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A BILL FOR AN ACT

To amend Public Law No. 9-154 by amending section 5; to further amend title 55 of the Code of the Federated States of Micronesia, as amended, by amending section 505; to further amend title 52 of the Code of the Federated States of Micronesia, as amended, by amending section 505, 506 and 509, as established by Public Law No. 9-155, and by further amending section 164, as amended by Public Law No. 9-155; for the purpose of improving the early retirement programs and related provisions, and for other purposes.

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

1 Section 1. Section 5 of Public Law No. 9-154 is hereby
2 amended to read as follows:

3 "Section 5. Relending Conditions.

4 (1) Relending of proceeds to a State shall be by
5 way of a Financing Agreement between the National
6 Government and the State which:

7 (a) requires the establishment of a separate
8 trust account within the national investment portfolio,
9 for the benefit of the State but under the control of the
10 Secretary of Finance, into which the State (or the
11 National Government, if a State meets the criteria set
12 forth in subsection (1)(b) of this section) must gradually
13 deposit, by September 30, 2001, and thereafter maintain, a
14 sum not less than the principal balance which it owes;

15 (b) requires the National Government to pay
16 into a State's trust account amounts owed by the State in
17 accordance with subsection (1)(a) of this section,
18 provided that:

19 (i) the State creates a separate
20 Health and Education Fund and deposits into that Fund an
21 amount equal to the amount that it owes for its subsection
22 (1)(a) trust account;

23 (c) requires the State to use the money in
24 that Health and Education Fund solely for health and
25 educational needs that do not involve:

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- 1 a) salaries or benefits for state
- 2 employees whose positions were created after the
- 3 effective date of Public Law No. 9-154;
- 4 b) purchasing or maintaining vehicles,
- 5 other than school buses or ambulances;
- 6 c) travel outside of the Federated
- 7 States of Micronesia;
- 8 (d) requires a State to pay to the National
- 9 Government any amount of money that was deposited into
- 10 the State's Health and Education Fund, created in
- 11 accordance with subsections (1)(b) and (1)(c) of this
- 12 section, if the Public Auditor determines that the amount
- 13 was used by a State for a purpose prohibited by
- 14 subsection (1)(c) of this section;
- 15 (de) grants to the National Government an
- 16 unconditional security interest in the State's share of
- 17 section 211 block grants and section 217 inflation
- 18 adjustments under the Compact of Free Association and in
- 19 the State's share of national tax revenues;
- 20 (df) binds the State to the set-off provisions
- 21 of section 3 of Public Law No. 9-136;
- 22 (dg) contains such other provisions as the
- 23 President or the Bank may require; and
- 24 (eh) is specifically and properly authorized by
- 25 the legislature of the State.

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1 (2) Except as provided herein or in the loan
2 agreement with the Bank, the form of the Financing
3 Agreement shall be the same for all States so as to
4 assure that no State is preferred over any other State."

5 Section 2. Section 505 of title 55 of the Code of the
6 Federated States of Micronesia is hereby amended to read as follows:

7 "Section 505. Duties.

8 The duties of the Public Auditor shall be as follows:

9 (1) The Public Auditor shall inspect and audit
10 transactions, accounts, books, and other financial records
11 of every branch, department, office, agency, board,
12 commission, bureau, and statutory authority of the National
13 Government and of other public legal entities, including,
14 but not limited to, States, subdivisions thereof, and
15 nonprofit organizations receiving public funds from the
16 National Government.

17 (2) The Public Auditor shall inspect and audit
18 transactions, accounts, books, and other financial records
19 associated with any project, program, and activity
20 receiving funding in whole or in part from public funds of
21 the National Government, including a State's Health and
22 Education Fund, created in accordance with subsection
23 (1)(b) and (1)(c) of Public Law No. 9-154.

24 (3) The Public Auditor shall perform audits
25 as otherwise specifically required by statute.

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1 (4) The Public Auditor shall have the
2 discretion to perform audits, or assist in the
3 performance of audits, upon request by the States.

4 (5) The Public Auditor shall have the
5 exclusive audit jurisdiction over public funds of
6 the National Government of the Federated States of
7 Micronesia, but he shall have the authority to
8 contract for independent auditing services to be
9 performed under his supervision in instances where
10 specialized expertise is required, or where
11 auditing requirements are beyond the capacity of
12 the Public Auditor's staff and separate funding is
13 available.

14 (6) The Public Auditor shall file a report
15 at least once a year with the Congress. The
16 Public Auditor may file other reports at such
17 other times as he may determine. All reports of
18 the Public Auditor shall be made available to the
19 public.

