

OFFICE OF THE NATIONAL PUBLIC AUDITOR
FEDERATED STATES OF MICRONESIA

**SBOC's ALLOTMENT OF VETOED APPROPRIATION NOT
AUTHORIZED BY LAW**

FISCAL YEAR 2015

REPORT NO. 2015-02



Haser H. Hainrick
National Public Auditor



FEDERATED STATES OF MICRONESIA

Office of The National Public Auditor

P.O. Box PS-05, Palikir, Pohnpei FSM 96941

Tel: (691) 320-2862/2863; Fax: (691) 320-5482;

CID Hotline: (691) 320-6768; E-mail: hhainrick@fsmopa.fm

November 18, 2014

His Excellency Manny Mori, President
Honorable Member of the FSM Congress
Federated States of Micronesia

RE: Audit on SBOC's Allotment of Vetoed Appropriation Not Authorized by Law

We have completed this special audit based on request by some of the Pohnpei State Senators in the FSM Congress regarding the allotment of funds to Pohnpei State despite a line item veto by the President. The allotment prompted the Pohnpei Senators in the Congress to ask for an audit to determine the circumstances surrounding the allotment of line-item vetoed funds.

The objectives of the audit were to determine (a) whether the allotment of funds to Pohnpei State under Public Law 18-11 was in accordance with related laws and regulations, and (b) the status of the allotted funds.

Based on our audit, we concluded that:

- The allotment of funds by the Office of SBOC to Pohnpei State did not comply with related laws and regulations. The President line item vetoed the \$895,000 apportionment *to cover the principal amount owed by Pohnpei employers to Social Security Administration*. When the Director allotted \$1 Million to Pohnpei State, the allotment included the \$895,000 that the President had vetoed. Consequently, the \$895,000 was improperly allotted.
- As of the date of this report, the National Government has not collected or set up any arrangement to collect the allotment balance of \$521,708 that was disbursed to Pohnpei State from the National Treasury.

Our recommendations include the following:

The Director of SBOC should:

- Ensure that clear and specific interpretation of the law is obtained prior to issuing an allotment especially where a Presidential veto was involved; and,

- Exercise due care when preparing and issuing advice of allotment.

The Secretary of DOJ should:

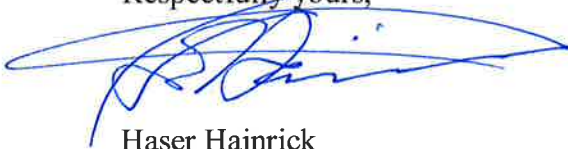
- Provide specific and direct answers in their legal opinions to specific questions and issues raised by other departments and offices within the government.

Legal opinions should be succinctly clear and should directly answer the questions and issues raised. This is an expectation throughout the government given that each department/office depends on the DOJ for the interpretation of the law.

The Secretary of Finance and Administration should proceed with the recovery of the funds and report the status of the recovery to the President and Congress.

As is our practice, we discussed the contents of the draft audit with the key officials from the concerned departments/offices and invited them to provide written management response. Their management responses are included at pages 30 through 35 in this final report.

Respectfully yours,



Haser Hainrick
National Public Auditor

Xc: Director, Office of SBOC
Secretary, Department of Finance and Administration
Secretary, Department of Justice

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INTRODUCTION

This audit involved the \$895,000 allotted by the Office of Statistics, Budget, Economic Management, Compact and Aid Coordination (SBOC) despite a line item veto made by the President to cancel the \$895,000 appropriation. The Congress did not override the item veto. The allotment prompted the Pohnpei Senators in the Congress to request the Office of National Public Auditor (ONPA) to audit the circumstances surrounding the allotment of funds, which subsequently led to the payment of National funds to Pohnpei State government.

Background

On July 16, 2013, Congressional Bill (CB) No. 18-27 was introduced in the FSM Congress to appropriate \$1.5 Million from the General Fund for fiscal year 2013 *to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls*. The Bill apportioned the funds as follows:

State	Apportioned Amount
1. Pohnpei State	\$ 1,000,000
2. Yap State	500,000
Total	\$ 1,500,000

On July 24, 2013, Congress passed a Congressional Act that amended CB No. 18-27, increasing the appropriation to \$1.680 Million *to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls* with additional provision not to use the funds for travel and personnel. The Act apportioned the funds as follows:

State	Apportioned Amount
1. Pohnpei State	\$ 1,130,000
2. Yap State	550,000
Total	\$ 1,680,000

For Pohnpei State, the Act apportioned further some of funds for the following specific purposes:

Purpose	Amount
a. To fund the Micronesian Legal Services Corporation	\$ 130,000
b. To cover the principal amount owed by Pohnpei employers to Social Security Administration ¹	895,000
Total	\$ 1,025,000 ²

For Yap State, additional provision specified that \$50,000 be used for fuel for outer island field trip services.

¹ This provision for Social Security Administration was not in the original congressional bill but only inserted as amendment during the final deliberation on the bill.

² The total appropriation for Pohnpei State was \$1,130,000 per this Act.

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Applying the principle of interpreting the statute that specific terms prevail over the general terms in the same statute, the Act **had** the following provisions governing the use of the appropriated funds:

State	Governing/Lawful Purpose	Amount
1. Pohnpei State		\$ 1,130,000
	a. To fund the Micronesian Legal Services Corporation but not to use for travel and personnel - \$130,000	
	b. To cover the principal amount owed by Pohnpei employers to Social Security Administration - \$895,000	
	c. To assist the State of Pohnpei in retiring debt and covering budget shortfalls but not use for travel and personnel (\$ 1,130,000 - \$130,000 - \$895,000) = \$105,000	
2. Yap State		\$ 550,000
	a. To provide fuel for outer island field trip services in Yap - \$50,000	
	b. To assist Yap State in retiring debt and covering budget shortfalls but not to use for travel and personnel, (\$550,000 - \$50,000) = \$500,000	
Total		\$ 1,680,000

On August 15, 2013, the President approved CB No. 18-27 that became Public Law No. 18-11, but vetoed the proposed \$895,000 to be used *to pay the principal amount owed by Pohnpei employers to Social Security.*"

The Director of SBOC sought legal advice from the Secretary of the Department of Justice and allotted the funds based on her interpretation of the legal opinion. On October 7, 2013³, the Director issued Allotment No. 425P14007 for \$1 Million and released it to Pohnpei State. The allotment included the \$895,000 that was item vetoed by the President (See Appendix A on page 8 for Chronology of Events). Separate allotment was made to Pohnpei State for the \$130,000 that was apportioned to fund the Micronesian Legal Services Corporation.

Legal Framework for Appropriation, Presidential Veto/Line Item Veto and Allotment of Funds

The FSM Constitution, the FSM Code, and the Congress Rules of Procedures provide the legal framework for appropriation, presidential veto or line-item veto, and allotment of appropriated funds (See Appendix B on page 11 for the details).

The Constitution gives Congress the power of the purse - the ability to tax and appropriate public money for the national government. The power to appropriate funds gives Congress a powerful influence over all the activities of the government. An appropriation act authorizes the program or activity and provides the budget authority to implement such program or activity.

³ The actual date on the Advice of allotment was October 1, 2013, which was explained by the SBOC Director due to error.

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The President *may item veto an appropriation in any bill*⁴ passed by Congress. He shall return the disapproved or line item vetoed bill to the Congress. The Congress shall either override or accept the disapproved bill.

