
A BILL FOR AN ACT

To enact a new title 27 of the Code of the Federated States of Micronesia to govern essential services and to enact a new chapter 2 thereof to create the Federated States of Micronesia Petroleum Corporation as a public corporation, and for other purposes.

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

1 Section 1. The Code of the Federated States of Micronesia,
2 as amended, is hereby further amended by enacting a new title 27
3 entitled "Essential Services".

4 Section 2. The Code of the Federated States of Micronesia,
5 as amended, is hereby further amended by enacting a new chapter 1
6 of title 27 which shall be titled "Reserved".

7 Section 3. The Code of the Federated States of Micronesia,
8 as amended, is hereby further amended by enacting a new chapter 2
9 of title 27 which shall be entitled "Federated States of
10 Micronesia Petroleum Corporation Act of 2007".

11 Section 4. The Code of the Federated States of Micronesia,
12 as amended, is hereby further amended by enacting a new section
13 201 to chapter 2 of title 27 as follows:

14 "Section 201. Short title. This chapter may be cited
15 as the "Federated States of Micronesia Petroleum
16 Corporation Act of 2007"."

17 Section 5. The Code of the Federated States of Micronesia,
18 as amended, is hereby further amended by enacting a new section
19 202 to chapter 2 of title 27 as follows:

1 "Section 202. Definitions. For the purposes of this
2 chapter and subsequent regulations, the following
3 definitions shall apply unless the context otherwise
4 requires:

5 (1) "Board" means the Board of Directors appointed
6 under section 213;

7 (2) "CEO" means the Chief Executive Officer appointed
8 under section 231;

9 (3) "Corporation" means the Federated States of
10 Micronesia Petroleum Corporation;

11 (4) "Chairperson" means the Chairperson of the Board;

12 (5) "Congress" means the Congress of the Federated
13 States of Micronesia;

14 (6) "Executive Council" means the President of the
15 Federated States of Micronesia and the Governor of each
16 State. As used herein, consent, approval or instruction
17 of the Executive Council shall mean such consent,
18 approval or instruction taken with the unanimous consent
19 of the President and each Governor. For the avoidance of
20 doubt, a written resolution of the Federated States of
21 Micronesia Economic Policy Implementation Council, duly
22 signed by the President and each Governor, shall
23 constitute such an instruction notwithstanding the fact
24 that it is also executed by other officials;

25 (7) "FSM" means the Federated States of Micronesia;

1 (8) "Officer" includes any employee of the Corporation
2 vested with a power or duty in accordance with this
3 Chapter;

4 (9) "Premises" means any piece of land and if there
5 are buildings of any sort erected on that land, includes
6 those buildings, and also includes a ship or other
7 vessel;

8 (10) "Product" or "Products" means petroleum products
9 including automotive and industrial diesel fuels,
10 gasoline, unleaded petrol, kerosene, Jet A1, lubricants
11 and other fuel products;

12 (11) "Secretary" means the Secretary of Finance and
13 Administration of the Federated States of Micronesia;

14 (12) "State" means a State of the Federated States of
15 Micronesia;

16 (13) "Works" or "Works of the Corporation" includes the
17 whole of the petroleum storage and dispensing systems
18 and associated works owned, controlled or managed by the
19 Corporation for any purpose associated with its
20 functions under this Act."

21 Section 6. The Code of the Federated States of Micronesia,
22 as amended, is hereby further amended by enacting a new section
23 211 to chapter 2 of title 27 as follows:

24 "Section 211. Establishment of Corporation. The
25 Federated States of Micronesia Petroleum Corporation is

1 hereby established as a public corporation under the
2 laws of the Federated States of Micronesia. It may
3 hereinafter be referred to as "the Corporation"."

4 Section 7. The Code of the Federated States of Micronesia,
5 as amended, is hereby further amended by enacting a new section
6 212 to chapter 2 of title 27 as follows:

7 "Section 212. Independence. The Corporation shall not
8 be deemed to be a government department, board or agency
9 and as such is not subject to the laws governing the
10 activities of the government including but not limited
11 to Title 52 (the Public Service System Act) and Title 55
12 (The Financial Management Act); provided, however, that
13 nothing herein shall be deemed to waive the Corporations
14 responsibility to comply with the Financial Management
15 Act if allotted government funds."

16 Section 8. The Code of the Federated States of Micronesia,
17 as amended, is hereby further amended by enacting a new section
18 213 to chapter 2 of title 27 as follows:

19 "Section 213. Board of Directors of the Corporation.
20 The affairs of the Corporation shall be managed and its
21 corporate powers exercised by a Board of Directors,
22 hereinafter referred to as 'the Board.'"

