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A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-54, and 5-109, by further amending section 202, as amended by Public Law No. 5-21; by amending section 203; and by amending sections 206-214, 219, 221, 222, and 225-227, as renumbered by Public Law No. 5-21; for the purposes of clarifying that the foreign investment law is applicable to business relating to the practice of law and other professions, amending the criteria for permit decisions, making technical amendments; and for other purposes.

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

1 Section 1. Section 202 of title 32 of the Code of the
2 Federated States of Micronesia, as amended by Public Law No.
3 5-21, is hereby further amended to read as follows:

4 "Section 202. Definitions. When words defined in this
5 section are used in this chapter, unless otherwise
6 required by the context, the following definitions shall
7 govern:

8 ~~(1) 'Board' means the Secretary of Resources and~~
9 ~~Development.~~

10 (2) 'Business' means any sole proprietorship,
11 partnership, corporation, or any other association
12 engaged in commerce.

13 (3) 'Citizen' means any person or business not
14 included in the definition of noncitizen contained in
15 this chapter.

16 (4) 'Licensee' means any noncitizen who has been issued
17 a foreign-investment permit under this chapter, including
18 agents or employees of the noncitizen.

19 (5) 'Noncitizen' means any person who is not a citizen
20 of the Federated States of Micronesia, and any business in
21 which any interest is owned by a person who is not a
22 citizen of the Federated States of Micronesia.

23 (6) 'President' means the President of the Federated
24 States of Micronesia.

25 (7) 'Secretary' means the Secretary of Resources and

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1 Development of the Federated States of Micronesia.

2 (§7) 'State authority' means any official or entity
3 designated by a State of the Federated States of Micronesia
4 to consider foreign-investment applications under this
5 chapter and, failing such designation, means the Governor
6 of a State."

7 Section 2. Section 203 of title 32 of the Code of the Federated
8 States of Micronesia is hereby amended to read as follows:

9 "Section 203. Business activities and interests for which
10 permits required.

11 (1) A noncitizen may not engage in any business in
12 the Federated States of Micronesia, including, but not
13 limited to, business relating to the practice of law and
14 other professions, without first obtaining a
15 foreign-investment permit.

16 (2) A noncitizen may not acquire an interest, other
17 than a security interest in real or personal property for
18 the purpose of securing a loan, in any business operating
19 in the Federated States of Micronesia without first
20 obtaining a foreign-investment permit.

21 (3) A noncitizen engaged in business in the Federated
22 States of Micronesia on the effective date of this chapter
23 under a permit issued under the Trust Territory Foreign
24 Investors' Business Permit Act or under an agreement with the
25 Trust Territory Government shall not continue to engage in

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1 business in the Federated States of Micronesia after the
2 expiration of that permit or agreement without first
3 obtaining a foreign-investment permit."

4 Section 3. Section 206 of title 32 of the Code of the
5 Federated States of Micronesia, as renumbered by Public Law
6 No. 5-21, is hereby amended to read as follows:

7 "Section 206. Application - Identification of interstate
8 or international character of business. The ~~Board~~ Secretary
9 shall review each foreign-investment permit application, and
10 shall, within twenty days of the filing of the application,
11 determine whether or not the business activities proposed
12 will fall within any of the following categories:

13 (1) Will the applicant engage in business in more
14 than one State;

15 (2) Will the applicant's business receive fifty
16 percent or more of its total revenue from the export
17 of goods or services to another State or nation;

18 (3) Will the applicant engage in the processing,
19 manufacturing, assembling, or building of goods or
20 products, and if so, will fifty percent or more of the
21 materials processed or used be imported from another State
22 or nation; or

23 (4) Will the applicant engage in communications, air
24 or sea transportation, or the shipment of fuel between
25 States or between the Federated States of Micronesia and

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1 another nation?"

