
A BILL FOR AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by amending sections 1202, 1204, 1211, 1213, 1215, 1216 and 1217, for the purpose of establishing an S Account within the FSM Trust Fund to stabilize the transition to the renegotiated terms of the Compact of Free Association, and for other purposes.

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

1 Section 1. Section 1202 of title 55 of the Code of the Federated
2 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
3 amended to read as follows:

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

7 (1) 'Baseline Funding' means the amount of Compact of Free
8 Association assistance provided to a government in fiscal
9 year 2001, adjusted for inflation to the final year of the
10 first Compact;

11 (2) 'Board' means the Board of Trustees of the Fund;

12 ~~(2)~~3) 'Contributing government' means the government of
13 any State of the FSM or the National Government once such
14 government has made a contribution of funds to the S Account;

15 (4) 'FSM' means the sovereign nation of the Federated
16 States of Micronesia;

17 ~~(3)~~5) 'Financial year' means the fiscal year of the Fund,
18 which shall be the twelve-month period ending on the last day

1 of each December;

2 ([4]6) 'Fiscal year' means the fiscal year of the National
3 Government;

4 ([5]7) 'Fund' means the FSM Trust Fund created by this
5 chapter, including the accounts therein;

6 ([6]8) 'Fund custodians' means the one or more firms
7 selected by the Board to assume responsibility for the
8 physical possession of the Fund assets or evidences of
9 assets;

10 ([7]9) 'Fund managers' means the one or more firms
11 selected by the Board to manage the investment and
12 reinvestment of the Fund's resources;

13 ([8]10) 'Fund returns' means the returns accruing to the
14 Fund by way of income generated from the Fund's resources and
15 the capital appreciation of those resources;

16 ([9]11) 'National Government' means the National Government
17 of the FSM;

18 ([10]12) 'Other participating government' means a State or
19 local government of the FSM participating pursuant to a
20 memorandum of understanding with the National Government;

21 ([11]13) 'Real [~~per capita~~] value' means the value of
22 contributions to the Fund when adjusted to reflect inflation
23 and population change. For purposes of determining 'real
24 [~~per capita~~] value' at any one time, the value of a
25 contribution in the form of a loan shall be the principal

1 balance then owing. The inflation adjustment shall be made
2 to current prices in line with movements in the US Consumer
3 Price Index. Population refers to the number of FSM citizens
4 residing in the FSM. When current population figures are not
5 available, the Board shall use such estimates thereof as it
6 finds to be reasonable. Such estimates may be extrapolated
7 from the most recent population census based on the
8 population growth rate prior thereto; [~~and~~]
9 ([~~12~~]14) 'Reinvestment' means the process whereby Fund
10 returns, whether in the form of income or appreciation,
11 become part of the capital of the Fund; and
12 (15) 'Renewal Compact' means the renewed economic assistance
13 provisions contained in Title Two of the Compact of Free
14 Association."

15 Section 2. Section 1204 of title 55 of the Code of the Federated
16 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
17 amended to read as follows:

18 "Section 1204. Purpose.

19 (1) The purpose of the Account A and Account B portion of
20 the Fund is to create a single investment fund in which all
21 levels of government may participate in order to contribute
22 to the long-term financial viability of the FSM by providing
23 an additional source of revenue and to enhance the capacity
24 of the National Government to receive and effectively utilize
25 external resources in order to:

1 (~~1~~a) Assist the National Government and other
2 participating governments to achieve greater financial
3 autonomy in the management of their recurrent budgets;

4 (~~2~~b) Enable the FSM at all levels of government to meet
5 long-term maintenance and operating costs of social and
6 economic infrastructure; and

7 (~~3~~c) Enable the FSM at all levels of government to
8 improve existing levels of social and economic
9 infrastructure.

10 (2) The purpose of the S Account portion of the Fund is to:

11 (a) provide a funding source to promote financial
12 stability and provide an orderly adjustment process for each
13 of the contributing governments in the event of significant
14 reductions in economic assistance under the Renewed Compact;
15 or

16 (b) enable a transfer of FSM's own resources into the
17 A Account in the event of minimal or no reductions in
18 economic assistance under the Renewed Compact."

