

AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by addition of a new chapter 12 for the purpose of establishing an FSM Trust Fund, and for other purposes.

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

Section 1. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new chapter 12 to be entitled "FSM Trust Fund".

Section 2. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1201 to chapter 12 to read as follows:

"Section 1201. Short title. This act is known and may be cited as the FSM Trust Fund Act."

Section 3. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1202 to chapter 12 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) 'Board' means the Board of Trustees of the Fund;
- (2) 'FSM' means the sovereign nation of the Federated States of Micronesia;

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

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

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

(6) '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;

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

(8) '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;

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

(10) 'Other participating government' means a State or local government of the FSM participating pursuant to a memorandum of understanding with the National Government;

(11) 'Real per capita value' means the value of contributions to the Fund when adjusted to reflect

inflation and population change. For purposes of determining 'real per capital 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

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

Section 4. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1203 to chapter 12 to read as follows:

"Section 1203. Establishment. There is hereby created the FSM Trust Fund, separate from the General Fund of the FSM and all other funds."

Section 5. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1204 to chapter 12 to read as follows:

"Section 1204. Purpose. The purpose 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:

(1) Assist the National Government and other participating governments to achieve greater financial autonomy in the management of their recurrent budgets;

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

(3) Enable the FSM at all levels of government to improve existing levels of social and economic infrastructure."

Section 6. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1205 to chapter 12 to read as follows:

"Section 1205. Powers. The Fund shall have the powers and privileges of a corporation, including all powers necessary for the fulfillment and achievement of its purposes."

Section 7. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1206 to chapter 12 to read as follows:

"Section 1206. Legal status, privileges and immunities.

(1) The Fund shall possess juridical personality and, in particular, the capacity to:

(a) contract;

(b) acquire and dispose of immovable and movable property; and

(c) institute legal proceedings.

(2) The fund shall be exempt from any exchange control regulations, restrictions, or moratoria.

(3) Within the scope of its official activities, the Fund, its property, and its assets shall be exempt from all direct taxation."

Section 8. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1207 to chapter 12 to read as follows:

"Section 1207. Limitations on Liability.

(1) No contributor to the Fund shall be liable, by reason of its contribution, for the acts or obligations of the Fund.

(2) Obligations of the Fund are not obligations of the National Government or any other participating government."

Section 9. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1208 to chapter 12 to read as follows:

"Section 1208. Board.

(1) The Fund shall have a Board of Trustees consisting of five trustees appointed and removable by the President of the FSM with the advice and consent of the Congress of the FSM. Nominations to the Board shall take into account the need to have adequate geographical representation from within the FSM, representation of other participating governments with substantial accounts, representation of substantial foreign contributors to the Fund, and complementary experience in the fields of investment management and public finance. Each trustee shall serve for a term of four years or until a successor is appointed, provided, however, that two of the trustees on the initial board shall be appointed to two-year terms. The Board shall elect a chairman from among its own members.

(2) All powers of the Fund shall be vested in and exercisable by the Board.

(3) The functions of the Board shall include:

(a) obtaining, along with others, contributions to the Fund;

(b) operation, supervision and management of the Fund; and

(c) investment and distribution of resources of the Fund.

(4) Trustees shall serve as such without payment of compensation from the Fund or any other source.

Reasonable expenses of the Board itself shall be provided for annually in the national budget of the FSM and not paid out of the Fund.

(5) The Board shall meet as necessary, and reasonable notice shall be given of meetings.

(6) For the purposes of meetings of the Board, three-fifths of trustees shall constitute a quorum.

(7) Except where otherwise provided in this chapter, questions before the Board shall be decided by a majority of votes of trustees present and voting at the meeting.

(8) The Board shall establish its own bylaws and rules of procedure."

Section 10. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1209 to chapter 12 to read as follows:

"Section 1209. Administrator of the Fund. The Secretary of Finance and Administration of the FSM, or his cabinet-level successor, shall serve as administrator of the Fund and all its accounts, and shall provide necessary administrative support to the Fund and its Board."

Section 11. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1210 to chapter 12 to read as follows:

"Section 1210. Resources of the Fund. The resources of the Fund shall consist of all contributions to the Fund, from whatever sources, and all Fund returns. The resources of the Fund shall be held in trust and administered by the Board and used only for the purpose of and in accordance with this chapter."

Section 12. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1211 to chapter 12 to read as follows:

"Section 1211. Contributions to the Fund.

(1) 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 3% and is otherwise cost-free.

(2) 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.

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

(4) 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.

(5) 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."

Section 13. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1212 to chapter 12 to read as follows:

"Sections 1212. Fund managers and custodians.

(1) The Board shall appoint one or more Fund managers and custodians from time to time on such terms and conditions as it determines. No Fund custodian shall be engaged unless it:

(a) is a bank duly chartered to transact business in the Federated States of Micronesia or is a United States bank or trust company regulated by the Federal Reserve Board, a state authority or the federal comptroller of the currency as is appropriate;

(b) has a net worth in excess of \$10,000,000;

(c) has the capacity to clear securities transactions through the Depository Trust Company I.D. System; and

(d) has at least 10 years experience as a custodian of financial assets.

