A BILL FOR AN ACT

To further amend title 52 of the Code of the Federated States of Micronesia, as amended, to create the Pension Plan for the National Government of the Federated States of Micronesia, by adding a new chapter 6 thereof, that provides for the guidelines, eligibilities, management and administration of the pension plan, establishes the obligations and benefits arising there from, and the appropriation of public funds to support the pension plan, and for other purposes.

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

Section 1. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new chapter 6, entitled “FSM Pension Plan of 2015”.

Section 2. Short title. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby amended by inserting new section 601 under chapter 6 to read as follows:

“Section 601. This Act shall be known as the ‘National Pension Plan Act of 2015’.”

Section 3. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 602 under chapter 6 to read as follows:

“Section 602. Purpose.
The purpose of this chapter is to establish a defined contribution pension plan as supplemental source of retirement income of national government employees. By regulation, persons employed by employers other than the National Government may participate in the pension plan
in accordance with the regulation promulgated under this
chapter.”

Section 4. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 603 under chapter 6 to read as follows:

“Section 603. Effective date.
This act shall become law in accordance with section
606, provided, that contributions to the pension plan
shall not be required or permitted in respect of
contributory earnings until such date as established by
the Board through regulation.”

Section 5. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 604 under chapter 6 to read as follows:

“Section 604. Legal form and financial year.
The plan shall have the legal form of a trust, which
shall operate on a not-for-profit basis under the laws
of the Federated States of Micronesia. The financial
year of the plan shall be the 12-month period ending on
December 31.”

Section 6. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 605 under chapter 6 to read as follows:

“Section 605. Definitions.
As used in this title, unless it is otherwise provided
or the context requires a different construction,
application, or meaning:

‘benefit’ includes a pension benefit, ancillary benefit and any other benefit payable under the terms of the plan;

‘Board’ means the board of the plan, established in accordance with section 606;

‘dependent child’ means a child below 18 years of age and considered as such in accordance with the law of the state in which a member is domiciled. A ‘child’ shall include only the member’s biological children and such adopted children whose confirmed petition for adoption by the member has been presented to the Board;

‘employee’ means an individual employed to do work or provide a service, other than as an independent contractor, who is in receipt of or entitled to remuneration for the work or service;

‘employer’ in relation to a member of the plan, means the National Government of the Federated States of Micronesia in respect to national government employees or a State Government or a person or organization, whether incorporated or unincorporated, from which the member receives or received remuneration in respect of which benefits under the plan are provided;

‘individual account’ means an account maintained by the plan for the benefit of a member and the member’s beneficiaries;
'interest’ means interest, gains and losses credited to employer and member contributions calculated in the prescribed manner;

‘joint and survivor pension benefit’ means a pension benefit that continues until the later of the death of the member and the spouse of the member;

'member’ means an employee or former employee who is entitled to benefits under the plan;

'OECD’ means the Organization for Economic Co-operation and Development;

'other plan beneficiary’ means a person other than a member who has become entitled to a benefit under the plan;

'participating employer’ means an employer participating in the plan in accordance with section 631;

‘pension fund’ means the fund established under subsection 7 of section 611 maintained to provide benefits under or related to the plan;

'plan’ means the pension plan established in this act; and

'spouse’ means a lawful spouse in accordance with the applicable state law; and

State Government’ means any of the state governments of the Federated States of Micronesia.”

Section 7. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new
section 606 under chapter 6 to read as follows:

“Section 606. Establishment of the Board.

There is hereby established a Board, the members of which shall be appointed by the President subject to the advice and consent of Congress, to administer the plan and the pension fund in accordance with the provisions of this chapter.”

Section 8. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 607 under chapter 6 to read as follows:

“Section 607. Membership of the Board.

(1) The Board shall consist initially of five members; three (3) appointed from the executive, one (1) from the legislative, and one (1) from the judicial branches of the National Government of the Federated States of Micronesia.

(2) Additional of up to two members for no more than seven total members may be appointed to the board in accordance with section 606 whenever participating employers other than the National Government become part of the plan.

(3) Members of the Board shall have adequate knowledge and experience on pensions, financial matters, or investments, have the ability to comply with the prudent person rule described in paragraph 3(c) of 611, and shall not have been convicted of a crime.
(4) For the initial creation of the Board, the President shall designate the chair from among the members of the Board.”

Section 9. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 608 under chapter 6 to read as follows:

“Section 608. Term of Board membership.

(1) Except as provided in subsection (2), a member of the Board shall be appointed for a term of three years and is eligible for reappointment.

(2) The President may remove any board member if:

(a) The member is incompetent, unfaithful to the duties of the Board, or does not fulfill the qualification criteria described in paragraph 3 of section 607; or

(b) If not less than three other members of the Board recommend to the President that the member be removed because of poor attendance, conflicts of interest, or failure to appropriately carry out the duties of the Board.”

Section 10. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 609 under chapter 6 to read as follows:

“Section 609. Meetings of the Board.

(1) The Board shall meet as often as may be required, at such times, places and with such prior notice as the
Board shall prescribe, but not less frequently than once in every three months.

(2) Any member of the Board may request a special meeting upon giving at least twenty-four hours’ notice to the Chairman.

(3) A majority of the members of the Board shall constitute a quorum. Decisions shall be adopted by a simple majority of the votes of the members present.”

Section 11. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 610 under chapter 6 to read as follows:

“Section 610. Compensation of Board members.

(1) Board members shall not receive a salary or fee in respect of their membership.

