A BILL FOR AN ACT

To amend title 25 of the Code of the Federated States of Micronesia by repealing chapters 1 through 4 of subtitle I in their entirety and amending chapters 5 through 7 of subtitle II by renumbering chapters 5 through 7 as chapters 1 through 3, for the purpose of revising and updating the Federated States of Micronesia Environmental Protection Act, and for other purposes.

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

Section 1. Chapters 1 through 4 of title 25 of the Code of the Federated States of Micronesia are hereby repealed in their entirety.

Section 2. Chapter 5 of title 25 of the Code of the Federated States of Micronesia is hereby renumbered as chapter 1.

Section 3. Section 501 of title 25 of the Code of the Federated States of Micronesia entitled “Short title” is hereby amended to read as follows:

“Section [501] 101. Short title. This [sub]title may be cited as the Federated States of Micronesia Environmental Protection Act.”

Section 4. Section 502 of title 25 of the Code of the Federated States of Micronesia entitled “Public policy” is hereby amended to read as follows:

“Section [502] 102. Public policy. (1) The Federated States of Micronesia, recognizing the profound impact of man’s activity on the interrelations of all components of the natural
environmental, particularly the profound influences of population fluctuation and redistribution, cultural change, resource exploitation, and new technological developments, and recognizing further the critical importance of restoring and maintaining environmental quality for the overall welfare and development of man, and recognizing further the severe threat posed by anthropogenic climate change and the urgent need to both mitigate and adapt to future changes in the climate, declares that it is the continuing policy of the Federated States of Micronesia, in cooperation with state and municipal governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the Federated States of Micronesia.

(2) In order to carry out the policy set forth in this subtitle, it is the continuing responsibility of the Federated States of Micronesia to use all
practicable means, consistent with other essential considerations of national policy, to improve and coordinate governmental plans, functions, programs, and resources to the end that the inhabitants of the Federated States of Micronesia may:

(a) fulfill the responsibilities for each generation as trustee of the environment for succeeding generations;

(b) [assure for all Micronesians] enjoy safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences; [and]

(d) preserve important historic, cultural, and natural aspects of our Micronesian heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

and

(e) remain responsible members of the global community by complying with the international legal obligations accepted by the Federated States of Micronesia upon ratifying or acceding to international environment agreements.
(3) The effort to protect and preserve the environment will be carried forward in close cooperation with the States in the formulation of policy, enforcement, and other activities.

(4) The Federated States of Micronesia recognizes that each person has a responsibility to contribute to the preservation and enhancement of the environment.”

Section 5. Section 503 of title 25 of the Code of the Federated States of Micronesia entitled “Definitions” is hereby amended to read as follows:

“Section [503] 103. Definitions. The following words, for the purpose of this [sub]title shall have the following meanings:

(1) [“Board” means the Secretary of Human Resources] “Director” means the Director of the Office of Environment and Emergency Management;

(2) [“Chairman of the Board” or “chairman” means the Secretary of Human Resources or his designee] “Exclusive Economic Zone” means the exclusive economic zone defined in title 18 of the Code of the Federated States of Micronesia;

(3) “Office” means the Office of Environment and Emergency Management of the Federated States of Micronesia;
(4) "Person" means the Federated States of Micronesia, a State, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Federated States of Micronesia or any State or country, lessee or other occupant of property, or individual, acting singly or as a group;

[(4)] (5) "Pollutant" means one or more substances or forms of energy which, when present in the air, land, or water, are or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

[(5) "Primary drinking water regulation" means a regulation which:

(a) Applies to public water systems;

(b) Specifies contaminants which, in the judgment of the Boards, may have any adverse effect on the health of persons; and

(c) Specifies for each such contaminant either:

(i) A maximum contaminant level, if, in the judgment of the Board, it is economically and technologically feasible to ascertain the level of
such contaminant in water in public water systems; or

(ii) If, in the judgment of the Board, it is not economically or technologically possible to so ascertain the level of such contaminant, each treatment technique known to the Board which leads to a reduction in the level of such contaminant;

(d) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the system and requirements as to:

(i) The minimum quality of water which may be taken into the system; and

(ii) Siting for new facilities for public water systems.

