

NINETEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

THIRD REGULAR SESSION, 2016

C.B. NO. 19-103

A BILL FOR AN ACT

To amend sections 1202, 1204, 1211, 1213, 1214, 1215, 1216, 1217 and 1222 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Laws Nos. 18-74 and 18-119, to update and improve the functionality of the FSM Trust Fund, and for other purposes.

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

1 Section 1. Section 1202 of title 55 of the Code of the
2 Federated States of Micronesia (Annotated), as amended by Public
3 Law No. 18-74, is hereby further amended to read as follows:

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

8 (1) 'Baseline Funding' means the balance of the FSM
9 Trust Fund on January 1, 2016 not including the
10 balances of the State Sub-Accounts [amount of Compact
11 of Free Association assistance provided to a
12 government in fiscal year 2001, adjusted for
13 inflation to the final year of the first Compact];

14 (2) 'Board' means the Board of Trustees of the Fund
15 appointed pursuant to Section 1208 of this title;

16 (3) 'Contributing government' means the government of
17 any State of the FSM or the National Government once
18 such government has made a contribution of funds to the

1 [S Account] State Sub-Account's;

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

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

7 (6) 'Fiscal year' means the fiscal year of the
8 National Government;

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

11 (8) 'Fund custodians' means the one or more firms
12 selected by the Board to assume responsibility for
13 the physical possession of the Fund assets or
14 evidences of assets;

15 (9) 'Fund managers' means [the]one or more firms
16 selected by the Board to manage the investment and
17 reinvestment of the Fund's resources;

18 (10) 'Fund returns' means the returns accruing to
19 the Fund by way of income generated from the Fund's
20 resources and the capital appreciation of those
21 resources;

22 (11) 'General Fund' means the General Fund of the
23 Federated States of Micronesia, into which all
24 revenues raised pursuant to the tax laws and other
25 revenue laws shall be deposited.

1 ['Long term Trust Account' means a Trust Fund or
2 Trust Account similar or identical in structure to
3 the terms of this Trust Fund, wherein an Account is
4 designed for the principal to be maintained through
5 long term investments.]

6 (12) 'National Government' means the National
7 Government of the FSM;

8 (13) 'Other participating government' means a State
9 government of the FSM;

10 (14) 'Real value' means the value of contributions to
11 the Fund adjusted annually at the beginning of the
12 financial year in the same percentage as the United
13 States Bureau of Labor Statistics Consumer Price Index
14 for All Urban Consumers All Items, United States City
15 Average of the previous 12 months. [when adjusted to
16 reflect inflation and population change. For purposes
17 of determining 'real value' at any one time, the value
18 of a contribution in the form of a loan shall be the
19 principal balance then owing. The inflation adjustment
20 shall be made to current prices in line with movements
21 in the US Consumer Price Index. Population refers to
22 the number of FSM citizens residing in the FSM. When
23 current population figures are not available, the Board
24 shall use such estimates thereof as it finds to be
25 reasonable. Such estimates may be extrapolated from the

1 ~~most recent population census based on the population~~
2 ~~growth rate prior thereto]; and~~

3 (15) 'Reinvestment' means the process whereby Fund
4 returns, whether in the form of income or appreciation,
5 become part of the capital of the Fund.~~[; and]~~
6 ~~[(16) 'Renewal Compact' means the renewed economic~~
7 ~~assistance provisions contained in Title Two of the~~
8 ~~Compact of Free Association.]"~~

9 Section 2. Section 1204 of title 55 of the Code of
10 the Federated States of Micronesia (Annotated) is hereby
11 amended to read as follows:

12 "Section 1204. Purpose.

13 (1) The purpose of the Account A and Account B
14 portion of the Fund is to create a ~~single investment~~
15 ~~fund in which all levels of government may~~
16 ~~participate in order to contribute to the long-term~~
17 ~~financial viability of the FSM by providing an~~
18 ~~additional source of revenue and to enhance the~~
19 ~~capacity of the National Government to receive and~~
20 ~~effectively utilize external resources in order to]~~
21 disciplined approach to ensure the protection of the
22 Fund's Real Value into perpetuity while providing a
23 sustainable source to supplement the needs of the
24 General Fund. Specifically, the accounts shall:

(a) assist the National Government and other participating governments to achieve greater financial autonomy in the management of their recurrent budgets;

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

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

(2) The purpose of the State Sub-Account's A and B of the Fund are distinct and defined in section 1217 of this chapter. [~~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.]"