23 Section 9. The Code of the Federated States of Micronesia,
24 as amended, is hereby further amended by enacting a new section
25 214 to chapter 2 of title 27 as follows:

1 "Section 214. Appointment and Termination of Directors.

2 (1) The Board shall be composed of seven voting
3 members as follows:

4 (a) one director appointed by the President of
5 the FSM with the advice and consent of Congress;

6 (b) one director appointed by the Governor of the
7 State of Chuuk;

8 (c) one director appointed by the Governor of the
9 State of Kosrae;

10 (d) one director appointed by the Governor of the
11 State of Pohnpei;

12 (e) one director appointed by the Governor of the
13 State of Yap; and

14 (f) two directors appointed by the President of
15 the FSM with the advice and consent of Congress from a
16 list of private sector candidates nominated by the four
17 State governors.

18 (2) The persons appointed under subsection 214(1) must
19 have experience in public administration, environmental
20 matters, finance, or oil and gas distribution. At least
21 one person appointed under subsection (1)(f) must have
22 special knowledge and capacity in the field of oil and
23 gas distribution.

24 (3) No person appointed under subsection 214(1) may
25 possess any pecuniary interest in any business or entity

1 which derives any part of its revenue from the
2 distribution of oil or gas in the Federated States of
3 Micronesia.

4 (4) The persons appointed under subsection 214(1) hold
5 office for a term of three years, provided, however,
6 that the initial terms of office shall be determined by
7 lot at the first meeting held by the Board with three
8 members serving an initial term of one year, two serving
9 an initial term of two years and two serving an initial
10 term of three years. All members are eligible for
11 reappointment.

12 (5) Vacancies on the Board shall be filled for the
13 unexpired portion of the term in the same manner as
14 originally filled.

15 (6) The Board may, at any time by majority vote,
16 remove any director for failure to attend three
17 consecutive meetings of the Board, or for neglect of
18 duty or malfeasance in office."

19 Section 10. The Code of the Federated States of Micronesia,
20 as amended, is hereby further amended by enacting a new section
21 215 to chapter 2 of title 27 as follows:

22 "Section 215. Chairperson of the Board. The
23 Chairperson of the Board shall be chosen by the Board
24 members by majority vote and shall serve for a term of
25 one year from the date of selection. The Chairperson may

1 authorize, in writing, any director to exercise any
2 power or perform any function conferred on the
3 Chairperson by or under this Act."

4 Section 11. The Code of the Federated States of Micronesia,
5 as amended, is hereby further amended by enacting a new section
6 216 to chapter 2 of title 27 as follows:

7 "Section 216. Meetings of the Board.

8 (1) The Board must meet as often as may be necessary
9 for the performance of its functions, provided that it
10 shall meet on no less than four occasions each calendar
11 year and provided, further, that at least two such
12 meetings shall require the physical presence of the
13 directors at a single location.

14 (2) At any meeting, the quorum of the Board is a
15 majority of the total directors appointed at the time of
16 the meeting.

17 (3) Notice of a meeting of the Board must be given to
18 each director and shall be delivered by hand or sent by
19 post, facsimile, electronic mail, or other written
20 message to an address supplied by the director to the
21 Board for this purpose.

22 (4) Decisions at meetings of the Board are taken by a
23 simple majority of the directors present and voting.

24 (5) Subject to this section, the Board may regulate
25 its own procedure.

1 (6) The validity of a proceeding of the Board is not
2 affected by a vacancy in the membership, or by any
3 defect in the appointment, of a director."

4 Section 12. The Code of the Federated States of Micronesia,
5 as amended, is hereby further amended by enacting a new section
6 217 to chapter 2 of title 27 as follows:

7 "Section 217. Transaction of Business Without Meeting.

8 A resolution of the Board is valid, even though it was
9 not passed at a meeting of the Board, if -

10 (1) it is signed or assented to by no less than five
11 directors of the Board; and

12 (2) a notice in writing of the proposed resolution was
13 given to each director no less than 7 Days before the
14 resolution is assented to by any director."

15 Section 13. The Code of the Federated States of Micronesia,
16 as amended, is hereby further amended by enacting a new section
17 218 to chapter 2 of title 27 as follows:

18 "Section 218. Remuneration of Directors. Directors who
19 are employees of the national government of the FSM or a
20 State government shall receive no additional
21 compensation for their service as members of the Board.

22 The compensation of members who are not Government
23 employees shall be as determined by the Board and
24 published in the minutes and annual report of the
25 Board."