Using an “Advice of Allotment”, the Executive Branch of the government administers the appropriated funds and ensures compliance of obligations or expenditures with the appropriation act. The Finance Management Act requires that the allotment be limited as set forth in an appropriation act of the FSM Congress.

Objectives, Scope and Methodology

Objectives – The objectives of this audit were to:

- a. determine whether the allotment of funds to Pohnpei State under Public Law 18-11 was in accordance with related laws and regulations; and,
- b. determine the status of the allotted funds.

Scope – This audit covers the \$895,000 under Public Law 18-11, appropriated and allotted to Pohnpei State. It did not include an examination of the propriety and adequacy of documentations supporting the disbursed funds.

We conducted this audit in accordance with Title 55 of the FSM Code, Chapter 5, which states in part:

“The Public Auditor shall inspect and audit transactions, accounts, books and other financial records of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government and of other public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organizations receiving public funds from the National Government.”

Methodology – We reviewed the communications and the transactions related to the appropriation and allotment of the funds pursuant to Public Law No. 18-11. We obtained the related laws, regulations and procedures governing the enactment of bills, line-item veto, appropriation, and allotment of funds. Finally, we interviewed the concerned employees and officials.

We conducted this audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings.

Prior Audit Coverage

This was the first audit conducted by ONPA relating to line item veto.

⁴ Article XII, Section 1 of FSM Constitution

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Conclusion

Based on our audit, we concluded that;

- The allotment of funds by the Office of SBOC to Pohnpei State did not comply with related laws and regulations. The President line item vetoed the \$895,000 apportionment *to cover the principal amount owed by Pohnpei employers to Social Security Administration*. When the Director allotted \$1 Million to Pohnpei State, the allotment included the \$895,000 that the President had vetoed. Consequently, the \$895,000 was improperly allotted.
- As of the date of this report, the National Government has not collected or set up any arrangement to collect the allotment balance of \$521,708 that was disbursed to Pohnpei State from the National Treasury.

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FINDINGS AND RECOMMENDATIONS

Finding 1 –\$895,000 Allotment of Funds Appeared Illegal

The FSM Constitution states in part, “*money may not be withdrawn from the General Fund or special funds except by law*”. The Financial Management Act (FMA) reiterates this important constitutional provision and further defines that the ‘Appropriation’ is the law that authorizes the National Government to incur obligations. The FMA requires that the allotment be limited as set forth in an appropriation act of the FSM Congress.

If the President line item vetoes a provision of an appropriation bill, the funds for the item vetoed/cancelled provision/s of a bill should not be released because releasing the funds is a violation of the constitutional provision that no money may be withdrawn from the General Fund or special funds except by law - - assuming Congress did not override the veto, which in this case it did not.

The general purpose in an act cannot be held to apply to a matter specifically dealt with in another part of the same statute/enactment. Thus, there was no basis in the appropriation law (Public Law 18-11) to allot the \$895,000 for other purposes after the President line item vetoed the following provision of the act:

To cover the principal amount owed by Pohnpei employers to Social Security \$ 895,000

The Congress did not override the veto but the SBOC Director allotted \$1 Million to Pohnpei State that erroneously included the vetoed \$895,000. The Director, led by her interpretation of the legal opinion from the Department of Justice, authorized the release of the funds.

As a result, the allotment of \$895,000 of which \$521,708 was disbursed by the National Treasury appeared to violate the constitution as well as the existing laws and regulations.

Cause and Recommendation

The allotment of the funds without basis in the appropriation law was due to;

- The Director’s interpretation of the legal opinion. The Director thought the legal opinion says that the veto cancelled the purpose (to cover the principal amount owed by Pohnpei employer to Social Security Administration) and that the amount (\$895,000) could still be used by Pohnpei State to cover its budget shortfall and to pay existing debt.
- The legal opinion from DOJ could have been made with more clarity and could have directly answered the questions asked by the Director of SBOC. For instance, the Director asked whether the effect of the item veto;
 - Reduced the \$895,000 from the appropriation;
 - Deleted the particular use of the funds (i.e. to cover the principal amount owed by Pohnpei employer to Social Security Administration); and,
 - Freed the entire amount of \$1 million for Pohnpei State to use to pay for debt and cover budget shortfall.

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The response in the legal opinion stated;

- The item veto does not reduce the overall apportionment of appropriated funds for Pohnpei State;
- The legal effect of the item veto is not to allow the appropriated funds to be used to cover the principal amount owed by Pohnpei employers to Social Security; and,
- The apportionment for Pohnpei State remains subject to a proviso not vetoed by the President, i.e. \$130,000, to be used to fund the Micronesian Legal Services Corporation.

It is our conclusion that the legal opinion did not answer the third question, which is a key question asked by the Director, on whether the \$1 million could be used by Pohnpei State to pay for debt and to cover budget shortfall. Notwithstanding this, it is also our position that the Director of the Office of SBOC is ultimately responsible for the decision to allot the \$1 million.

We recommend the following;

The Director of SBOC should;

- Ensure that clear and specific interpretation of the law is obtained prior to issuing an allotment especially where a Presidential veto was involved; and,
- Exercise due care when preparing and issuing advice of allotment.

The Secretary of DOJ should;

- Provide specific and direct answers in their legal opinions to specific questions and issues raised by other departments and offices within the government.

Given that each department and office at the National Government depends on the DOJ for the interpretation of the law, and that each department/office does not have its own attorney, it is an expectation throughout the government that all legal opinions issued by the department should be succinctly clear and should directly answer the questions and issues raised.

Finding 2- Over \$521,000 of the Improperly Allotted Funds Was Disbursed But Not Collected Yet

The Congress amended Public Law 18-11 by enacting CB No. 18-73 which became Public Law 18-44 without the President's signature. The purpose of the amendment was to change the use and the allottee of the funds previously appropriated under Public Law 18-11. Public Law 18-44 appropriated the same amount of \$1.13 Million to Pohnpei State. It provided further that the appropriated funds should not be allotted until such time that the Congress is officially advised of the collection of the improperly disbursed funds to Pohnpei State under Public Law 18-11.

The SBOC Director allotted \$1.130 Million⁵ to Pohnpei State under Public Law 18-11. Out of this amount, the Pohnpei State Department of Treasury and Administration disbursed \$756,708 from the

⁵ \$130,000 Micronesian Legal Services Corporation and \$1,000,000 to Pohnpei State

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National Government. As of the date of this audit report, there is no agreement yet between the National Government and the Pohnpei State regarding the recovery of the remaining balance of the \$521,708 improperly allotted and disbursed funds. The status of the allotted amount as of the date of this report is as follows:

Description	A Allotted	B Deallotted	C = A – B Disbursed	Balance
Pohnpei State	\$ 1,130,000	\$ 373,292	\$ 756,708	0
Pohnpei State used the disbursed funds from the national government for:				
• Micronesian Legal Services Corporation			\$ 130,000	
• Transfer to municipal governments			317,882	
• Payment of contractual and other services			308,826	
Total			<u>\$ 756,708</u>	
Less : Legally allotted funds (\$130,000 + \$105,000)			<u>235,000</u>	
For collection			<u>\$ 521,708</u>	

As a result, the appropriated activities under the amended Public Law 18-44 cannot be implemented.

Cause and Recommendations

The Secretary of Finance and Administration⁶ has not taken the initiative to recover the improperly allotted and disbursed amount.

We recommend that the Secretary of Finance and Administration should proceed with the recovery of the funds and report the status of the recovery to the President and Congress.

