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:

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

"Section 5. Relending Conditions.
(1) Relending of proceeds to a State shall be by way of a Financing Agreement between the National Government and the State which:
(a) requires the establishment of a separate trust account within the national investment portfolio, for the benefit of the State but under the control of the Secretary of Finance, into which the State for the National Government, if a State meets the criteria set forth in subsection (1)(b) of this section) must gradually deposit, by September 30, 2001, and thereafter maintain, a sum not less than the principal balance which it owes;
(b) requires the National Government to pay into a State's trust account amounts owed by the State in accordance with subsection (1)(a) of this section, provided that:
(i) the State creates a separate Health and Education Fund and deposits into that Fund an amount equal to the amount that it owes for its subsection (1)(a) trust account;
(c) requires the State to use the money in that Health and Education Fund solely for health and educational needs that do not involve:"

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a) salaries or benefits for state
employees whose positions were created after the
effective date of Public Law No. 9-154;

b) purchasing or maintaining vehicles,
other than school buses or ambulances;

c) travel outside of the Federated
States of Micronesia;

(d) requires a State to pay to the National
Government any amount of money that was deposited into
the State's Health and Education Fund, created in
accordance with subsections (1)(b) and (1)(c) of this
section, if the Public Auditor determines that the amount
was used by a State for a purpose prohibited by
subsection (1)(c) of this section;

(e) grants to the National Government an
unconditional security interest in the State's share of
section 211 block grants and section 217 inflation
adjustments under the Compact of Free Association and in
the State's share of national tax revenues;

(f) binds the State to the set-off provisions
of section 3 of Public Law No. 9-136;

(g) contains such other provisions as the
President or the Bank may require; and

(h) is specifically and properly authorized by
the legislature of the State.
(2) Except as provided herein or in the loan agreement with the Bank, the form of the Financing Agreement shall be the same for all States so as to assure that no State is preferred over any other State."

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

"Section 505. Duties.

The duties of the Public Auditor shall be as follows:

(1) 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.

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

(3) The Public Auditor shall perform audits as otherwise specifically required by statute.
(4) The Public Auditor shall have the discretion to perform audits, or assist in the performance of audits, upon request by the States.

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

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

(7) The Public Auditor may submit recommendations with his audit reports which shall be confined to matters within the jurisdiction of the Public Auditor, including compliance or noncompliance with laws governing the expenditure of public moneys, and the need for amendments or
new laws to secure the efficient expenditure of public funds.

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

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

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

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

(2) 'Base salary' means the average bi-weekly rate of pay to an employee over the most recent 26 pay periods based upon an 80 hour bi-weekly pay
period. The most recent 26 pay periods shall be
determined starting from the date such employee is
approved for early retirement. Base salary does not
include differentials, including but not limited to
foreign service differentials, of or allowances for
night work, transfer, overtime, holiday work, travel
per diem, or other similar allowances.

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

(44) "Permanent employee" means an employee
who is not employed through a contract that has a
specific date of termination and has been appointed
to a position in the public service system who has
successfully completed a probation period.

(45) "Program" means the early retirement
program with its eligibility requirements and
benefits as defined in this chapter.

(96) "Public service" means all offices and
other positions in the National Government of the
Federated States of Micronesia not exempted by
section 117 of chapter 1 of the National Public
Service System Act."

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

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

(1) Within 60 days of the effective date of
the bill of the latter regular session of the
regular Congress of the Federated States of
Micronesia, a bill or during which session the
President shall submit the enactment of
a National Government Restructuring Plan that refers
to this subsection, for review and upon by the
Congress, the President of the Federated States of
Micronesia for the executive branch, the Chief
Justice of the Supreme Court of the Federated States
of Micronesia for the judiciary branch, the Speaker
of the Congress of the Federated States of
Micronesia for the Congress, and the chief executive
officer of each agency of the National Government
shall submit to the President, or his designee, a
list for their respective branch or agency of the National Government. Each list may be updated from time to time and shall include each position:

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

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

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

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

(3) A permanent employee in a position eligible for inclusion in the program under section
505(1)(c) of this chapter may participate in the program by submitting a written application to the Office of Administrative Services and if:

(a) There are funds available in the program;

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

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

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

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

(b) The head of the branch or agency containing that ineligible position agrees, in
writing, to employ that eligible person in the
permanent employee's ineligible position; and

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

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

"Section 506. Compensation.

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

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

(b) 52 bi-weekly base salary payments.

(2) (a) Subject to the availability of
funds, an employee eligible for participation in the
program, who is more than 55 years of age and not
yet eligible for FSM Social Security Administration
(hereinafter 'SSA') retirement benefits, may retire
and may choose to receive the benefits described in
section 506(1)(a) or 506(1)(b), or may receive a
lump sum payment equaling 6 base salary pay periods
and a monthly amount equal to the monthly SSA
retirement benefits that the person would have
received if he had been 60 years of age when his employment with the National Government ceased due to his participation in the Early Retirement Program. Such payments shall terminate upon the person reaching the age of 60 or becoming eligible for SSA retirement benefits, whichever occurs first. The Secretary of the Department of Finance may enter into an agreement with the SSA authorizing the SSA to administer the payments under this subsection. The agreement may also provide for the collection of reasonable administrative fees by the SSA.

