

A BILL FOR AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by addition of a new chapter 12 for the purpose of establishing an FSM Trust Fund, and for other purposes.

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

1 Section 1. Title 55 of the Code of the Federated States of
2 Micronesia, is hereby further amended by adding a new chapter 12
3 to be entitled "FSM Trust Fund."

4 Section 2. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a
6 new section 1201 to chapter 12 to read as follows:

7 "Section 1201. Short title. This act is known and may
8 be cited as the FSM Trust Fund Act."

9 Section 3. Title 55 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a
11 new section 1202 to chapter 12 to read as follows:

12 "Section 1202. Definitions. Unless otherwise specified
13 or clear from the context, words and phrases used in
14 this chapter shall have the following meanings:

15 (1) "Board" means the Board of Trustees of the
16 Fund;

17 (2) "FSM" means the sovereign nation of the
18 Federated States of Micronesia;

19 (3) "Financial year" means the fiscal year of the
20 Fund, which shall be the twelve-month period ending on
21 the last day of each December;

22 (4) "Fiscal year" means the fiscal year of the
23 National Government;

24 (5) "Fund" means the FSM Trust Fund created by this
25 chapter, including the accounts therein;

(6) "Fund managers" means the one or more firms selected by the Board to manage the receipt, investment, reinvestment, and disbursement of the Fund's resources;

(7) "Fund returns" means the returns accruing to the Fund by way of income generated from the Fund's resources and the capital appreciation of those resources;

(8) "National Government" means the national government of the FSM;

(9) "Real per capita value" means the value of contributions to the Fund when adjusted to reflect inflation and population change. The inflation adjustment shall be made to current prices in line with movements in the US Consumer Price Index. Population refers to the number of FSM citizens residing in the FSM. When current population figures are not available, the Board shall use such estimates thereof as it finds to be reasonable. Such estimates may be extrapolated from the most recent population census based on the population growth rate prior thereto; and

(10) "Reinvestment" means the process whereby Fund returns, whether in the form of income or appreciation, become part of the capital of the Fund."

Section 4. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a

1 new section 1203 to chapter 12 to read as follows:

2 "Section 1203. Establishment. There is hereby created
3 the FSM Trust Fund, separate from the General Fund of
4 the FSM and all other funds."

5 Section 5. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a
7 new section 1204 to chapter 12 to read as follows:

8 "Section 1204. Purpose. The purpose of the Fund is to
9 contribute to the long-term financial viability of the
10 FSM by providing an additional source of revenue and to
11 enhance the capacity of the National Government to
12 receive and effectively utilize external resources in
13 order to:

14 (1) Assist the National Government to achieve
15 greater financial autonomy in the management of its
16 recurrent budget;

17 (2) Enable the FSM to meet long-term maintenance
18 and operating costs of social and economic
19 infrastructure; and

20 (3) Enable the FSM to improve existing levels of
21 social and economic infrastructure."

22 Section 6. Title 55 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a
24 new section 1205 to chapter 12 to read as follows:

25 "Section 1205. Powers. The Fund shall have the powers

1 and privileges of a corporation, including all powers
2 necessary for the fulfillment and achievement of its
3 purposes."

4 Section 7. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a
6 new section 1206 to chapter 12 to read as follows:

7 "Section 1206. Legal status, privileges and immunities.

8 (1) The Fund shall possess juridical personality
9 and, in particular, the capacity to:

10 (a) contract;

11 (b) acquire and dispose of immovable and
12 movable property; and

13 (c) institute legal proceedings.

14 (2) The Fund shall be exempt from any exchange
15 control regulations, restrictions, or moratoria.

16 (3) Within the scope of its official activities,
17 the Fund, its property, and its assets shall be exempt
18 from all direct taxation."

19 Section 8. Title 55 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a
21 new section 1207 to chapter 12 to read as follows:

22 "Section 1207. Limitations on liability.

23 (1) No contributor to the Fund shall be liable, by
24 reason of its contribution, for the acts or obligations
25 of the Fund.

1 (2) Obligations of the Fund are not obligations of
2 the National Government."