⁶ Per SBOC Director, only the Department of Finance and Administration could collect the money back. This was discussed with the Secretary of the Department of Finance and Administration.

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APPENDICES

Appendix A: Chronology of Events

On July 16, 2013, Congressional Bill (CB) No. 18-27 was introduced in the FSM Congress to appropriate \$1.5 million from the General Fund for fiscal year 2013 *to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls* (**Appendix C on page 12**).

On July 24, 2013, Congress passed a Congressional Act that amended CB No. 18-27 (**Appendix D page 14**), increasing the appropriation to \$1.680 Million *to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls* but not to use for travel and personnel. The Act apportioned the funds as follows:

State	Apportioned Amount
1. Pohnpei State	\$ 1,130,000
2. Yap State	550,000
Total	<u>\$ 1,680,000</u>

For Pohnpei State, the Act further apportioned some of the funds for the following purposes:

Purpose	Amount
a. To fund the Micronesian Legal Services Corporation	\$ 130,000
b. To cover the principal amount owed by Pohnpei employers to Social Security Administration ⁷	895,000
Total	<u>\$ 1,025,000⁸</u>

On July 26, 2013, the FSM Congress transmitted the Congressional Act to the President for his review and action⁹.

On August 15, 2013, the President approved CB No. 18-27 that became Public Law No. 18-11, but item vetoed the proposed \$895,000 *to be used to pay the principal amount owed by Pohnpei employers to Social Security*" (**Appendices E and F on pages 16 and 18**). The President approved all other provisions including the general purpose of the bill.

On September 16, 2013, the Governor of Pohnpei State, who is the allottee of the fund, requested SBOC for the allotment of \$130,000 to fund the Micronesian Legal Services Corporation.

On October 2, 2013, the Governor of Pohnpei State, requested SBOC for the allotment of \$895,000 that was line item vetoed by the President. In the request letter, the Governor indicated that Public Law 18-11 approved and authorized the \$895,000.

⁷ This provision for Social Security Administration was not in the original congressional bill but only inserted as amendment during the final deliberation on the bill.

⁸ The total appropriation for Pohnpei State was \$1,130,000 per this Act.

⁹ The President may either sign or veto legislation or allow the act to become law without his signature

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On October 4, 2013, the SBOC Director requested (thru email) a legal opinion from the Secretary of the Department Justice (Attorney General) regarding the effect on appropriation of the \$895,000 that was item vetoed (**Appendix G on page 20**). In her email, the SBOC Director expressed the need for a legal opinion because of the different interpretations that were received as follows:

- Reduce the \$895,000 from the appropriation.
- Delete the particular use of funds and free the entire amount of \$1 Million for Pohnpei State to use to pay for debt and cover budget shortfalls.

The SBOC Director further informed the AG that the request for allotment (\$895,000) was received but will hold the processing until the Congress session is over and the legal opinion is received¹⁰.

On October 7, 2013, the Governor of Pohnpei State, who is the allottee of the fund, sent another letter (to President) to change the previously requested amount for allotment from \$895,000 to \$1 million.

On October 7, 2013¹¹, the Office of SBOC prepared an Advice of Allotment amounting to \$1 Million with Pohnpei State Governor as the allottee (**Appendix H on page 22**). The justifications indicated in the allotment form were : (1) to assist Pohnpei State in retiring debt and covering budget shortfalls; and (2) not use the fund for personnel and travel expenses.

On October 8, 2013, the Attorney General issued legal opinion on the interpretation of line-item veto in Public Law 18-11 (**Appendix I on page 22**). The legal opinion answered the following questions:

- *Does the line-item veto reduce the apportionment of funds for Pohnpei State by the amount of the item veto?*

Attorney General – *The line-item veto did not reduce the overall apportionment of the appropriated funds to the Pohnpei State.*

- *Has the item veto freed up the \$895,000 for Pohnpei State to use to cover budgetary shortfalls and to pay for debt?*

Attorney General - *The legal effect of the item veto is not to allow the appropriated funds to cover the principal amount owned by Pohnpei employers to Social Security Administration. The apportionment for Pohnpei State remains subject to a proviso not vetoed by the President, i.e. \$130,000 to be used to fund the Micronesian Legal Services Corporation.*

On November 29, 2013, The Speaker held a meeting with the Secretary of Department of Foreign Affair wherein he raised concerns regarding the improper allotment of funds under Public Law 18-11.

On December 2, 2013, the Office of SBOC de-allotted¹² \$1 million but was able to de-allot only the \$373,292 undisbursed balance.

¹⁰ It should be noted that the Allotment was processed on October 7, 2013 that was before and not after the release of the legal opinion dated October 8, 2013.

¹¹ The date of the Advice of Allotment was October 1, 2013. We were informed by the SBOC Director that this was due to error during the preparation of the form and the actual date should have been October 7, 2013.

¹² Undo the previous allotment

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On December 16, 2013, the SBOC Director sent a memo to the President to explain the background surrounding the allotment of funds for Pohnpei State under Public Law 18-11(**Appendix J on page 24**).

On January 29, 2014, the Congress passed Public Law No. 18-44 (**Appendix K on page 26**) to amend Public Law No. 18-11. The amendments were made to change the allottee of the funds and the use of funds previously appropriated for the State of Pohnpei under Public Law No. 18-11. On January 31, 2014, the Congress sent the bill to President for his signature. On February 18, 2014, the President did not sign the bill, transmitted it back to Congress and the bill became a law without his signature.

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Appendix B: Legal Framework for Appropriation, Presidential Veto/Line Item Veto and Allotment of Funds

The FSM Constitution, the FSM Code, and the Congress Rules of Procedures provide the legal framework for appropriation, presidential veto or line-item veto, and allotment of appropriated funds.

Separation of Powers

- The Legislative Branch or Congress makes laws, the Executive Branch implements the laws and the Judicial Branch interprets the laws.

Appropriation of Funds

- The Constitution gives Congress the **power of the purse**, the ability to tax and to appropriate public money for the national government. The power to appropriate funds gives Congress a powerful influence over all the activities of the government. Article XII, Section 1 of FSM Constitution states in part that *the public money raised or received by the national government shall be deposited in a General Fund or special funds within the National Treasury*. Furthermore, it states in part, *“money may not be withdrawn from the General Fund or special funds except by law.”*
- Title 55, Chapter 1, Section 102.3 of FSM Code defines “Appropriation” as *referring to a law enacted by Congress¹³, which authorizes the National Government to incur obligations and to make payments out of the National Treasury in accordance with the law*. In FSM, an appropriation act both authorizes the program or activity and provides the budget authority to implement such program or activity.

Presidential Line Item Veto

The President may line item veto an appropriation bill. He shall return the disapproved or line item vetoed bill to the Congress, which shall either override or accept the disapproved bill.

- Article XII, Section 1 of FSM Constitution states that *the President may item veto¹⁴ an appropriation in any bill passed by congress, and the procedure in such case shall be the same as for disapproval of an entire bill by the President*. Article IX, Section 22 of the FSM Constitution states that *if the President disapproves the bill, he shall return it with his objections to Congress within 10 days. If Congress has 10 days or remaining in its session, or has adjourned, he shall return the bill within 30 days after presentation. If the President does not return the bill within the appropriate period, it becomes law as if approved*.
- Rule 8, Section 12 of the Congress' Rules of Procedure provides for the procedures in overriding a presidential veto. *Whenever the President disapproves a bill, the Speaker shall refer the bill and the President's reasons for disapproving (the bill) to the committee to which the measure was originally referred. The committee shall then report on the measure and recommend that the measure either be overridden or not overridden.*

¹³ Article IX, Section 3 of the FSM Constitution explicitly defined the power of the Congress, which include the power to appropriate public funds.