19 Section 3. Section 1211 of title 55 of the Code of the Federated
20 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
21 amended to read as follows:

22 "Section 1211. Contributions to the Fund.

23 (1) Contributions to the A Account.

24 (a) A contribution to the Fund may be in the form of a
25 grant or, with the agreement of a majority of all trustees,

1 in the form of an unsecured loan which bears interest (or its
2 equivalent) at a rate no greater than 3% and is otherwise
3 cost-free.

4 (~~[2]~~b) The Fund may refuse a contribution if it considers
5 that it would not be in the interest of the Fund or the FSM
6 to accept it. The Fund shall notify Congress of the nature,
7 amount, source and terms of any contribution that it has
8 decided to accept or refuse, whereupon the Fund may
9 conditionally accept or refuse the contribution. Acceptance
10 or refusal shall become final no earlier than 180 days after
11 notice to Congress, unless Congress directs by law otherwise.

12 (~~[3]~~c) The Fund shall not issue negotiable or
13 transferable obligations evidencing indebtedness for any
14 loan.

15 (~~[4]~~d) Contributions shall be made for the purpose of the
16 Fund without further restriction as to use, except such
17 restrictions as Congress may provide by law. Except for
18 repayment of loans, contributions shall not be refunded to
19 contributors.

20 (~~[5]~~e) A contribution to the Fund shall not in and of
21 itself constitute or imply any commitment by the contributor
22 to make any further contribution to the Fund.

23 (2) Contributions to the S Account. The National
24 Government and each of the State Governments may contribute
25 to the S Account, the increased financial assistance that is

1 received, pursuant to section 231 of the Compact of Free
2 Association, during fiscal years 2002 and 2003. The amounts
3 that may be contributed by the National Government and each
4 of the State Governments shall be determined by the Secretary
5 of the FSM Department of Finance and Administration, and
6 shall be appropriated by each contributing government
7 pursuant to its financial management laws and regulations."

8 Section 4. Section 1213 of title 55 of the Code of the Federated
9 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
10 amended to read as follows:

11 "Section 1213. [A and B] Accounts.

12 (1) The Fund shall be divided into an A Account, ~~[and]~~ a B
13 Account, and an S Account.

14 (2) All contributions to the Fund shall be deposited to the
15 A Account, except for the contributions which qualify to be
16 deposited to the S Account, as provided for in section
17 1211(2) of this chapter. Thereafter, the Board shall ensure
18 that a portion of the Fund returns in each financial year is
19 reinvested at the end of that financial year as capital of
20 the A Account, such portion being the amount necessary to
21 maintain the opening balance of the A Account's capital for
22 the following financial year at the real ~~[per capita]~~ value
23 of all contributions to the Fund minus all principal
24 repayments made on loans to the Fund.

25 (3) Repayment of loans to the Fund and payment of the

1 expenses of the Fund shall be made from the A Account. The
2 amount, if any, of Fund returns in each financial year which
3 remains after such repayment of loans and payment of
4 expenses, and after reinvestment in accordance with
5 subsection (2) of this section, shall be transferred to the B
6 Account. Except as provided in this subsection or upon
7 termination of the Fund, no funds may ever be removed from
8 the A Account.

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

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

20 (6) Funds in the S Account may be used by the contributing
21 governments to offset the negative impact of reductions, if
22 any, under the Renewed Compact as follows:

23 (a) no withdrawals shall be made from the S Account by
24 any contributing government that receives a funding level
25 during the first year of the Renewed Compact that is greater

1 than, the same, or within four percent (4%) of, its Baseline
2 Funding level. Any contributing government that is
3 prohibited from making a withdrawal from the S Account by
4 this subsection, may make a transfer pursuant to section
5 1215(2) of this chapter;

6 (b) in the event that any contributing government's
7 funding level during the first year of the Renewed Compact is
8 reduced by more than four percent (4%) but less than twenty
9 percent (20%) of its Baseline Funding level, that
10 contributing government shall be entitled to draw, upon
11 request, an amount from the S Account each year as follows,
12 PROVIDED THAT each contributing government shall be limited
13 to withdrawing no more than the total of its contributions
14 and the earnings on its contributions:

15 (i) first year: up to the amount of reduction
16 minus four percent (4%) of the Baseline Funding level; (ii)
17 second year: up to the amount of reduction minus eight
18 percent (8%) of the Baseline Funding level;

19 (iii) third year: up to the amount of the reduction
20 minus twelve percent (12%) of the Baseline Funding level;

21 (iv) fourth year: up to the amount of the
22 reduction minus sixteen percent (16%) of the Baseline Funding
23 level;

24 (v) fifth year: up to the amount of the reduction
25 minus twenty percent (20%) of the Baseline Funding level;

1 (c) in the event that any contributing government's
2 funding level during the first year of the Renewed Compact is
3 reduced by more than twenty percent (20%) of the Baseline
4 Funding level, that contributing government shall be entitled
5 to draw down, upon request, an amount in each year, in a
6 manner to be determined by an act of the Congress of the
7 Federated States of Micronesia following consultations with
8 the affected government."

9 Section 5. Section 1215 of title 55 of the Code of the Federated
10 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
11 amended to read as follows:

12 "Section 1215. Transfers to the A Account.

13 (1) Transfers from the B Account.

14 (a) The Board shall transfer funds from the B Account
15 to the A Account to the extent necessary to make up any
16 shortfall of funds in the A Account needed for reinvestment,
17 repayment of loans to the Fund, and payment of the expenses
18 of the Fund pursuant to section 1213 of this chapter.

19 (~~2~~)b) The Board may transfer to the A Account any funds
20 in the B Account in excess of an amount equal to the sum of
21 all funds transferred from the A Account to the B Account
22 during the five most recent financial years. Such a transfer
23 may only occur at the end of a financial year and after there
24 have been at least five financial years in which funds were
25 in fact transferred from the A Account to the B Account.

1 Funds transferred to the A Account pursuant to this
2 subsection shall be deemed to be additional contributions to
3 the Fund.

4 (2) Transfers from the S Account. If each contributing
5 government receives a funding level during the first year of
6 the Renewed Compact that is greater than, the same, or within
7 four percent (4%) of, its Baseline Funding level, then the
8 following transfers may be made:

9 (a) funds contributed to the S Account by each of the
10 contributing governments, and the earnings accrued on these
11 funds, may be transferred to the A Account if the terms of
12 the Renewed Compact require the FSM to contribute to a trust
13 fund established between the US and the FSM; or

14 (b) if the terms of the Renewed Compact do not require
15 the FSM to contribute to a trust fund established between the
16 US and the FSM, then at the request of a contributing State
17 Government, funds contributed by that government and the
18 earnings accrued on those funds may be transferred into that
19 State's trust fund, provided that the State trust fund has
20 been established with the principles of real asset protection
21 similar in form and purpose to that of the FSM Trust Fund."

22 Section 6. Section 1216 of title 55 of the Code of the Federated
23 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
24 amended to read as follows:

25 "Section 1216. Miscellaneous restrictions.

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

3 (2) The Fund shall not be used to guaranty the debt of
4 another person or entity.

5 (3) The Fund shall not invest in instruments denominated in
6 currencies other than the US dollar except as prudent and
7 necessary to avoid exchange rate risks on loans which must be
8 repaid in a currency other than the US dollar."

9 Section 7. Section 1217 of title 55 of the Code of the Federated
10 States of Micronesia, as enacted by Public Law No. 10-150, is hereby
11 amended to read as follows:

12 "Section 1217. Other participating government accounts.
13 Contributions may be made to the Fund for the benefit of
14 other participating governments in the FSM, in which case the
15 Board shall establish separate A, ~~and~~ B, and S Accounts
16 within the Fund in the name of each such government. Such
17 accounts shall be subject to this chapter and administered in
18 the same manner as the National Government A, ~~and~~ B, and S
19 Accounts except that distributable funds or assets shall be
20 made available to the other participating governments rather
21 than the National Government. Fund expenses shall be
22 prorated between the accounts of different governments in
23 proportion to their relative share of the total Fund."

1 Section 8. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its becoming
3 law without such approval.

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5 Date: 10/23/01

Introduced by: /s/ Manny Mori
Manny Mori

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