

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;

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

13 (3) 'Contributing government' means the government of
14 any State of the FSM or the National Government once
15 such government has made a contribution of funds to the
16 State Sub-Account's;

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

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

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

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

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

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

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

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

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

25 (13) 'Other participating government' means a State

1 government of the FSM;

2 (14) 'Real value' means the value of contributions to
3 the Fund adjusted annually at the beginning of the
4 financial year in the same percentage as the United
5 States Bureau of Labor Statistics Consumer Price Index
6 for All Urban Consumers All Items, United States City
7 Average of the previous 12 months; and

8 (15) 'Reinvestment' means the process whereby Fund
9 returns, whether in the form of income or appreciation,
10 become part of the capital of the Fund."

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

14 "Section 1204. Purpose.

15 (1) The purpose of the Account A and Account B
16 portion of the Fund is to create a disciplined
17 approach to ensure the protection of the Fund's Real
18 Value into perpetuity while providing a sustainable
19 source to supplement the needs of the General Fund.
20 Specifically, the accounts shall:

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

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

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

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

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

13 "Section 1211. Contributions to the Fund.

14 (1) Contributions to Account A.

15 (a) A contribution to the Fund may be in the
16 form of a grant or, with the agreement of a majority of
17 all trustees, in the form of an unsecured loan which
18 bears interest (or its equivalent) at a rate no greater
19 than three percent (3%) and is otherwise cost-free.

20 (b) The Fund may refuse a contribution if it
21 considers that it would not be in the interest of the
22 Fund or the FSM to accept it. The Fund shall notify
23 Congress of the nature, amount, source and terms of any
24 contribution that it has decided to accept or refuse,
25 whereupon the Fund may conditionally accept or refuse

1 the contribution. Acceptance or refusal shall become
2 final no earlier than 180 days after notice to Congress,
3 unless Congress directs by law otherwise.

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

7 (d) Contributions shall be made for the
8 purpose of the Fund without further restriction as to
9 use, except such restrictions as Congress may provide by
10 law. Except for repayment of loans, contributions
11 shall not be refunded to contributors.

12 (e) A contribution to the Fund shall not in
13 and of itself constitute or imply any commitment by the
14 contributor to make any further contribution to the
15 Fund.

16 (2) Contributions to the State Sub-Account's A and B
17 of the Fund are outlined in section 1217 of this chapter
18 and excluded from the provisions above."

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

22 "Section 1213. Accounts.

23 (1) The Fund shall be divided into Account A and
24 Account B.

25 (2) All contributions to the Fund shall be deposited

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

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

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

22 (5) Repayment of loans to the Fund and payment of the
23 expenses of the Fund shall be made from Account A. The
24 amount, if any, of Fund returns in each financial year
25 which remains after such repayment of loans and payment

1 of expenses, and after reinvestment in accordance with
2 subsection (2) of this section, shall be transferred to
3 Account B. Except as provided in this subsection or
4 upon termination of the Fund, no funds may ever be
5 removed from Account A.

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

15 (7) It is anticipated that funds in Account A will be
16 placed in longer term, higher yielding investments than
17 are funds in Account B."

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

21 "Section 1214. Distributions to National Government.

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

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

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

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

21 (4) Notwithstanding the foregoing, no funds shall be
22 distributed to the National Government prior to October
23 1, 2023.

24 (5) Funds distributed to the National Government
25 shall be deposited in the General Fund of the FSM for

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

6 (6) This section may apply to the State Sub-Account's
7 A and B with additional provisions defined in section
8 1217 of this title."

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

12 "Section 1215. Transfers to Account A.

13 (1) Transfers from Account B.

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

21 (b) The Board may transfer to Account A any
22 funds in Account B in excess of an amount equal to the
23 sum of all funds transferred from Account A to Account B
24 during the five most recent financial years. Such a
25 transfer may only occur at the end of a financial year

1 and after there have been at least five financial years
2 in which funds were in fact transferred from Account A
3 to Account B. Funds transferred to Account A pursuant
4 to this subsection shall be deemed to be additional
5 contributions to the Fund.

6 (2) State Sub-Account's A and B of the Fund may
7 be subject to the provisions above after certain
8 conditions are met as defined in section 1217 of this
9 chapter."

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

13 "Section 1216. Miscellaneous restrictions.

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

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

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

1 Section 8. Section 1217 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 1217. Other participating government accounts.

5 (1) There are hereby-created State Sub-A accounts,
6 including A and B sub-accounts, for each of the States
7 of the Federated States of Micronesia; with the
8 condition that the State Sub-Account A for each
9 individual state must meet an initial threshold balance
10 of \$2,000,000 USD, independent of the balance of the
11 other state's Sub-Account A, before establishing a State
12 Sub-Account B for that state.

13 (2) Any donor, including the State and Foreign
14 Governments may make contributions to a State Sub-A
15 account or Sub-A accounts.

16 (3) National Government contributions to State sub-
17 accounts shall only be to the long-term, Sub-A account A
18 of that state or states.

19 (4) Contributions to a State Sub-A account made by
20 the National Government shall remain the property of the
21 National Government unless conditions are met for
22 transfers to Sub-Account B, with the relevant State
23 being the beneficiary of the proceeds subject to the
24 conditions of the A account B. Contributions made by the
25 National Government to a State Sub-A account shall not

1 be withdrawn or disbursed except to cover the
2 compensation and expenses of the Fund managers and
3 custodians in carrying out their duties in
4 administration of the Fund in accordance with sections
5 1212 and 1213.

6 (5) State Sub-A accounts shall be subject to this
7 chapter and shall be managed and administered in the
8 same manner as the National Government Accounts A and
9 B except that distributable funds or assets shall be
10 made available to the other participating governments
11 rather than the National Government.

12 (6) States may withdraw their own contributions to
13 their States Sub-A account A and contributions made on
14 their behalf by NGO's and other donors if allowed under
15 the terms of the contribution, beginning October 1,
16 2023.

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

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

4 Section 10. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

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March 04 _____, 2016

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/s/ Peter M. Christian
Peter M. Christian
President
Federated States of Micronesia

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