1 Section 14. The Code of the Federated States of Micronesia,
2 as amended, is hereby further amended by enacting a new section
3 219 to chapter 2 of title 27 as follows:

4 "Section 219. Disclosure of Interest.

5 (1) A director of the Board who has a direct or
6 indirect personal interest in the outcome of any matter
7 before the Board must disclose the interest to the
8 Board.

9 (2) The disclosure of an interest under subsection (1)
10 must be recorded in the minutes of the Board.

11 (3) After making a disclosure under subsection (1),
12 the director -

13 (a) in the case of a meeting, must withdraw from
14 the meeting before the commencement of deliberations of
15 the Board in respect of the matter referred to in
16 subsection (1), although the director may be counted for
17 the purposes of forming a quorum of the Board at the
18 meeting; and

19 (b) in any case, must not vote on the matter."

20 Section 15. The Code of the Federated States of Micronesia,
21 as amended, is hereby further amended by enacting a new section
22 220 to chapter 2 of title 27 as follows:

23 "Section 220. Minutes of Meetings and Business

24 Transacted. The Board must keep minutes of all its
25 meetings and business transacted under section 216 and

1 217 in a proper form. All minutes of the meetings shall
2 be made available to the public upon request."

3 Section 16. The Code of the Federated States of Micronesia,
4 as amended, is hereby further amended by enacting a new section
5 221 to chapter 2 of title 27 as follows:

6 "Section 221. Delegation of Board's Powers.

7 (1) The Board may, from time to time, by notice in
8 writing under the hand of the Chairperson, delegate to
9 any person or committee any of the Board's powers under
10 this Act.

11 (2) A delegation under this section may be made to a
12 specified person or committee, or holder for the time
13 being of a specified office or to the holders of offices
14 of a specified class.

15 (3) A delegation may be made subject to such
16 restrictions and conditions as the Board thinks fit, and
17 may be made either generally or in relation to any
18 particular case or class of cases.

19 (4) A person or committee purporting to exercise a
20 power of the Board by virtue of a delegation under this
21 section must, when required to do so, produce evidence
22 of authority of the person or committee to exercise the
23 power."

24 Section 17. The Code of the Federated States of Micronesia,
25 as amended, is hereby further amended by enacting a new section

1 231 to chapter 2 of title 27 as follows:

2 "Section 231. Appointment of Chief Executive Officer.

3 (1) The Board must appoint a Chief Executive Officer
4 on such terms and conditions as the Board may determine.

5 (2) The CEO -

6 (a) shall serve at the pleasure of the Board;

7 (b) shall have had not less than five years

8 experience in the oil industry, or the equivalent

9 experience in a related profession;

10 (c) shall not engage in any other business

11 without the prior consent of the Board;

12 (d) shall be responsible for the day to day

13 operation of the Corporation;

14 (e) shall be responsible for the proper

15 administration and management of the functions and

16 affairs of the Corporation;

17 (f) shall be responsible for developing a five-

18 year plan and an annual plan describing the medium and

19 short term goals of the Corporation; and

20 (g) must perform such other functions and duties

21 as the Board may determine.

22 (3) The Board shall review the performance of the

23 Chief Executive Officer at least annually in light of

24 the Corporation's goals and objectives, and may

25 terminate the CEO at any time, for any reason.

1 (4) If the CEO is temporarily absent from FSM, or
2 temporarily unable to perform the duties of office, the
3 Board may, appoint a person to act in the place of the
4 CEO during that period."

5 Section 18. The Code of the Federated States of Micronesia,
6 as amended, is hereby further amended by enacting a new section
7 232 to chapter 2 of title 27 as follows:

8 "Section 232. Appointment of Chief Financial Officer.

9 The CEO shall appoint, with the concurrence of the
10 Board, a Chief Financial Officer, for such term as shall
11 be directed by the Board. He shall receive and disburse
12 all funds of the Corporation. The Chief Financial
13 Officer shall serve at all times under the direct
14 supervision of the CEO."

15 Section 19. The Code of the Federated States of Micronesia,
16 as amended, is hereby further amended by enacting a new section
17 233 to chapter 2 of title 27 as follows:

18 "Section 233. Appointment of Health and Safety Officer.

19 The CEO shall appoint, with the concurrence of the
20 Board, a Health and Safety Officer. The Health and
21 Safety Officer, whose duties may be combined with those
22 of another position, shall be responsible for ensuring
23 compliance with all health, safety and environmental
24 laws and for developing, with input from the Board and
25 the Executive Council, health, safety and environmental

1 policies for the day-to-day operation of the
2 Corporation."