2 Section 4. Section 207 of title 32 of the Code of the
3 Federated States of Micronesia, as renumbered by Public Law
4 No. 5-21, is hereby amended to read as follows

5 "Section 207. Application - Business with interstate or
6 international character. If the ~~Board~~ Secretary determines
7 that the applicant's business falls within one or more of
8 the categories set out in section ~~209~~ 206 of this chapter,
9 the procedures set forth in sections ~~408~~ 208 through ~~411~~
10 212 of this chapter shall apply."

11 Section 5. Section 208 of title 32 of the Code of the Federated
12 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
13 amended to read as follows:

14 "Section 208. Application - Review and investigation.

15 (1) Upon making the section ~~209~~ 206 determination, the
16 ~~Board shall refer the application to the Secretary for review~~
17 ~~and investigation.~~

18 (2) The Secretary shall collect any further
19 information which he believes will be useful for the
20 evaluation of the application ~~and shall present all~~
21 ~~information obtained to the Board within thirty days of~~
22 ~~receiving the application from the Board."~~

23 Section 6. Section 209 of title 32 of the Code of the Federated
24 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
25 amended to read as follows:

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1 "Section 209. Application - State recommendation. At the
2 time the application is ~~referred to~~ received by the
3 Secretary, a copy of the application shall be delivered to
4 the State authority of each State. The State authorities
5 may examine the application and may make a recommendation
6 as to the approval of the application. The Secretary shall
7 deliver copies of any information which he obtains under
8 section ~~211~~ 208 of this chapter to the State authorities.
9 The State authorities shall have thirty days from receipt
10 of the informational material from the Secretary to
11 deliver recommendations to the ~~Board~~ Secretary."

12 Section 7. Section 210 of title 32 of the Code of the Federated
13 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
14 amended to read as follows:

15 "Section 210. Application - Decision by ~~board~~ Secretary.
16 Upon receipt of the information and recommendations called
17 for in sections ~~211~~ 208 and ~~211~~ 209 of this chapter, or
18 upon expiration of the time set for submission of such
19 information and recommendations, whichever occurs first,
20 the ~~Board~~ Secretary shall, within an additional thirty
21 days, decide whether or not to grant the foreign-
22 investment permit, based on all relevant factors,
23 including:

24 (1) the economic, social, or environmental need for
25 the business activity to be performed;

1 (2) the degree to which such activities will effect
2 change in exports or imports;

3 (3) the extent to which such activities will
4 deplete a nonrenewable natural resource, or will disturb
5 the environmental balance or the conservation of renewable
6 natural resources, or will pollute the atmosphere or water;

7 (4) the extent of participation by citizens at the
8 outset in the ownership and management of the enterprise,
9 and in the case of an applicant which is a corporation
10 chartered outside the Federated States, the degree of
11 willingness and specific plans to form a Federated States
12 corporation in the future and to offer at least fifty-one
13 percent of the ownership and capital to citizens;

14 (5) the willingness and specific plans of the
15 applicant to give employment preference to citizens and to
16 train citizens for positions in management and at other
17 levels by instituting training programs;

18 (6) the extent to which the capital, managerial skills,
19 and technical skills required for such an enterprise are
20 available among Federated States citizens at the current
21 time or can be expected to be available in the near
22 future;

23 (7) the extent to which an operation will contribute
24 to the overall economic well-being of the Nation and each
25 State affected and the extent to which any interest,

1 including economic, social, traditional, or environmental,
2 of any State or the Nation may be affected; ~~and~~

3 (8) the extent to which the activity will contribute
4 to the constitutional policy of making education, health
5 care, and legal services available to the people of the
6 Federated States of Micronesia; and

7 (9) the recommendations, if any, made by the
8 State authorities."

9 Section 8. Section 211 of title 32 of the Code of the Federated
10 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
11 amended to read as follows:

12 "Section 211. Approval of application - Limitations
13 authorized. If the ~~Board~~ Secretary decides that the
14 foreign-investment permit should be granted, it may also
15 impose limitations on the issuance of the permit."

