

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 MICRONEIA:

1 Section 1. Section 216 of title 32 of the Code of the
2 Federated States of Micronesia, as enacted by Public Law No.
3 10-49, is hereby amended to read as follows:

4 "Section 216. Compulsory acquisition of foreign
5 investment property.

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

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

16 (b) in extraordinary cases in which (i) such
17 compulsory acquisition or expropriation is consistent
18 with existing FSM law governing eminent domain; (ii)

1 such compulsory acquisition or expropriation is
2 necessary to serve overriding national interests and
3 (iii) the conditions of subsection (2) below are met; or
4 (c) pursuant to generally applicable laws and
5 regulations of the FSM or any State.

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

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

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

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

1 amount.

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

11 Section 2. Section 219 of title 32 of the Code of the
12 Federated States of Micronesia, as enacted by Public Law No. 10-
13 49, is hereby amended to read as follows:

14 "Section 219. Non-discriminatory treatment. Subject to
15 the provisions of this chapter and regulations
16 promulgated hereunder, the National Government shall not
17 take action, or permit any State to take action, that
18 would result in a foreign investor being [~~given~~
19 ~~treatment that is less favorable than the treatment~~
20 ~~given to~~] treated less favorably than citizens, or
21 business entities wholly owned by citizens, engaging in
22 business in the FSM. If, upon application, the Supreme
23 Court finds that action in contravention of this section
24 has been taken, or is about to be taken, the Court may
25 grant injunctive relief, however, no liability for

1 damages shall arise in respect of any such action."

2 Section 3. This act shall become law upon approval by the
3 President of the Federated States of Micronesia or upon its
4 becoming law without such approval.

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6 Date: 5/16/05

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

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