3 Section 20. The Code of the Federated States of Micronesia,
4 as amended, is hereby further amended by enacting a new section
5 234 to chapter 2 of Title 27 as follows:

6 "Section 234. Appointment of Other Officers and Staff.
7 To the extent consistent with this Title, the CEO may
8 appoint, retain and terminate, on such terms and
9 conditions as the Board may determine, such officers,
10 employees, agents, or consultants as may be necessary or
11 expedient for carrying out the functions and duties of
12 the Corporation."

13 Section 21. The Code of the Federated States of Micronesia,
14 as amended, is hereby further amended by enacting a new section
15 241 to chapter 2 of title 27 as follows:

16 "Section 241. Functions of the Corporation. The
17 functions of the Corporation are -

18 (1) to operate and manage the Works, either directly
19 or through contracting out such management to third
20 parties;

21 (2) to secure contracts with Product suppliers who
22 will provide the required fuel Products at the lowest
23 cost through competitive bidding to the extent
24 practicable;

25 (3) to provide oil and gas distribution services on

1 the basis of commercially accepted practices, treating
2 all purchasers of Products on equitable terms in
3 accordance with its published prices and requiring all
4 users to pay for fuel purchased; provided that nothing
5 in this subsection shall prevent the Corporation from
6 using subsidies received from governmental,
7 international or private sources to reduce the overall
8 costs charged to users of public utilities services;

9 (4) to plan for the continued security of Product
10 supply in the FSM;

11 (5) to maintain and operate the Works so as to
12 minimize the likelihood of interruption of supply, and
13 to handle the Product in a manner that protects the
14 environment, the safety, and the health of employees and
15 the public;

16 (6) to make safety, health and environmental
17 considerations a priority in planning, and in the
18 development of new Products and processes; to advise
19 promptly, appropriate officials, employees, customers
20 and the public of information on significant industry-
21 related safety, health and environmental hazards, and to
22 recommend protective measures;

23 (7) to invest surplus revenues of the Corporation in
24 the maintenance, expansion and improvement of Product
25 facilities and services;

1 (8) to represent the Federated States of Micronesia
2 with regard to regional fuel supply initiatives as
3 requested by the Government of the Federated States of
4 Micronesia; and

5 (9) to do all those things which shall be necessary or
6 incidental to the performance of its functions under
7 this Chapter."

8 Section 22. The Code of the Federated States of Micronesia,
9 as amended, is hereby further amended by enacting a new section
10 242 to chapter 2 of title 27 as follows:

11 "Section 242. Powers of the Corporation.

12 (1) In performing the functions authorized under this
13 Chapter or under any other law of the Federated States
14 of Micronesia, the Corporation shall have the capacity
15 to exercise all powers normally exercised by a
16 corporation, including, but not limited to, the
17 following:

18 (a) to adopt, alter, and use a corporate seal;

19 (b) to adopt and amend bylaws governing the
20 conduct of its business and the exercise of its powers;

21 (c) to sue and be sued in its corporate name;

22 (d) to acquire, in any lawful manner, real,
23 personal, or mixed property, either tangible or
24 intangible; to hold, maintain, use, and operate such
25 property; and to sell, lease, or otherwise dispose of

1 such property;

2 (e) to, subject to Section 251 and the laws of
3 the Federated States of Micronesia, borrow or raise any
4 sum or sums of money and to issue corporate bonds on
5 such security and upon such terms as may from time to
6 time be deemed necessary for the expansion and
7 improvement of the Works;

8 (f) to retain and terminate the services of
9 employees, agents, attorneys, auditors, and independent
10 contractors upon such terms and conditions as it may
11 deem appropriate; and

12 (g) to do all such other things as may be deemed
13 incidental to or conducive to the attainment of the
14 responsibilities of the Corporation.

15 (2) Without limiting the generality of the powers
16 given to it by subsection (1), and in addition to any
17 other powers provide for by this Act, the Corporation
18 shall have the following specific powers -

19 (a) to acquire, lease, construct, maintain and
20 operate facilities, plant, equipment and infrastructure
21 associated with the supply of Product and the related
22 activities of the Corporation; to erect Works, and
23 install any necessary equipment, machinery and plant for
24 any purpose related to the functions of the Corporation;

25 (b) to acquire, lease and take over in any lawful

1 manner the business, property, assets, and liabilities
2 of any preexisting entity relating to fuel storage and
3 distribution;

4 (c) to purchase, lease or otherwise acquire and
5 maintain such personal and real property as the
6 Corporation may from time to time deem necessary for the
7 furtherance of its functions;

8 (d) to do all such things as it deems expedient
9 to enter into any contract for the sale, lease or
10 purchase of property related to the performance of its
11 functions;

