

STANDING COMMITTEE REPORT NO. CC-SCR-04-17

DATE: June 21, 2022

RE: CC-PR-04-36

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

Dear Mr. President:

Your Committee on Public Finance and Revenue, to which was referred Delegation Proposal No. 04-36, entitled;

TO AMEND ARTICLE IX, SECTION 2(m) OF THE CONSITUTION OF THE FEDERATED STATES OF MICRONESIA TO PROVIDE THAT NET REVENUE DERIVED FROM FISHING ARE SHARED 60% TO THE NATIONAL GOVERNMENT AND 40% TO THE STATES.

The current language of Article IX, Section 2(m) is:

“**Section 2.** The following powers are expressly delegated to Congress:

* * *

(m) to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federate States of Micronesia beyond 12 miles from island baselines;”

begs leave to report as follows:

Your Committee has previously reported out Committee Proposal 04-08 attached to Standing Committee Report 04-10, which Proposal and Report were referred back to your Committee on March 13, 2020, just prior to the Convention recessing due to the COVID19 pandemic.

Upon reconsideration, your Committee considered all of the revenue sharing proposals that had been submitted to the Convention and referred to your Committee including Delegate Proposal Nos. CC-PR-04-07, CC-PR-04-09, CC-PR-04-20, CC-PR-04-24, CC-PR-04-25, CC-PR-04-34, and CC-PR-04-53, and Delegation Proposal Nos. CC-PR-04-36 and 04-66.

Your Committee held public hearings in January and February of 2020 and again in June of 2022, requesting data from the Secretary of Finance and other FSM agencies and revenue generating public corporations regarding the revenue received by the national government. Because Standing Committee Report No. 04-10 sets out the findings from the 2020 public

hearings and the 2022 financial information reported was not substantially different, your Committee will not repeat the financial information provided in 2022 in this report.¹

Your Committee was unanimous in its agreement that revenues be shared between the national and state governments. Your Committee began its deliberations by reviewing a summary of all of the revenue sharing proposals that had been referred to it. Because the current structure of the Constitution sets out different types or forms of revenue in different sections of Article IX, your Committee determined that it was best to maintain the current structure and address each type of revenue separately. Your Committee then proceeded to discuss how the different types of revenue should be shared between the national and state governments.²

Your Committee focused on revenue from fishing licenses fees and determined that the appropriate provision for placing the revenue sharing provision for fishing licenses fees was in Article IX, Section 2(m), which is the provision of the FSM Constitution that grants the national government power to issue licenses to fish within the FSM EEZ. Your Committee considered several formulas for the division of revenue from fishing license fees, including the Pohnpei formula of 60% to the national government and 40% to the states, the Chuuk formula 40% to the national government and 60% to the states, and a compromise formula of 50/50. Your Committee discussed that because the national government operates almost exclusively on the revenue from fishing license fees it was necessary to ensure that the operations of the national government would remain stable and would allow the current national Trust Fund law to remain in place. Your Committee also discussed that it was important for the states and municipalities to receive revenue because that is where the people live, that local government is more responsive to people's needs, and that local governments provide services directly to the people. Several delegates emphasized that it was important to take small steps, one at a time, so as not to compromise the essential role and functions of the national government, and that increases could be made in future conventions.

Your Committee determined that, at this point in time, the appropriate revenue sharing formula is an equal division between the national government and state governments. This formula will ensure the continued operations of the national government and bring substantial revenue to the state governments. This formula will allow the continued investment in and operation of the FSM Trust Fund, including the national government's investment of funds in the subaccounts that benefit the state governments. Maintaining the FSM Trust Fund is necessary for the future

¹ The 2022 financial information can be found in the Summary Journals of your Committee and in Committee Communication No. 04-01, dated June 14, 2022 from Chairman Jack Fritz to the 4th FSM Constitutional Convention, sharing a general summary of information provided by testimonies of witnesses in the hearings conducted by the Committee on Public Finance and Revenue relating to revenue sharing of available resources which could be shared with our states and local governments given the facts that the states are experiencing financial challenges while our national government is enjoying significant surplus of revenues.

² The sharing of "net revenue derived from ocean floor mineral resources" is the subject of Standing Committee Report No. 04-06 on Committee Proposal 04-06 and is not discussed in and is not a part of this Standing Committee Report and Committee Proposal.

economic sustainability of our nation. This formula for revenue sharing is reflected in Section 2(m)(i) of your Committee's Proposal.

