

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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