(6) “Secondary drinking water regulation” means a regulation which applies to public water systems and which specifies the maximum contaminant level which in the judgment of the Board is requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water:

(a) Which may adversely affect the odor or appearance of such water and consequently may cause a
substantial number of persons served by the public water system providing such water to discontinue its use; or

(b) Which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic or other circumstances.

(7) “Trust Territory Environmental Protection Board” means the board established pursuant to 25 F.S.M. C. 201.”

Section 6. Chapter 6 of title 25 of the Code of the Federated States of Micronesia is hereby renumbered as chapter 2.

Section 7. Sections 601 through Section 605 entitled “RESERVED” are amended to read as follows:

“Sections [601] 201 – [605] 205. RESERVED.”

Section 8. Section 606 of title 25 of the Code of the Federated States of Micronesia entitled “Technical assistance” is hereby amended to read as follows:


The President shall provide the [Board] Office with necessary technical and legal assistance through departments, offices, and agencies of the National Government.”

Section 9. Sections 607 of title 25 of the Code of the Federated States of Micronesia entitled “RESERVED” is hereby
amended to read as follows:

“Section. [607] 207. RESERVED.”

Section 10. Section 608 of title 25 of the Code of the Federated States of Micronesia entitled “Reports” is hereby amended to read as follows:

“Section [608] 208. Reports.

The [Board] Director shall transmit to the President and Congress, no later than September 30th of each year, an environmental quality report for the preceding calendar year, [which shall set forth:

(1) the status and conditions of the major natural, artificial, or altered environmental classes of the Federated States of Micronesia, including, but not limited to, the air the waters, including marine, estuarine, and fresh water, and the terrestrial environmental, including, but not limited to, the forest, mangrove areas, beaches, reefs, drylands, wetlands, and urban and rural environment;

(2) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of these trends on the social, economic, and other requirements of the Federated States of Micronesia;

(3) the adequacy of available natural resources for fulfilling human and economic requirements of the...
Federated States of Micronesia in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the National Government, State governments, local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment, the conservation, development, and utilization of the Federated States of Micronesia;

and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.)

covering the status and conditions of the environment of the Federated States of Micronesia, and a review of the programs and activities (including regulatory activities) of the HYPERLINK "http://www.fsmlaw.org/fsm/index.htm"National Government, state governments, municipal governments and nongovernmental entities, with particular reference to their effect on the environment of the Federated States of Micronesia."

Section 11. Section 609 of title 25 of the Code of the Federated States of Micronesia is hereby amended to read as follows:
Section 209. General powers and duties of the [Board] Office.

The [Board] Office shall have the power and duty to work in close cooperation with the States to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water in accordance with this [sub] title and with the regulations adopted and promulgated pursuant to this [sub]title, including measures undertaken to prohibit or regulate the testing, storage, use, disposal, import and export of radioactive, toxic chemical, or other harmful substances. The [Board] Office shall balance the needs of economic and social development with those of environmental quality and shall adopt regulations and pursue policies which, to the maximum extent possible, promote both these needs and the policies set forth in section [502] 102 of this title."

Section 12. Section 610 of title 25 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 210. Specific powers and duties of the [Board] Office.

For the purposes set forth in section [604] 209 of
this chapter, the [Board] Director is authorized and empowered to:

(1) adopt, approve, amend, revise, promulgate, and repeal regulations[,] in the manner which is or may be provided by law[,] to effect the purposes of this [sub]title, and enforce such regulations which shall have the force and effect of law[. These may include regulations to give effect to the obligations contained in the following international environmental treaties ratified by the Federated States of Micronesia

(a) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;

(b) Montreal Protocol on Substances that Deplete the Ozone Layer;

(c) Stockholm Convention on Persistent Organic Pollutants; and

(d) Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes within the South Pacific Region.

