ELEVENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 1999

A BILL FOR AN ACT

To further amend title 52 of the Code of the Federated States of Micronesia, as amended, by further amending section 164, as amended by Public Laws Nos. 9-155, 10-62 and 10-96 and by further amending section 509, as enacted by Public Law No. 9-155 and as amended by Public Laws Nos. 10-62, 10-118 and 10-151, to provide for overtime compensation for all public employees upon approval by authorized officials; to make other clarifications more certain regarding overtime, and for other purposes.

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

Section 1. Section 164 of title 52 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 9-155, 10-62 and 10-96 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] compensation. Any employee is eligible to receive overtime compensation for excess hours worked upon approval by the head of his or her department or agency, or in the case of the Judiciary or the Legislature, by the Chief Justice or his or her designee or the Speaker of the Congress or his or her
designee. An employee shall receive overtime compensation at the rate of straight time; provided, however, that if an employee is eligible to receive overtime compensation under section 509 of title 52, he shall be paid overtime compensation at the rate of time and one-half of his adjusted base salary for [all time when he] excess hours. For purposes of this title, 'excess hours' are hours that an employee 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; and provided further, that overtime work performed on a holiday shall be subject to subsection (4) of this section; and provided further, that hours worked while on Government-authorized travel for which the employee is entitled to per diem shall not be considered excess hours for purposes of calculating entitlement to overtime or compensatory time.

(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.

(5) Typhoon emergency differential. Employees who are required to work in a location and during 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.

(6) Sea duty differential. An employee of the Maritime Wing of the National Police shall be paid his adjusted base salary plus a differential of ten percent of his adjusted base salary for all hours actually worked, up to but not in excess of eight hours per day, in any day or fraction thereof, including the sixth and seventh day of the work week, that he is on duty at sea. No compensation, regular or overtime, no differential of any sort, and no compensatory time shall be due for any additional hours worked in any such day, regardless of how many hours the employee was actually required to work in that day. Hours actually worked while at sea, up to but not in excess of eight hours per day, shall count as straight time hours for the purpose of determining compensatory time, if any, in a work week spent partially at sea and partially not at sea. The holiday differential shall apply in lieu of the sea duty
differential while at sea on a holiday. The hazardous
work differential shall apply in addition to the sea duty
differential while at sea, provided that being at sea
does not in and of itself constitute hazardous work. The-
typhoon emergency differential shall not apply while at
sea."

Section 2. Section 509 of title 52 of the Code of the
Federated States of Micronesia, as enacted by Public Law No. 9-155
and as amended by Public Laws Nos. 10-62, 10-118 and 10-151, is
hereby further 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 system [shall] may, at the discretion of
the head of his or her department or agency, or in the
case of the Judiciary or the Legislature, by the
discretion of the Chief Justice or his or her designee or
the Speaker of the Congress or his or her designee, be
credited in lieu of receiving overtime compensation as
otherwise authorized under the National Public Service
System Act and regulations promulgated thereunder.
Compensatory time shall accrue [means those hours
authorized in advance and worked by an employee outside established work hours and for which the employee is credited with as one hour [in the form] of leave with pay for each excess hour worked [of work an employee is directed to work and performs in excess of the regular 40 hour workweek as provided by law]. Compensatory time shall be accrued by National Government public service 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.

(3) [Notwithstanding the provisions of this section,] An employee shall be entitled to receive overtime [differential] compensation at a rate of time and one-half of his adjusted base salary, retroactive to the effective date of Public Law No. 9-155, [as authorized under the National Public Service System Act,] for excess hours worked:

(a) [time worked] in the event that the National
Government would be entitled to compensation for payment of such [differential] overtime compensation under section 115 of title 50;

(b) [time worked] in the event that the National Government would be entitled to compensation for payment of such [differential] overtime compensation through a written agreement with a legal entity that seeks to provide relief from emergency conditions, as long as the time worked is directly related to efforts to provide emergency relief, in accordance with an emergency declared by the President under article X, section 9, of the Constitution of the Federated States of Micronesia;

or

(c) [time worked] in the event that the National Government would be entitled to compensation for payment of such [differential] overtime compensation through a written agreement with the Water Users Corporation, as long as the time worked is directly related to management and maintenance of the Capital Water System [

(d) [time worked] as follows:

(i) by personnel within the Division of Budget in preparation of the annual budget submission in the thirty-day period prior to April 1;

(ii) by accounting personnel within the Division of Treasury in preparing the annual financial
statements for the FSM National Government, during the
period from November 1 to December 31 of each year,
(iii) by accounting personnel within the
Division of Treasury in preparing reports pursuant to
section 226 of title 55 of the Code of the Federated
States of Micronesia, or a successor provision, during
the fifteen day periods leading up to May 1 and November
1 of each year. Notwithstanding section 164 of this
title, persons working hours entitling them to overtime
differential pursuant to paragraph (d) of subsection (2)
of this section shall receive compensation at straight
time for those hours).

Section 3. 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: 7-26-99

Introduced by: Nishima G. Yleizah