¹⁴ The line-item veto, or partial veto, is a special form of veto that authorizes a President to reject particular provisions of a bill enacted by a legislature without vetoing the entire bill.

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- Rule 8, Section 12 of the Congress' Rules of Procedure further provides that *overriding* (a presidential veto) *require affirmative vote by at least three state delegations*¹⁵. If the Congress overrides a bill, *the Clerk shall transmit the bill to the President under the certification of the Speaker*.

Allotment of Funds

Using an "Advice of Allotment", the Executive Branch of the government administers the appropriated funds and ensures compliance of obligations or expenditures with the appropriation act (law). The law requires *that the allotment*¹⁶ *of funds should be within specified limits set forth in an appropriation act of the FSM Congress or as may be required by the terms of funding available from other sources*.

Specifics Prevail Over General Terms in the Statute¹⁷

In the interpretation of law, the specific terms of a statute override the general terms. "*However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment*."¹⁸

¹⁵ Each state delegation shall cast one vote when voting to override a Presidential veto. (Rule 10, Section 13 of the Congress' Rules of Procedure)

¹⁶ Title 55 FSMC, Chapter 2, Section 215 defined "allotment" as the delegation of authority to a person to create legally enforceable financial obligations in accordance with applicable law on behalf of the Federated States of Micronesia.

¹⁷ Statutory Interpretation: General Principles and Recent Trends, prepared for Members and Committees of Congress, updated on August 31, 2008

¹⁸ *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) (citations omitted). The same principle is used to resolve conflict between two statutes. *See, e.g., United States v. Estate of Romani*, 523 U.S. 517, 532 (1998) (later, more specific statute governs). *See also Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (a general statute will not be held to have repealed by implication a more specific one unless there is "clear intention otherwise").

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Appendix C: Proposed Congressional Bill No. 18-27 to Appropriate \$1.5 Million to Pohnpei and Yap States

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 2013

C.B. NO. 18-27

A BILL FOR AN ACT

To appropriate the sum of \$1,500,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2013, to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls, and for other purposes.

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

1 Section 1. The sum of \$1,500,000, or so much thereof as
2 may be necessary, is hereby appropriated from the General Fund
3 of the Federated States of Micronesia for the fiscal year
4 ending September 30, 2013, to assist the States of Pohnpei and
5 Yap in retiring debt and covering budget shortfalls. The funds
6 shall be apportioned as follows:

7 1. Pohnpei State..... \$ 1,000,000
8 2. Yap State..... 500,000

9 Section 2. Allotment and management of funds and lapse
10 date. All funds appropriated by this act shall be allotted,
11 managed, administered and accounted for in accordance with
12 applicable laws, including, but not limited to, the Financial
13 Management Act of 1979. The allottee shall be responsible for
14 ensuring that these funds, or so much thereof as may be
15 necessary, are used solely for the purpose specified in this
16 act, and that no obligations are incurred in excess of the sum
17 appropriated. The allottee of the funds appropriated under
18 section 1 of this act shall be the Governor of the appropriate

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C.B. NO. 18-27

1 state for each of the respective states. The authority of the
2 allottee to obligate funds appropriated by this act shall lapse
3 on September 30, 2014.

4 Section 3. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

7

8 Date: 7/16/13

Introduced by: /s/ Joseph J. Urusemal
Joseph J. Urusemal

9

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Appendix D: Public Law No. 18-11 to Appropriating \$1.68 Million to Pohnpei and Yap States

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 2013 CONGRESSIONAL BILL NO. 18-27, C.D.1, C.D.2,
C.D.3, C.D.4

AN ACT

To appropriate the sum of \$1,680,000, from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2013, to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls, and for other purposes.

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

1 Section 1. The sum of \$1,680,000, or so much thereof as
2 may be necessary, is hereby appropriated from the General Fund
3 of the Federated States of Micronesia for the fiscal year
4 ending September 30, 2013, to assist the States of Pohnpei and
5 Yap in retiring debt and covering budget shortfalls, PROVIDED
6 THAT the funds appropriated shall not be used for personnel and
7 travel expenses. The funds shall be apportioned as follows:

8 1. Pohnpei State \$ 1,130,000

9 PROVIDED THAT \$130,000 be used to fund the Micronesian
10 Legal Services Corporation, and \$895,000 be used to cover
11 the principal amount owed by Pohnpei employers to Social
12 Security.

13 2. Yap State 550,000

14 PROVIDED THAT \$50,000 be used for fuel for the Field Trip Ship.

15 Section 2. Allotment and management of funds and lapse
16 date. All funds appropriated by this act shall be allotted,
17 managed, administered and accounted for in accordance with
18 applicable laws, including, but not limited to, the Financial

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CONGRESSIONAL BILL NO. 18-27, C.D.1, C.D.2,
C.D.3, C.D.4

1 Management Act of 1979. The allottee shall be responsible for
2 ensuring that these funds, or so much thereof as may be
3 necessary, are used solely for the purpose specified in this
4 act, and that no obligations are incurred in excess of the sum
5 appropriated. The allottee of the funds appropriated under
6 section 1 of this act shall be the Governor of the appropriate
7 state for each of the respective states. The authority of the
8 allottee to obligate funds appropriated by this act shall lapse
9 on September 30, 2014.

10 Section 3. This act shall become law upon approval by the
11 President of the Federated States of Micronesia or upon its
12 becoming law without such approval.

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_____, 2013

Manny Mori
President
Federated States of Micronesia

Office Of The National Public Auditor
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**Appendix E: President's Message Regarding Line Item Vetoed Public Law No. 18-11
Appropriating \$1.68 Million to Pohnpei and Yap States**



August 15, 2013

The President
Teo Kir, Pohnpei
Federated States of Micronesia



The Honorable Dohsis Halbert
Speaker
Congress of the Federated States of Micronesia
Palikir, Pohnpei, FM 96941

Dear Speaker Halbert:

I transmit the following congressional act, which I have signed to become Public Law No. 18-11:

Congressional Act No. 18-11, entitled: "AN ACT TO APPROPRIATE THE SUM OF \$1,680,000 FROM THE GENERAL FUND OF THE FEDERATED STATES OF MICRONESIA FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013, TO ASSIST THE STATES OF POHNPEI AND YAP IN RETIRING DEBT AND COVERING BUDGET SHORTFALLS, AND FOR OTHER PURPOSES."

I agree with the general intent of this act; however, I have concerns regarding the language and purpose in the allocation of funds for Pohnpei State. Laws governing social security impose an excise tax on employers. Failure to pay tax is a violation of law. This act appears to reward non-payment of tax by "Pohnpei employers" without penalty and without any review of the problem leading up to the non-payment of tax. In addition, it discourages those law-abiding employers who have paid the social security tax for their employees. This act sets a dangerous precedent compelling the National Government to pay off future social security taxes owed by delinquent employers and will have a negative impact on the National Government's budget and ability to adequately fund the social security program. It will also cause the systemic erosion of the social security system. Additionally, it would have been better had the Social Security Administration been the allottee of the funds. Naming a governor as the allottee may require certain confidential information on both the employer and the employee(s) to be disclosed to the allottee.