(2) Board members may be reimbursed for reasonable expenses incurred in the performance of their duties. They may also receive an allowance for attending a meeting of the Board that is held outside of normal working hours. Any such reimbursement and allowances shall be paid in accordance with regulation prescribed by the Board and approved by the President.”

Section 12. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 611 under chapter 6 to read as follows:

“Section 611. Duties of the Board.

(1) The Board shall administer the plan and the
pension fund in accordance with the National Pension
Plan Act and any other legislation and regulations to
which they might be subject.

(2) An employer shall provide the Board with any
information that is required by the Board to comply with
legislation, regulations or the terms of the plan.

(3) The Board:

(a) Stands in a fiduciary relationship to members
and other plan beneficiaries;

(b) Shall act honestly, in good faith, and in the
best interests of the members and other plan
beneficiaries; and

(c) Shall exercise the degree of care, diligence
and skill that a person of ordinary prudence would
exercise in dealing with the property of another person.

(4) Each member of the Board shall employ all relevant
knowledge and skill that the person possesses or ought
to possess by reason of the person’s business or
profession.

(5) Each member of the Board shall become acquainted
with all aspects of their fiduciary duties and
obligations.

(6) The Board shall collectively possess the skills,
capability and dedication necessary to fulfill its
responsibilities. Where appropriate, the Board shall
seek information and advice from qualified external
advisors.

(7) The Board shall establish a pension fund for the purpose of holding assets of the pension plan. The pension fund is held in trust for the benefit of members and other plan beneficiaries.

(8) The Board shall cause the assets of the pension fund of the plan to be invested:

(a) in accordance with section 629 and any other legislation and regulations to which it might be subject and the statement of investment policies and procedures;

(b) in the manner that a reasonable and prudent person would invest a portfolio of investments made on behalf of another person to whom a fiduciary duty is owed; and

(c) in such a manner as to satisfy the purpose of the plan.”

Section 13. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 612 under chapter 6 to read as follows:

“Section 612. Conflicts of interest.

(1) A member of the Board is deemed to face a conflict of interest in any circumstance related to such person’s duties respecting the plan that might result in or create the appearance of any of the following conditions:

(a) Using membership of the Board for private
(b) Giving preferential treatment to any person;
(c) Impeding the efficiency or economy of the Board or the plan;
(d) Losing complete independence or impartiality;
(e) Making a Board decision outside of official channels;
(f) Affecting adversely the confidence of the members, other plan beneficiaries, participating employers, or the Government in the integrity of the Board or the plan; or
(g) Affecting adversely the reputation of the pensions sector.

(2) The Board shall establish rules and procedures for addressing conflict of interest.

(3) Any conflict of interest shall be declared to the Board in writing, and shall be addressed in accordance with the Board’s rules and procedures.

(4) A member who has a conflict of interest shall not participate in a decision or transaction on behalf of the Board.”

Section 14. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 613 under chapter 6 to read as follows:

“Section 613. Plan amendments and regulations.

(1) Any amendment to the plan shall be made by
legislation.

(2) The Board shall recommend such amendments, as it may consider necessary to achieve the purpose of the plan.

(3) An amendment shall be void if it would reduce the amount or value of benefits accrued with respect to employment before the effective date of the amendment. However, such an amendment shall not be void if it is necessary under the tax or pension legislation of the Federated States of Micronesia or has been consented to by a majority of the affected members and a majority of the affected other plan beneficiaries.

(4) The Board shall timely and properly coordinate, facilitate and provide notice of the adoption of an amendment affecting rights and benefits or obligations, to all members, beneficiaries and participating employers, within 60 days after the adoption of the amendment.

(5) The Board shall make regulations to facilitate the administration of the plan. Such regulations shall be consistent with the terms of the plan. Regulations shall include, but are not limited to, making specifications called for by the plan."

Section 15. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 614 under chapter 6 to read as follows:
“Section 614. Annual report.

(1) The Board shall prepare an annual report on the operation of the plan every plan year.

(2) The annual report shall include the financial statements of the plan, which shall be prepared in accordance with either the generally accepted accounting principles prescribed for agencies of the Government of the United States of America or such other accounting standards as may be adopted by the National Government of the Federated States of Micronesia.

(3) The financial statements of the plan shall be audited by either the National Public Auditor or a qualified, independent auditor appointed by the Board. The audit shall be performed in accordance with either the auditing standards prescribed for agencies of the Government of the United States of America or the International Standards of Auditing.

(4) The annual report shall be submitted to the President not later than six months after the end of the plan year. A copy of annual report shall be provided to each participating employer and available for inspection by any member or other beneficiary.”

Section 16. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 615 under chapter 6 to read as follows:

“Section 615. Information to be provided.
(1) The Board shall ensure that the information prescribed by this Section is provided to the persons indicated within the specified times.

(2) A summary of the plan shall be provided to each active member of the plan and any other person who is eligible to join the plan, within 60 days after commencement of employment or the date of eligibility, whichever is earlier.

(3) An annual statement containing the following information shall be provided to each member of the plan, within 6 months after the end of the plan year:
   (a) name of plan;
   (b) contact information of Board and plan administrator;
   (c) member’s name and date of birth;
   (d) period covered by the statement;
   (e) membership date and date of employment;
   (f) normal retirement date;
   (g) name of spouse;
   (h) name of designated beneficiary;
   (i) member’s required contributions made during the period;
   (j) member’s additional voluntary contributions made during the period;
   (k) amounts transferred in from another pension plan during the period;
(l) employer contributions allocated to the member during the period;

(m) accumulated value of member’s required contributions to end of the period;

(n) accumulated value of member’s additional voluntary contributions to end of period;

(o) accumulated value of amounts transferred in from another pension plan to end of period;

(p) accumulated value of employer contributions to the end of the period;

(q) rate and amount of interest credited during the period;

(r) if members may make investment choices from among various options, the names of the funds in which the member’s individual account is invested and, for each such fund, the number of units held, the value of each unit, the total value, and the rate of return;

(s) expenses allocated in accordance with section 625;

(t) right to access to plan information; and

(u) the names of the members of the Board.