20 (7) The Public Auditor may submit
21 recommendations with his audit reports which shall
22 be confined to matters within the jurisdiction of
23 the Public Auditor, including compliance or
24 noncompliance with laws governing the expenditure
25 of public moneys, and the need for amendments or

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1 new laws to secure the efficient expenditure of
2 public funds.

3 (8) The Public Auditor shall keep a complete and
4 accurate record or file of all audit reports,
5 inspections, investigations, releases, audit work
6 papers, and other materials pertaining to the work of
7 the Office of the Public Auditor."

8 Section 3. Section 503 of title 52 of the Code of the
9 Federated States of Micronesia, as established by Public Law
10 No. 9-155, is hereby amended to read as follows:

11 "Section 503. Definitions. As used in this
12 chapter, unless the context clearly requires
13 otherwise, the term:

14 (1) 'Agency' means any authority, office,
15 commission, board, bureau or other entity of the
16 Government of the Federated States of Micronesia
17 outside of the executive, legislative or judicial
18 branches of government, the employees of which
19 authority, office, commission, board, bureau or
20 other entity are subject to the National Public
21 Service System Act and regulations promulgated
22 thereunder.

23 (2) 'Base salary' means the average bi-weekly
24 rate of pay to an employee over the most recent 26
25 pay periods based upon an 80 hour bi-weekly pay

1 period. The most recent 26 pay periods shall be
 2 determined starting from the date such employee is
 3 approved for early retirement. Base salary does not
 4 include differentials, including but not limited to
 5 foreign service differentials, ~~of~~ or allowances for
 6 night work, transfer, overtime, holiday work, travel
 7 per diem, or other similar allowances.

8 (3) 'Qualifying debt' means a debt owed by a
 9 National Government employee to an entity other than
 10 the National Government, provided that the debt
 11 arose for the purpose of paying a consumer debt,
 12 making a purchase, or a similar purpose. A
 13 'qualifying debt' does not encompass a savings plan,
 14 insurance, funds distributed for the continuing
 15 support of the employee's relatives or any other
 16 person, or any debt that arose after May 1, 1997.

17 (4) 'Permanent employee' means an employee
 18 who is not employed through a contract that has a
 19 specific date of termination and has been appointed
 20 to a position in the public service system who has
 21 successfully completed a probation period.

22 (5) 'Program' means the early retirement
 23 program with its eligibility requirements and
 24 benefits as defined in this chapter.

25 (6) 'Public service' means all offices and

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1 other positions in the National Government of the
2 Federated States of Micronesia not exempted by
3 section 117 of chapter 1 of the National Public
4 Service System Act."

5 Section 4. Section 505 of title 52 of the Code of the
6 Federated States of Micronesia, as established by Public Law
7 No. 9-155, is hereby amended to read as follows:

8 "Section 505. Eligibility; procedures. Eligibility
9 for the benefits under this chapter shall be
10 determined as follows:

11 (1) Within 60 days of the effective date of
12 the end of the first regular session of the
13 tenth Congress of the Federated States of
14 Micronesia, before or during which session the
15 President shall have submitted the enactment of
16 a National Government Restructuring Plan that refers
17 to this subsection, for review and action by the
18 Congress, the President of the Federated States of
19 Micronesia for the executive branch, the Chief
20 Justice of the Supreme Court of the Federated States
21 of Micronesia for the judiciary branch, the Speaker
22 of the Congress of the Federated States of
23 Micronesia for the Congress, and the chief executive
24 officer of each agency of the National Government
25 shall submit to the President, or his designee, a

1 list for their respective branch or agency of the
2 National Government. Each list may be updated from
3 time to time and shall include each position:

4 (a) Ineligible for inclusion in the
5 program. A position shall be ineligible if such
6 position is exempt by law from the provisions of the
7 Public Service System Act, or provides essential
8 public services and if abolished would cause the
9 National Government to fail to provide such
10 essential public services;

11 (b) Which shall be terminated because
12 such position is to be abolished; and

13 (c) Which may be eligible for inclusion
14 in the program.

15 (2) A permanent employee in a position which
16 shall be terminated under section 505(1)(b) of this
17 chapter shall be automatically deemed a participant
18 in the program subject only to the abolishment of
19 the position. Such abolishment may occur at anytime
20 during the program period but not less than 90 days
21 after the employee receives notice that the position
22 is to be abolished, except that such 90-day period
23 can be waived by the employee.