You may recall that in 2007, the national government used a grant from one of our development partners to pay off the Chuuk State Government's unpaid tax to social security. This act, however, is proposing to use local revenue to pay off the principal amount owed by Pohnpei employers. Public funds must be used for a public purpose. Therefore, I have line item vetoed lines 10-12 in the amount of \$895,000.

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SBOC's Allotment of Vetoed Appropriation Not Authorized By Law
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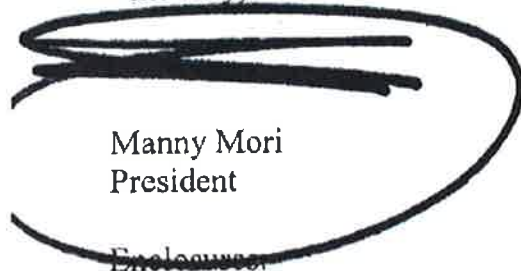
The Honorable Dohsis Halbert
August 15, 2013
Page 2

Public Law No. 17-64, which is the Budget Act for FY 2013, appropriated \$150,000 for Micronesia Legal Services Corporation. The additional allocation of \$130,000 for MLSC is not transparent because there is no justification whatsoever to provide this additional funding.

I respectfully urge Congress to carefully review and consider the foregoing concerns.

With warm personal regards, I remain,


Sincerely,



Manny Mori
President

Enclosure

Xc: Chief Justice, FSM Supreme Court


Director, SBOC
Legislative Counsel, CFSM
Library, CFSM
FSM PIO

Office Of The National Public Auditor
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Appendix F: Line Item Vetoed Public Law No. 18-11 Appropriating \$1.68 Million to Pohnpei and Yap States

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 2013 CONGRESSIONAL BILL NO. 18-27, C.D.1, C.D.
C.D.3, C.D.

PUBLIC LAW No. 18-

AN ACT

To appropriate the sum of \$1,680,000, from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2013, to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls, and for other purposes.

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

1 Section 1. The sum of \$1,680,000, or so much thereof as
2 may be necessary, is hereby appropriated from the General Fund
3 of the Federated States of Micronesia for the fiscal year
4 ending September 30, 2013, to assist the States of Pohnpei and
5 Yap in retiring debt and covering budget shortfalls, PROVIDED
6 THAT the funds appropriated shall not be used for personnel and
7 travel expenses. The funds shall be apportioned as follows:

8 1. Pohnpei State \$ 1,130,000

9 PROVIDED THAT \$130,000 be used to fund the Micronesian
10 Legal Services Corporation, and \$895,000 be used to cover
11 the principal amount owed by Pohnpei employers to Social
12 Security.

13 2. Yap State 550,000

14 PROVIDED THAT \$50,000 be used for fuel for the Field Trip Ship.

15 Section 2. Allotment and management of funds and lapse
16 date. All funds appropriated by this act shall be allotted,
17 managed, administered and accounted for in accordance with
18 applicable laws, including, but not limited to, the Financial

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CONGRESSIONAL BILL NO. 18-27, C.D.1, C.D.2,
C.D.3, C.D.4

PUBLIC LAW No. 18-11

1 Management Act of 1979. The allottee shall be responsible for
2 ensuring that these funds, or so much thereof as may be
3 necessary, are used solely for the purpose specified in this
4 act, and that no obligations are incurred in excess of the sum
5 appropriated. The allottee of the funds appropriated under
6 section 1 of this act shall be the Governor of the appropriate
7 state for each of the respective states. The authority of the
8 allottee to obligate funds appropriated by this act shall lapse
9 on September 30, 2014.

10 Section 3. This act shall become law upon approval by the
11 President of the Federated States of Micronesia or upon its
12 becoming law without such approval.

13
14
15
16 August 15, 2013
17

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19
20
21 Manny Mori
President
Federated States of Micronesia
22

**Office Of The National Public Auditor
SBOC's Allotment of Vetoed Appropriation Not Authorized By Law
Audit Report 2015 – 02**

Appendix G: SBOC's Request for Legal Assistance

3/30/2014

Gmail - Public Law 18-11



Public Law 18-11

Evelyn Adolph <eadolph@mail.fm>

Fri, Oct 4, 2013 at 5:05 AM

To: April Dawn Skilling <adms.fsm@gmail.com>, "L. M. Bacalando" <junbacalando@yahoo.com>

Cc: Leo Falcam <coslaf@gmail.com>, Sohs John <sjohn@sboc.fm>

Dear Secretary and Jun,

I thought of sending a memo on this matter but realized that Secretary leaves today for Kosrae and would probably not get copy of memo until later. Thus this email. If I need to send a more official request on letterhead please let me know.

I need assistance in the interpretation of the subject Public Law (attached), specifically the effect of the line item veto of the \$895,000. One understanding is that the line item veto has the effect of reducing the \$895,000 from the appropriation. Another understanding is that it has the effect of deleting that particular use of the funds and frees that entire amount up for Pohnpei State to use to cover budgetary shortfalls, less the \$130,000 for MLSC, leaving the entire remaining amount of \$1 million for Pohnpei State to use to pay for debt and cover budget shortfalls. Please advise on what the correct interpretation is of the implication of the line item veto.

We already have a [REDACTED] from Pohnpei State which Jun has advised we hold processing of until the session is over because of the possibility of over-ride of this veto. We will hold this allotment until: (1) the session is over, and (2) we hear back from you on the correct interpretation of the effect that this veto has on the appropriation amounts.

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SBOC's Allotment of Vetoeed Appropriation Not Authorized By Law
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Appendix H: \$1 Million Advice of Allotment to Pohnpei State

FSM NATIONAL GOVERNMENT
OFFICE OF S.B.O.C
PAUKIR, POHNPEI 96941

PREPARED BY:	<u>SJ</u>	ADVICE NO:	<u>425P14007</u>
CLEAR BY:	<u></u>	DATE:	<u>10/1/2013</u>
		FISCAL YEAR:	<u>2014</u>

ADVICE OF ALLOTMENT

ALLOTEE Governor **DEPT:** Office of the Governor

ADDRESS : Kolonia, Pohnpei **ACTIVITY:** Retiring debt & covering budget shortfalls

ACCT: A4-25-85-90-44449-14¹³ **BOC:** 25 - General Fund **EXP. DATE:** 9/30/2014

TYPE OF ADVICE: **CFDA #:** 15.875

SUB_ACCT:	ACCT. DESCRIPTION	ADESC	PREVIOUS	ACTION	CURRENT ALLOT
8001	PERSONNEL	\$	-	\$	-
8101	TRAVEL	\$	-	\$	-
8201	CONSUMABLE GOODS	\$	-	\$	-
8301	CONTRACTUAL SERVICES	\$	-	\$	-
8601	FIXED ASSETS	\$	-	\$	-
8401	SINGLE AUTHORIZATION	\$	-	\$ 1,000,000.00	1,000,000.00
*TOTAL COSTLED: 44449		\$	-	\$ 1,000,000.00	1,000,000.00

JUSTIFICATION

To allot funds appropriated under P.L. No. 18-11, Section 1 (1) to assist Pohnpei State in retiring debt and covering budget shortfalls. In line with P.L. No. 18-11, the funds shall not be used for personnel and travel expenses.

Budget Period Begins: 10/1/2013

PUBLIC LAW: P.L. No. 18-11 Section 1 (1)

GRANT AWARD #: _____



APPROVED:


Evelyn Adolph

DIRECTOR, SBOC

10/10/13 NOTE: CORRECTED COPY ON THE FY Y
 ADVICE TO .