12 (e) to hire out plant or equipment of the
13 Corporation and to enter into contracts for its
14 operation and management;

15 (f) to fix, charge and recover rates and fees for
16 the supply of Product and for any other service provided
17 by the Corporation;

18 (g) to fix, charge and recover any surcharge on
19 rates and fees for the supply of Product during any
20 period when it may be reasonably anticipated that the
21 supply of Product may be affected by a shortage of
22 supply;

23 (h) to ration or differentially allocate the
24 supply of Product during times of shortage;

25 (i) to recover the capital cost of supplying

1 Product or providing other services to particular
2 premises on such terms and conditions as the Corporation
3 determines;

4 (j) to investigate any failure to comply with
5 this Act, or any act that effects the ability of the
6 Corporation to provide services under this Act, and to
7 take such steps as it considers necessary to secure
8 compliance with this Act or to prevent interference with
9 the activities of the Corporation; and

10 (k) to set and to enforce standards for work done
11 by contractors and tradesmen relating to the supply of
12 Product and any other service provided by the
13 Corporation."

14 Section 23. The Code of the Federated States of Micronesia,
15 as amended, is hereby further amended by enacting a new section
16 243 to chapter 2 of title 27 as follows:

17 "Section 243. Executive Council May Give Direction and
18 Require Information. The powers, functions and
19 discretion of the Corporation, its Board of Directors
20 and its officers shall be subject to the right and power
21 of the Executive Council to -

22 (1) request, and obtain from the Corporation, such
23 returns, accounts, and other information as the
24 Executive Council may, from time to time, require, and
25 to institute any investigation, hearing, audit or other

1 informational process as the Executive Council shall
2 deem appropriate; and

3 (2) set the terms and timing of any subsequent
4 divestment of the assets and operations of the
5 Corporation or for the issuance of common shares of the
6 Corporation; provided any such divestment must provide
7 for the payment or satisfaction of all indebtedness
8 incurred in the formation and operation of the
9 Corporation for which the Government of the Federated
10 States of Micronesia may be obligated or a full and
11 complete release of the Government of the Federated
12 States of Micronesia from liability for the repayment of
13 such loans or indebtedness."

14 Section 24. The Code of the Federated States of Micronesia,
15 as amended, is hereby further amended by enacting a new section
16 251 to chapter 2 of title 27 as follows:

17 "Section 251. Debts and obligations of the Corporation.

18 (1) Unless otherwise expressly provided by law, the
19 debts and obligations of the Corporation shall not be
20 debts or obligations of the Government of the Federated
21 States of Micronesia, nor shall the Government of the
22 Federated States of Micronesia be responsible for any
23 such debts or obligations.

24 (2) Unless an express assumption of liability shall be
25 executed by the Corporation and approved by Resolution

1 of Congress, the Corporation shall not assume, or be
2 deemed to have assumed, the liability of any third party
3 whose assets or operations are acquired by the
4 Corporation, including, without limitation, liabilities
5 arising from any breach of legal or contractual
6 obligation or arising from violation of any law, rule,
7 ordinance, regulation or decree.

8 (3) During such periods of time there remains
9 outstanding any loans or obligations payable to the
10 Government of the Federated States of Micronesia or any
11 loans or obligations payable by the Corporation to any
12 other party for which the Government of the Federated
13 States of Micronesia may be a guarantor, borrower or
14 otherwise obligated, no new loans or indebtedness
15 (except credit extended pursuant to energy/fuel supply
16 agreements) in excess of an aggregate amount of
17 \$1,000,000 shall be incurred unless approved by
18 Resolution of Congress."

19 Section 25. The Code of the Federated States of Micronesia,
20 as amended, is hereby further amended by enacting a new section
21 252 to chapter 2 of title 27 as follows:

22 "Section 252. Funds of the Corporation.

23 (1) The funds of the Corporation consist of -

24 (a) money appropriated from time to time by the
25 FSM Congress and the State legislatures and paid to the

1 Corporation;

2 (b) money derived from the disposal, lease, or
3 hire of, or any other dealing with, any property vested
4 in or acquired by the Corporation;

5 (c) money borrowed by the Corporation in
6 accordance with subsection (2);

7 (d) income from interest referred to in
8 subsection (3); and

9 (e) except as provided herein, any other moneys
10 that may become payable to the Corporation in respect of
11 the sale of Product or any matter incidental to its
12 functions and powers.

13 (2) Subject to Section 251, the Corporation may borrow
14 such sums as shall be required by the Corporation to
15 meet any of its obligations or to perform any of its
16 functions.