24 (3) A permanent employee in a position
25 eligible for inclusion in the program under section

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1 505(1)(c) of this chapter may participate in the
2 program by submitting a written application to the
3 Office of Administrative Services and if:

4 (a) There are funds available in the
5 program;

6 (b) Long-term cost savings would be
7 achieved by the employees participation in the
8 program; and

9 (c) The respective branch or agency of
10 government may abolish the position without
11 compromising essential public services or such
12 position may be filled by a permanent or
13 probationary employee and such employees previous
14 position is abolished.

15 (4) A permanent employee holding a position
16 identified as 'ineligible' for the Program under
17 section 505(1)(a) of this title may become eligible
18 for inclusion in the Program if he submits a written
19 application and:

20 (a) A person who is eligible for the
21 Program through section 505(1)(b) or 505(1)(c)
22 agrees, in writing, to become employed in the
23 ineligible position;

24 (b) The head of the branch or agency
25 containing that ineligible position agrees, in

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1 writing, to employ that eligible person in the
2 permanent employee's ineligible position; and

3 (c) sufficient funds are available in the
4 Program."

5 Section 5. Section 506 of title 52 of the Code of the
6 Federated States of Micronesia is hereby amended to read as
7 follows:

8 "Section 506. Compensation.

9 (1) Subject to the availability of funds, an
10 employee eligible for participation in the program
11 and less than 60 years of age may choose to receive
12 either:

13 (a) a lump sum payment equal to 48 bi-
14 weekly base salary payments; or

15 (b) 52 bi-weekly base salary payments.

16 (2) (a) Subject to the availability of
17 funds, an employee eligible for participation in the
18 program, who is more than 55 years of age and not
19 yet eligible for FSM Social Security Administration
20 (hereinafter 'SSA') retirement benefits, may retire
21 and may choose to receive the benefits described in
22 section 506(1)(a) or 506(1)(b), or may receive a
23 lump sum payment equaling 6 base salary pay periods
24 and a monthly amount equal to the monthly SSA
25 retirement benefits that the person would have

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1 received if he had been 60 years of age when his
2 employment with the National Government ceased due
3 to his participation in the Early Retirement
4 Program. Such payments shall terminate upon the
5 person reaching the age of 60 or becoming eligible
6 for SSA retirement benefits, whichever occurs first.
7 The Secretary of the Department of Finance may enter
8 into an agreement with the SSA authorizing the SSA
9 to administer the payments under this subsection.
10 The agreement may also provide for the collection of
11 reasonable administrative fees by the SSA.

12 (b) If a participating employee disputes
13 National Government records that indicate what his
14 age is, and if resolution of the dispute would
15 control the amount of the benefits that the worker
16 would receive under section 506, the worker may
17 request a determination of the dispute by the
18 Director of the Social Security Administration
19 (hereinafter, "the Director"). Such a request must
20 be in writing. The Director must resolve the
21 dispute promptly, and he may receive any evidence
22 that he deems appropriate in resolving such a
23 dispute. The Director must make written findings
24 explaining his evaluation of the evidence presented
25 to him and explaining his ultimate resolution of the

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1 dispute. The Director must also provide a copy of
2 those written findings to the employee in question.

3 (c) After each eligibility list has been
4 determined, it shall be promptly transmitted to the
5 Director of Social Security, who shall promptly
6 deliver written notification to each worker who is
7 between 53 and 59 years of age and whose position is
8 described in section 505(1)(c), of the following:
9 how many 'quarters of coverage' the worker has
10 accumulated for the purposes of Social Security
11 benefits, whether that number is sufficient to
12 entitle the worker to Social Security retirement
13 benefits at age 60 and, if not, how many more
14 'quarters of coverage' the employee would have to
15 accumulate to become entitled to such benefits.

16 (3) Subject to the availability of funds, an
17 employee who is more than 60 years of age and
18 eligible to receive SSA retirement benefits and who
19 is otherwise eligible to participate in the program,
20 shall receive a lump sum payment equal to 6 bi-
21 weekly base salary periods.

22 (4) The following adjustments shall be made
23 from each payment due to an employee:

24 (a) Any advance annual or sick leave
25 owed by the employee;

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1 (b) Any salary advance;

2 (c) Any per diem or other travel advance
3 including outstanding travel authorizations; and any
4 other adjustment which the employee may owe to the
5 National Government, or which the National
6 Government may owe to the employee.