(4) An individual statement regarding benefit entitlements containing the information described in subsection (3) together with the type and amount of the benefit to which the person is entitled, any options available with respect to the form of benefit, and a
description of the procedures to be followed by the
person to elect an option and claim the benefit, to the
following:

(a) Any plan member who terminates employment,
within 60 days after the member’s termination of
employment;

(b) Any plan member who retires, within 60 days
prior to the member’s normal retirement date or 60 days
after the date at which the member has indicated that
the member intends to retire; and

(c) Any person entitled to death benefits upon
the death of the member, within 60 days after the date
at which the Board or the plan administrator received
notice of the member’s death.

(5) Where an individual statement has been provided to
a member or other plan beneficiary under subsection (4),
the member or other beneficiary has ninety (90) days to
advise the Board or the plan administrator of their
benefit election, failing which the default form for the
relevant type of benefit shall be applied.

(6) Where the Board or the plan administrator has been
advised of a benefit election under subsection (5), the
plan shall complete the settlement within 60 days
following the receipt of all documentation necessary to
process the transaction.”

Section 17. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new section 616 under chapter 6 to read as follows:

"Section 616. Inspection of plan information.

(1) The following individuals are entitled to inspect the plan information described in subsection (3):

(a) a member;

(b) the spouse of a member;

(c) any other plan beneficiary;

(d) a participating employer; or

(e) an agent of a member, spouse, beneficiary, any other plan beneficiary or a participating employer.

(2) Upon written request, individuals who are entitled to inspect plan information may inspect the plan information once per plan year without charge at a place agreed upon by the individual and the Board or plan administrator, or request copies of plan information once per calendar year for a reasonable fee that may be waived.

(3) The following plan information shall be available for inspection:

(a) The provisions of the plan and any amendments;

(b) Any trust deed or agreement, insurance contract, bylaw or resolution relating to the plan;

(c) The provisions of any document setting out a participating employer’s responsibilities with respect to the plan;
(d) Any document whereby the administration of the plan or pension fund is delegated;

(e) Copies of any statement of investment policies and procedures established for the pension fund;

(f) Copies of any audited financial statement or audit report for the plan or the pension fund;

(g) Copies of any information returns, financial information, or report filed with any regulatory authority to which the plan is subject; and

(h) Copies of correspondence in respect of the plan between such regulatory authority and the Board or the plan administrator within 7 years preceding the date of the request, except that information pertaining to ongoing examinations by a regulatory authority is exempt from this provision while the examination is ongoing."

Section 18. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 617 under chapter 6 to read as follows:

"Section 617. Complaints.

(1) Any complaint by a member, spouse, dependent child, other plan beneficiary or participating employer concerning the administration of the plan or a benefit entitlement under the plan shall first be made in writing to the Board. The Board shall consider such complaints within sixty (60) days of receipt and shall
advise the complainant of its decision and of the grounds for this decision in writing. The complainant or such person’s representative must be allowed to be present at any hearing of the matter by the Board.

(2) A complainant may seek resolution of the complaint in a court of competent jurisdiction after receipt of a written decision from the Board or after the passage of sixty (60) days from the filing of a written complaint, whichever is earlier."

Section 19. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 618 under chapter 6 to read as follows:

"Section 618. Service providers.

(1) The Board may employ or retain a person, including an actuary, to carry out aspects of the administration of the plan where it is reasonable and prudent to do so, including any professional or other advisor retained by the Board to provide advice in respect of the plan or pension fund.

(2) The Board shall be accountable for the proper selection and supervision of any such person employed or retained to carry out aspects of the administration of the plan. The duties, responsibilities and compensation of such person shall be documented in a legally-enforceable written agreement, which shall also specify the remedies for breaches of the agreed duties and
responsibilities.

(3) A person employed or retained by the Board to carry out aspects of the administration of the plan shall, in the performance of their duties respecting the plan or pension fund, be held to the same standard of care and avoidance of conflicts of interest as is the Board.

(4) A person employed or retained by the Board to carry out aspects of the administration of the plan may not delegate their duties, or responsibility for their duties, respecting the plan or pension fund to another person without the prior authorization of the Board.”

Section 20. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 602 under chapter 6 to read as follows:

“Section 619. Auditor.

(1) The Public Auditor may serve as auditor of the Plan.

(2) The auditor shall provide an annual audit of the financial statements of the plan and the pension fund.

(3) If requested by the Board, the auditor shall provide an audit of the benefit calculations and payments.”

Section 21. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 602 under chapter 6 to read as follows:
“Section 620. Plan administrator.

(1) The Board may employ or retain a person to serve as plan administrator.

(2) The duties of a plan administrator shall include the following:

(a) Enroll new members;
(b) Maintain records of member information;
(c) Maintain the primary information on contributions, benefits, and individual accounts;
(d) Update and maintain data as supplied from time-to-time by the members or participating employers;
(e) Process terminations, deaths, and retirements, including:
   (i) Calculations;
   (ii) Production of option forms;
   (iii) Coordinating, facilitating and communicating to the members and beneficiaries;
   (iv) Preparation of payment authorization forms;
(f) Upon request by a participating employer, discuss with members and beneficiaries their options and assist with completion of the option forms;
(g) Submit payment authorizations to the custodian, and communicate with the custodian as needed;
(h) Respond to enquiries from the participating employers’ administration staff;
(i) Prepare periodic reconciliations of custodian reports;

(j) Produce annual member statements; and

(k) Upon request by the Board, assist in the preparation of the annual financial statements of the plan.

