registrations shall be able to register
between decennial registrations but shall not have to
register again until the following decennial regis-

(5) registration conducted under subsections (3)
and (4) of this section shall conform to sections 502
through 508 of this title.”

Section 6. Section 504 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 504. Application for registration - Affidavit.
Any person qualified to and desiring to register as a
voter in any election district may present himself at
any time during business hours to any of the members
of the board of election (herein empowered and authorized
to administer oaths and take acknowledgements) or
persons authorized by law to administer oaths, then and
there to be examined under oath as to his qualifications
as an elector. Each applicant shall make and subscribe
to an application in substantially the following
form:

AFFIDAVIT ON APPLICATION FOR REGISTRATION

Federated States of Micronesia

1. My full name is _______________________.

2. I was born at _______________________.

3. My date of birth is ___________________.

4. I live at _______________________.

5. I am a citizen of the Federated States of
Micronesia.

6. I was naturalized as a citizen of the Federated
States of Micronesia at _______________ State on the
_________________ day of _______ in the year_______.

7. I have resided in the Federated States of
Micronesia not less than nine months, and in Congressional
Election District No. _____________ in the State of
_____________ not less than three months immediately
preceding this date on which I now offer to register to vote
in that district, to wit, the _______ date of______,

19___.
8. I am not currently under parole, probation, or sentence for any felony for which I have been convicted by any court of the Federated States of Micronesia or any court within the jurisdiction of the United States.

9. I am not currently under a judgment of mental incompetence or insanity.

10. I solemnly swear that the foregoing statements are true, so help me God.

Subscribed and sworn to before me this ___________ day of ___________ 19___.

This applicant shall strike out allegations that are inapplicable and shall sign or make a mark on and swear to the truth of the allegations in his application. In any case where the person who administers the oath shall so desire or believe the same to be expedient, he may demand that the applicant produce a witness or witnesses to further substantiate the allegations of his application."

Section 7. Section 506 of title 9 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 506. Entry of a voter's name in the General State Register - Filing of affidavits.

(1) If the person authorized to receive an affidavit of application for registration is satisfied that the applicant is entitled to be registered as a
voter, he shall number the affidavit consecutively as
approved by him and shall transmit the affidavit to the
national election commissioner. The national election
commissioner shall thereupon enter or cause to be entered
in the General State Register the following facts:

(a) the number of the affidavit;
(b) the date of registration;
(c) the name of the applicant in full;
(d) the age of the applicant;
(e) if naturalized, the date of such natural-
ization;
(f) the residence of the applicant; and
(g) any other pertinent information which the
national election commissioner may deem necessary.

(2) The national election commissioner shall also
forthwith enter or cause to be entered the name so
registered in its proper place in the general alphabetical
index, together with a reference to the page on which the
registration appears. A voter having once been registered
shall not be required to register again for any succeeding
election, except in case of change of name or residence
as specified in section 507 of this title or intervening
disqualification as specified in section 305 of this
title; provided, that in the event the voting records
are destroyed or lost, the national election commissioner
may require the registration of voters.

(3) The national election commissioner shall file
the accepted affidavits in consecutive numbers, and keep
the same in some convenient place so as to be open to
public inspection and examination."

Section 8. Section 603 of title 9 of the Code of the
Federated States of Micronesia is hereby amended to read as
follows:

"Section 603. Printing and distributing.

(1) The ballots should be printed by order of
the national election commissioner at Government expense.
The national election commissioner shall deliver an
adequate amount of ballots to each election precinct.

(2) At least 35 days before the election the
national election commissioner shall print a sample
ballot and shall forthwith submit copies of the same
to the members of the several boards of election and to
the several candidates at their addresses as given on their
nomination papers, and the members of the boards shall post
a copy of the same in a conspicuous place in their office
or a public place."

Section 9. Section 604 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 604. Withdrawal of candidates.

(1) Any candidate may withdraw before an election by
giving notice in writing to the member or members of the board
of election or to the national election commissioner, whichever
is more practical, in the election district or State in which
such candidate was seeking nomination or election. If a
candidate withdraws or dies after the printing of the ballots,
the national election commissioner shall cause the name of the
candidate so withdrawing, or the name of any candidate who has
died, to be stricken from the ballots and in that regard, may
require the services of the board of election of the district
or precinct in which any person was a candidate and shall
notify in writing such board of election of the withdrawal or
death, whereupon notice thereof shall, before the opening of
the polls on election day, be posted at the polling place.

