

TWELFTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SECOND REGULAR SESSION, 2001 CONGRESSIONAL BILL NO. 12-68, C.D.1, C.D.2

AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by amending sections 1202, 1204, 1211, 1213, 1215, 1216 and 1217, for the purpose of establishing an S Account within the FSM Trust Fund to stabilize the transition to the renegotiated terms of the Compact of Free Association, to require that the President of the Federated States of Micronesia transmit to Congress nominations for the Board of Trustees 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, as enacted by Public Law No. 10-
3 150, is hereby amended to read as follows:

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

7 (1) 'Baseline Funding' means the amount of Compact of
8 Free Association assistance provided to a government in
9 fiscal year 2001, adjusted for inflation to the final
10 year of the first Compact;

11 (2) 'Board' means the Board of Trustees of the Fund;

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

16 (4) 'FSM' means the sovereign nation of the Federated

1 States of Micronesia;

2 (5) 'Financial year' means the fiscal year of the
3 Fund,

4 which shall be the twelve-month period ending on the
5 last day of each December;

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

8 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 the
13 physical possession of the Fund assets or evidences of
14 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 the
19 Fund by way of income generated from the Fund's
20 resources and the capital appreciation of those
21 resources;

22 (11) 'National Government' means the National
23 Government of the FSM;

24 (12) 'Other participating government' means a State or

1 local government of the FSM participating pursuant to a
2 memorandum of understanding with the National
3 Government;

4 (13) 'Real value' means the value of contributions to
5 the Fund when adjusted to reflect inflation and
6 population change. For purposes of determining 'real
7 value' at any one time, the value of a contribution in
8 the form of a loan shall be the principal balance then
9 owing. The inflation adjustment shall be made to
10 current prices in line with movements in the US Consumer
11 Price Index. Population refers to the number of FSM
12 citizens residing in the FSM. When current population
13 figures are not available, the Board shall use such
14 estimates thereof as it finds to be reasonable. Such
15 estimates may be extrapolated from the most recent
16 population census based on the population growth rate
17 prior thereto;

18 (14) 'Reinvestment' means the process whereby Fund
19 returns, whether in the form of income or appreciation,
20 become part of the capital of the Fund; and

21 (15) 'Renewal Compact' means the renewed economic
22 assistance provisions contained in Title Two of the
23 Compact of Free Association."

24 Section 2. Section 1204 of title 55 of the Code of the

1 Federated States of Micronesia, as enacted by Public Law No. 10-
2 150, is hereby amended to read as follows:

3 "Section 1204. Purpose.

4 (1) The purpose of the Account A and Account B portion
5 of the Fund is to create a single investment fund in
6 which all levels of government may participate in order
7 to contribute to the long-term financial viability of
8 the FSM by providing an additional source of revenue and
9 to enhance the capacity of the National Government to
10 receive and effectively utilize external resources in
11 order to:

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

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

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

21 (2) The purpose of the S Account portion of the Fund
22 is to:

23 (a) provide a funding source to promote financial
24 stability and provide an orderly adjustment process for

1 each of the contributing governments in the event of
2 significant reductions in economic assistance under the
3 Renewed Compact; or

4 (b) enable a transfer of FSM's own resources into
5 the A Account in the event of minimal or no reductions
6 in economic assistance under the Renewed Compact."

7 Section 3. Section 1211 of title 55 of the Code of the
8 Federated States of Micronesia, as enacted by Public Law No. 10-
9 150, is hereby amended to read as follows:

10 "Section 1211. Contributions to the Fund.

11 (1) *Contributions to the A Account.*

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

17 (b) The Fund may refuse a contribution if it
18 considers that it would not be in the interest of the
19 Fund or the FSM to accept it. The Fund shall notify
20 Congress of the nature, amount, source and terms of any
21 contribution that it has decided to accept or refuse,
22 whereupon the Fund may conditionally accept or refuse
23 the contribution. Acceptance or refusal shall become
24 final no earlier than 180 days after notice to Congress,

1 unless Congress directs by law otherwise.

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

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

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

14 (2) *Contributions to the S Account.* The National
15 Government and each of the State Governments may
16 contribute to the S Account, the increased financial
17 assistance that is received, pursuant to section 231 of
18 the Compact of Free Association, during fiscal years
19 2002 and 2003. The amounts that may be contributed by
20 the National Government and each of the State
21 Governments shall be determined by the Secretary of the
22 FSM Department of Finance and Administration, and shall
23 be appropriated by each contributing government pursuant
24 to its financial management laws and regulations."

