

STANDING COMMITTEE REPORT NO. CC-SCR-04-14

DATE: June 14, 2022

RE: Proposal No. 04-22

The Honorable Redley Killion
President
Fourth Constitutional Convention of the
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Mr. President:

Your Committee on General Provisions, to which was referred Delegation Proposal No. 04-22, has drafted its own Committee Proposal, entitled;

TO AMEND ARTICLE XIII, SECTION 4 OF THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA TO PROVIDE THAT OWNERSHIP OF LAND AND WATER SHALL BE CONTROLLED BY STATE LAW.

begs leave to report as follows:

The current language of FSM Constitution, Article XIII Section 4:

“Section 4. A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters in Micronesia.”

The intent and purpose of this proposal is to recognize that it has always been the intent of the citizens of the FSM that determination of ownership of land and water is governed by the law of the state where the land or water is located. See 1975 Con.Con., SCREP 33, Vol. II at 814 (Oct. 10, 1975). The current language of the Article XIII, Section 4, restricts ownership of land to FSM citizens, but fails to recognize that each state has different land tenure laws based on their distinct customs and traditions. Because Section 4 fails to recognize that state law governs ownership of land and water, FSM courts have entered judgments in violation of state constitutions, laws, and customs and tradition. For example, the Pohnpei Constitution limits ownership of land in Pohnpei to pwilidak, but the FSM Supreme Court has entered judgments granting title to land in Pohnpei to non-pwilidak.

Your Committee reviewed the records of the 1975 Constitutional Convention which document that land issues received considerable attention in the 1975 Convention. See 1975 Con.Con., SCREP Nos. 33, 36, and 48. The clear intent of the 1975 Convention was that “[t]he powers . . . reserved to the states include . . . Land law [and] Inheritance law . . .” 1975 Con.Con., SCREP 33, Vol. II at 814 (Oct. 10, 1975). Your Committee’s Proposal when ratified will align the FSM Constitution with the original intent of our forefathers and the current desires of FSM citizens.

Your Committee deliberated and discussed at length that the land and water of each state should be governed by each state’s constitution, laws, customs, and traditions as intended by the 1975 Convention because land tenure and transfer is based upon customs and traditions which vary

throughout the FSM by municipality, village, and kingdom, as each has its own customs and traditions regarding ownership of land and water. Land in Micronesia is scarce and rich in history and culture; tied to family and clan history. The Committee Proposal reaffirms that the citizens of each state control how ownership of the land and water in their state is managed and transferred.

The current language of Section 4, which is the first sentence of the Committee Proposal, is the language that limits ownership of land to FSM citizens. Your Committee believes that this sentence must remain in the Constitution because under the customs and traditions of some islands, non-FSM citizens can own land. It is this language that limits ownership of land in those jurisdictions to FSM citizens.

Your Committee's Proposal would have prospective application from the date of ratification. Interests in land and water that exist prior to the effective date of the amendment will not be impacted.

Your Committee discussed the impact that the Committee Proposal may have on the Judiciary Act of 1979. 4 FSMC §§ 101 *et seq.* The general powers of the Supreme Court as set out in Section 117 of the Judiciary Act of 1979 is by its own terms limited by the FSM Constitution, and thus, this Committee Proposal clarifies the jurisdiction and power of the Supreme Court. 4 FSMC § 117 ("The Supreme Court . . . shall have power to . . . all acts, not inconsistent with law . . ."). See also 4 FSMC § 201(1) ("The jurisdiction of the Appellate Division of the Supreme Court is as provided in the Constitution.").

Your Committee Proposal will nullify and make obsolete the FSM statute of limitations for "recovery of land or any interest therein." 6 FSMC § 802(1)(b). And, the FSM statute pertaining to judgments affecting land, 6 FSMC § 1402, will apply to those judgments entered prior to the effective date of the Committee Proposal; but cases filed after the effective date of the Committee Proposal must be determined by the law of the state where the land is located and any adjudication of title must be filed with the appropriate agency or court according to that state's law. When a party seeks to enforce a judgment in the FSM Supreme Court by executing on the judgment debtor's interest in land, the FSM statutes on enforcement of judgments, 6 FSMC §§ 1401 *et seq.*, must be interpreted consistent with the law of the state where the land being executed on is located. For example, if an interest in land is being sold or auctioned to satisfy a judgment, then the purchaser or successful bidder must be someone who under state law can hold the interest in land being sold or auctioned.

Your Committee also discussed the impact of the Committee Proposal on the ability of banks within the FSM, both commercial banks and the FSM Development Bank, to take a security interest in land to secure a loan or mortgage. The Committee Proposal will allow banks to continue to hold a security interest in land, but when the bank forecloses on the land and the land is sold at auction, the successful bidder must be a person or entity that can hold title to the land under the laws of the state where the land is located.

The intent and purpose of this Committee Proposal is to maintain the current jurisdiction and regulatory authority of the FSM national government over the marine space of the FSM. Because in some states and in some islands in other states, the Chief owns the water as far as the eye can

see, and this can include water and submerged reefs located in the EEZ, your Committee believes that it is important to include specific language in the Committee Proposal which clarifies that the FSM national government's jurisdiction and regulatory authority over the marine space remains unchanged. Thus, the FSM national government will continue to regulate navigation and prosecute crimes occurring within the EEZ.

For the reasons stated herein, your Committee on General Provisions is in accord with the intent and purpose of the Committee Proposal attached hereto and recommends its passage on First Reading, and that it be placed on the Calendar for Second Reading for review by your Committee of the Whole, then placed on the Calendar for Final Reading after review by your Committee on Style and Arrangement.

Respectfully submitted,



Yoslyn Sigrah, Chairwoman



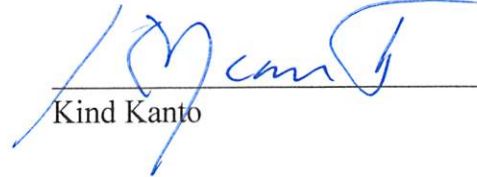
Andy Choor, Vice Chair

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Cindy S. Mori

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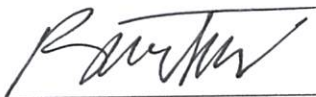
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Salomon Saimon

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ARTICLE XIII

Section 4. A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters in Micronesia. Ownership of land and waters in each state shall be held pursuant to the laws and customs and traditions of the respective state. This provision shall be applied prospectively only and shall not affect any existing title or interest in land and waters. This provision does not divest the national government of its jurisdiction or regulatory authority over the marine space pursuant to other provisions of this Constitution.