16 Section 9. Section 212 of title 32 of the Code of the Federated
17 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
18 amended to read as follows:"

19 "Section 212. Notice to President of action on application.
20 The ~~Board~~ Secretary shall deliver notice of the action it
21 takes on the permit application, together with a statement
22 of reasons in support of the action taken, to the President
23 as soon as the permit is granted or denied."

24 Section 10. Section 213 of title 32 of the Code of the Federated
25 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby

1 amended to read as follows:

2 "Section 213. Application - Business lacking interstate
3 or international character. If the ~~Board~~ Secretary
4 determines that the applicant's business does not fall
5 within any of the categories set out in section ~~209~~
6 206 of this chapter, the following procedure shall apply:

7 (1) Upon making the section ~~209~~ 206 determination,
8 the ~~Board~~ Secretary shall refer the foreign-investment
9 permit application to the State authority of the State
10 affected by the applicant's business.

11 (2) The State authority shall approve or disapprove
12 the permit application, stating its reasons for approving
13 or disapproving in a report which shall be delivered
14 to the ~~Board~~ Secretary within forty-five days of the
15 receipt of the application by the State authority. The
16 ~~Board~~ Secretary shall promptly grant or deny the permit in
17 conformity with the action taken by the State authority and
18 shall immediately notify the President of the action taken.

19 (3) If the State authority approves the application,
20 it may impose limitations on the issuance of the permit."

21 Section 11. Section 214 of title 32 of the Code of the Federated
22 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
23 amended to read as follows:

24 "Section 214. President's action on foreign-investment
25 permits.

1 (1) Within twenty days of receipt of notice of a
2 permit action taken by the ~~Board~~ Secretary, the President
3 may reverse the decision of the ~~Board~~ Secretary if he
4 determines that the action taken would adversely affect a
5 compelling National interest relating to foreign affairs or
6 to the general public welfare.

7 (2) If the President takes no action within the
8 prescribed time limits, the ~~Board's~~ Secretary's action
9 stands.

10 (3) If the President reverses the action taken by the
11 ~~Board~~ Secretary, he shall notify the ~~Board~~ Secretary, the
12 applicant, and the State authorities by certified mail of
13 his decision and the reasons for the decision.

14 (4) No ~~Board~~ permit decision by the Secretary is final
15 until the requirements of this section have been met."

16 Section 12. Section 219 of title 32 of the Code of the Federated
17 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
18 amended to read as follows:

19 "Section 219. Change in licensee's business. If a licensee
20 intends to substantially alter the business activity on
21 which the foreign-investment permit is based or intends to
22 undertake significant additional business activities not
23 contemplated at the time of the original application, the
24 licensee shall submit an application for a new foreign-
25 investment permit to the Secretary, which shall be

1 considered in accordance with sections ~~209~~ 206 through
2 217~~214~~ of this chapter except that ~~the Board,~~ the Secretary,
3 or the State authority need not duplicate investigatory
4 efforts made in connection with the original application.
5 The licensee shall not alter its business activities or add
6 new business activities until a new permit is granted."

7 Section 13. Section 221 of title 32 of the Code of the Federated
8 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
9 amended to read as follows:

10 "Section 221. Modification, suspension, or revocation of
11 permit - Grounds. A foreign-investment permit may be
12 modified, suspended, or revoked by the ~~Board~~ Secretary if:

13 (1) the original permit application is found to have
14 contained false or fraudulent information;

15 (2) the licensee bribed or otherwise influenced or
16 attempted to bribe or influence the Secretary ~~or any~~
17 ~~member of the Board~~ or any member of a State authority
18 to issue the permit;

19 (3) the licensee presented false or fraudulent
20 information to the ~~Board~~ Secretary or to a State authority
21 in support of the application;

22 (4) the licensee violates any law of the Federated
23 States of Micronesia or of any political subdivision within
24 the Federated States of Micronesia, or any of the
25 regulations issued under those laws, which are relevant to

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- 1 the business activity conducted under the permit;
- 2 (5) the licensee engages in business activities which
- 3 are violative of any limitation contained in the permit;
- 4 (6) the licensee engages in business activities
- 5 substantially outside the scope of the permit;
- 6 (7) the licensee fails or refuses to comply with the
- 7 reporting requirements of section ~~220~~ 217 or ~~221~~ 218 of
- 8 this chapter, and such failure continues for a period of
- 9 sixty days after any report is due; or
- 10 (8) the licensee refuses or fails to comply with
- 11 orders for production of documents and things or for
- 12 attendance of witnesses under section ~~229~~ 226 of this
- 13 chapter."