7 (d) If authorized by the employee in
8 writing, amounts requested by the employee to be
9 deducted from compensation received pursuant to
10 subsection (1)(b) of this section, and remitted to a
11 third party, provided that no more than two such
12 remittances shall be permitted for each employee at
13 any one time and that each such remittance must be
14 in effect for at least six months, unless otherwise
15 provided by law. A remittance under this sub-
16 section shall be binding upon the employee in
17 accordance with the terms of the request therefor,
18 including but not limited to any prohibition on
19 canceling the remittance without the consent of the
20 third-party payee, provided that the terms of the
21 remittance are otherwise in accordance with
22 applicable law, including but not limited to usury
23 laws.

24 (5) Subject to the availability of funds
25 within the Fund for Paying Certain Allotments of

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1 Beneficiaries of the National Early Retirement
2 Program, a participating employee who has entered
3 into an allotment agreement that allows deductions
4 from his National Government paychecks for a debt
5 owed to a third-party payee may have the remaining
6 amount of the debt paid by the National Government
7 if the participating employee submits a written
8 application to the Secretary of Finance of the FSM
9 Government, and if the Secretary of Finance or his
10 designee determines that the debt is a 'qualifying
11 debt' within the meaning of section 503(3) of title
12 52 of the Code of the Federated States of
13 Micronesia.

14 (a) All National Government payments for
15 qualifying debts shall be made directly to the
16 third-party payee, not to the participating
17 employee.

18 (56) For purposes of this chapter,
19 compensation received by an employee pursuant to
20 this chapter shall be exempted from the:

21 (a) Provisions of sections 901 and 902
22 of title 53 to the extent that such compensation
23 shall not be deemed wages received by the employee;

24 (b) Provisions of section 121 of title
25 54 to the extent that such compensation shall not be

1 deemed wages or salaries received by the employee;
2 and

3 (c) Provisions of section 603(6) of title
4 53 to the extent that such compensation shall not be
5 deemed dollars earned in a quarter by the employee.

6 (~~67~~) If a participating employee dies, his
7 entitlement to compensation under the Program shall
8 survive and the remainder shall be paid to persons
9 or entities in accordance with the general law of
10 descent and distribution or in accordance with
11 customary law if the applicable jurisdiction does
12 not have general law of descent and distribution."

13 Section 6. Section 508 of title 52 of the Code of the
14 Federated States of Micronesia, as established by Public Law
15 No. 9-155, is hereby amended to read as follows:

16 "Section 508. Program Loan; Funds.

17 (1) The program shall be funded from loan
18 proceeds obtained from the Asian Development Bank,
19 or from funds from the General Fund otherwise
20 appropriated for such use, as authorized by law.
21 Upon disbursement of the loan proceeds, such funds
22 shall be deposited in a National Government
23 Employee's Early Retirement Fund (hereinafter
24 'Retirement Fund') which is hereby created and
25 established. The Retirement Fund shall be separate

1 from the General Fund or any other funds of the
2 National Government. Money in the Retirement Fund
3 shall be invested prudently.

4 (2) In order to facilitate the National
5 Government's repayment of the funds borrowed from
6 the Asian Development Bank as authorized by law, the
7 National Government shall continue to appropriate
8 funds for each position abolished and vacated
9 pursuant to the program in the same amount budgeted
10 for each fiscal year of the program for each
11 respective position held by the employee. The funds
12 so appropriated shall be deposited by the President,
13 or his designee, in the Retirement Fund. On or
14 before September 30, 2001, the balance in the
15 Retirement Fund must equal or exceed the principal
16 amount borrowed from the Asian Development Bank. At
17 any time during the term of the loan, if the amount
18 in the Retirement Fund exceeds the principal amount
19 remaining, the amount in excess of the principal may
20 be withdrawn and revert to the General Fund.

21 (3) Money in the Retirement Fund may only be
22 withdrawn, unless otherwise provided by law, by the
23 President, or his designee, for the following
24 purposes:

25 (a) Payment of compensation, other than

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1 the allotment compensation provided for in section
2 506(5) of this title, to employees participating in
3 the program;

4 (b) Payment to the SSA for payments and
5 the administration of compensation to employees
6 participating in the program and pursuant to section
7 506 of this chapter;

8 (c) Repayment of any loan obligations
9 directly related to program; or

10 (d) Payment for training costs related
11 to the program, but not exceeding \$175,000 in total.
12 Any funds remaining in the Retirement Fund after the
13 loan has been paid in full shall revert to the
14 General Fund.

15 (e) Relending to the States for their
16 early retirement programs.