22 Section 3. Section 1211 of title 55 of the Code of the
23 Federated States of Micronesia (Annotated) is hereby amended to
24 read as follows:

25 "Section 1211. Contributions to the Fund.

(1) Contributions to [the A] Account A.

(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 three percent (3%) and is otherwise cost-free.

(b) 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.

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

(d) 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.

(e) A contribution to the Fund shall not in and of itself constitute or imply any commitment by the

1 contributor to make any further contribution to the
2 Fund.

3 (2) Contributions to the [S Account] State Sub-
4 Account's A and B of the Fund are outlined in section
5 1217 of this chapter and excluded from the provisions
6 above. [The National Government and each of the State
7 Governments may contribute to the S Account, the
8 increased financial assistance that is received,
9 pursuant to section 231 of the Compact of Free
10 Association, during fiscal years 2002 and 2003. The
11 amounts that may be contributed by the National
12 Government and each of the State Governments shall be
13 determined by the Secretary of the FSM Department of
14 Finance and Administration, and shall be appropriated by
15 each contributing government pursuant to its financial
16 management laws and regulations.]

17 Section 4. Section 1213 of title 55 of the Code of the
18 Federated States of Micronesia (Annotated), as amended by Public
19 Law No.18-119, is hereby further amended to read as follows:

20 "Section 1213. Accounts.

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

23 (2) All contributions to the Fund shall be deposited
24 to [the A] Account A. [, except for the contributions
25 which qualify to be deposited to the S Account, as

1 provided for in section 1211(2) of this chapter.]

2 Thereafter, the Board shall ensure that a portion of the
3 Fund returns in each financial year is reinvested at the
4 end of that financial year as capital of [the A] Account
5 A, such portion being the amount necessary to maintain
6 the opening balance of [the A] Account['s] A's capital
7 for the following financial year at the real value of
8 all contributions to the Fund minus all principal
9 repayments made on loans to the Fund.

10 (3) If shortfalls are incurred when the Fund's
11 investment return net of expenses was insufficient to
12 Maintain Account A's Real Value, such shortfalls shall
13 be made up via a transfer from Account B or via future
14 withholdings of transfers into Account B. Transfers into
15 Account B shall be suspended until such shortfalls are
16 reduced to zero.

17 (4)[+3)] All contributions to the Fund shall be
18 deposited within 90 days from the date of appropriation.
19 The Secretary of Finance and Administration shall submit
20 proof of deposit and a balance statement to the Congress
21 of the Federated States of Micronesia within the next 10
22 business days from the deposit.

23 (5)[+4)] Repayment of loans to the Fund and payment
24 of the expenses of the Fund shall be made from [the A]
25 Account A. The amount, if any, of Fund returns in each

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

7 (6)[~~(5)~~] [The B] Account B shall consist of funds
8 transferred from [the A] Account A and the returns
9 therefrom while in [the B] Account B. Funds in [the B]
10 Account B may be distributed to the National Government
11 in accordance with section 1214 of this chapter or
12 transferred to [the A] Account A in accordance with
13 section 1213 (3) and section 1215 of this
14 chapter. Except as provided in this subsection or upon
15 termination of the Fund, no funds may ever be removed
16 from [the B] Account B.

17 (7)[~~(6)~~] It is anticipated that funds in [the A]
18 Account A will be placed in longer term, higher yielding
19 investments than are funds in [the B] Account B.