(b) If a participating employee disputes National Government records that indicate what his age is, and if resolution of the dispute would control the amount of the benefits that the worker would receive under section 506, the worker may request a determination of the dispute by the Director of the Social Security Administration (hereinafter, "the Director"). Such a request must be in writing. The Director must resolve the dispute promptly, and he may receive any evidence that he deems appropriate in resolving such a dispute. The Director must make written findings explaining his evaluation of the evidence presented to him and explaining his ultimate resolution of the
dispute. The Director must also provide a copy of those written findings to the employee in question.

(c) After each eligibility list has been determined, it shall be promptly transmitted to the Director of Social Security, who shall promptly deliver written notification to each worker who is between 53 and 59 years of age and whose position is described in section 505(1)(c), of the following:

how many 'quarters of coverage' the worker has accumulated for the purposes of Social Security benefits, whether that number is sufficient to entitle the worker to Social Security retirement benefits at age 60 and, if not, how many more 'quarters of coverage' the employee would have to accumulate to become entitled to such benefits.

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

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

(a) Any advance annual or sick leave owed by the employee;
(b) Any salary advance;
(c) Any per diem or other travel advance including outstanding travel authorizations; and any other adjustment which the employee may owe to the National Government, or which the National Government may owe to the employee.
(d) If authorized by the employee in writing, amounts requested by the employee to be deducted from compensation received pursuant to subsection (1)(b) of this section, and remitted to a third party, provided that no more than two such remittances shall be permitted for each employee at any one time and that each such remittance must be in effect for at least six months, unless otherwise provided by law. A remittance under this subsection shall be binding upon the employee in accordance with the terms of the request therefor, including but not limited to any prohibition on canceling the remittance without the consent of the third-party payee, provided that the terms of the remittance are otherwise in accordance with applicable law, including but not limited to usury laws.

(5) Subject to the availability of funds within the Fund for Paying Certain Allotments of
Beneficiaries of the National Early Retirement Program, a participating employee who has entered into an allotment agreement that allows deductions from his National Government paychecks for a debt owed to a third-party payee may have the remaining amount of the debt paid by the National Government if the participating employee submits a written application to the Secretary of Finance of the FSM Government, and if the Secretary of Finance or his designee determines that the debt is a 'qualifying debt' within the meaning of section 503(3) of title 52 of the Code of the Federated States of Micronesia.

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

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

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

(b) Provisions of section 121 of title 54 to the extent that such compensation shall not be
deemed wages or salaries received by the employee;

and

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

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

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

"Section 508. Program Loan: Funds.

(1) The program shall be funded from loan proceeds obtained from the Asian Development Bank, or from funds from the General Fund otherwise appropriated for such use, as authorized by law.

Upon disbursement of the loan proceeds, such funds shall be deposited in a National Government Employee’s Early Retirement Fund (hereinafter ‘Retirement Fund’) which is hereby created and established. The Retirement Fund shall be separate
from the General Fund or any other funds of the National Government. Money in the Retirement Fund shall be invested prudently.

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

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

(a) Payment of compensation other than
the allotment compensation provided for in section 506(5) of this title, to employees participating in the program;

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

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

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

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

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

Section 7. Section 509 of title 52 of the Code of the Federated States of Micronesia, as established by Public Law No. 9-155, is hereby amended to read as follows:
Section 509. Freeze on salary increases;
compensatory time and overtime compensation.
Notwithstanding any other applicable law, there is
hereby enacted:

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

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

Compensatory time means those hours authorized in
advance and worked by an employee outside
established work hours, above the overtime payment
ceiling set by subsection (2)(a) of this section,
and for which the employee is credited with one
hour in the form of leave with pay for each hour
of work an employee is directed to and performs
work in excess of the regular 40 hour workweek
and the overtime hours for which he will receive
payment as provided by law. Compensatory
time shall be accrued by National Government
employees and shall be included in the
compensation received by a program participant
pursuant to subsection (4)(c) of section 506 of
this chapter; except that any accumulation of time
in excess of 280 hours shall be forfeited unless
taken before the end of the calendar year in which
the excess was accumulated. For purposes of
computing whether a program employee's accrued
compensatory and/or annual leave hours are in
excess of 280 hours, accrued compensatory time and
annual leave shall be included in computing the
280-hour ceiling.

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

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

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

(1) Night work differential. An employee
whose tour of duty includes regularly scheduled
hours falling between 7 p.m. and 6 a.m. shall be
paid a differential of fifteen percent of the
adjusted base salary for all hours falling within
that period.

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

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

(4) Holiday differential. An employee who is
required to work on a legal holiday shall be
compensated at double his adjusted base salary for all such hours worked.

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

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

Date: 5/22/91

Introduced by: Wagner M. Lawrence