Your Committee then discussed how the states' share of the revenue from fishing license fees should be divided among the states. Your Committee focused on three options. The first option was to leave the revenue sharing to Congress. Several delegates objected to leaving the division to Congress as being unfair because Congress usually divides funds by Congressional Delegation but Congress has not yet created an additional election district for those states whose population has grown. The second option was that 60% of the states' revenue would be divided between the states based on population and 40% of the states' revenue would be divided equally. Several delegates objected to 40% of the states' revenue being shared equally as that would favor the smaller states over the larger states. In response, several delegates pointed out that there were fixed costs of operating government in each state and that these costs did not change based on the size of the population. The example discussed was the cost of operating the airport according to FAA standards to insure that United would service each state, i.e. the cost of building and maintaining the runway was the same for each state. Several delegates also pointed out that state equality and state population was how Congress was structured and that this structure of equality was based on the fact that each state entered the FSM as an equal exercising its right to self-determination. The third option was that 70% of the states' revenue would be divided between the states based on population and 30% of the states' revenue would be divided equally. Your Committee discussed that a 30% share based on equality would be sufficient to meet the fixed costs of government and respect the equality of each of the states, and that the 70% shared based on population would allow each state to meet the needs of the people. After much debate, your Committee determined that the third option was a compromise that reflected the interests of all of the states. The division of the revenue among the states is reflected in Section 2(m)(ii) of your Committee's proposal.

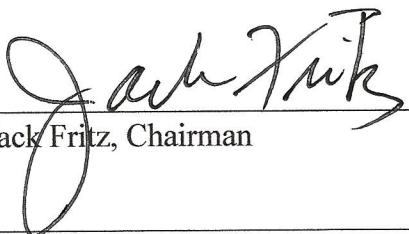
Your Committee believes that it is important that the Constitution provided that the states portion of the revenues derived from fishing license fees be deposited directly into each states general fund. That the revenue will be deposited into the state general fund is reflected in Section 2(m)(iii).

Your Committee also discussed the request of the Chuuk Delegation that your Committee's Proposal provide that funds go directly to the Chuuk municipalities. The Chuuk Delegation's request was based on the provision in the Chuuk Constitution which provides that "the Legislature shall appropriate at least 8 percent of the state operation funds, and shall appropriate to the municipalities for development projects at least 40% of the development funds that may be allocated." Chuuk State Const., Art. VIII, Sec. 6. From the time the Chuuk Constitution took effect, Chuuk State has failed to provide sufficient funding, as constitutionally mandated, to the municipal governments to enable them to carry out their duties and responsibilities to the citizens of the FSM residing in the municipalities. This is why the municipal governments in Chuuk unanimously charged their delegates to seek relief from the fundamental source of law which recognizes their existences but failed to provide adequate means for them to raise revenue on their own. An objection was raised that the FSM Constitution was not the appropriate place for a

provision for revenue sharing between states and their municipalities, that such matters were part of the internal operations of the state and should be address by the state constitution and the leaders of that state. In response, the Chuuk Delegation pointed out that because the FSM Constitution clearly establishes three levels of government: national, state, and local, FSM Const., Art. VII, Sec. 1, the FSM Constitution was an appropriate place to address the concerns of the municipalities. The Chuuk Delegation also pointed out that the provision they were requesting only applied to Chuuk and would not apply to any other state. Several delegates objected to the inclusion of municipalities because it makes the proposal more complicated and confusing to the people. Your Committee determined that the division of revenues between the state and its municipalities should be resolved internally by each state.


For the reasons stated herein, a majority of your Committee on Public Finance and Revenue 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,




Jack Fritz, Chairman

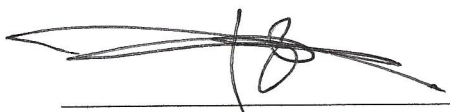
Myron Hashiguchi



Johnny Risin

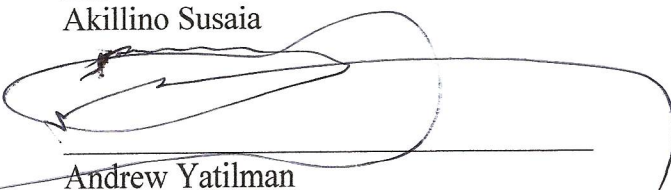


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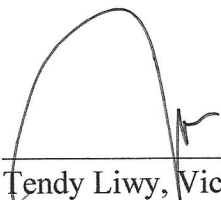
Akillino Susaia



Andrew Yatilman



Ricky Bay




Tendy Liwy, Vice Chairman

Cindy S. Mori

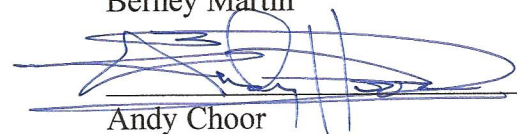
Roger Arnold



Johnson Asher



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Andy Choor

Relating to Article IX, Section 2(m) of the Constitution of the Federated States of Micronesia to provide that revenue derived from fishing are shared with the States.

RESOLVED, that the following be agreed upon as an amendment to the Constitution:

ARTICLE IX

Section 2. The following powers are expressly delegated to Congress:

(m) (i) to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, provided, however, that not less than 50% of all revenue collected from all forms of fishing fees are shared with the State governments;

(ii) seventy percent (70 %) of the revenue shared with the State governments pursuant to subsection (m)(i) shall be shared among the State governments based on population as determine by the most recent census, and thirty percent (30 %) of the revenue shared with the State governments pursuant to subsection (m)(i) shall be shared equally among the State governments;

(iii) all funds shared pursuant to subsection (m)(i) and (ii) shall be paid into the State treasuries;

Date: June 21, 2022

Offered by: Committee on Public Finance and Revenue