

STANDING COMMITTEE REPORT NO. 19-203

RE: C.B. NO. 19-244/W&M

SUBJECT: TO FURTHER AMEND TITLE 54 OF THE CODE OF THE
FEDERATED STATES OF MICRONESIA (ANNOTATED), AS
AMENDED, BY CREATING A NEW CHAPTER 6 TO PROVIDE
FOR AVAILABILITY, ACCESS, AND EXCHANGE OF
INFORMATION FOR TAXATION PURPOSES

JANUARY 27, 2017

The Honorable Wesley W. Simina
Speaker, Nineteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2017

Dear Speaker:

Your Committee on Ways & Means, to which was referred
Congressional Bill No. 19-244, entitled:

“A BILL FOR AN ACT TO FURTHER AMEND TITLE 54 OF THE
CODE OF THE FEDERATED STATES OF MICRONESIA
(ANNOTATED), AS AMENDED, BY CREATING A NEW CHAPTER 6
TO PROVIDE FOR AVAILABILITY, ACCESS, AND EXCHANGE OF
INFORMATION FOR TAXATION PURPOSES, AND FOR OTHER
PURPOSES.”,

begs leave to report as follows:

The intent and purpose of this act is expressed in its
title.

Your Committee held a Public Hearing and Oversight on C.B.
19-234, an earlier version of this same bill, on December
19, 2016. At this hearing, the purpose of the bill was
discussed, along with several concerns that your Committee

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had regarding the bill. Your Committee noted that this bill was drafted by the Department of Justice, after being made aware of outside press reports claiming that the Federated States of Micronesia was at risk of being "blacklisted" by the Global Forum of the Organization for Economic Co-operation and Development (OECD). OECD is generally regarded as an influential international organization, whose Global Forum component (comprised of 138 member states) purports to be the "premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area." Because the current tax law of the Federated States of Micronesia does not meet the Global Forum's standards, the Global Forum was reportedly preparing to add the Federated States of Micronesia to a "blacklist" which would potentially subject the country to decreased foreign business investment, as well as reputational damage.

C.B. 19-234 sought to address the concerns of the Global Forum, in order to avoid having the country placed on the Global Forum's blacklist. At the Dec. 19, 2016 Public Hearing and Oversight, representatives from the Department of Justice offered the belief that the bill was broadly effective at addressing the Global Forum's concerns, but the Department was unable to explain how the bill's many substantive provisions were specifically tailored to the bill's ultimate goal. Your Committee had two concerns, in particular, with the bill: (1) the scope of the bill appeared exceptionally large, subjecting all Micronesian businesses, including small mom-and-pop stores and roadside stands, to a comprehensive set of reporting, accounting and recordkeeping requirements, and (2) providing the Secretary of Finance with very large amounts of discretion to design her own rules and exercise her own judgments regarding what

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sorts of information must be reported by businesses, and which, if any businesses, might be given exemptions from the reporting requirements. Based on these concerns, the Department of Justice agreed to re-visit C.B. 19-234 and draft a new version of the bill that would reign in the wide-ranging discretion to be given to the Secretary of Finance and would more tightly fit the law to what was actually needed by the Global Forum to avoid placement on the blacklist.

C.B. 19-244 was transmitted to Congress by the Executive, as an updated version of this same tax information bill, in response to the first Public Hearing and Oversight. C.B. 19-244 made certain changes to C.B. 19-234, including stylistic changes such as the addition of a Purpose section.

After reviewing C.B. 19-244, your Committee held a second Public Hearing and Oversight on the new version of the bill, C.B. 19-244, on January 25, 2017, at 1:00 p.m. in the Congress Central Facilities Room. Present at this second Public Hearing and Oversight were members of your Committee, other members of Congress, representatives from the Dept. of Finance and Administration including Secretary Lawrence, representatives from the Dept. of Justice including Mr. Bacalando, and members of the General Public, including representatives from Micronesian Registration Advisors, Inc. (MRA).

The second Public Hearing and Oversight was opened by the Chairman of your Committee, Sen. Isaac V. Figir. Chairman Figir invited Secretary Lawrence and Mr. Bacalando to explain the purpose of the bill. Both Sec. Lawrence and Mr. Bacalando reiterated that the bill was necessitated by the Global Forum's pending decision to add the Federated

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States of Micronesia to its "blacklist," should the country fail to change its tax information laws. Secretary Lawrence noted that a failure to pass the bill would likely lead to a blacklisting that could cost the country up to \$5 million per year in lost tax revenue. Your Committee asked representatives from the Dept. of Finance and Administration and the Dept. of Justice whether the bill would subject small businesses to excessive burdens. Your Committee was assured that the bill was "not intended to target small businesses" and representatives noted that the bill specifically allowed the Secretary of Finance to promulgate regulations to protect small businesses. Your Committee was told that the issuance of regulations protecting small businesses would be a top priority of the Dept. of Finance and Administration upon the passage of the bill, and that Congress would receive notice and a copy of the proposed regulations, with an opportunity to review and submit comments on the regulations, prior to their finalization. The Dept. of Finance and Administration stated that its regulations would aim to exempt small businesses from this law, to the extent that those businesses do not operate outside the Federated States of Micronesia. Moreover, your Committee was advised that small businesses, in any case, would be very unlikely to have any of their tax information actually shared with other countries, as it was noted that any tax sharing would come only pursuant to a valid treaty, and would be limited to those businesses which operate both in the Federated States of Micronesia and in the specific countries with which a relevant treaty had been signed.

Representatives from the Dept. of Finance and Administration and the Dept. of Justice also stressed to your Committee that C.B. 19-244 is merely "enabling legislation" and that, as such, it would simply allow the

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National Government to enter into valid tax information sharing agreements with other countries (a practice that is currently prohibited by law). Your Committee was assured that the substantive requirements of this bill are only aimed at allowing the Secretary of Finance and Administration to collect the information necessary to comply with a valid treaty. Your Committee was told that C.B. 19-244 was a necessary "first step" in bringing the information sharing portion of the country's tax law "in line with international standards." Congress, as usual, would continue have the opportunity to ratify or reject specific treaties brought before it.

Your Committee supports the underlying purpose of C.B. 19-244: bringing the tax information reporting laws of the Federated States of Micronesia in line with international standards, in order to avoid being "blacklisted" and developing the appearance of a tax haven. Your Committee recognizes the time-sensitive nature of this bill, given that a potential blacklisting could take place in early or mid-2017. Your Committee notes that the C.B. 19-244 version of the bill continues to provide the Secretary of Finance and Administration with substantial discretion. Your Committee was pleased, however, to hear that the Dept. of Finance and Administration intends to act quickly, upon the passage of the bill, to promulgate regulations lessening the bill's potential burden on small businesses.

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CONCLUSION

Your Committee has carefully reviewed Congressional Bill No. 19-244. Your Committee on Ways and Means is in accord with the intent and purpose of C.B. No. 19-244, and recommends its passage on First Reading and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. 19-244.

Respectfully submitted,

/s/ Isaac V. Figir
Isaac V. Figir, chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

/s/ Victor V. Gouland
Victor V. Gouland, member

/s/ Bonsiano F. Nethon
Bonsiano F. Nethon, member

/s/ David W. Panuelo
David W. Panuelo, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member

Paliknoa K. Welly, member

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