(l) Perform other tasks as assigned by the Board.”

Section 22. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 621 under chapter 6 to read as follows:

“Section 621. Investment manager.

(1) The Board may employ or retain one or more persons to serve as investment manager.

(2) The duties of an investment manager shall include:

(a) Invest the assets of the pension fund in accordance with the statement of investment policies and procedures and subject to any limitations prescribed in the specific investment mandate given to the investment manager by the Board;

(b) Ensure that the asset mix policy of the pension fund, as specified in the statement of investment policies and procedures, is adhered to, to the extent that this can be controlled by the investment manager in view of the specific investment mandate given to the investment manager by the Board;

(c) At all times comply with applicable laws and
regulations; and

(d) Meet regularly with the Board to review investment performance and other investment issues relevant to the investment manager’s portfolio, at such frequency as requested by the Board.”

Section 23. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 622 under chapter 6 to read as follows:

“Section 622. Custodian.

(1) The Board may employ or retain one or more persons to serve as custodian. If more than one person serves as custodian, the Board shall designate one such person as the primary custodian.

(2) The duties of a custodian shall include:

(a) Provide safekeeping for the assets of the pension fund;

(b) Provide record keeping for the pension fund;

(c) Perform valuations of the assets of the pension fund not less frequently than monthly;

(d) Monitor investments for compliance with the statement of investment policies and procedures and applicable laws and regulations and refrain from any transactions that would contravene any such policies, procedures, laws, or regulations;

(e) Ensure that the asset mix policy of the pension fund, as specified in the statement of
investment policies and procedures, is adhered to, 
rebalancing the assets among the investment managers as 
necessary;

(f) Receive contributions and allocate them to 
the investment managers in accordance with the asset mix 
policy of the pension fund and the investment choices of 
members, if members are permitted to make investment 
choices;

(q) Monitor the receipt of contributions and 
notify the Board of any overdue required contributions, 
not later than two days after the date they were due;

(h) Process payments that have been properly 
authorized, communicating with the plan administrator as 
needed.”

Section 24. Title 52 of the Code of the Federated States of 
Micronesia, as amended, is hereby further amended by inserting new 
section 623 under chapter 6 to read as follows:

“Section 623. Investment advisor.

(1) The Board may employ or retain one or more persons 
to serve as investment advisor.

(2) The duties of an investment advisor may include:

(a) Assist in the preparation of the statement of 
investment policies and procedures, and in annual or 
more frequent reviews of it;

(b) Assist in the review of investment manager 
performance, services and costs;
(c) Monitor investment performance and provide performance reports;

(d) Review and monitor custodian reports; and

(e) Provide advice related to investment management issues.

(3) Upon request by the Board, an investment advisor may assist in the selection of, negotiations with, and monitoring of other service providers.”

Section 25. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 624 under chapter 6 to read as follows:

“Section 624. Plan records.

(1) Records respecting the plan which are in the possession or custody of the Board, a participating employer or any other person (other than a plan member) shall be retained for the longer of:

(a) the period within which a member or former member may exercise rights under limitations legislation in the jurisdiction of employment, and

(b) a period of at least:

(i) in the case of a record relating to a person entitled to benefits under the plan, five years after the date all rights or entitlements of the person under the plan are paid, settled or extinguished;

(ii) in the case of any document that creates or supports the plan, five years after the date upon
which the last assets of the pension fund are distributed; and

(iii) in the case of any other record, five years after the later of the date of the last transaction to which the record relates or the date when the record ceases to be operative.

(2) On written request of the Board, a person with possession or custody of any information, not considered as confidential under the law, necessary for the administration of the plan shall provide the information to the Board. If the person to whom the request is directed does not provide the information requested within the specified time, the Board may apply to the court for an order compelling the provision of the information.”

Section 26. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 625 under chapter 6 to read as follows:

“Section 625. Expenses of administering the plan.

(1) Initial expenses in establishing the plan and making it operational shall be paid by the National Government of the Federated States of Micronesia.

(2) Expenses directly related to the investment of the pension fund shall be paid by the pension fund. If members are permitted to make investment choices, such expenses shall be allocated in an equitable manner, as
determined by the Board, among the various investment options.

(3) All expenses other than those described in subsections (1) and (2) shall be allocated in an equitable manner, as determined by the Board, among the participating employers."

Section 27. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 626 under chapter 6 to read as follows:

"Section 626. Budget appropriation.
The Congress of the Federated States of Micronesia shall include appropriations in the annual budgets of the National Government of the Federated States of Micronesia that are sufficient to cover the expenses for which it is responsible under section 625 and the employer contributions for which it is responsible under section 645."

Section 28. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 627 under chapter 6 to read as follows:

"Section 627. Statement of investment policy and procedures.
(1) The pension fund shall be invested in accordance with a statement of investment policy and procedures adopted by the Board, which shall contain a description of the factors that may affect the value of the assets.
of the plan as a whole, and the relationship of those factors to the investment policies and procedures, including the following:

(a) Categories of investments;
(b) Diversification of the investment portfolio;
(c) Asset mix and rate of return expectations;
(d) Liquidity of investments;
(e) The lending of cash or securities;
(f) The retention or delegation of voting rights acquired through investments;

(g) The method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange; and

(h) Related party transactions if permitted, and the criteria to be used in establishing whether a transaction is nominal or immaterial to the plan.