3 Section 9. Title 55 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a
5 new section 1208 to chapter 12 to read as follows:

6 "Section 1208. Board.

7 (1) The Fund shall have a Board of Trustees
8 consisting of five trustees appointed and removable by
9 the President of the FSM with the advice and consent of
10 the Congress of the FSM. Nominations to the Board shall
11 take into account the need to have adequate geographical
12 representation from within the FSM, representation of
13 substantial foreign contributors to the Fund, and
14 complementary experience in the fields of investment
15 management and public finance. Each trustee shall serve
16 for a term of four years or until a successor is
17 appointed. The Board shall elect a chairman from among
18 its own members.

19 (2) All powers of the Fund shall be vested in and
20 exercisable by the Board.

21 (3) The functions of the Board shall include:

22 (a) obtaining, along with others, of
23 contributions to the Fund;

24 (b) operation, supervision and management of
25 the Fund; and

(c) investment and distribution of resources of the Fund.

(4) Trustees shall serve as such without payment of compensation from the Fund or any other source. Reasonable expenses of the Board itself shall be provided for annually in the national budget of the FSM and not paid out of the Fund.

(5) The Board shall meet as necessary, and reasonable notice shall be given of meetings.

(6) For the purposes of meetings of the Board, three-fifths of trustees shall constitute a quorum.

(7) Except where otherwise provided in this chapter, questions before the Board shall be decided by a majority of votes of trustees present and voting at the meeting.

(8) The Board shall establish its own bylaws and rules of procedure."

Section 10. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1209 to chapter 12 to read as follows:

"Section 1209. Administrator of the Fund. The Secretary of Finance of the FSM, or his cabinet-level successor, shall serve as administrator of the Fund and shall provide necessary administrative support to the Fund and its Board."

1 Section 11. Title 55 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a
3 new section 1210 to chapter 12 to read as follows:

4 "Section 1210. Resources of the Fund. The resources
5 of the Fund shall consist of all contributions to the
6 Fund, from whatever sources, and all Fund returns. The
7 resources of the Fund shall be held in trust and
8 administered by the Board and used only for the purpose
9 of and in accordance with this chapter."

10 Section 12. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a
12 new section 1211 to chapter 12 to read as follows:

13 "Section 1211. Contributions to the Fund.

14 (1) A contribution to the Fund may be in the form
15 of a grant or, with the agreement of a majority of all
16 trustees, in the form of a an unsecured loan which bears
17 interest (or its equivalent) at a rate no greater than
18 3% and is otherwise cost-free.

19 (2) The Fund may refuse a contribution if it
20 considers that it would not be in the interests of the
21 Fund or the FSM to accept it.

22 (3) The Fund shall not issue negotiable
23 or transferable obligations evidencing indebtedness for
24 any loan.

25 (4) Contributions shall be made for the purpose of

1 the Fund without further restriction as to use and,
2 except for repayment of loans, shall not be refunded to
3 contributors.

4 (5) A contribution to the Fund shall not in and of
5 itself constitute or imply any commitment by the
6 contributor to make any further contribution to the
7 Fund."

8 Section 13. Title 55 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by adding a
10 new section 1212 to chapter 12 to read as follows:

11 "Section 1212. Fund managers.

12 (1) The Board shall appoint one or more Fund
13 managers from time to time on such terms and conditions
14 as it determines.

15 (2) The Board shall adopt investment guidelines for
16 the Fund managers. In so doing, it shall ensure that
17 the capital of the Fund is prudently invested in a
18 balanced portfolio so as to maximize returns while
19 protecting capital and maintaining adequate liquidity.

20 (3) The Board may delegate to the Fund managers
21 responsibility for the day-to-day administration of the
22 Fund.

23 (4) The Fund managers shall provide such reports on
24 the value and disposition of the resources of the Fund,
25 such reviews of its performance, and such advice on it

1 as are required by the Board.

2 (5) The compensation and expenses of the Fund
3 managers in carrying out their duties in administration
4 of the Fund shall be expenses of the Fund."

5 Section 14. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a
7 new section 1213 to chapter 12 to read as follows:

8 "Section 1213. A and B Accounts.

