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;

(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 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 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.

(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; 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.’”

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 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.”

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 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 State Sub-Account’s A and B of the Fund are outlined in section 1217 of this chapter and excluded from the provisions above.”

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 Account A and Account B.

(2) All contributions to the Fund shall be deposited
to Account A. 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 Account A, such portion being the amount necessary to maintain the opening balance of Account 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) 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) Repayment of loans to the Fund and payment of the expenses of the Fund shall be made from 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 Account B. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from Account A.

(6) Account B shall consist of funds transferred from Account A and the returns therefrom while in Account B. Funds in Account B may be distributed to the National Government in accordance with section 1214 of this chapter or transferred to 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 Account B.

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

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 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.

(2) In order to enable the National Government to
prepare its annual budget and estimates for the next
fiscal year, by January 30 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.

(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 Account A.

(1) Transfers from Account B.

(a) The Board shall transfer funds from Account B to Account A to the extent necessary to make up any shortfall of funds in Account A needed for reinvestment, repayment of loans to the Fund, 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 Account A any funds in Account B in excess of an amount equal to the sum of all funds transferred from Account A to 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 Account A
to Account B. Funds transferred to 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.”

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-U.S. 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 Sub-A accounts, 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 Sub-A account or Sub-A accounts. (3) National Government contributions to State sub-accounts shall only be to the long-term, Sub-A account A of that state or states. (4) Contributions to a State Sub-A account 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 account B. Contributions made by the National Government to a State Sub-A account 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 Sub-A accounts shall be subject to this
chapter and shall be managed and administered in the
same manner as the National Government Accounts A and
B 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 Sub-A 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
Sub-A 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 in its entirety:

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.

March 04, 2016

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