(2) The Board shall review the statement of investment policies and procedures not less frequently than once every plan year and update it as necessary.”

Section 29. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 628 under chapter 6 to read as follows:

"Section 628. Investment choices by members.

(1) The Board may determine that members may make investment choices from among various options.

(2) If members are permitted to make investment
(a) The statement of investment policies and procedures shall, in addition to the items specified in section 627, also contain a description of the relationship of the factors that may affect the value of the assets of the plan as a whole to the types of investment options offered to and rate of return expectations of such options;

(b) The investment options offered must be diversified, involve varying degrees of risk and expected return, and allow the creation of portfolios that are generally well-adapted to the needs of the members;

(c) The Board may prescribe limitations to the choices that may be made by members and to the timing and frequency at which investment options can be changed; and

(d) The Board shall specify appropriate default investment options, for members who do not make choices.”

Section 30. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 629 under chapter 6 to read as follows:

"Section 629. Limitations on investments.
The investments of the pension fund shall be made in:

(1) Government obligations. Obligations issued or
guaranteed as to principal and interest by the National Government and/or the State Government or by the Government of the United States, or any state, territory or commonwealth thereof, or obligations of any other government or economic community, whether denominated in United States dollars or other currency.

(2) Corporate obligations and mortgaged backed securities. Obligations of any public or private entity corporations created or existing under the laws of the Federated States of Micronesia or of the United States or any state, territory or commonwealth thereof, or obligations or any other government or economic community, or pass through and other mortgaged backed securities, provided that:

(a) The obligation is on an agency of the United States Government, or

(b) The obligation is on an agency of the Federated States of Micronesia Government, or

(c) The obligation is investment grade rated by one of two nationally recognized rating agencies; and

(d) No investment under this heading exceeds ten percent (10%) of the market value of the Pension Fund or ten percent (10%) of the outstanding value of the issue at the time of purchase.

(e) Preferred and common stocks of any corporations created or existing under the laws of the
Federated States of Micronesia or under the laws of the
United States or any state, territory or commonwealth
thereof, or any other nation, may be purchased, provided
that:

(i) The purchase of such shares shall be
considered reasonable and prudent by the investment
advisor at the time of purchase;

(ii) Not more than five percent of the market
value of the pension fund shall be invested in the stock
of any one corporation; and

(iii) Not more than twenty-five percent of the
market value of the pension fund shall be invested in
any one industry group.

(f) Such shares are readily marketable and
actively traded on a recognized national or regional
stock exchange, physical or electronic.

(3) Insurance company obligations. Contracts and
agreements supplemental thereto providing for
participation in one or more accounts or a life
insurance company authorized to do business in the
Federated States of Micronesia or in any state,
territory or commonwealth of the United States, provided
that the total market value of these investments at no
time shall exceed ten percent of the total market value
of all investments of the pension fund.

(4) Pooled investment funds, provided that:
(a) The underlying assets of such funds are clearly identified;

(b) The underlying assets of such funds are of the types acceptable under subsection (1), (2) and (3); and

(c) The amounts of the underlying assets of such funds shall be considered together with the other investments of the pension fund when applying the limitations under subsection (2) and (3)."

Section 31. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 630 under chapter 6 to read as follows:

"Section 630. Title and custody of investments.

(1) The investments of the pension fund shall be held in the name of the plan, by a custodian under a trust agreement or in an insurance contract.

(2) A trust agreement shall be constituted under the laws of either the Federated States of Micronesia or a member state of the OECD.

(3) Any custodian used by the plan shall:

(a) Be a financial institution that is regulated either by the Banking Board of the Federated States of Micronesia or a relevant authority of a member state of the OECD;

(b) Be authorized by legislation and the respective regulatory authority to provide custodial
services; and

(c) Provide custodial services to the plan in either the Federated States of Micronesia or the member state of the OECD in which it is regulated.

(4) Any insurance contract used by the plan shall be issued by an insurance company that is registered or licensed by the Insurance Board of the Federated States of Micronesia.”

Section 32. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 631 under chapter 6 to read as follows:

“Section 631. Participating employers.

(1) The National Government of the Federated States of Micronesia shall be a participating employer.

(2) The State Governments and other employers carrying on business in the Federated States of Micronesia may elect to become participating employers, subject to such conditions as shall be prescribed regulation by the Board.”

Section 33. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 632 under chapter 6 to read as follows:

“Section 632. Categories of employees eligible for membership.

(1) An employee of the National Government of the Federated States of Micronesia who is employed in any of
the following categories, and whose nature of employment
is eligible under section 633, shall be eligible to be a
member of the plan:

(a) National public service employees
(b) Special service contract employees
(c) Exempted positions
(d) Expatriates employees working within the

Federated States of Micronesia.

(2) Participating employer other than the National
Government of the Federated States of Micronesia shall
specify the categories of its employees eligible to be a
member of the plan, subject to prescribed regulations by
the Board."

Section 34. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 633 under chapter 6 to read as follows:

“Section 633. Eligible nature of employment.

(1) An employee of the National Government of the
Federated States of Micronesia who is employed in an
eligible category, and whose nature of employment is any
of the following, shall be eligible to be a member of
the plan:

(a) Full-time, whether permanent or temporary
(b) Less than full-time, whether permanent or
temporary.

(2) A participating employer other than the National
Government of the Federated States of Micronesia shall specify the eligible nature of employment for its employees in eligible categories of employment, subject to such conditions as may be prescribed by the Board.”