(2) If a candidate withdraws his name later than 30
days before an election and the ballots are in the process
of or have been printed, and it becomes necessary in the
opinion of the national election commissioner or the board of
election for a reprinting of ballots or a striking out of the
candidate's name by a reprint blockout, all expenses thereof,
except in case of a withdrawal necessitated for medical cause
and so certified by a physician, shall be a charge against
the withdrawing candidate and shall be paid by him within
sixty days after such withdrawal to the national election
commissioner. Monies so received shall be deposited in the
General Fund of the Federated States of Micronesia, as a local
revenue general realization, available for appropriation by
the Congress of the Federated States of Micronesia.

(3) Any person who, directly or indirectly, physically
threatens or intimidates any candidate so as to cause
or attempt to cause the candidate to withdraw from an election
is guilty of a national offense and upon conviction shall be
fined not more than $2,000, or imprisoned for not more than
five years, or both."

Section 10. Section 605 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 605. Substitute candidates. In the case of the
death, withdrawal, or disqualification of candidates after
the deadline for filing nominations, substitute candidates
may be nominated prior to 31 days before the date of an
election. A person nominated as a substitute for a
candidate nominated by petition must be nominated by petition
in the same manner as the candidate who has died, withdrawn,
or been disqualified. The national election commissioner of
the State concerned in the case of a substitute candidate
filling a vacancy caused by death, withdrawal, or disqualifi-
cation of a candidate shall cause the name of any substitute
candidate to be placed upon the proper ballots by reprinting,
over-printing, or through the use of stamps or such other
means as the national election commissioner may deem satis-
factory for the purpose and may require the services of
members of the board of election who may be in the election
district or precinct in which such a person is a candidate.
The board of election shall post a notice at the polling place
of the name and office sought by any such substitute
candidate."

Section 11. Section 606 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 606. Packaging - Sealing - Record of distribution.
When printed, the ballots shall be fastened together in blocks
of 25 each in such manner that each ballot may be detached
and removed separately. They shall be forwarded by the
national election commissioner of each State to the member
or members of the board of election in sealed packages, which
shall not be opened until the opening of the polls. A record
of the number of ballots sent to each board of election member
shall be kept by the national election commissioner."

Section 12. Section 701 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 701. 'Voter' and 'ballot' defined.

(1) Any registered voter qualified to vote at any general
or special election shall be entitled and enabled to vote by
absentee ballot if:

(a) he is confined to his home or hospital by
reason of such illness or physical disability as will
prevent him from attending the polls, or
(b) he is prevented from voting by reason of
being at sea, absent from the State in which he is
registered, or obstructed by natural barrier making it highly
impractical or extremely difficult for him to arrive at his
place of voting in time to cast his ballot.

(2) An absentee ballot is an official ballot which is
authorized by this title to be voted outside of any designated
polling place or prior to the date of the election."

Section 13. Section 703 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 703. Request for ballot.

(1) Any registered voter qualified to vote in any
election may request and cast an absentee ballot with the
national election commissioner; provided, that he meets the
requirements as set forth in section 701 of this title.

(2) Any registered voter qualified to vote by absentee
ballot may, not more than 120 days, but before the close
of the polling place on the day of the election, request
the national election commissioner in writing for an
absentee ballot to be voted at the election. The request
shall include information stating the voter's voting
precinct, election district, reasons for being absent,
address to which he wishes his ballot forwarded and the
establishment of his right to a ballot."

Section 14. Section 704 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 704. Marking and return of ballot – Voting at polls.

(1) The national election commissioner of each State or the board of election, as the case may be, shall, at least 30 days prior to an election, provide to any person who may be entitled to vote by absentee ballot, and who requests the same, an official ballot, a ballot envelope, an affidavit prescribed by the national election commissioner, and a covering reply envelope. If a request for an absentee ballot is made 30 days or less prior to an election, the commissioner or board shall provide the materials to the person making the request as soon as is practicable. The absentee voter shall mark the ballot in the usual manner provided by law and in such manner that no person can see or know how the ballot is marked except as provided in section 702 of this title. The absentee voter shall then deposit the ballot in the envelope and securely seal the same. The absentee voter shall then complete and execute the affidavit. The ballot envelope and the affidavit shall then be enclosed and sealed in the covering reply envelope and shall be mailed or delivered to reach the national election commissioner of his State issuing the absentee ballot not later than the established closing hour of the polls on the day of the election except as provided in section 702 of this title.

(2) It is unlawful for persons having voted an absen-
tee ballot to cast a ballot at the polls on election day."

