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A BILL FOR AN ACT

To amend title 32 of the Code of the Federated States of Micronesia by amending section 213 and by adding a new section 214 and a new section 215 for the purpose of changing the factors to be considered by the Foreign Investment Board in its review of applications for foreign-investment permits; to renumber sections 214 through 232; and for other purposes.

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

1 Section 1. Section 213 of title 32 of the Code of the Federated
2 States of Micronesia is hereby amended to read as follows:

3 "Section 213. Application - Decision by board. Upon receipt
4 of the information and recommendations called for in sections
5 211 and 212 of this chapter, or upon expiration of the time set
6 for submission of such information and recommendations, whichever
7 occurs first, the Board shall, within an additional thirty days,
8 decide whether or not to grant the foreign investment permit,
9 based on ~~all relevant factors, including~~ the factors given in
10 sections 214 and 215 of this chapter.

11 (1) ~~the economic, social, or environmental need for the~~
12 ~~business activity to be performed;~~

13 (2) ~~the degree to which such activities will effect change~~
14 ~~in exports or imports;~~

15 (3) ~~the extent to which such activities will deplete a~~
16 ~~nonrenewable natural resource, or will disturb the environmental~~
17 ~~balance or the conservation of renewable natural resources, or~~
18 ~~will pollute the atmosphere or water;~~

19 (4) ~~the extent of participation by citizens at the outset~~
20 ~~in the ownership and management of the enterprise, and in the case~~
21 ~~of an applicant which is a corporation chartered outside the~~
22 ~~Federated States, the degree of willingness and specific plans to~~
23 ~~form a Federated States corporation in the future and to offer at~~
24 ~~least fifty-one percent of the ownership and capital to citizens;~~

25 (5) ~~the willingness and specific plans of the applicant to~~

give employment preference to citizens and to train citizens for positions in management and at other levels by instituting training programs;

(6) the extent to which the capital, managerial skills, and technical skills required for such an enterprise are available among Federated States citizens at the current time or can be expected to be available in the near future;

(7) the extent to which an operation will contribute to the overall economic well-being of the Nation and each State affected and the extent to which any interest, including economic, social, traditional, or environmental, of any State or the Nation may be affected; and

(8) the recommendations, if any, made by the State authorities;"

Section 2. Title 32 of the Code of the Federated States of Micronesia is hereby amended by the addition of a new section 214 to read as follows:

"Section 214. Application - Decision by board - Certain businesses.

(1) If a foreign investment permit is sought for the purpose of engaging in any of those businesses enumerated in subsection (2) below, the Board shall base its decision on all relevant factors, including the following:

(a) The economic, social, or environmental need for the business activity to be performed;

(b) The extent to which such activities will use or

RD

C.B. No. 4-147

1 deplete a nonrenewable natural resource, or will disturb the
2 environmental balance or the conservation of renewable natural
3 resources, or will pollute the atmosphere or water;

4 (c) The extent of participation by citizens at the
5 outset in the ownership and management of the enterprise, and in
6 the case of an applicant which is a corporation chartered outside
7 the Federated States, the degree of willingness and specific plans
8 to form a Federated States corporation in the future and to offer
9 at least fifty-one percent of the ownership and capital to citizens;
10 PROVIDED, however, that there must be at least twenty percent local
11 participation by way of equity ownership;

12 (d) The specific plans of the applicant to give
13 employment preference to citizens for positions in management and
14 at other levels by instituting training programs, and the applicant's
15 financial commitment to training citizens;

16 (e) The extent to which an operation will contribute
17 to the overall economic well-being of the Nation and each State
18 affected and the extent to which any interest, including economic,
19 social, traditional, or environmental, of any State or the Nation
20 may be affected; and

21 (f) The recommendations, if any, made by the State
22 authorities.

23 (2) This section shall apply to all foreign-investment
24 permit applications in which the applicant seeks to engage in any
25 of the following businesses:

RD

C.B. No. 4-147

- 1 (a) Transportation, including air transportation;
- 2 (b) Sale or storage of fuel;
- 3 (c) Utilities and power generation;
- 4 (d) Construction of roads, harbors, and airports;
- 5 (e) Finance and banking;
- 6 (f) Communications;
- 7 (g) Wholesale or retail business;
- 8 (h) Insurance;
- 9 (i) Undersea mining; or
- 10 (j) Tuna and billfish fishing.

11 Section 3. Title 32 of the Code of the Federated States of Micronesia
12 is hereby amended by the addition of a new section 215 to read as follows:

13 "Section 215. Application - Decision by board - Other business.

14 If a foreign-investment permit application is not for a business
15 named in section 214 (2) of this chapter, the Board shall base its
16 decision on the following factors:

- 17 (1) Whether the applicants are financially sound;
- 18 (2) Whether the business is legal;
- 19 (3) The extent to which the business will damage the
20 environment of the Federated States of Micronesia or deplete the
21 Federated States of Micronesia's natural resources;
- 22 (4) Whether or not the equity capital of non-citizen investors
23 comes from outside the Federated States of Micronesia; and
- 24 (5) The ability of the applicant to accomplish its purpose
25 and to bring funds and equipment needed for the purpose into the

RD

C.B. No. 4-147

1 Federated States of Micronesia."

2 Section 4. Sections 214 through 232 of title 32 of the Code of the
3 Federated States of Micronesia are hereby renumbered as sections 216
4 through 234.

5 Section 5. This act shall not apply to foreign-investment permit
6 applications pending before the Board on its effective date; PROVIDED,
7 however, that an applicant may withdraw and resubmit an application in
8 order to come within the provisions of this act. In the event of such a
9 withdrawal and resubmission, the Board may waive repetition of any steps
10 in the application process which were completed to the Board's satisfaction
11 prior to such withdrawal and resubmission.

12 Section 6. This act shall become law upon approval by the President
13 of the Federated States of Micronesia or upon its becoming law without such
14 approval.

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16 Date: 10/16/05

Introduced by: 

Pedro Harris

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