A BILL FOR AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by repealing chapter 12 in its entirety and creating a new chapter 12 in lieu thereof, for the purpose of establishing a National Trust Fund for major catastrophic disasters and emergencies that may occur in the Federated States of Micronesia and a financial scheme for long-term climate mitigation and adaptation measures, and for other purposes.

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


2. Section 2. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new chapter 12 entitled, "FSM National Trust Fund".

3. Section 3. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new section 1201 under chapter 12, to read as follows:

   "Section 1201. Short title.

   This act is known and may be cited as the "FSM National Trust Fund Act of 2012."

4. Section 4. Title 55 of the Code of the Federated States of Micronesia, as amended is hereby further amended by inserting a new section 1202 under chapter 12, 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) "Board" means the Board of Trustees of the Fund;

(2) "Capitalized earning" means earning of more than one million dollars from previous financial years except from immediately preceding financial year;

(3) "Corpus" means the totality of the principal and capitalized earning;

(4) "Earning" means the income or the return of the corpus as a result of investment, which includes interest, dividend, and appreciation of assets;

(5) "Financial year" means a twelve-month period ending on the last day of each December;

(6) "Fiscal year" means the fiscal year of the National Government;

(7) "FSM" means the sovereign nation of the Federated States of Micronesia;

(8) "Fund" means the FSM National Trust Fund created by this chapter, including all the accounts and sub-accounts established herein;

(9) "Fund custodians" means one or more firms selected by the Board to assume responsibility for the physical possession of the Fund assets or evidence of assets;

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

(11) "National Government" means the National
Government of the FSM;

(12) “Other participating entity” means a State or local government of the FSM participating pursuant to a memorandum of understanding with the National Government, or an international organization, agency, or a foreign government contributing financial assistance into the Fund;

(13) “Sub-accounts” means the sub-accounts established under section 1213.”

Section 5. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1203 under chapter 12, to read as follows:

“Section 1203. Establishment.

There is hereby created the FSM National Trust Fund, separate from the General Fund of the FSM and all other funds.”

Section 6. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1204 under chapter 12, to read as follows:

“Section 1204. Purpose.

(1) The purpose of the Fund is to set aside financial resources which the National Government may use in the event of major catastrophic disasters and for implementing measures and plans in response to climate change.
(2) The Fund shall be used exclusively for the purposes as authorized herein, and pursuant to the procedure, conditions and guidelines provided in this chapter.”

Section 7. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1205 under chapter 12, to read as follows:

“Section 1205. Powers.

The Fund shall have the powers and privileges expressly granted herein, and all incidental and necessary powers that are reasonably necessary to fulfil the purpose of the Fund.”

Section 8. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1206 under chapter 12, to read as follows:

“Section 1206. Legal status, privileges and immunities.

(1) The Fund is vested with juridical personality separate from the National Government. In particular, the Fund is vested with the capacity to:

(a) contract;

(b) acquire and dispose of immovable and movable properties; and

(c) institute legal proceedings on its behalf.

(2) The Fund shall be exempt from any exchange control regulations, restrictions, or moratoria.
(3) Within the scope of its official activities, the Fund, and its properties and assets, shall be exempt from all direct taxation.”

Section 9. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1207 under chapter 12, to read as follows:

“Section 1207. Limitations on Liability.

(1) No contributor shall be liable, by reason of its contribution, for the acts or obligations of the Fund.

(2) Obligations of the Fund are not the obligations of the National Government or its contributors or participating entity.”

Section 10. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1208 under chapter 12, to read as follows:

“Section 1208. Board.

(1) The Fund shall have a Board of Trustees consisting of the following members whose appointment is vested in the President of the FSM, and subject to advice and consent of Congress:

(a) three (3) members from the National Government, one of whom shall be selected as chairman of the Board;

(b) two (2) members from the private sector; and

(c) one (1) member from non-government
(2) The President shall establish such terms and conditions governing the rights and privileges of board members.

(3) The President may designate representatives of substantial contributors and donors of the Fund. The representatives so designated shall be deemed as honorary board members without the right to vote, but may participate in the proceedings of the Board.