Section 15. Section 807 of title 9 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 807. Election irregularities. Any person may file an oral or written complaint of any election irregularity with a member of the board of election present at the polling place. The board member shall give any individual against whom the complaint is made time to present witnesses and an explanation, if any, but in no event shall time be granted so as to prevent the board of election from making a decision prior to the time for the closing of the polls. The complainant, or the individual against whom the complaint is made, may appeal the decision to the national election commissioner of the State concerned or his designated representative. The national election commissioner, or his said representative, shall, as soon as possible, examine the findings of the board of election and may hear witnesses, if he deems necessary. The national election commissioner, or his representative, shall make his decision prior to the time of the closing of the polls, and the aggrieved party may appeal the decision in accordance with section 903 of this title. In the event the decision of the national election commissioner, or his designated representative, cannot be obtained as heretofore provided, the aggrieved party may file a petition with the National election commissioner prior to certification of the results of the
1 election or within 1 week of the election, whichever occurs
2 first. A candidate may appeal a decision of the National
3 election commissioner or of the election board in
4 accordance with section 903 of this title."
5
6 Section 16. Section 901 of title 9 of the Code of the Federated
7 States of Micronesia is hereby amended to read as follows:
8 "Section 901. Petition for recount.
9 (1) A petition for recount may be filed by any
10 candidate in an election who believes that there was fraud
11 or error committed in the casting, canvassing, or return of
12 the votes cast at said election. The petition shall be
13 filed with the national election commissioner of the State
14 in which the recount is requested. Such petition shall
15 contain a statement that the petitioner has reason to
16 believe and does believe that the records or copies of
17 records made by the board of election of such district are
18 erroneous, specifying wherein he deems such records or
19 copies thereof to be in error, or that votes were cast by
20 persons not entitled to vote therein, and that he believes
21 that a recount of the ballots cast in the district will
22 affect the election of one or more candidates voted for at
23 such election.
24 (2) A petition for a recount must be granted if the
25 difference between the number of votes cast for the winning
26 candidate and the next highest candidate is one-half of one
percent or less of the total votes cast for all of the
candidates for that particular seat."

Section 17. Section 902 of title 9 of the Code of the Federated
States of Micronesia is hereby repealed in its entirety and a new
section 902 is hereby enacted to read as follows:

"Section 902. Filing timeframes. A petition for a recount
must be filed within 1 week of certification of the results
of the election. Any other petition challenging the
acceptability of a vote or votes must be filed prior to
certification of the results of the election or within 1
week of the election, whichever occurs first. The winning
candidate shall have 1 week to respond to the petition. The
National election commissioner shall then have 10 days to
decide whether to approve the petition. If the National
election commissioner decides not to approve the petition,
he shall record the reasons for such decision."

Section 18. Section 903 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 903. Denial of petition - Appeal to Supreme
Court.

(1) The aggrieved candidate may, within five days
after receipt of the decision of the national election
commissioner, appeal his case to the Appellate Division of
the Supreme Court. The Appellate Division of the Supreme
Court shall review the appeal to determine if the decision
by the election commissioner was:

(a) Arbitrary, capricious, an abuse of
discretion, or otherwise not in accordance with law;

(b) In excess of statutory jurisdiction,
authority, or limitations, or a denial of legal rights;

(c) Without substantial compliance with the
procedures required by law; or

(d) Unwarranted by the facts.

If the decision is in favor of a recount, the national
election commissioner of the State concerned shall be so
notified and shall proceed as provided in sections 904 and
905 of this title.

(2) Appeals may be had in the manner prescribed in
section 902 and subsection (1) of this section from any
decision of the national election commissioner with respect
to a challenge affecting the acceptability of a vote or
votes. A petition under this section for appeal shall
contain the information specified in section 901 of this
title for a petition for a recount. A decision of the
Appellate Division of the Supreme Court in favor of the
petitioner may have the effect of disallowing the
challenged votes but shall not halt or delay balloting or
counting and tabulating."

Section 19. Section 904 of title 9 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:
"Section 904. Approval of petition – Notice of recount.

If the national election commissioner determines that there
is a substantial question of fraud or error and that there
is a substantial possibility that the outcome of the
election would be affected by a recount, he shall cause
notice of the recount to be given in a manner decided by
him."

Section 20. Title 9 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 906 to
read as follows:

"Section 906. Irregularities not correctable by recount.

In the event of election irregularities which cannot
be corrected by recount, a candidate may petition for
an election to be set aside and done over, either in a
district as a whole or in the portion thereof where
the irregularities took place. The procedures for the
filing of such petition, action thereon, and appeal
of its denial shall be the same as such procedures for
a petition for recount. A petition made pursuant to this
section shall not be granted unless the petitioner proves
it is more likely than not that the irregularities
complained of could have resulted in the election of a
candidate who would not have won had the irregularities
not occurred."
Section 21. This act shall become law upon approval by the
President of the Federated States of Micronesia or upon its becoming
law without such approval.

September 7, 1988

John H. Haglapam
President
Federated States of Micronesia