1 Section 4. Section 1213 of title 55 of the Code of the
2 Federated States of Micronesia, as enacted by Public Law No. 10-
3 150, is hereby amended to read as follows:

4 "Section 1213. Accounts.

5 (1) The Fund shall be divided into an A Account, a B
6 Account and an S Account.

7 (2) All contributions to the Fund shall be deposited
8 to the A Account, except for the contributions which
9 qualify to be deposited to the S Account, as provided
10 for in section 1211(2) of this chapter. Thereafter, the
11 Board shall ensure that a portion of the Fund returns in
12 each financial year is reinvested at the end of that
13 financial year as capital of the A Account, such portion
14 being the amount necessary to maintain the opening
15 balance of the A Account's capital for the following
16 financial year at the real value of all contributions to
17 the Fund minus all principal repayments made on loans to
18 the Fund.

19 (3) Repayment of loans to the Fund and payment of the
20 expenses of the Fund shall be made from the A Account.
21 The amount, if any, of Fund returns in each financial
22 year which remains after such repayment of loans and
23 payment of expenses, and after reinvestment in
24 accordance with subsection (2) of this section, shall be

1 transferred to the B Account. Except as provided in
2 this subsection or upon termination of the Fund, no
3 funds may ever be removed from the A Account.

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

13 (5) It is anticipated that funds in the A Account will
14 be placed in longer term, higher yielding investments
15 than are funds in the B Account.

16 (6) Funds in the S Account may be used by the
17 contributing governments to offset the negative impact
18 of reductions, if any, under the Renewed Compact as
19 follows:

20 (a) no withdrawals shall be made from the S
21 Account by any contributing government that receives a
22 funding level during the first year of the Renewed
23 Compact that is greater than, the same as, or within
24 four percent (4%) of, its Baseline Funding level. Any

1 contributing government that is prohibited from making a
2 withdrawal from the S Account by this subsection, may
3 make a transfer pursuant to section 1215(2) of this
4 chapter;

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

15 (i) first year: up to the amount of
16 reduction minus four percent (4%) of the Baseline
17 Funding level;(ii)second year: up to the amount of
18 reduction minus eight percent (8%) of the Baseline
19 Funding level;

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

23 (iv) fourth year: up to the amount of the
24 reduction minus sixteen percent (16%) of the Baseline

1 Funding level;

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

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

14 Section 5. Section 1215 of title 55 of the Code of the
15 Federated States of Micronesia, as enacted by Public Law No. 10-
16 150, is hereby amended to read as follows:

17 "Section 1215. Transfers to the A Account.

18 (1) *Transfers from the B Account.*

19 (a) The Board shall transfer funds from the B
20 Account to the A Account to the extent necessary to make
21 up any shortfall of funds in the A Account needed for
22 reinvestment, repayment of loans to the Fund, and
23 payment of the expenses of the Fund pursuant to section
24 1213 of this chapter.

(b) The Board may transfer to the A Account any funds in the B Account in excess of an amount equal to the sum of all funds transferred from the A Account to the B Account 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 to the B Account. Funds transferred to the A Account pursuant to this subsection shall be deemed to be additional contributions to the Fund.

(2) *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

1 established between the US and the FSM, then at the
2 request of a contributing State Government, funds
3 contributed by that government and the earnings accrued
4 on those funds may be transferred into that State's
5 trust fund, provided that the State trust fund has been
6 established with the principles of real asset protection
7 similar in form and purpose to that of the FSM Trust
8 Fund."

9 Section 6. Section 1216 of title 55 of the Code of the
10 Federated States of Micronesia, as enacted by Public Law No. 10-
11 150, is hereby amended to read as follows:

12 "Section 1216. Miscellaneous restrictions.

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

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

17 (3) The Fund shall not invest in instruments
18 denominated in currencies other than the US dollar
19 except as prudent and necessary to avoid exchange rate
20 risks on loans which must be repaid in a currency other
21 than the US dollar."

22 Section 7. Section 1217 of title 55 of the Code of the
23 Federated States of Micronesia, as enacted by Public Law No. 10-
24 150, is hereby amended to read as follows:

"Section 1217. Other participating government accounts. Contributions may be made to the Fund for the benefit of other participating governments in the FSM, in which case the Board shall establish separate A, B and S Accounts within the Fund in the name of each such government. Such accounts shall be subject to this chapter and administered in the same manner as the National Government 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. Fund expenses shall be prorated between the accounts of different governments in proportion to their relative share of the total Fund."

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

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/s/ Leo A. Falcam

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Leo A. Falcam

President

Federated States of

Micronesia

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