(4) Nominations to the Board shall take into account the need to have adequate geographical representation from within the FSM, representation of other participating entities with substantial accounts, representation of substantial foreign contributors to the Fund, and complementary experience in the fields of investment management and public finance. Each trustee shall serve for a term of four years or until a successor is appointed. The Board shall elect a chairman from among its own members representing the National Government.

(5) All powers of the Fund shall be vested in and exercisable by the Board.

(6) The functions of the Board shall include:

(a) obtaining contributions to the Fund;

(b) operation, supervision, management, and
investment of the Fund;

(c) adoption of investment policy that establishes the overall objectives, guidelines and standards by which investment is to be managed, and the duties and responsibilities of investment consultant and fund custodian;

(d) management of the Fund’s assets, and retaining the services of reputable investment consultant, manager and custodian of the Fund, and such other investment experts to assist the Board in the discharge of its fiduciary duties;

(e) reviewing the asset allocation mix on a regular basis in conformity with due diligence to ensure sustainability of the Fund;

(f) monitoring performance of investment to determine whether the rate of return objectives are being met, and the policies and guidelines set by the Board followed;

(g) taking appropriate action whenever the objectives of the Fund are not met or if policies and guidelines set by the Board are not achieved;

(h) anticipating financial needs of the Fund, considering its risk tolerance; and

(i) to document and communicate objectives, guidelines, and standards to managers of funds or
investment managers.

(7) The Board may delegate any of its administrative responsibilities and powers as necessary through formal appointment. The Board may appoint and recruit an Executive Administrator to handle the administrative management of the Trust Fund on a day-to-day basis. The Executive Administrator shall report to the Board of Trustees through the Chairman of the Board. The Executive Administrator shall be recruited based on expertise in finance, banking, investment, law and business management, and whose compensation shall be commensurate with relevant qualifications. The Board shall set the procedures and the terms and conditions of appointment.

(8) The investment policy and documentation of investment guidelines are a critical process in the management of the Trust Fund’s assets. In formulating an investment policy and in making decisions affecting the Fund, the Board shall consider secured investment with guaranteed return, and available business investments, that will ensure that the corpus of the Fund is sustained. The investment strategy shall be developed through establishing the proper policy constraints and define strategic policy allocation that establishes a clear set of objectives. Along with a
quarterly review of the overall strategy, upon request or as market conditions dictate, the investment advisor or consultant shall make suggestions to the Board as to possible modifications to the asset allocation, selection of managers, or the investment policy itself.

(9) The Board shall meet at least quarterly or as necessary, and reasonable notice of meetings shall be given.

(10) For purposes of board meetings, three-fifths of trustees shall constitute a quorum.

(11) Except where otherwise provided in this chapter, questions before the Board shall be decided by a majority of votes of trustees present and voting at the meeting.

(12) The Board shall establish its own bylaws and rules of procedure."

Section 11. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1209 under chapter 12, to read as follows:

"Section 1209. Administrator of the Fund.

During a transition period of five years from the approval of this amendment, or, whenever the corpus of the Fund is below $50 million, the Secretary of Finance shall serve as administrator of the Fund and its accounts. Thereafter when the Board established
pursuant to section 1208 of this chapter shall have
become fully constituted and functioning, the Board
shall take over the responsibility from the Secretary of
Finance and it shall perform the functions and duties
expressly delegated to it pursuant to this chapter, at
which time the Secretary of Finance and Administration
shall provide administrative support to the Fund and its
Board. The Secretary shall also serve as ex-officio
member of the Board.”

Section 12. Title 55 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting a
new section 1210 under chapter 12, to read as follows:

“Section 1210. Resources of the Fund.

(1) The fund balance of the FSM Trust Fund shall be
degemed transferred to the FSM National Trust Fund, in
particular to a sub-account referred to as “A account”,
upon the approval of this act.