Section 35. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 634 under chapter 6 to read as follows:

“Section 634. Mandatory membership.
Membership in the plan is mandatory for each eligible employee of each participating employer.”

Section 36. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 635 under chapter 6 to read as follows:”

“Section 635. Active member.
A member shall be considered an active member if the member is either:
(a) Actively at work;
(b) On sick leave with pay; or
(c) On a leave of absence, including maternity leave, with pay.”

Section 37. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 636 under chapter 6 to read as follows:

“Section 636. Suspended member.
A member shall be considered a suspended member if the member is on a leave of absence without pay.”
Section 38. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 637 under chapter 6 to read as follows:

"Section 637. Deferred member.

A deferred member is a former active or suspended member whose employment terminated for any reason other than death or retirement and whose individual account has not been fully paid out, but who has not reached the normal retirement date."

Section 39. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 638 under chapter 6 to read as follows:

"Section 638. Normal retirement date.

The normal retirement date of a member who is an employee or a former employee of the National Government of the Federated States of Micronesia is the date at which the member attains 60 years of age.

Section 40. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 639 under chapter 6 to read as follows:

"Section 639. Retirement date.

(1) The retirement date of an active member or a suspended member is later of the following:

(a) The normal retirement date; or

(b) The date at which the member becomes disabled or is considered as medically retired."
(2) The retirement date of a deferred member is the normal retirement date.”

Section 41. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 640 under chapter 6 to read as follows:

“Section 640. Retired member.

A retired member is a member who has reached the retirement date and whose individual account has not been fully paid out.”

Section 42. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 641 under chapter 6 to read as follows:

“Section 641. Contributory earnings.

(1) The contributory earnings of a member who is an employee of the National Government of the Federated States of Micronesia shall be the base salary of the member.

(2) A participating employer other than the National Government of the Federated States of Micronesia shall specify the basis for determining the contributory earnings of members employed by such employer, subject to prescribed regulations by the Board.”

Section 43. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 642 under chapter 6 to read as follows:

“Section 642. Required member contributions.
(1) A member who is an employee of the National Government of the Federated States of Micronesia is required to contribute three percent (3%) of contributory earnings to the pension fund.

(2) A member who is an employee of a participating employer other than the National Government of the Federated States of Micronesia is required to contribute the percentage of contributory earnings as specified by such employer to the pension fund, which specification shall be subject to such conditions as may be prescribed by the Board.”

Section 44. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 643 under chapter 6 to read as follows:

“Section 643. Additional voluntary member contributions.

(1) A member may elect to make additional voluntary contributions to the pension fund through payroll deduction, subject to the following:

(a) The total of the required contribution rate and the additional voluntary contribution rate shall not exceed twenty percent (20%) of a member’s contributory earnings; and

(b) The additional contribution rate may be changed from time-to-time by a member, but not more frequently than twice each plan year and only at such
dates as may be prescribed by the Board.

(2) In addition to making contributions to the plan via a payroll deduction, Participants of the Plan are eligible to make non-payroll contributions to the plan in order to better secure enough funds for a comfortable retirement. A separate account will be set up by the Plan Administrator to track these funds. However, the Employer will not match any non-payroll contributions that a Participant elects to make to the Plan.”

Section 45. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 644 under chapter 6 to read as follows:

“Section 644. Transfers from other pension plans.
A member who is entitled to a lump sum benefit from another pension plan may elect to transfer all or a portion of the amount of such benefit to the pension fund, if permitted to do so by the other pension plan and subject to such conditions as may be prescribed by the Board.”

Section 46. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 645 under chapter 6 to read as follows:

“Section 645. Employer contributions.
(1) The National Government of the Federated States of Micronesia is required to contribute to the pension fund on behalf of members who are its employees, in
accordance with the following contribution rates:

(a) For a member with less than four years of recognized service, two percent (2%) of contributory earnings;

(b) For a member with at least four years but less than ten years of recognized service, three percent (3%) of contributory earnings; and

(c) For a member with at least ten years of recognized service, four percent (4%) of contributory earnings.

(2) For the purpose of subsection (1), recognized service means service recognized by the National Government of the Federated States of Micronesia for the purpose of determining a member’s rate of vacation accrual.

(3) A participating employer other than the National Government of the Federated States of Micronesia shall specify the basis for determining the employer contribution rates in respect of the members employed by such employer, subject to such conditions as may be prescribed by the Board.

(4) A participating employer other than the National Government of the Federated States of Micronesia is required to contribute to the pension fund on behalf of members who are its employees, in accordance with the contribution rates specified under subsection (3).
(5) A participating employer shall not make any matching contributions to the pension fund in respect of additional voluntary contributions or amounts transferred to the pension fund from other pension plans."

Section 47. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 646 under chapter 6 to read as follows:

"Section 646. Timing of contributions.

(1) A participating employer shall remit contributions to the pension fund within 30 days from the end of the month to which they apply.

(2) Contributions that have been deducted from members’ contributory earnings and employer contributions due and owing to the pension fund are deemed to be held in trust for members and other plan beneficiaries.

(3) If a participating employer does not remit contributions to the pension fund within the time specified under subsection (1), overdue contributions shall accrue interest at a rate of two percent (2%) per month, compounded monthly, from the date at which they were due.

(4) The Board shall use its best efforts to ensure that all required contributions are paid into the pension fund within the prescribed time and that any
overdue contributions together with accrued interest are paid into the pension fund as soon as possible.

(5) If any required contributions to be paid into the pension fund by a participating employer are overdue by three months or more, the Board shall apply to the court for an order compelling such participating employer to make such payments.