17 (3) The Corporation shall, to the extent practicable,
18 maintain its funds in the form of liquid, interest
19 bearing bank deposits or such other investments as shall
20 be approved in writing by the Board.

21 (4) The Corporation shall conserve its funds by
22 performing its functions and exercising its powers under
23 this Chapter so as to ensure that the total revenues of
24 the Corporation are sufficient to meet all sums properly
25 chargeable to its revenue account including depreciation

1 and interest on capital."

2 Section 26. The Code of the Federated States of Micronesia,
3 as amended, is hereby further amended by enacting a new section
4 253 to chapter 2 of title 27 as follows:

5 "Section 253. Annual Budget and Costs of
6 Administration.

7 (1) At such time and in such manner as the Board may
8 prescribe, the Chief Financial Officer shall submit to
9 the Board and to the Executive Council a detailed budget
10 for the next ensuing fiscal year which shall include:

11 (a) for the last completed fiscal year, audited
12 accounts indicating the prevailing rates and charges
13 applicable to the Product, the amount of gross income
14 generated by the Corporation, and the amount of all
15 capital and operational expenditures made by the
16 Corporation, together with the closing balance of all
17 bank accounts maintained by the Corporation;

18 (b) for the fiscal year in progress, a statement
19 showing the estimated amount of gross income and the
20 estimated amount of all capital and operational
21 expenditures made by the Corporation, together with such
22 summaries, schedules, and supporting data as the Board
23 may deem necessary; and

24 (c) for the next ensuing fiscal year, a budget
25 showing anticipated rates and charges for the Product,

1 the estimated amounts of gross income of the Corporation
2 and a statement of all estimated capital and operational
3 expenditures anticipated by the Corporation.

4 (2) In the event the expenditures identified in
5 subsection 1(c) are anticipated to exceed the estimated
6 amount of gross income to be generated by the
7 Corporation in the next ensuing fiscal year, plus
8 appropriations, grants, loans or subsidies fully
9 approved by the Congress of the Federated States of
10 Micronesia and the amount of any funds, including the
11 balance of any applicable capital expenditure sinking
12 funds earmarked for the current year's expenditures,
13 carried over from previous fiscal years, the proposed
14 budget shall include a plan for financing the deficit.

15 (3) For any fiscal year during which the Corporation
16 is expected to have outstanding loan balances owing to
17 the Federated States of Micronesia or in which the
18 Federated States of Micronesia continues to be obligated
19 or liable for repayment of any portion of a loan or debt
20 of the Corporation, or if the proposed plan to finance a
21 budget deficit pursuant to subsection (2) above includes
22 a grant, loan, guarantee or subsidy from the Federated
23 States of Micronesia, the budget of the Corporation
24 shall be submitted to Congress for approval and no
25 further loans or indebtedness shall be incurred by the

1 Corporation until the budget has been approved by
2 Resolution of Congress."

3 Section 27. The Code of the Federated States of Micronesia,
4 as amended, is hereby further amended by enacting a new section
5 254 to chapter 2 of title 27 as follows:

6 "Section 254. Accounts, Annual Report, and Audit.

7 (1) The Board, the CEO and the Chief Financial Officer
8 of the Corporation are jointly responsible for ensuring
9 that the Corporation at all times keeps adequate
10 accounts of its transactions and financial affairs, and
11 must, without limitation, ensure that -

12 (a) all moneys received by the Corporation are
13 properly brought to account;

14 (b) all payments by the Corporation are properly
15 authorized;

16 (c) adequate control is maintained over the
17 Corporation's property and the incurring of liabilities;
18 and

19 (d) the accounts are kept in accordance with
20 generally accepted accounting principles.

21 (2) Within three months after the end of each
22 financial year, the Chief Financial Officer must prepare
23 a report of the Corporation's activities during the
24 financial year (referred to as the "Annual Report") and
25 shall submit a copy of the Report to the Secretary, the

1 Board and to the Executive Council.

2 (3) The Annual Report must contain, among other things

3 -

4 (a) a statement of financial performance, which
5 shall include a balance sheet, operating statements, a
6 statement of changes in financial position, and an
7 analysis of changes in retained earnings;

8 (b) a statement summarizing the rates and charges
9 prevailing throughout the prior year with respect to the
10 Product and the outlook for such rates in the coming
11 year;

12 (c) a statement concerning the condition of the
13 Works and the capital expenditure plan of the
14 Corporation;

15 (d) the CEO's one and five-year plans required
16 pursuant to section 231 of this Chapter; and

17 (e) such other information as is required to give
18 a true and fair view of the Corporation's financial and
19 operational affairs.