(2) The resources of the Fund shall consist of the
transferred balance and all contributions to the Fund
including foreign contribution to FSM trust fund, from
whatever sources, and all the earnings thereof. The
resources of the Fund shall be held in trust and
administered by the Board, or the Secretary of Finance
and Administration during the transition period under
section 1209; and shall used only for the purpose of,
and in accordance with, this chapter.

(3) No part of the Fund shall revert or transfer to the General Fund at any time.”

Section 13. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1211 under chapter 12, to read as follows:

“Section 1211. Contributions to the Fund.

(1) Contribution to the Fund in the form of foreign financial assistance shall be subject to approval by Congress. The President may negotiate with a foreign country or organization for possible contribution to the Fund.

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

(3) Contributions shall be made for the purpose of the Fund without further restriction as to use, except such restrictions or conditions as foreign donors may impose.

(4) 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.

(5) There shall be appropriated every fiscal year at least one million US dollars ($1 million) from the General Fund of the Federated States of Micronesia as
annual contribution to the Fund.”

Section 14. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1212 under chapter 12, to read as follows:

“Section 1212. Fund managers and custodians.

(1) The Board shall appoint one or more Fund managers and custodians from time to time on such terms and conditions as it determines. No Fund custodian shall be engaged unless it:

(a) is a bank duly chartered to transact business in the Federated States of Micronesia or is a United States bank or trust company regulated by the Federal Reserve Board, a state authority or the federal comptroller of the currency as is appropriate;

(b) has a net worth in excess of $10,000,000;

(c) has the capacity to clear securities transactions through the Depository Trust Company I.D. System; and

(d) has at least 10 years experience as a custodian of financial assets.

(2) The Board shall adopt investment guidelines for the Fund managers. In so doing, it shall ensure that the capital of the Fund is prudently invested in a balanced portfolio so as to maximize returns while protecting capital and maintaining adequate liquidity.
(3) The Board may delegate to the Fund managers and custodians responsibility for the day-to-day administration of the Fund.

(4) The Fund managers and custodians shall provide such reports on the value and disposition of the resources of the Fund, such reviews of its performance, and such advice on it as are required by the Board.

(5) The compensation and expenses of the Fund managers and custodians in carrying out their duties in administration of the Fund shall be expenses of the Fund.”

Section 15. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1213 under chapter 12, to read as follows:

“Section 1213. Sub-Accounts.

(1) The Fund shall consist of three (3) sub-accounts as follows:

(a) A-Account, reserved for major catastrophic disasters and emergencies; and

(b) B-Account, reserved for National Government programs on climate change mitigation and adaptation measures.

(c) C-Account, is a holding account of financial assistance to support program that has a period of three (3) years or more.
(2) All contributions to the Fund shall be deposited in the appropriate sub-accounts. With regard to foreign contribution to the Fund, the terms and conditions of the assistance shall govern at all times. A foreign financial assistance for a project or program that has implementation period of 3 years or more shall be deposited in a separate holding account where it shall be accounted separately to ensure conformity with the terms and conditions of assistance.”

Section 16. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1214 under chapter 12, to read as follows:

Section 1214. Use of Fund.

(1) The Fund shall be used in accordance with the provisions of this section. The President shall have authority to issue guidelines, if necessary, to further implement this section.

(2) No part of the corpus of the Fund may be used at any time, except pursuant to subsection (3) of this section.

(3) The Fund may be used for the following purposes:

(a) to defray the operational cost associated with normal business transactions (e.g., investment management fees, executive administrator’s salary, and applicable fees for other service providers) involving
the Fund;

(b) investment in accordance with the investment policy and guidelines duly adopted by the Board;

(c) with respect to the A-Account,

(i) cost of mobilization decreed by the President up to a maximum of $500,000 as a response to major catastrophic disaster, as the term is defined under section 1215, occurring anywhere in the FSM, by reason of which the President has declared a state of emergency; and

(ii) further response to a catastrophic disaster as authorized by Congress, where initial mobilization by the President is deemed insufficient.

In the event Congress allocates additional resources, and if the corpus of the Fund is below $50 million, any additional allocation authorized by Congress shall not exceed 25 percent of the total deposit in the A-Account as of the close of immediately preceding financial year.