(6) If any required contributions to be paid into the pension fund by a participating employer are overdue by 12 months or more, the participation of such employer in the plan shall be terminated with respect to future contributory service of its employees. The employer remains liable for the overdue contributions and interest, which shall continue to accrue until paid into the pension fund.”

Section 48. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 647 under chapter 6 to read as follows:

“Section 647. Individual accounts.

(1) The plan shall establish and maintain an individual account for each member.

(2) An individual account shall reflect: member contributions; employer contributions made on behalf of a member; amounts transferred in from another pension plan on behalf of a member; interest whether positive or negative; expenses; and benefits paid.
(3) Contributions to an individual account made by the member and those made by an employer on behalf of a member shall be accounted for separately.

(4) Interest shall be calculated and applied to individual accounts not less frequently than annually.”

Section 49. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 648 under chapter 6 to read as follows:

"Section 648. Vesting, locking-in, non-alienation.

(1) The right to a portion of the assets of the pension fund, as represented by a member’s individual account, shall be fully vested in the member.

(2) This property right shall be restricted to the extent that the right to receive and use the property shall arise only at the time a benefit becomes payable under the plan.

(3) This property right cannot be pledged, garnished, assigned, mortgaged, or otherwise alienated. It shall not be subject to execution, shall not be part of an estate in bankruptcy of the member, and shall not be affected by any settlement proceedings, and any attempt to do so shall be null and void.”

Section 50. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 649 under chapter 6 to read as follows:

"Section 649. Loans and withdrawals by employees.
An active member or a suspended member may not withdraw or borrow any portion of the value of the member’s individual account from the pension fund.”

Section 51. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 650 under chapter 6 to read as follows:

“Section 650. Benefit on termination of employment.

(1) If the employment of an active member or a suspended member terminates for any reason other than death or retirement, the member is entitled to a termination benefit in accordance with either subsection (2) or subsection (3).

(2) If the value of the member’s individual account is less than $5,000 at the date of termination:

(a) The member may elect to transfer all or a portion of such value to another pension plan or to any other form of investment or savings account;

(b) Any amount not so transferred shall be paid to the member as a lump sum; and

(c) The membership of the member shall be terminated.

(3) If the value of the member’s individual account is $5,000 or more at the date of termination:

(a) The member may elect to transfer all or a portion of such value to another pension plan or retirement savings account, if the other pension plan or
retirement savings account permits such transfers and
imposes locking-in requirements equivalent to those of
the plan; and

(b) The member shall become a deferred member.”

Section 52. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 651 under chapter 6 to read as follows:

“Section 651. Options available to deferred members.

(1) A deferred member may withdraw or borrow any
portion of the value of the member’s individual account
from the pension fund.

(2) At any time before the member’s normal retirement
date, a deferred member may elect to transfer all or a
portion of the value of the member’s individual account
to another pension plan or retirement savings account.

(3) If all of the value of the member’s account has
been so transferred, the membership of the member shall
be terminated.”

Section 53. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 652 under chapter 6 to read as follows:

“Section 652. Benefit on disability of an active,
suspended, or deferred member.

(1) If an active member, a suspended member, or a
defferred member who resides in the Federated States of
Micronesia becomes disabled or considered medically
retired, such member shall be deemed to have retired under the plan.”

Section 54. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 653 under chapter 6 to read as follows:

“Section 653. Beneficiaries.

(1) A member may designate one or more beneficiaries to receive any death benefit payable under the plan upon the death of the member and may modify or revoke any such designation, subject to the conditions described in this Section.

(2) If the member has a spouse or any dependent children, persons in such categories must in aggregate be beneficiaries of not less than fifty percent (50%) of the death benefit.

(3) The Board shall prescribe rules to be applied if, at the date of a member’s death, the designated beneficiaries who are alive at the date of a member’s death do not satisfy the condition described in subsection (2).

(4) If the member has failed to designate a beneficiary or if no designated beneficiary is alive at the date of a member’s death, the rights to the benefits shall be based on the following order of priority:

(a) The spouse of the member, if any;

(b) If there is no spouse, then to the children
of the member, if any, in equal shares; and

(c) If there are no children, then to the estate

of the member.

(5) No designation, modification, or revocation of a

beneficiary designation shall be valid unless it has

been made in writing on the form prescribed by the Board

and until it has been received by the Board or the plan

administrator.”

Section 55. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 654 under chapter 6 to read as follows:

“Section 654. Benefit on death of a member before

retirement.

(1) If a member dies before the retirement date a
death benefit shall be payable. The total value of the
death benefit shall be the value of the member’s
individual account.

(2) If the member’s death occurred before the normal
retirement date, each beneficiary’s share of the death
benefit shall, subject to subsection (3), be paid in the
form of a lump-sum.

(3) A member may designate or a beneficiary may elect
a form of payment other than lump-sum, provided that
such payments meet the conditions prescribed by the
Board.

(4) If the member’s death occurred before the
retirement date but on or after the normal retirement
date, the member shall be deemed to have retired on the
day immediately preceding the date of death.”

Section 56. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by inserting new
section 655 under chapter 6 to read as follows:

“Section 655. Retirement benefit.

(1) If a member reaches the retirement date or has
been deemed to have retired, a retirement benefit shall
be payable. The total value of the retirement benefit
shall be the value of the member’s individual account.

(2) If the value of the member’s individual account is
less than $10,000 at the retirement date:

(a) The member may elect to transfer all or a
portion of such value to another pension plan or to any
other form of investment or savings account; and

(b) Any amount not so transferred shall be paid
to the member as a lump-sum.