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

24 ~~(a) no withdrawals shall be made from the S~~
25 ~~Account by any contributing government that receives a~~

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

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

18 (i) first year: up to the amount of
19 reduction minus four percent (4%) of the Baseline
20 Funding level;

21 (ii) second year: up to the amount of
22 reduction minus eight percent (8%) of the Baseline
23 Funding level;

24 (iii) third year: up to the amount of the
25 reduction minus 12 percent (12%) of the Baseline Funding

1 **level;**

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

5 (v) ~~fifth year: up to the amount of the~~
6 ~~reduction minus 20 percent (20%) of the Baseline Funding~~
7 ~~level;~~

8 (c) ~~in the event that any contributing~~
9 ~~government's funding level during the first year of the~~
10 ~~Renewed Compact is reduced by more than 20 percent (20%)~~
11 ~~of the Baseline Funding level, that contributing~~
12 ~~government shall be entitled to draw down, upon request,~~
13 ~~an amount in each year, in a manner to be determined by~~
14 ~~an Act of the Congress of the Federated States of~~
15 ~~Micronesia following consultations with the affected~~
16 ~~government.]"~~

17 Section 5. Section 1214 of title 55 of the Code of
18 the Federated States of Micronesia (Annotated) is hereby
19 amended to read as follows:

20 "Section 1214. Distributions to National Government.

21 (1) At the end of each financial year the Board
22 shall determine the maximum amount of funds available
23 for distribution to the National Government in the
24 following fiscal year. Such amount shall be the lesser
25 of [~~the total funds in the B Account or an amount~~

1 calculated as follows:] 5 percent of the average total
2 Fund balances of the 5 previous financial years
3 (inclusive) or the entire balances of Account B. For
4 the years 2017, 2018, 2019, 2020, and 2021, the average
5 shall be calculated with the available number of years
6 since 2016. For the purposes of this calculation, the
7 balances of the State Sub-Accounts are calculated
8 separately and subject to provisions in section 1217 of
9 this chapter.

10 [(a) Calculate a percentage rate of net return on
11 the Fund for the financial year just ended by dividing
12 (i) the total Fund returns for that
13 financial year, less the portions thereof required for
14 reinvestment, repayment of loans, and payment of
15 expenses during or for that financial year, by
16 (ii) the average daily balance of the Fund
17 during that financial year.

18 (b) Then calculate the percentage rate of net
19 return on the Fund for each of the four (or fewer) years
20 immediately preceding the financial year just ended in
21 which there were in fact Fund returns.

22 (c) Then calculate the average rate of net
23 return over the prior five (or fewer) financial years by
24 adding the percentage rates of net return for those
25 financial years, determined in accordance with

1 subsections (1)(a) and (1)(b) of this section, and
2 dividing the total by the number of financial years
3 involved.

4 (d) Finally, multiply that average rate of net
5 return by the average daily balance of the Fund during
6 the financial year just ended.]

7 (2) In order to enable the National Government to
8 prepare its annual budget and estimates for the next
9 fiscal year, by January 30 [15] of each year the Board
10 shall inform the National Government of the maximum
11 amount of funds available for distribution in the next
12 fiscal year.

13 (3) The Board shall distribute to the National
14 Government each fiscal year the maximum amount of funds
15 available for distribution or such lesser amount as the
16 National Government may specify. The distribution shall
17 be made at such times and in such proportions as the
18 National Government and the Board agrees.

19 (4) Notwithstanding the foregoing, no funds shall be
20 distributed to the National Government prior to October
21 1, 2023 [01].

22 (5) Funds distributed to the National Government
23 shall be deposited in the General Fund of the FSM for
24 appropriation and expenditure consistent with the
25 purposes of the Fund. Such appropriation and

1 expenditure may, but need not, include transfers to
2 other levels of government in the FSM for their use in
3 ways consistent with the purposes of the Fund.

4 (6) This Section may apply to the State Sub-Account's
5 A and B with additional provisions defined in section
6 1217 of this title."

7 Section 6. Section 1215 of title 55 of the Code of the
8 Federated States of Micronesia (Annotated) is hereby amended to
9 read as follows:

10 "Section 1215. Transfers to [the A] Account A.

11 (1) Transfers from [the B] Account B.

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

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

1 fact transferred from [the A] Account A to [the B]
2 Account B. Funds transferred to [the A] Account A
3 pursuant to this subsection shall be deemed to be
4 additional contributions to the Fund.

