TWELFTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
SECOND REGULAR SESSION, 2001
C.B. NO. 12-68

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:

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

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

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

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

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

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

(5) 'Financial year' means the fiscal year of the Fund, which shall be the twelve-month period ending on the last day
of each December;

(Fiscal year' means the fiscal year of the National Government;

(Fund' means the FSM Trust Fund created by this chapter, including the accounts therein;

(Fund custodians' means the one or more firms selected by the Board to assume responsibility for the physical possession of the Fund assets or evidences of assets;

(Fund managers' means the one or more firms selected by the Board to manage the investment and reinvestment of the Fund's resources;

(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;

(National Government' means the National Government of the FSM;

(Other participating government' means a State or local government of the FSM participating pursuant to a memorandum of understanding with the National Government;

(Real [per capita] value' means the value of contributions to the Fund when adjusted to reflect inflation and population change. For purposes of determining 'real [per capita] value' at any one time, the value of a contribution in the form of a loan shall be the principal
balance then owing. 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]

(12) 'Reinvestment' means the process whereby Fund returns, whether in the form of income or appreciation, become part of the capital of the Fund; and

(15) 'Renewal Compact' means the renewed economic assistance provisions contained in Title Two of the Compact of Free Association."

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

"Section 1204. Purpose.

(1) The purpose of the Account A and Account B portion of the Fund is to create a single investment fund in which all levels of government may participate in order to contribute to the long-term financial viability of the FSM by providing an additional source of revenue and to enhance the capacity of the National Government to receive and effectively utilize external resources in order to:
(1a) Assist the National Government and other participating governments to achieve greater financial autonomy in the management of their recurrent budgets;

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

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

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

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

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

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

"Section 1211. Contributions to the Fund.

(1) Contributions to the A Account.

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

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

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

(4) Contributions shall be made for the purpose of the Fund without further restriction as to use, except such restrictions as Congress may provide by law. Except for repayment of loans, contributions shall not be refunded to contributors.

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

(2) Contributions to the S Account. The National Government and each of the State Governments may contribute to the S Account, the increased financial assistance that is
received, pursuant to section 231 of the Compact of Free
Association, during fiscal years 2002 and 2003. The amounts
that may be contributed by the National Government and each
of the State Governments shall be determined by the Secretary
of the FSM Department of Finance and Administration, and
shall be appropriated by each contributing government
pursuant to its financial management laws and regulations."

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


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

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

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

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

(a) no withdrawals shall be made from the S Account by any contributing government that receives a funding level during the first year of the Renewed Compact that is greater
than, the same, or within four percent (4%) of, its Baseline Funding level. Any contributing government that is prohibited from making a withdrawal from the S Account by this subsection, may make a transfer pursuant to section 1215(2) of this chapter;

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

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

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

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

(v) fifth year: up to the amount of the reduction minus twenty percent (20%) of the Baseline Funding level;
(c) in the event that any contributing government's funding level during the first year of the Renewed Compact is reduced by more than twenty percent (20%) of the Baseline Funding level, that contributing government shall be entitled to draw down, upon request, an amount in each year, in a manner to be determined by an act of the Congress of the Federated States of Micronesia following consultations with the affected government."

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

"Section 1215. Transfers to the A Account.

(1) Transfers from the B Account.

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

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

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

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

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

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

"Section 1216. Miscellaneous restrictions."
(1) Except as provided in subsection 1211(a) of this chapter, the Fund shall not borrow money.

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

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

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

"Section 1217. Other participating government accounts.
Contributions may be made to the Fund for the benefit of other participating governments in the FSM, in which case the Board shall establish separate A, [and] B, and S Accounts within the Fund in the name of each such government. Such accounts shall be subject to this chapter and administered in the same manner as the National Government A, [and] B, and S Accounts except that distributable funds or assets shall be made available to the other participating governments rather than the National Government. Fund expenses shall be prorated between the accounts of different governments in proportion to their relative share of the total Fund."
Section 8. 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: 10/23/01
Introduced by: /s/ Manny Mori

Manny Mori