(d) with respect to the B-Account,

(i) major programs of FSM in accordance with approved national policy on climate change mitigation and adaptation strategy; and

(ii) major relocation in the event of catastrophic disasters.

(4) Except for initial mobilization ordered by the
President, Congressional authorization is required before any portion of the Fund is utilized.”

Section 17. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1215 under chapter 12, to read as follows:

“Section 1215. Major Catastrophic Disaster.

(1) A “major catastrophic disaster” means the occurrence of widespread injuries or deaths of persons, massive destruction of properties, or sudden loss or inundation of landmass of the Federated States of Micronesia as a result of unusual movement of the tide or ocean (for example, a tsunami), or a combination of any of the foregoing, the impact or the magnitude of which is so severe that the regular resources of the National Government might not be adequate to respond to the devastation.

(2) Without need for any further express authorization, every instance of catastrophic disaster, the President shall have authority to decree, obligate and expend from the Fund up to a maximum amount of $500,000 to defray the cost of initial mobilization.”

Section 18. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1216 under chapter 12, to read as follows:

“Section 1216. Miscellaneous restrictions.
(1) Except as provided in subsection 1211(1) 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.”

Section 19. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 1217 under chapter 12, to read as follows:


(1) The Board and the Secretary of Finance and Administration, during a transition period pursuant to section 1209, shall have the responsibility to keep all proper books and records of account of the assets, property, liabilities, income and expenditure, and transactions involving the Fund, and to cause Fund manager if one is retained to keep such books and records, and to produce these promptly at the direction of the President or upon audit.

(2) All records and reports of the Fund returns shall clearly segregate and identify gross returns, management fees, and net returns.

(3) The books and records of the Fund shall separately account for each of the sub-accounts, including the application of expenses charged against the Fund.”

Section 20. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a
new section 1218 under chapter 12, to read as follows:

"Section 1218. Audits.

(1) At the end of each financial year the accounts of the Fund shall be audited either by the FSM Public Auditor, or by an independent auditor who has no connections with the Fund managers and is appointed by the Board.

(2) The auditor shall satisfy himself that the accounts of the Fund have been properly prepared in accordance with accounting standards adopted by the International Accounting Standards Committee or an entity of similar stature, and he shall either:

(a) state in his report that:

   (i) the accounts have been properly prepared in accordance with the books and records of the Fund;

   (ii) the books and records of the Fund have been properly kept and contain information adequate for the purpose of his audit;

   (iii) the balance sheet and income and expenditure accounts of the Fund give a true and fair view of the Fund’s financial position; and

   (iv) the financial affairs of the Fund have been properly conducted in accordance with this chapter; or

(b) notify the Board that he is unable to
complete his report as provided in sub-paragraph (a),
giving his reasons therefor.

(3) The auditor shall include in his report
information on the performance of the Fund managers in
the investment of the Fund in accordance with the
guidelines laid down by the Board with particular
comparative reference to the performance of managers of
other funds of a similar size and nature.

(4) The auditor shall submit his report to the Board.”

Section 21. Title 55 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting a
new section 1219 under chapter 12, to read as follows:

“Section 1219. Annual Reports.

Within six months of the end of the financial year the
Board shall publish and shall submit to the President
and the Congress of the FSM:

(1) An annual report on the activities and management
of the Fund;

(2) The accounts of the Fund for that year audited in
accordance with section 1218 of this chapter; and

(3) The report of the auditor under section 1218 of
this chapter.”

Section 22. Termination and transition of funds.

(1) Upon the effective date of this act, all the
activities of the FSM Trust Fund established by Public
Law No. 10-150 shall automatically cease.

(2) The Secretary of the Department of Finance shall settle all legal obligations of the trust fund within a period not exceeding six (6) months, and thereafter submit a final report to the President.

(3) Upon approval of the final report, all the leftover funds of the FSM Trust Fund shall automatically paid to the FSM National Trust Fund.

Section 23. 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: 5/9/12

Introduced by: /s/ Florencio S. Harper
Florencio Singkoro Harper
(by request)