FSM Form 8001

Postul
 10-9-13

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Appendix I: Attorney General's Legal Opinion



Department of Justice
Federated States of Micronesia



April Dawn M. Skilling, Secretary

(691) 320-2608

October 8, 2013

AG Op. 2013-008

LEGAL OPINION

TO: Director, Office of SBOC

FROM: Secretary, Department of Justice

RE: Interpretation of item veto on Public Law No. 18-11

Issue

On August 15, 2013, the President signed into law Public Law No. 18-11 with **item veto**, as follows:

"Section 1. The sum of \$1,680,000, or so much therefore as may be necessary, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 2013, to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls, PROVIDED THAT the funds appropriated shall not be used for personnel and travel expenses. The funds shall be apportioned as follows:

1. Pohnpei State	\$1,130,000
PROVIDED THAT \$130,000 be used to fund the Micronesian Legal Services Corporation, and \$895,000 be used to cover the principal amount owed by Pohnpei employers to Social Security.	
2. Yap State	\$550,000"

Congress did not override the item veto. You solicited our interpretation as to the legal effect of the item veto on the appropriation. Put differently, does the item veto reduce the **apportionment of funds** for Pohnpei State by the amount of the item veto? In the alternative, has the item veto **freed up the whole appropriation of \$1,130,000**, including the item vetoed apportionment of \$895,000, **from any condition** on the use of the appropriated funds?

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Answer

(1) The item veto does not reduce the overall apportionment of appropriated funds for Pohnpei State.

(2) The legal effect of the item veto is to not allow the appropriated funds to be used to cover the principal amount owed by Pohnpei employers to Social Security.

(3) The apportionment for Pohnpei State remains subject to a proviso not vetoed by the President, i.e., \$130,000, to be used to fund the Micronesian Legal Services Corporation.

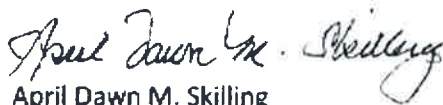
Analysis

There is no doubt that the President has a constitutional power of item veto. (Article XII, Section 2 (c) states that: "The President may item veto an appropriation in any bill passed by Congress, and the procedure in such case shall be the same as for disapproval of an entire bill by the President." Item veto allows the President to disapprove certain provisions of a bill passed by Congress without having to disapprove all other parts of the bill. This authority can be exercised only with regard to an appropriation, for example Public Law No. 18-11.

Subsection 1 of section 1 of Public Law No. 18-11 appropriates the amount of \$1,130,000 for Pohnpei State. That appropriation is complete because the purpose of the appropriation is clear ("to assist the States of Pohnpei and Yap in retiring debts and covering budget shortfalls"). Viewed in that light, the veto does not affect the overall apportionment of funds as stated in the appropriation.

What the President disapproved by his item veto is a proviso in the apportionment, which is the principal amount owed by the Pohnpei employers to Social Security, not the appropriation itself. Because of the item veto, the appropriated amount cannot be used in payment for Social Security arrears. For more discussion on the rationale of the item veto, see the enclosed transmittal of the President dated August 15, 2013.

In conclusion, it is our opinion that the item veto on Public Law No. 18-11 does not reduce the overall apportionment of funds appropriated for Pohnpei State. The effect of the item veto is to disallow the appropriated funds to be used to cover the principal amount owed by Pohnpei employers to Social Security.


April Dawn M. Skilling
Secretary of Justice

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Appendix J: SBOC Director's Memo to the President to Explain the Background Regarding the Allotment of Funds to Pohnpei State



THE FEDERATED STATES OF MICRONESIA
OFFICE OF STATISTICS, BUDGET & ECONOMIC MANAGEMENT
OVERSEAS DEVELOPMENT ASSISTANCE AND COMPACT MANAGEMENT (S.B.O.C.)
P.O. BOX PS 52, PALIKIR, POHNPEI, FM 96944
TEL: (691) 320-6260/2823/7824 FAX: (691) 320-2428/1526 WEBSITE: WWW.SBOC.FM

December 16, 2013

MEMORANDUM

TO: President

FROM: Director

SUBJECT: Allotment of Funds for Pohnpei State under PL 18-11

I am sending this memo to document the background and process leading to the release of the allotment of funds under the subject public law.

As background, Congressional Bill 18-27 was introduced to appropriate \$1,680,000 to assist the States of Yap and Pohnpei to cover budget shortfall and retire debt. As a witness in the public hearing on CB 18-27 and other measures, I recommended against the intent of providing financial support to Pohnpei and Yap States for two reasons: (1) these are the two States that have not passed enabling legislation on the tax reforms, and they need to be incentivized rather than supported to continue to stall the necessary nation-wide tax reforms; (2) temporary financial assistance to the States to cover budget shortfall now can enable the States to forgo expenditure reduction commitments made under the LTFF process.

The bill was passed as Congressional Act 18-11 on second reading with a verbal amendment providing that \$895,000 of the \$1,130,000 amount for Pohnpei State be used to cover debt of Pohnpei State employers to the FSM Social Security Administration.

On August 15, the President signed CA 18-11 into law with a line item veto on the proviso that \$895,000 of the funds appropriated for Pohnpei State is to be used to cover social security debt for Pohnpei State employers.

As allottee of the funds, Governor Ehsa sent a letter with accompanying project control document (PCD) dated October 2, 2013 to the Office of SBOC requesting allotment of \$895,000 "as approved and authorized under PL 18-11".

The Governor is the allottee of the subject funds. As such, our office needed more than our opinion to return the request unprocessed, we needed a legal opinion from DOJ in order for the decision to carry weight. Sometime after receiving the allottee's first request dated October 2, I contacted DOJ and spoke with Mr. Bacalando seeking advice on the effect of the veto. Some days later I followed up in person. In my recollection, he indicated that based on the wording of the legislation, it looks like the veto has not reduced the total amount that is available for Pohnpei State for the original purpose of the Act which is to cover budget shortfall and pay existing debt for the State. He indicated that the intent of the veto is to disallow the use of the funds for paying social security debt of Pohnpei State employers, but not to

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memo subject: Allotment of funds for Pohnpei State under PL 18-11

reduce the overall amount therefore the veto has the effect of **freeing up the funds** for use by Pohnpei State to cover its budget shortfall and pay existing debt.

After this I indicated to Mr. Bacalando that SBOC would be pursuing a written legal opinion to ensure that the advice we receive is official. On October 4, I sent an email to Secretary of DOJ seeking assistance in interpreting the new public law with the effect of the veto. The specific question that I raised in my October 4 email is whether the line item veto has (1) the effect of reducing the \$895,000 from the appropriation or (2) that the line item veto has the effect deleting that particular use of the funds thus freeing up the entire amount up for Pohnpei State to pay for debt and cover budget shortfall (as implied in the allottee's request for allotment).

~~On~~ October 7, 2013 Governor Ehsa sent a letter to you Mr. President changing the allotment request from \$895,000 to \$1,000,000.