(2) [adopt, approve, amend, revise, promulgate, and repeal primary and secondary drinking water regulations[,] in accordance with regulations adopted under this section may collect fees from persons
submitting applications or receiving permits or licenses. Fees collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;

(3) accept appropriations, loans, and grants from [the United States Government or any agency thereof and other] any appropriate sources, public or private, which [loans, grants, and appropriations] shall not be expended for other than the purposes of this [sub]title;

(4) adopt and provide for the continuing administration of nationwide programs for the protection of the environment, human health, welfare, and safety of the Federated States of Micronesia [and for the prevention, control, and abatement of pollution of the air, land, and water, including programs for the abatement or prevention of the contamination of drinking water systems], and from time to time review and modify such programs as necessary; and

(5) [establish criteria for classifying air, land, and water in accordance with present and future uses;]

[(6) establish and provide for the continuing administration of a permit system whereby a permit]
shall be required for the discharge by any person or any pollutant in the air, land, or water, or for the conduct by any person of any activity, including, but not limited to, the operation, construction, expansion, or alteration of any installation, which results in or may result in the discharge of any pollutant in the air, land, or water, provide for the issuance, modification, suspension, revocation, and termination of such permits, and for the posting of any appropriate bond.]

[(7)] collect information and establish recordkeeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this [sub]title

[(8) conduct a study of those United States environmental protection laws which contain standards applicable to the Government of the Federated States of Micronesia, pursuant to section 161(b) of the Compact of Free Association, and make recommendations as to any necessary modifications of those laws in light of the particular circumstances of the Federated States of Micronesia.]

Section 13. Chapter 7 of title 25 of the Code of the Federated States of Micronesia is hereby renumbered as chapter 3.
Section 14. Section 701 of title 25 of the Code of the Federated States of Micronesia entitled “Cooperative agreements” is hereby amended to read as follows:


(1) The [Board] Director is authorized to enter into written cooperative agreements with the States or State agencies [for the purpose of:

(a) collecting data and any information relative to identifying the local needs with respect to controlling, protecting, and enhancing the environmental quality of the State;

(b) acting as an agent of the Board in implementing programs at the State level;

(c) providing funds from the Board for the purpose of implementing environmental protection program activities within each State;

(d) conducting investigations, making studies, reviewing local grievances, and making recommendations as needed to the Board; and

(e) performing any other activities within the jurisdiction of the Board.] to assist in achieving the purposes set out in this title.

(2) [Such function or functions delegated to the States pursuant to subsection (1) of this section may
be reassumed and performed by the Board if such
delegation will result in the actual termination of
any financial grant received by the Board. Notice of
such reassumption shall be by written notice to each
State or State agency involved.]
The Director is authorized to enter into written
cooperative agreements with the departments or
agencies of the National Government of the Federated
States of Micronesia to assist in achieving the
purposes of this title. “

Section 15. Section 702 of title 25 of the Code of the
Federated States of Micronesia entitled "Environment impact
statements” is hereby amended to read as follows:


(1) [The National Government and its agencies Any
person, prior to taking any action that may
significantly affect the quality of the environment
within the exclusive economic zone of the Federated
States of Micronesia, or within the boundaries of the
National Capital Complex at Palikir, must submit an
environmental impact statement to the [Board]
Director, in accordance with regulations established
by the [Board] Director [, prior to taking any major
action significantly affecting the quality of the
human environment. This requirement shall apply to
any such action funded in any part by the National
Government or its agencies; provided, that in such
case the recipient of the funds may be required to
submit the environmental impact statement as
condition to its receipt of funds].