5 (2) State Sub-Account's A and B of the Fund may
6 be subject to the provisions above after certain
7 conditions are met as defined in section 1217 of this
8 chapter. [Transfers from the S Account. If each
9 contributing government receives a funding level during
10 the first year of the Renewed Compact that is greater
11 than, the same as, or within four percent (4%) of its
12 Baseline Funding level, then the following transfers may
13 be made:

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

20 (b) if the terms of the Renewed Compact do not
21 require the FSM to contribute to a trust fund
22 established between the US and the FSM, then at the
23 request of a contributing State Government, funds
24 contributed by that government and the earnings accrued
25 on those funds may be transferred into that State's

1 ~~trust fund, provided that the State trust fund has been~~
2 ~~established with the principles of real asset~~
3 ~~protection similar in form and purpose to that of the~~
4 ~~FSM Trust Fund.]"~~

5 Section 7. Section 1216 of title 55 of the Code of the
6 Federated States of Micronesia (Annotated) is hereby amended to
7 read as follows:

8 "Section 1216. Miscellaneous restrictions.

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

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

13 (3) The Fund shall not invest more than 40 percent
14 in non-US securities or instruments denominated in
15 currencies other than the U.S. dollar except as prudent
16 and necessary to avoid exchange rate risks on loans
17 which must be repaid in a currency other than the US
18 dollar."

19 Section 8. Section 1217 of title 55 of the Code of the
20 Federated States of Micronesia (Annotated), as amended by Public
21 Law No. 18-74, is hereby further amended to read as follows:

22 "Section 1217. Other participating government accounts.

23 (1) There are hereby-created State S[s]ub-
24 A[a]ccounts, including A and B sub-accounts, for each of
25 the States of the Federated States of Micronesia; with

1 the condition that the State Sub-Account A for each
2 individual state must meet an initial threshold balance
3 of \$2,000,000 USD, independent of the balance of the
4 other state's Sub-Account A, before establishing a State
5 Sub-Account B for that state.

6 (2) Any donor, including the State and Foreign
7 Governments may make contributions to a State S[s]ub-
8 A[a]ccount or S[s]ub-A[a]ccounts.

9 (3) National Government contributions to State sub-
10 accounts shall only be to the long-term, [A] S[s]ub-
11 A[a]ccount A of that state or states.

12 (4) Contributions to a State S[s]ub-A[a]ccount made
13 by the National Government shall remain the property of
14 the National Government unless conditions are met for
15 transfers to Sub-Account B, with the relevant State
16 being the beneficiary of the proceeds subject to the
17 conditions of the [A] A[a]ccount B. Contributions made
18 by the National Government to a State S[s]ub-A[a]ccount
19 shall not be withdrawn or disbursed except to cover the
20 compensation and expenses of the Fund managers and
21 custodians in carrying out their duties in
22 administration of the Fund in accordance with sections
23 1212 and 1213.

24 (5) State S[s]ub-A[a]ccounts shall be subject to this
25 chapter and shall be managed and administered in the

1 same manner as the National Government Accounts A and
2 B [A, B and S Accounts] except that distributable
3 funds or assets shall be made available to the
4 other participating governments rather than the
5 National Government.

6 (6) States may withdraw their own contributions to
7 their States [A] Sub-Account A and contributions
8 made on their behalf by NGO's and other donors if
9 allowed under the terms of the contribution, beginning
10 October 1, 2023.

11 (7) In the event that a state meets the initial
12 threshold requirement to establish a State Sub-Account B
13 under (1) above, States may withdraw from their State
14 [B] Sub-Account B beginning October 1, 2023. Fund
15 expenses shall be prorated between the accounts of
16 different governments in proportion to their relative
17 share of the total Fund."

18 Section 9. Section 1222 of title 55 of the Code of the
19 Federated States of Micronesia (Annotated) is hereby deleted to in
20 its entirety:

21 ["Section 1222. Fund Transfer.
22 Notwithstanding any other provision of this chapter 12
23 of this title, in the event that no Trust Fund Board has
24 been appointed as of the date that a trust fund for the
25 FSM is established pursuant to the Compact of Free

1 Association, as amended (referred to hereafter in this
2 section as the "Compact Trust Fund"), funds previously
3 appropriated for the FSM Trust Fund, including any sub-
4 accounts thereof, may, by action of the allottee of such
5 funds, be allotted for, and deposited into, the Compact
6 Trust Fund."]

7 Section 10. This act shall become law upon approval by the
8 President of the Federated States of Micronesia or upon its
9 becoming law without such approval.

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11 Date: 1/08/16

Introduced by: /s/ Isaac V. Figir
Isaac V. Figir

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