17 (3) There is hereby created and established a
18 Fund for Paying Certain Allotments of Beneficiaries
19 of the National Early Retirement Program. This Fund
20 shall be separate from the General Fund or any other
21 funds of the National Government. Money in this
22 Fund shall be invested prudently.

23 Section 7. Section 509 of title 52 of the Code of the
24 Federated States of Micronesia, as established by Public Law
25 No. 9-155, is hereby amended to read as follows:

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1 "Section 509. Freeze on salary increases;
2 compensatory time and overtime compensation.

3 Notwithstanding any other applicable law, there is
4 hereby enacted:

5 (1) A freeze on annual salary step increases
6 of all employees in the public service system; and

7 (2) Compensatory time, with which employees
8 in the public service shall be credited in lieu of
9 receiving overtime compensation as otherwise
10 authorized under the National Public Service Act
11 and regulations promulgated thereunder if the
12 employee has exceeded the overtime payment ceiling
13 set by subsection (2)(a) of this section.

14 Compensatory time means those hours authorized in
15 advance and worked by an employee outside
16 established work hours, above the overtime payment
17 ceiling set by subsection (2)(a) of this section,
18 and for which the employee is credited with one
19 hour in the form of leave with pay for each hour
20 of work an employee is directed to and performs
21 work in excess of the regular 40 hour workweek
22 and the overtime hours for which he will receive
23 payment as provided by law. Compensatory
24 time shall be accrued by National Government
25 employees and shall be included in the

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1 compensation received by a program participant
2 pursuant to subsection (4)(c) of section 506 of
3 this chapter; except that any accumulation of time
4 in excess of 280 hours shall be forfeited unless
5 taken before the end of the calendar year in which
6 the excess was accumulated. For purposes of
7 computing whether a program employee's accrued
8 compensatory and/or annual leave hours are in
9 excess of 280 hours, accrued compensatory time and
10 annual leave shall be included in computing the
11 280-hour ceiling.

12 (a) The overtime payment ceiling shall
13 be 8 hours of paid overtime for any bi-weekly pay
14 period."

15 Section 8. Section 164 of title 52 of the Code of the
16 Federated States of Micronesia, as amended by Public Law No.
17 9-155, is hereby further amended to read as follows:

18 "Section 164. Differentials. To compensate for
19 unusual circumstances of employment which create
20 hardships for public service employees, the
21 following differentials are provided for them;
22 provided that in no case may an employee receive
23 differentials under both subsections (1) and (2) of
24 this section:

25 (1) Night work differential. An employee

1 whose tour of duty includes regularly scheduled
2 hours falling between 7 p.m. and 6 a.m. shall be
3 paid a differential of fifteen percent of the
4 adjusted base salary for all hours falling within
5 that period.

6 (2) Hazardous work differential. An employee
7 whose position entails unusual and extreme hazards
8 to his health or safety shall be paid a
9 differential of twenty-five percent of the adjusted
10 base salary for all hours in which hazardous work
11 is performed.

12 (3) Overtime differential. An employee shall
13 be paid overtime compensation at the rate of time
14 and one-half of his adjusted base salary for all
15 time when he is directed to work and does work in
16 excess of eight hours in one day; or when he is
17 directed to work and does work on the sixth or
18 seventh day of the work week; provided that he has
19 first worked forty hours at straight time in the
20 same work week, that overtime work performed on a
21 holiday shall be subject to subsection (4) of this
22 section, and that he receives no more than 20 hours
23 of overtime payments for any bi-weekly pay period.

24 (34) Holiday differential. An employee who is
25 required to work on a legal holiday shall be

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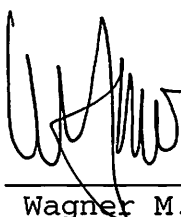
1 compensated at double his adjusted base salary for
2 all such hours worked.

3 (A5) Typhoon emergency differential.

4 Employees who are required to work in a location
5 and a period in which a typhoon or other natural
6 catastrophe has been declared by competent
7 authority, and in which other Government employees
8 are released from work because of such conditions,
9 shall be compensated for the hours worked while
10 such emergency remains in force at the rate of two
11 and one-half times the adjusted base salary. The
12 differential provided in this subsection shall not
13 limit the employee's right to any other
14 differential or allowance to which he may otherwise
15 be entitled by law or regulations."

16 Section 9. This act shall become law upon approval by
17 the President of the Federated States of Micronesia or upon its
18 becoming law without such approval.

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20 Date: 5/22/91

Introduced by: 
Wagner M. Lawrence

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