~~On~~ October 8, 2013 DOJ issued the attached legal opinion, which in my laymen's view confirmed what Mr. Bacalando had discussed with me earlier. Recall that I had come to DOJ with an allotment request from the allottee, Pohnpei State Governor requesting instead of \$105,000 an amount of \$895,000 initially and then \$1,000,000. When reading the legal opinion, it is important to refresh the question I was raising to DOJ with the allotment request at hand. The question is whether or not the line item veto had the effect of reducing the apportionment of funds for Pohnpei State or not. The legal opinion indicated that the line item veto does not reduce the apportionment of appropriated funds for Pohnpei State. The effect of the line item veto is to disallow the funds to be used to *cover the principal amount owed by Pohnpei employers to Social Security*. The legal opinion further states that the appropriation is still complete because the purpose of the appropriation is clear ("to assist the States of Pohnpei and Yap in retiring debt and covering budget shortfalls").

The legal opinion, and what I understand it to mean, is the sole reason behind my approval of the allotment of \$1,000,000 for the allottee of the funds for the purpose of retiring debt and covering budget shortfalls for Pohnpei State.

With utmost sincerity,

Evelyn Adolph

Encl: Advice of Allotment
Communications and PCD from Allottee of funds/Pohnpei State Governor
Legal Opinion from DOJ
Copy of email to DOJ

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Appendix K: Public Law 18-44

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SECOND REGULAR SESSION, 2013 CONGRESSIONAL BILL NO. 18-73, C.D.1, C.D.2

PUBLIC LAW NO. 18-44

AN ACT

To amend Public Law No. 18-11, by amending section 1 and 2 thereof, to change to use and the allottee of funds previously appropriated therein for the State of Pohnpei, and for other purposes.

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

1 Section 1. Section 1 of Public Law No. 18-11 is hereby
2 amended to read as follows:

3 "Section 1. The sum of \$1,680,000, or so much thereof as
4 may be necessary, is hereby appropriated from the General Fund
5 of the Federated States of Micronesia for the fiscal year
6 ending September 30, 2013, ~~to assist the States of Pohnpei and~~
7 ~~Yap in retiring debt and covering budget shortfalls~~, PROVIDED
8 THAT the funds appropriated shall not be used for personnel and
9 travel expenses. The funds shall be apportioned as follows:

10 1. Pohnpei State \$ 1,130,000

11 PROVIDED HOWEVER, that the funds appropriated in subsections
12 (b)(c)(d) and (e) of this section shall not be allotted until
13 Congress is officially advised that funds improperly disbursed
14 as a result of the line item veto which was reflected in Public
15 Law No. 18-11 are collected.

16 (a) Micronesian Legal Services

17 Corporation \$ 130,000

18 (b) At large, Pohnpei State roads

19 improvement 250,000

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CONGRESSIONAL BILL NO. 18-73, C.D.1, C.D.2

PUBLIC LAW NO. 18-44

1	(c)✓Election District No. 1, Pohnpei	
2	State roads improvement	\$ 250,000
3	(d)✓Election District No. 2, Pohnpei	
4	State roads improvement	250,000
5	(e)✓Election District No. 3, Pohnpei	
6	State roads improvement	250,000
7	2. Yap State	550,000

8 PROVIDED THAT \$50,000 be used for fuel for the Field Trip
9 Ship."

10 Section 2. Section 2 of Public Law No. 18-11 is hereby
11 amended to read as follows:

12 "Section 2. Allotment and management of funds and lapse
13 date. All funds appropriated by this act shall be
14 allotted, managed, administered and accounted for in
15 accordance with applicable laws, including, but not
16 limited to, the Financial Management Act of 1979. The
17 allottee shall be responsible for ensuring that these
18 funds, or so much thereof as may be necessary, are used
19 solely for the purpose specified in this act, and that
20 no obligations are incurred in excess of the sum
21 appropriated. The allottee of the funds appropriated
22 under subsection 1 of section 1 of this act shall be the
23 President of the Federated States of Micronesia. The
24 allottee of funds appropriated under subsection 2 of
25 section 1 of this act shall be the Governor of the State

CONGRESSIONAL BILL NO. 18-73, C.D.1, C.D.2

DATE TO BE PAID: 7-9-44

4 Section 3. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

10 _____, 2014

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15 02-18-14

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MANAGEMENT RESPONSE



THE FEDERATED STATES OF MICRONESIA
OFFICE OF STATISTICS, BUDGET & ECONOMIC MANAGEMENT,
OVERSEAS DEVELOPMENT ASSISTANCE AND COMPACT MANAGEMENT (S.B.O.C.)
P.O. BOX PS 52, PALIKIR, POHNPEI FM 96941
TEL: (691) 320-6260/2823-2824 FAX: (691) 320-2428/1626

November 17, 2014

Mr. Haser Hainrick
FSM Public Auditor
FSM National Government
Palikir, Pohnpei FM 96941

Haser
11.18.2014



Subject: SBOC Comments on ONPA Audit Report 2015-02

Dear Mr. Hainrick:

Thank you for the opportunity to comment on the subject audit. We offer the following comments:

1. Public Law 18-11 was not structured similar to the usual appropriation law in which line items are clearly separated out and numbered separately from other line items in the appropriation law. The structure of the appropriation law and lack of clarity led the allottee (Governor of Pohnpei State) to request the allotment of \$1,000,000 because of the allottee's interpretation of the effect of the line-item veto.
2. The allottee, like the Director of SBOC, has an obligation to implement the appropriation law in accordance with the intent of the law. There was no coverage in the audit report of the responsibility of the allottee to implement the law in accordance with the intent of the law.
3. Office of SBOC has in the past issued allotments in line with line-item vetoes in cases where appropriation laws have clear and numbered line items. The structure of the subject public law, without numbered line items, leaves unclear the intent of the line item veto, prompting the need for a legal opinion.
4. In applying the principle of interpreting the statute that specific terms prevail over general terms in the same statute, ONPA Audit Report 2015-02 provides for a table at the top of page 2, which clearly provides the answer being sought by the Office of SBOC in its request for a legal opinion. This principle was neither mentioned in the legal opinion nor applied by DOJ in answering SBOC's question. SBOC questioned whether the line item veto reduces the apportionment of funds for Pohnpei State by the amount of the line item veto or in the alternative, it has freed up the entire amount for apportionment to Pohnpei State. DOJ legal opinion answered that the line item veto does not reduce the overall apportionment of the appropriated funds for Pohnpei State and that the legal effect of the item veto is to not allow the appropriated funds to be

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SBOC's Allotment of Vetoed Appropriation Not Authorized By Law
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used to cover the principle amount owed by Pohnpei employers to social security. The legal opinion went on to state that Public Law 18-11 appropriates \$1,130,000 for Pohnpei State, and that the appropriation is still complete because the purpose of the appropriation is clear ("to assist the States of Pohnpei and Yap in retiring debts and covering budget shortfalls"). Yet in the subject audit report, ONPA is applying the principle that specific terms prevail over general terms. Is application of this principle consistent with the DOJ opinion that the public law is still complete with a not reduced appropriation amount for Pohnpei State because the purpose of the appropriation is clearly to "assist the States of Pohnpei and Yap in retiring debts and covering budget shortfalls"?

Clearly, the Office of Public Auditor could not have arrived at its findings without utilizing legal expertise. On the other hand, on a daily basis, the Office of SBOC does not have the expertise in the office to have a position on the legality of the subject allotment that lack clarity, such as the subject public law. The office has to rely on DOJ to interpret laws that are not easy to interpret; such as the subject line item vetoed public law. The office should receive legal opinions and advice that clearly provide answers to questions raised. Such answers in legal opinions should be clear enough not to require further interpretation.