20 (4) The annual accounts of the Corporation must be
21 audited by the FSM Public Auditor. For this purpose, the
22 Chief Financial Officer must, within three months after
23 the end of each financial year submit to the Public
24 Auditor -

25 (a) the statement of financial performance and

1 accompanying accounts of the Corporation for the year;
2 (b) the most recent budget prepared pursuant to
3 section 253; and
4 (c) the Annual Report for the year prepared in
5 accordance with subsection (2)."

6 Section 28. The Code of the Federated States of Micronesia,
7 as amended, is hereby further amended by enacting a new section
8 255 to chapter 2 of title 27 as follows:

9 "Section 255. Tax liability. The Corporation shall not
10 be exempt from any taxes or assessments. Nothing herein
11 shall be deemed to exempt employees and independent
12 contractors of the Corporation from tax liability for
13 services rendered to the Corporation and the Corporation
14 shall be liable for employee's contributions to the
15 Social Security System of the Federated States of
16 Micronesia in the manner provided by law."

17 Section 29. The Code of the Federated States of Micronesia,
18 as amended, is hereby further amended by enacting a new section
19 261 to chapter 2 of title 27 as follows:

20 "Section 261. Operating Standards. The Board, the CEO
21 and the Health and Safety Officer of the Corporation
22 shall be jointly responsible for developing and
23 implementing written operational policies that shall set
24 forth the manner in which the Corporation is to --

25 (1) manage its business with the goal of preventing

1 incidents and of controlling emissions and wastes to
2 below harmful levels, and to design, operate, and
3 maintain facilities to this end and to respond quickly
4 and effectively to incidents resulting from its
5 operations;

6 (2) design and maintain facilities, establish
7 management systems, provide training and conduct
8 operations in a manner that safeguards people and
9 property;

10 (3) identify and manage risks associated with its
11 products and to ensure that Product is not manufactured
12 or sold when it is not possible through proper design,
13 procedures, and practices to provide an appropriate
14 level of safety for people and the environment;

15 (4) specify precautions required in handling,
16 transporting, using, and disposing of Product and to
17 take reasonable steps to communicate those precautions
18 to employees, customers, and others who might be
19 affected;

20 (5) comply with all applicable environmental and
21 industrial and product safety laws and regulations and
22 to apply responsible standards where laws and
23 regulations do not exist;

24 (6) furnish services that reliably meet responsible
25 standards of performance, efficiency, and courtesy; to

1 furnish accurate and sufficient information about its
2 products and services, including details of guarantees
3 and warranties, so that customers can make informed
4 purchasing decisions; and where the Corporation's
5 products reach the ultimate consumer through independent
6 parties, such as service station dealers and
7 distributors, to actively encourage such parties to
8 achieve standards comparable to those which have been
9 established for the Corporation's own performance; and
10 (7) undertake appropriate reviews and evaluations of
11 its operations to measure progress and to foster
12 compliance with these policies."

13 Section 30. The Code of the Federated States of Micronesia,
14 as amended, is hereby further amended by enacting a new section
15 262 to chapter 2 of title 27 as follows:

16 "Section 262. Contracts.

17 (1) The purchase of all supplies and materials and the
18 construction of all works by independent contractors,
19 when the expenditure exceeds \$25,000, shall be, by
20 contract, let to the lowest responsible bidder; provided
21 that Product quality and reliability of Product supply
22 shall be taken into account when evaluating fuel supply
23 agreements; and provided further that any initial fuel
24 supply agreement and facilities operation agreement
25 executed as part of a transaction by which the

1 Corporation acquires the Works shall be exempt from such
2 requirement. Notice requesting bids shall be published
3 at least ten days before bids are received. The Board
4 may reject any and all bids and re-advertise at its
5 discretion.

6 (2) If, after rejecting bids for materials and
7 supplies, the Board determines that, in its opinion, the
8 materials and supplies may be purchased at a lower price
9 in the open market, the Board may authorize such
10 purchases without further observance of the provisions
11 requiring contracts, bids or notices.

12 (3) In case of major public calamity, or whenever it
13 is in the interest of public safety or necessary to keep
14 public utilities services operational, the Board may
15 determine that the public interest and necessity demand
16 the immediate expenditure of funds to keep the services
17 operational or in a safe condition, and thereupon
18 authorize the expenditure of such sums as may be needed
19 without the observation of the provisions requiring
20 contracts, bids or notices.

21 (4) Where reasonable, preference in the letting of
22 contracts shall be given to local contractors.

23 (5) No director shall vote on any contract awarded by
24 the Board in which the director has a direct or indirect
25 financial interest."