(3) If the value of the member’s individual account is
$10,000 or more at the retirement date:

(a) The member may elect to have up to twenty-
five per cent (25%) of such value, or $10,000 if
greater, transferred to another pension plan or to any
other form of investment or savings account or paid to
the member as a lump-sum, provided that:

(i) If such election would result in the
remainder of the individual account being less than $10,000, the remainder shall also be so transferred or paid as a lump-sum; and

(ii) Any amount remaining in the individual account shall be applied to a phased-withdrawal program or, if elected by the member, to the purchase of an annuity.”

Section 57. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 665 under chapter 6 to read as follows:

“Section 656. Phased-withdrawal program.

(1) If the amount of a member’s retirement benefit that remains after any transfer, lump-sum payment, or annuity purchase is $10,000 or more, such amount shall be applied to a phased-withdrawal program.

(2) Under a phased-withdrawal program, an individual account shall continue to be maintained for the member. The individual account shall reflect interest whether positive or negative; expenses; and benefits paid.

(3) The retired member shall receive monthly payments from the pension fund as long as a balance remains in the individual account.

(4) The retired member may specify the amount to be paid monthly, subject to the following conditions:

(a) During the first 15 years after the retirement date, the monthly payments shall not exceed
the limits prescribed by the Board, which shall be formulated with the objective of providing a smooth withdrawal of the individual account during such period;

(b) The monthly payments shall not be less than $50; and

(c) The retired member may from time-to-time change the specified amount to be paid monthly. Such changes may be made not more frequently than once each plan year, and only at such dates as may be prescribed by the Board.

(5) At any time during the phased-withdrawal program, the retired member can elect to use the amount remaining in the individual account to purchase an annuity, subject to any conditions that may apply to such purchases.

(6) At any time later than 15 years from the retirement date, the retired member can elect to receive the amount remaining in the individual account as a lump-sum.”

Section 58. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 657 under chapter 6 to read as follows:

“Section 657. Benefit on death of a retired member during a phased-withdrawal program.

(1) If a retired member dies during a phased-withdrawal program, a death benefit shall be payable.
The total value of the death benefit shall be the remaining value of the member’s individual account.

(2) Each beneficiary’s share of the death benefit shall, subject to subsection (3), be paid in the form of a lump-sum.

(3) A member may designate or a beneficiary may elect to have the beneficiary’s share of the death benefit applied to a phased-withdrawal program or used to purchase an annuity, subject to any conditions that may apply to such program or purchases.”

Section 59. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 658 under chapter 6 to read as follows:

"Section 658. Purchase of an annuity.

(1) If the amount of a member’s retirement benefit that remains after any transfer, lump-sum payment, or application to a phased-withdrawal program is $10,000 or more, the member may elect to use such amount to purchase an annuity from an insurance company.

(2) If the member has a spouse or any dependent children, then the death benefits under the form of annuity chosen by the member must be no less favorable to the persons in such categories than a joint life annuity with fifty percent (50%) continuing to the surviving spouse or a single life annuity with 10 years of payments guaranteed."
(3) The member shall select the insurance company from which to purchase the annuity. If a member resides in the Federated States of Micronesia, the selection shall be made from among the insurance companies registered or licensed by the Insurance Board of the Federated States of Micronesia that offer annuities. If a member resides outside the Federated States of Micronesia, the selection shall be made from among insurance companies authorized to offer annuities under the legislation and regulations of the jurisdiction in which the member resides.”

Section 60. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 659 under chapter 6 to read as follows:

“Section 659. Ancillary benefits.
The plan shall provide no benefits other than those described in the National Pension Plan Act, as amended from time-to-time.”

Section 61. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 660 under chapter 6 to read as follows:

“Section 660. Lost member.
(1) A member shall be considered a lost member if:
(a) There have been no contributions by the member in the last three plan years; and
(b) The plan has no record of the member’s
address; or

(c) Two or more pieces of mail sent to the member’s last known address have been returned to the plan unclaimed by the member.

(2) The plan shall employ reasonable efforts to locate a lost member. Such efforts shall include:

(a) Requesting the Federated States of Micronesia Social Security Administration to advise the lost member to contact the plan, if it knows the address of the lost member; and

(b) In January of each year, publishing a list of lost members in a newspaper of general circulation or by other means as determined by the Board.

(3) At the end of the plan year in which a member has been considered a lost member for three years, the plan shall transfer the full balance of the member’s individual account to the Secretary of Finance and Administration of the National Government of the Federated States of Micronesia for the account of the member, in the event the member or a beneficiary of such member is located at a later date.

(4) Upon receiving sums of money pursuant to this section, the Secretary of Finance and Administration of the National Government of the Federated States of Micronesia shall furnish the plan with a receipt of such transferred funds and shall deposit such sums into a
custodial interest bearing account separate and apart from the General Fund of the National Government of the Federated States of Micronesia.

(5) At any time within twenty years of the date of transfer of funds to the Secretary of Finance and Administration of the National Government of the Federated States of Micronesia pursuant to this section, such funds (principle plus interests) may be claimed by their rightful owner or owners by furnishing proof of his, her or their right to such funds, which proof is deemed satisfactory to the Secretary of Finance and Administration of the National Government of the Federated States of Micronesia.

(6) All funds transferred to the Secretary of Finance and Administration of the National Government of the Federated States of Micronesia pursuant to this section shall escheat to the National Government of the Federated States of Micronesia twenty (20) years following the date of such transfer.”

Section 62. 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: 1/28/15 Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)