9 (1) The Fund shall be divided into an A Account and
10 a B Account.

11 (2) All contributions to the Fund shall be
12 deposited to the A Account. Thereafter, the Board shall
13 ensure that a portion of the Fund returns in each
14 financial year is reinvested at the end of that
15 financial year as capital of the A Account, such portion
16 being the amount necessary to maintain the opening
17 balance of the A Account's capital for the following
18 financial year at the real per capita value of all
19 contributions to the Fund minus all principal repayments
20 made on loans to the Fund.

21 (3) Repayment of loans to the Fund and payment of
22 the expenses of the Fund shall be made from the A
23 Account. The amount, if any, of Fund returns in each
24 financial year which remains after such repayment of
25 loans and payment of expenses, and after reinvestment in

accordance with subsection (2) of this section, shall be transferred to the B Account. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from the A Account.

(4) The B Account shall consist of funds transferred from the A Account and the returns therefrom while in the B Account. Funds in the B Account may be distributed to the National Government in accordance with section 1214 of this chapter or transferred to the A Account in accordance with section 1215 of this chapter. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from the B Account.

(5) It is anticipated that funds in the A Account will be placed in longer term, higher yielding investments than are funds in the B Account."

Section 15. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1214 to chapter 12 to read as follows:

"Section 1214. Distributions to National Government.

(1) At the end of each financial year the Board shall determine the maximum amount of funds available for distribution to the National Government in the following fiscal year. Such amount shall be the lesser of the total funds in the B Account or an amount

calculated as follows:

(a) Calculate a percentage rate of net return on the Fund for the financial year just ended by dividing (i) the total Fund returns for that financial year, less the portions thereof required for reinvestment, repayment of loans, and payment of expenses during or for that financial year, by (ii) the average daily balance of the Fund during that financial year.

(b) Then calculate the percentage rate of net return on the Fund for each of the four (or fewer) years immediately proceeding the financial year just ended in which there were in fact Fund returns.

(c) Then calculate the average rate of net return over the prior five (or fewer) financial years by adding the percentage rates of net return for those financial years, determined in accordance with subsections (1)(a) and (1)(b) of this section, and dividing the total by the number of financial years involved.

(d) Finally, multiply that average rate of net return by the average daily balance of the Fund during the financial year just ended.

(2) In order to enable the National Government to prepare its annual budget and estimates for the next

fiscal year, by January 15 of each year the Board shall
inform the National Government of the maximum amount of
funds available for distribution in the next fiscal
year.

(3) The Board shall distribute to the National
Government each fiscal year the maximum amount of funds
available for distribution or such lesser amount as the
National Government may specify. The distribution shall
be made at such times and in such proportions as the
National Government and the Board agree.

(4) Notwithstanding the foregoing, no funds shall
be distributed to the National Government prior to
October 1, 2001.

(5) Funds distributed to the National Government
shall be deposited in the General Fund of the FSM for
appropriation and expenditure consistent with the
purposes of the Fund. Such appropriation and
expenditure may, but need not, include transfers to
other levels of government in the FSM for their use in
ways consistent with the purposes of the Fund."

Section 16. Title 55 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a
new section 1215 to chapter 12 to read as follows:

"Section 1215. Transfers to the A Account.

(1) The Board shall transfer funds from the B

1 Account to the A Account to the extent necessary to make
2 up any shortfall of funds in the A Account needed for
3 reinvestment, repayment of loans to the Fund, and
4 payment of the expenses of the Fund pursuant to section
5 1213 of this chapter.

6 (2) The Board may transfer to the A Account any
7 funds in the B Account in excess of an amount equal to
8 the sum of all funds transferred from the A Account to
9 the B Account during the five most recent financial
10 years. Such a transfer may only occur at the end of a
11 financial year and after there have been at least five
12 financial years in which funds were in fact transferred
13 from the A Account to the B Account. Funds transferred
14 to the A Account pursuant to this subsection shall be
15 deemed to be additional contributions to the Fund."

16 Section 17. Title 55 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a
18 new section 1216 to chapter 12 to read as follows:

19 "Section 1216. Miscellaneous restrictions.