(2) The environmental impact statements required by
subsection (1) of this section [shall be a] are
public documents, and [shall] must include a detailed
statement on:

(a) the environmental impact of the
proposed action;

(b) any adverse environmental effects
which cannot be avoided should the proposal be
implemented;

(c) the alternatives to the proposed
action;

(d) the relationship between local short-
term uses of the environment and the maintenance and
enhancement of long-term productivity; and

(e) any irreversible and irretrievable
commitments of resources which would be involved in
the proposed action should it be implemented."

Section 16. Section 703 of title 25 of the Code of the
Federated States of Micronesia entitled "Right of entry" is
hereby amended to read as follows:
“Section [703] 303. Right of entry.

Whenever it is necessary for the purposes of this [sub]title, the [Board] Director, or any [member] officer, agent, or employee when duly authorized by the [Board] Director or by court order, may, at reasonable times, enter any establishment or upon any property.”

Section 17. Section 704 of title 25 of the Code of the Federated States of Micronesia entitled “Violation - Enforcement action” is hereby amended to read as follows:


Any person who violates any provision of this [sub]title, or any permit, regulation, standard, or order issued or promulgated under this [sub]title, shall be subject to enforcement action by the [Board] Office. Such enforcement action may include, but is not limited to:

(1) an order to cease and desist from the violation, or to comply within a specific time period;
(2) an order to clean up or abate the effects of any pollutant;
(3) the imposition of a civil penalty up to $[10,000] 100,000 for each day of the violation.

Penalties collected under this subsection shall be...
paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;

(4) a civil action commenced in the Trial Division of the Federated States of Micronesia Supreme Court to enjoin the violation;

(5) a civil action for damages commenced in the Trial Division of the Federated States of Micronesia Supreme Court. Such action may be in addition to any civil penalties imposed hereunder. In determining such damages, the Court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurred, and corrective action, if any, taken by the violator. Damages collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;

and

(6) conducting a public hearing to determine the authenticity of the facts upon which the alleged violation is based, adequate notice of which and opportunity to appear and be heard at which shall be
afforded to all interested persons.”

Section 18. Section 705 of title 25 of the Code of the Federated States of Micronesia entitled “Administrative procedure applicable” is hereby amended to read as follows:

“Section [705] 305. Administrative procedure applicable.

The provisions of sections [704] 304 and [707] 307 of this chapter shall be interpreted consistently with the provisions of any law concerning administrative procedure which is or may hereafter become Federated States of Micronesia law. In the event of conflict between the two, the provisions of the latter shall supersede and be controlling.”

Section 19. Section 706 of title 25 of the Code of the Federated States of Micronesia entitled “Judicial review” is hereby amended to read as follows:


(1) Any person who is or will be adversely affected by the enforcement of any standard, policy, regulation, permit, order, or penalty [of the Board and] imposed under this title or regulations made pursuant to this title and who alleges its invalidity may file a petition for a declaratory judgment thereon in the Trial Division of the Federated States of Micronesia Supreme Court.
(2) The Court shall declare the standard, policy, regulation, permit, order, or penalty invalid if it finds that it exceeds the statutory authority of the [Board] Director, or that it is arbitrary and capricious."

Section 20. Section 707 of title 25 of the Code of the Federated States of Micronesia entitled "False statements" is hereby amended to read as follow:

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this [sub]title, or by any permit, regulation, or order issued under this [sub]title, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this [sub]title or by a permit, regulation, or any order issued under this [sub]title, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both."

Section 21. Section 708 of title 25 of the Code of the Federated States of Micronesia is hereby repealed in its
Section 22. Title 25 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 308 which shall be entitled “Authorized officers” to read as follows:

“Section 308. Authorized officers.
Agreements made under section 301 of this title may include the authorization by the Director of officers of National and state government agencies to perform the duties and exercise the powers provided in this title or in regulations adopted and promulgated pursuant to this title.”

Section 23. 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: 1/17/12
Introduced by: /s/ Florencio S. Harper
Florencio S. Harper (by request)