Despite evidence provided to the auditors, the report still cites two allotment dates (October 1 and 7, 2013) which both fall before the date of the legal opinion (October 8, 2013). This is despite evidence from both SBOC and Finance system records that the actual allotment was issued and posted in the financial management system on October 9, 2013 after the date of the legal opinion. The authority for the expenditure was actually established when the allotment was authorized and posted on the system.

Appendix J contains our December 16, 2013 memo to the President outlining events that led to the issuance of allotment.

Sincerely,



Evelyn Adolph
Director

**Office Of The National Public Auditor
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Department of Justice
Federated States of Micronesia

April Dawn M. Skilling, Secretary



(691) 320-2608

November 18, 2014

VIA HAND DELIVERY AND E-MAIL

Handwritten signature: Aaron 11.18.2014
Haser Hainrick
National Public Auditor
PO Box PS-05, Palikir, Pohnpei FM 96941
(691) 320-2862
hhainrick@fsmopa.fm

Re: Management Response – Audit Report No. 2015-02

Dear Mr. Hainrick:

Thank you for receipt of the draft audit report. I am submitting this letter as the formal response from the Department of Justice.

The draft audit report did not document a key conversation that took place between the President, the Director of SBOC, and me following the release by the Director of SBOC of \$1.130 million to Pohnpei State under Public Law 18-11. The President called the Director of SBOC and me to the President's conference room to discuss the allotment. In that conversation, the President asked the Director of SBOC the following:

President: What does "veto" mean to you?

Director of SBOC: It means you don't do anything.

President: Then why did you release the money?

Director of SBOC: Because I was confused.

President: Why were you confused if you know that a veto means you don't do anything?

Director of SBOC: Because I relied on the legal opinion.

President: Where does it say in the legal opinion to release the funds? It doesn't say that, it says right here (pointing to page 2) that the line item veto does not reduce the amount, that the legal effect of the veto is not to allow the appropriated funds to be used for social security, and that only the \$130,000 provision is not vetoed.

Director of SBOC: Where is that?

President: It is right here, on page 2.

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Mr. Haser Hainrick
November 18, 2014
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At this point the President left the room. While he was out of the room, the Director of SBOC stood up and walked over to me and said "To tell you the truth, AG, I didn't really read the legal opinion very carefully."

Then the President came back in and the meeting ended after he asked the Director of SBOC to write to him an explanation of why she did what she did in this matter. The Director of SBOC, thereafter, stated that she relied on the legal opinion in the release of the funds when she admittedly never read the opinion carefully nor did she seek any clarification.

In this matter, the President vetoed a line item. Even the Department of Justice cannot override the President's decision, but if we have any questions, we would need to return to him and ask our questions, which we sometimes do. Likewise, the Director of SBOC should have asked for clarification from the President as to his veto and seek his interpretation. We can only state, as we did in our answer to her questions, what the law allows.

We seek to provide answers to the specific questions we are asked, if at all possible, understanding our role in the Government. While Attorney General Opinions are meant to give guidance, they are fact specific and do not absolve the questioner of any responsibility they have to do their duty or to seek further clarification if necessary.

Regardless, your suggestion of caution in preparing our AG Opinions is noted and well taken. There is always room for improvement, and we will read your final audit report with that thought in mind.

Thank you,

Sincerely,



April Dawn M. Skilling
Secretary

**Office Of The National Public Auditor
SBOC's Allotment of Vetoed Appropriation Not Authorized By Law
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Secretary of Finance
&
Administration

**GOVERNMENT OF THE
FEDERATED STATES OF MICRONESIA
Department of Finance and Administration**

P.O. Box PS 158
Palikir, Pohnpei FM 96941
Tel: (691) 320-2640/5852 Fax: (691) 320-7728
E-mail: fsmsofa@psnet.fm



November 17, 2014

Mr. Haser Hainrick
National Public Auditor
FSM National Government
Palikir, Pohnpei FM 96941

Asen
11.17.2014

Dear Mr. Hainrick:

Thank you for the opportunity to respond to Audit Report No. 2015-02, "SBOC's Allotment of Vetoed Appropriation not Authorized by Law". Attached for your information and reference is a copy of the letter to Governor Elisa requesting for the return of the \$521,708 that was disbursed to Pohnpei State. As of this letter, the Department has yet to receive a response from the Governor.

Sincerely,

Kensley K. Mosia

Kensley K. Mosia

Attachment

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SBOC's Allotment of Vetoed Appropriation Not Authorized By Law
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ONPA's EVALUATION OF MANAGEMENT RESPONSES

We requested for formal management response from the Director of the Office of SBOC, Secretary for the Department of Justice and the Secretary for the Department of Finance & Administration. All three officials provided their management responses, which are included in this final report.

Our comment on the management responses follow;

1. Management response from the Director, Office of SBOC

In paragraph #2, the Director stated "There was no coverage in the audit report of the responsibility of the allottee to implement the law in accordance with the intent of the law."

ONPA Comment: The scope of our audit and the procedures we performed were designed to achieve the audit objectives. Our audit objectives did not include reviewing the allottee's responsibility to implement the law. Rather, our audit was set out to determine whether (a) the allotment of funds to Pohnpei State under Public Law 8-11 was in accordance with related laws and regulations; and (b) to determine the status of the allotted funds. The issuance of the advice of allotment is the responsibility of the Director of SBOC. Thus, we focused our audit thereat rather than the allottee's.

In the second to the last paragraph, the Director commented about allotment dates.

- October 1, 2013....date used in the advice of allotment which the Director explained that it was an error (see Appendix H)
- October 7, 2013....another date given to auditors as to when the allotment was prepared
- October 8, 2013.....date of the legal opinion
- October 9, 2013.....date the advice of allotment was issued and posted in the financial management system.

ONPA Comment: We raised no issue regarding when (or on what date) the authority for expenditure was established. However, the dates given above clearly show that the advice of allotment was prepared before the receipt of the legal opinion.

2. Management response from the Secretary, Department of Justice

No further comment by the ONPA

3. Management response from the Secretary, Department of Finance & Administration

No further comment by the ONPA

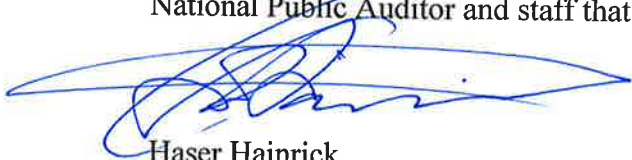
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4. NATIONAL PUBLIC AUDITOR'S COMMENTS

We would like to thank the Director of the Office of SBOC, Secretary of the Department of Justice, and the Secretary of the Department of Finance & Administration and including their key staff for their assistance and cooperation during the course of the audit.

We have provided copies of the final report to the President and Members of the Congress for their use and information. Furthermore, we will make copies available to other interested parties upon request.

If there are any questions or concerns regarding this report, please do not hesitate in contacting our Office. Contact information for the Office can be found on the last page of this report along with the National Public Auditor and staff that made major contributions to this report.



Haser Hainrick
National Public Auditor

November 18, 2014

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ONPA CONTACT AND STAFF ACKNOWLEDGEMENT

ONPA CONTACT:	Haser H. Hainrick, National Public Auditor Email: hhainrick@fsmopa.fm
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ACKNOWLEDGEMENTS	In addition to the contact named above, the following staff made key contributions to this report:
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Manuel San Jose CPA, CGAP, CIA, CISA, CRMA, Audit Manager
Erwhine David, Auditor-In-Charge
Rosadelima Afons, Staff Auditor

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CONTACT	Website: www.fsmopa.fm Hotline: (691) 320-6768
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