20 (1) Except as provided in subsection 1211(a) of
21 this chapter, the Fund shall not borrow money.

22 (2) The Fund shall not be used to guaranty the debt
23 of another person or entity."

24 (3) The Fund shall not invest in instruments
25 denominated in currencies other than the US dollar

1 except as prudent and necessary to avoid exchange rate
2 risks on loans which must be repaid in a currency other
3 than the US dollar.

4 Section 18. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a
6 new section 1217 to chapter 12 to read as follows:

7 "Section 1217. State accounts. Contributions may be
8 made to the Fund for the benefit of a state in the FSM,
9 in which case the Board shall establish separate A and B
10 Accounts within the Fund in the name of that state.
11 Such state accounts shall be subject to this chapter and
12 administered in the same manner as the National
13 Government A and B Accounts except that distributable
14 funds or assets shall be made available to the state
15 government rather than the National Government. Fund
16 expenses shall be prorated between the accounts of
17 different governments in proportion to their relative
18 share of the total Fund.

19 Section 19. Title 55 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a
21 new section 1218 to chapter 12 to read as follows:

22 "Section 1218. Books and Records.

23 (1) The Board shall cause the Fund managers to keep
24 all proper books and records of account of the assets,
25 property, liabilities, income and expenditure, and

1 transactions of the Fund, and to produce these promptly
2 in order to facilitate audit.

3 (2) All records and reports of Fund returns shall
4 clearly segregate and identify gross returns, management
5 fees, and net returns."

6 Section 20. Title 55 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a
8 new section 1219 to chapter 12 to read as follows:

9 "Section 1219. Audits.

10 (1) At the end of each financial year the accounts
11 of the Fund shall be audited either by the Public
12 Auditor or by an independent auditor who has no
13 connections with the Fund managers and is appointed by
14 the Board.

15 (2) The auditor shall satisfy himself that the
16 accounts of the Fund have been properly prepared in
17 accordance with internationally recognized standards of
18 accounting practice and he shall either:

19 (a) state in his report that:

20 (i) the accounts have been properly
21 prepared in accordance with the books and records of the
22 Fund;

23 (ii) the books and records of the Fund
24 have been properly kept and contain information adequate
25 for the purposes of his audit;

(iii) the balance sheet and income and expenditure accounts of the Fund give a true and fair view of the Fund's financial position; and

(iv) the financial affairs of the Fund have been properly conducted in accordance with this chapter; or

(b) notify the Board that he is unable to complete his report as provided in sub-paragraph (a), giving his reasons therefor.

(3) The auditor shall include in his report information on the performance of the Fund managers in the investment of the Fund in accordance with the guidelines laid down by the Board with particular comparative reference to the performance of managers of other funds of a similar size and nature.

(4) The auditor shall submit his report to the Board."

Section 21. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1220 to chapter 12 to read as follows:

"Section 1220. Annual Reports. Within six months of the end of the financial year the Board shall publish and shall submit to the President and the Congress of the FSM:

(1) An annual report on the activities and

1 management of the Fund;

2 (2) The accounts of the Fund for that year audited
3 in accordance with section 1219; and

4 (3) The report of the auditor under section 1219."

5 Section 22. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a
7 new section 1221 to chapter 12 to read as follows:

8 "Section 1221. Termination of Fund.

9 (1) The Fund may be terminated only by an act of
10 the Congress of the FSM.

11 (2) Upon termination of operations the Fund shall
12 immediately cease all activities, except those
13 incidental to the orderly realization and conservation
14 of its assets and the settlement of its obligations.

15 (3) Unit final settlement of the obligations of the
16 Fund and the distribution of its assets, the Fund shall
17 remain in existence and all rights and obligations of
18 the Fund under this chapter consistent with the
19 termination of the Fund's operations shall continue
20 unimpaired.

21 (4) No distribution of assets shall be made until
22 all liabilities to creditors have been discharged.
23 Subsequently, the assets of the Fund shall be
24 distributed to the General Fund of the FSM."

25

1 Section 23. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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5 Date: 11/11/97

Introduced by: 
Joseph J. Urusemal
(by request)

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