1 Section 31. The Code of the Federated States of Micronesia,
2 as amended, is hereby further amended by enacting a new section
3 263 to chapter 2 of title 27 as follows:

4 "Section 263. Power to discontinue or ration supplies.

5 (1) In addition to any other powers of the Corporation
6 under this Act, the Corporation may, without notice,
7 discontinue, ration or limit any supply of Product or
8 other service provided by it if it considers it
9 necessary or desirable to do so -

10 (a) by reason of a disruption of international
11 supplies;

12 (b) by reason of any accident or emergency;

13 (c) to facilitate any work done or to be done by
14 the Corporation;

15 (d) to avoid or limit pollution; or

16 (e) for the conservation of strategic product
17 reserves.

18 (2) As soon as possible after it has taken any action
19 under sub-section (1) the Corporation shall give notice
20 of its action and indicate the likely duration of the
21 discontinuance or rationing.

22 (3) The Corporation shall not be liable to any person
23 for any loss or damage suffered by that person, and no
24 person shall have a claim against the Corporation, where
25 there is an increase, diminution or discontinuance in

1 the supply of Product or any other service provided by
2 the Corporation, or where there is a diminution in the
3 quality of products, provided that such increase,
4 diminution or discontinuance is caused by accident,
5 other natural phenomenon or other unavoidable cause, by
6 the Corporation acting in good faith in the proper
7 exercise of its functions, or by the exercise by the
8 Corporation of a power under this Act.

9 (4) Without limiting the foregoing, if any fees or
10 charges in respect of any customer, including
11 governments or governmental units of any type, remain
12 unpaid thirty (30) calendar days after the date due for
13 payment, the CEO may discontinue the supply of Product
14 and services to that customer and may commence legal
15 action to recover any rates, fees or charges that have
16 fallen due for payment."

17 Section 32. The Code of the Federated States of Micronesia,
18 as amended, is hereby further amended by enacting a new section
19 264 to chapter 2 of title 27 as follows:

20 "Section 264. Transition; Employees. The Corporation
21 may, at its discretion, undertake to hire employees in
22 good standing of pre-existing entities involved in the
23 business of oil and gas distribution in the FSM,
24 provided that the Corporation shall be under no
25 obligation to do so with respect to any particular

1 employee, nor shall it be required to hire employees at
2 the same salaries or to fill the same positions as they
3 may have enjoyed previously. In the event employees of a
4 pre-existing entity are employed by the Corporation, all
5 accrued benefits, sick leave, annual leave and other
6 contractual obligations owed by the pre-existing entity
7 to its employees shall remain the obligations of that
8 entity and shall not be assumed by the Corporation,
9 except to the extent directed in writing by the Board."

10 Section 33. The Code of the Federated States of Micronesia,
11 as amended, is hereby further amended by enacting a new section
12 265 to chapter 2 of title 27 as follows:

13 "Section 265. Issuance of Shares; divestment.

14 (1) Upon the written instruction of the Executive
15 Council, the Corporation may, through the filing of such
16 documents as shall be required of privately-held
17 corporations, including, without limitation, Articles of
18 Incorporation, Bylaws and Share Affidavits, capitalize
19 itself through the issuance of common shares and, in
20 such event, the provisions of this Chapter shall be made
21 subject to the terms of the Articles of Incorporation
22 and Bylaws, and nothing in this Chapter shall be read as
23 restricting the payment of dividends, the holding of
24 annual shareholder's meetings, the conduct of audits for
25 the benefit of shareholders, the election of Directors

1 and such other corporate governance and shareholder's
2 rights provisions as may be set out in the Articles of
3 Incorporation and Bylaws and approved by the Executive
4 Council.

5 (2) Upon the written instruction of the Executive
6 Council, the Corporation shall, subject to the
7 conditions set forth in Section 243, take all necessary
8 steps to divest its assets and operations, in whole or
9 in part, to such entity or entities as shall be directed
10 by the Executive Council. The Board and officers of the
11 Corporation shall take all necessary actions to
12 effectuate such divestment, including the execution of
13 documents and instruments, and the turnover of books,
14 records and personal property as shall be necessary to
15 transfer operations and assets of the Corporation to the
16 entity or entities designated by the Executive Council.
17 Upon written instruction of the Executive Council
18 following such divestment, the Corporation shall wind up
19 its affairs and cease operation."

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25 Section 34. Effectiveness. This act shall become law upon

1 approval by the President of the Federated States of Micronesia or
2 upon its becoming law without such approval.

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4 Date: 7/05/07

Introduced by: /s/ Resio S. Moses
Joe N. Suka
(by request)

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