14 Section 14. Section 222 of title 32 of the Code of the Federated

15 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby

16 amended to read as follows:

17 "Section 222. Modification, suspension, or revocation of

18 permit - Procedure.

19 (1) The ~~Board~~ Secretary shall, upon receipt of

20 information which indicates that a permit should be

21 modified, suspended, or revoked, schedule a hearing on the

22 matter before the ~~Board~~ Secretary. At least twenty-one

23 days' written notice of the hearing shall be given to the

24 licensee stating the alleged violations.

25 (2) Hearing procedure shall be prescribed by the

1 Board Secretary by regulation and shall include the right
 2 of the licensee to participate and to be represented by
 3 counsel, to call witnesses, and to cross-examine
 4 witnesses called against the licensee.

5 (3) After the hearing the Board Secretary may, ~~by~~
 6 ~~majority vote,~~ modify, suspend, or revoke the permit,
 7 and in such cases the Secretary shall notify the licensee
 8 of the action taken by certified mail within five days
 9 of the hearing, stating the reasons for the action taken.

10 (4) A licensee whose permit has been modified,
 11 suspended, or revoked may appeal the decision of the
 12 Board Secretary to ~~the High Court of the Trust Territory of~~
 13 ~~the Pacific Islands of~~ the Supreme Court of the Federated States
 14 of Micronesia within twenty days after receipt of notice
 15 of the action of the Board Secretary. Copies of the notice
 16 of appeal shall be served on the Secretary and the Attorney
 17 General."

18 Section 15. Section 225 of title 32 of the Code of the Federated
 19 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
 20 amended to read as follows:

21 "Section 225. Enforcement responsibility. Primary
 22 responsibility for the enforcement of this chapter shall be
 23 placed in the ~~Board,~~ ~~with the assistance of the~~ Secretary,
 24 and, as to criminal sanctions provided in section ~~232~~ 229
 25 of this chapter, appropriate law-enforcement authorities

1 within the Federated States of Micronesia."

2 Section 16. Section 226 of title 32 of the Code of the Federated
3 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
4 amended to read as follows:

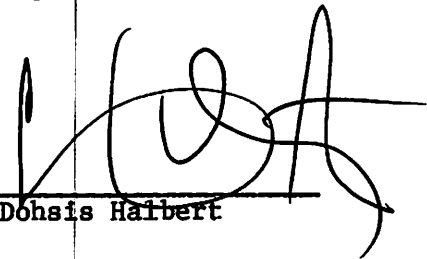
5 "Section 226. Production of information. In carrying out
6 the duties imposed by this chapter the ~~Board~~ Secretary may
7 require the attendance of any citizen or noncitizen at a
8 meeting or hearing conducted by the ~~Board~~ Secretary and
9 may require such persons to testify or to produce at,
10 before, or after such meeting or hearing documents,
11 information, and things relevant to enforcement of the
12 provisions of this chapter."

13 Section 17. Section 227 of title 32 of the Code of the Federated
14 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
15 amended to read as follows:

16 "Section 227. Rules and regulations. The ~~Board~~ Secretary
17 shall promulgate the regulations necessary to implement
18 this chapter, which regulations shall have the force
19 and effect of law."

20 Section 18. This act shall become law upon approval by the
21 President of the Federated States of Micronesia or upon its becoming
22 law without such approval.

23
24 Date: 3-27-89

25 Introduced by: 
Dohsis Haibert