A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended, by amending section 216 and section 219, to limit the scope of the National Government guarantee regarding the acquisition or expropriation of property, to clarify the relief available to foreign investment permit holders in certain circumstances and for other purposes.

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

1. Section 216 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 216. Compulsory acquisition of foreign investment property.

(1) The National Government guarantees that [there shall be no compulsory acquisition or expropriation of] it shall not compulsorily acquire or expropriate the property of any [foreign investment] business entity [as to which a Foreign Investment [Certificate] Permit has been issued, except under the following circumstances:

(a) in order to apply sanctions for violation of laws or regulations, as provided for in section 220 of this chapter; or

(b) in extraordinary cases in which (i) such compulsory acquisition or expropriation is consistent with existing FSM law governing eminent domain; (ii)
such compulsory acquisition or expropriation is necessary to serve overriding national interests and (iii) the conditions of subsection (2) below are met; or (c) pursuant to generally applicable laws and regulations of the FSM or any State.

(2) Compulsory acquisition or expropriation of a type described in subsection (1)(b) above may be undertaken only after:

(a) the National Congress has, following a recommendation to this effect by the Secretary, taken official action to identify in writing (i) the property to be acquired or expropriated and (ii) the overriding national interests that make such acquisition or expropriation necessary; and

(b) the Secretary has issued a notification to any holder of a Foreign Investment Permit whose property is to be acquired or expropriated, indicating (i) what property is affected by the action; (ii) what compensation will be paid for the acquisition or expropriation of the property; and (iii) what appeal or other forms of legal recourse are available to the holder of the Foreign Investment Permit affected by the action.

(3) Payment of compensation pursuant to subsection (2)(b) above shall be promptly made and adequate in
amount.

[(4) The National Government shall not take action, or permit action to be taken by any State or other entity within the FSM, that, although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ('creeping expropriation'). If such action nevertheless takes place, the National Government shall be responsible for the prompt and adequate compensation of any injured noncitizen.]

Section 2. Section 219 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 219. Non-discriminatory treatment. Subject to the provisions of this chapter and regulations promulgated hereunder, the National Government shall not take action, or permit any State to take action, that would result in a foreign investor being [given treatment that is less favorable than the treatment given to] treated less favorably than citizens, or business entities wholly owned by citizens, engaging in business in the FSM. If, upon application, the Supreme Court finds that action in contravention of this section has been taken, or is about to be taken, the Court may grant injunctive relief, however, no liability for
Section 3. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 5/16/05

Introduced by: /s/ Alik L Alik
Alik L. Alik