(2) The Board shall adopt investment guidelines for the Fund managers. In so doing, it shall ensure that the capital of the Fund is prudently invested in a balanced portfolio so as to maximize returns while protecting capital and maintaining adequate liquidity.

(3) The Board may delegate to the Fund managers and custodians responsibility for the day-to-day administration of the Fund.

(4) The Fund managers and custodians shall provide such reports on the value and disposition of the resources of the Fund, such reviews of its performance, and such advice on it as are required by the Board.

(5) The compensation and expenses of the Fund managers and custodians in carrying out their duties in administration of the Fund shall be expenses of the Fund."

Section 14. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1213 to chapter 12 to read as follows:

"Section 1213. A and B Accounts.

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

(2) All contributions to the Fund shall be deposited to the A Account. 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, such portion being the amount necessary to maintain the opening balance of the A Account's capital for the following financial year at the real per capita value of all contributions to the Fund minus all principal repayments made on loans to the Fund.

(3) Repayment of loans to the Fund and payment of the expenses of the Fund shall be made from the A Account. 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. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from the A Account.

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

A Account in accordance with 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.

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

Section 15. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1214 to chapter 12 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:

(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 subsections (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 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 agree.

(4) Notwithstanding the foregoing, no funds shall be distributed to the National Government prior to October 1, 2001.

(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."

Section 16. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1215 to chapter 12 to read as follows:

"Section 1215. Transfers to the A Account.

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

(2) 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."

Section 17. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1216 to chapter 12 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 entity.

(3) the Fund shall not invest in instruments denominated in currencies other than the US 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 18. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1217 to chapter 12 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 and B 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 and B 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 19. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1218 to chapter 12 to read as follows:

"Section 1218. Books and Records.

(1) The Board shall cause the Fund managers to keep all proper books and records of account of the assets, property, liabilities, income and expenditure, and transactions of the Fund, and to produce these promptly in order to facilitate audit.

(2) All records and reports of Fund returns shall clearly segregate and identify gross returns, management fees, and net returns.

(3) The books and records of the Fund shall separately account for each government's account, including the pro rata application of expenses of the Fund."

Section 20. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1219 to chapter 12 to read as follows:

"Section 1219. Audits.

(1) At the end of each financial year the accounts of the Fund shall be audited either by the Public Auditor

or by an independent auditor who has no connections with the Fund managers and is appointed by the Board.

(2) The auditor shall satisfy himself that the accounts of the Fund have been properly prepared in accordance with accounting standards adopted by the International Accounting Standards Committee or an entity of similar stature, and he shall either:

(a) state in his report that:

(i) the accounts have been properly prepared in accordance with the books and records of the Fund;

(ii) the books and records of the Fund have been properly kept and contain information adequate for the purpose of his audit;

(iii) the balance sheet and income and expenditure accounts of the Fund give a true and fair view of the Fund's financial position; and

(iv) the financial affairs of the Fund have been properly conducted in accordance with this chapter; or

(b) notify the Board that he is unable to complete his report as provided in sub-paragraph (a), giving his reasons therefor.

(3) The auditor shall include in his report information on the performance of the Fund managers in the investment of the Fund in accordance with the guidelines laid down by the Board with particular

comparative reference to the performance of managers of other funds of a similar size and nature.

(4) The auditor shall submit his report to the Board."

Section 21. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1220 to chapter 12 to read as follows:

"Section 1220. Annual Reports. Within six months of the end of the financial year the Board shall publish and shall submit to the President and the Congress of the FSM and to the Governor or chief executive officer of each other participating government:

(1) An annual report on the activities and management of the Fund;

(2) The accounts of the Fund for that year audited in accordance with section 1219 of this chapter; and

(3) The report of the auditor under section 1219 of this chapter."

Section 22. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1221 to chapter 12 to read as follows:

"Section 1221. Termination of Fund.

(1) The Fund may be terminated only by an act of the Congress of the FSM.

(2) Upon termination of operations the Fund shall immediately cease all activities, except those incidental to the orderly realization and conservation

of its assets and the settlement of its obligations; upon termination of the Fund, disposition of assets of any other participating government's account shall be made only after consultation with such government.

(3) Until final settlement of the obligations of the Fund and the distribution of its assets, the Fund shall remain in existence and all rights and obligations of the Fund under this chapter consistent with the termination of the Fund's operations shall continue unimpaired.

(4) No distribution of assets shall be made until all liabilities to creditors have been discharged. Subsequently, the assets of the Fund shall be distributed to the General Fund of the FSM, or in the case of other participating governments, as requested by them."

Section 23. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by renumbering existing chapter 12 as chapter 13 and renumbering existing section 1201 as section 1301.

Section 24. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

\_\_\_\_\_, 1999

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Jacob Nena  
President  
Federated States of Micronesia