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:

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

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

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

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

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

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

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

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

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

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

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

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

(11) 'General Fund' means the General Fund of the Federated States of Micronesia, into which all revenues raised pursuant to the tax laws and other revenue laws shall be deposited.
[‘Long-term Trust Account’ means a Trust Fund or Trust Account similar or identical in structure to the terms of this Trust Fund, wherein an Account is designed for the principal to be maintained through long-term investments.]

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

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

(14) 'Real value' means the value of contributions to the Fund adjusted annually at the beginning of the financial year in the same percentage as the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers All Items, United States City Average of the previous 12 months. [When adjusted to reflect inflation and population change. For purposes of determining 'real value' at any one time, the value of a contribution in the form of a loan shall be the principal balance then owing. The inflation adjustment shall be made to current prices in line with movements in the US Consumer Price Index. Population refers to the number of FSM citizens residing in the FSM. When current population figures are not available, the Board shall use such estimates thereof as it finds to be reasonable. Such estimates may be extrapolated from the]
most recent population census based on the population
growth rate prior thereto]; and

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

[(16) 'Renewal Compact' means the renewed economic
assistance provisions contained in Title Two of the
Compact of Free Association.]

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

"Section 1204. Purpose.

(1) The purpose of the Account A and Account B
portion of the Fund is to create a [single investment
fund in which all levels of government may
participate in order to contribute to the long-term
financial viability of the FSM by providing an
additional source of revenue and to enhance the
capacity of the National Government to receive and
effectively utilize external resources in order to]
disciplined approach to ensure the protection of the
Fund’s Real Value into perpetuity while providing a
sustainable source to supplement the needs of the
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.]”

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

“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
contributor to make any further contribution to the Fund.

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

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

"Section 1213. Accounts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Section 1214. Distributions to National Government.

(1) At the end of each financial year the Board shall determine the maximum amount of funds available for distribution to the National Government in the following fiscal year. Such amount shall be the lesser of [the total funds in the B Account or an amount
calculated as follows: 5 percent of the average total Fund balances of the 5 previous financial years (inclusive) or the entire balances of Account B. For the years 2017, 2018, 2019, 2020, and 2021, the average shall be calculated with the available number of years since 2016. For the purposes of this calculation, the balances of the State Sub-Accounts are calculated separately and subject to provisions in section 1217 of this chapter.

(a) Calculate a percentage rate of net return on the Fund for the financial year just ended by dividing

(i) the total Fund returns for that financial year, less the portions thereof required for reinvestment, repayment of loans, and payment of expenses during or for that financial year, by

(ii) the average daily balance of the Fund during that financial year.

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

(c) Then calculate the average rate of net return over the prior five (or fewer) financial years by adding the percentage rates of net return for those financial years, determined in accordance with
subsection (1)(a) and (1)(b) of this section, and
dividing the total by the number of financial years
involved.
(d) Finally, multiply that average rate of net
return by the average daily balance of the Fund during
the financial year just ended.]
(2) In order to enable the National Government to
prepare its annual budget and estimates for the next
fiscal year, by January 30 [15] of each year the Board
shall inform the National Government of the maximum
amount of funds available for distribution in the next
fiscal year.
(3) The Board shall distribute to the National
Government each fiscal year the maximum amount of funds
available for distribution or such lesser amount as the
National Government may specify. The distribution shall
be made at such times and in such proportions as the
National Government and the Board agrees.
(4) Notwithstanding the foregoing, no funds shall be
distributed to the National Government prior to October
1, 2023 [41].
(5) Funds distributed to the National Government
shall be deposited in the General Fund of the FSM for
appropriation and expenditure consistent with the
purposes of the Fund. Such appropriation and
expenditure may, but need not, include transfers to
other levels of government in the FSM for their use in
ways consistent with the purposes of the Fund.

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

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

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

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

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

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

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

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

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

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

“Section 1216. Miscellaneous restrictions.

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

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

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

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

"Section 1217. Other participating government accounts.

(1) There are hereby-created State S[sub-A[a]ccounts, including A and B sub-accounts, for each of
the States of the Federated States of Micronesia; with
the condition that the State Sub-Account A for each
individual state must meet an initial threshold balance
of $2,000,000 USD, independent of the balance of the
other state’s Sub-Account A, before establishing a State
Sub-Account B for that state.

(2) Any donor, including the State and Foreign
Governments may make contributions to a State $[s]ub-

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

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

(5) State $[s]ub-A[a]ccounts shall be subject to this
chapter and shall be managed and administered in the
same manner as the National Government Accounts A and B [A, B and S Accounts] except that distributable funds or assets shall be made available to the other participating governments rather than the National Government.

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

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

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

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

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

Section 10. 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: 1/08/16

Introduced by: /s/ Isaac V. Figir

Isaac V. Figir