

A BILL FOR AN ACT

To further amend title 52 of the Code of the Federated States of Micronesia, as amended, by enacting a new chapter 6, for the purpose of establishing a retirement program for employees of the Government of the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Title 52 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by enacting a
3 new chapter 6 to be entitled the "Federated States of Micronesia
4 Retirement Plan".

5 Section 2. Title 52 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by enacting a
7 new section 601 of chapter 6 to read as follows:

8 "Section 601. Short title. This chapter may be cited
9 as the Federated States of Micronesia Retirement Plan."

10 Section 3. Title 52 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by enacting a
12 new section 602 of chapter 6 to read as follows:

13 "Section 602. Definitions.

14 (1) 'Accounts' or 'Member's Accounts' means the
15 member's employee account and the member's government
16 account. *

17 (2) 'Annuity Starting Date' means the first day of
18 the first period for which a pension is paid as an
19 annuity or any other form.

20 (3) 'Beneficiary' means any person, persons, or
21 entity named by a member by written designation filed
22 with the Board to receive the member's accounts in the
23 event of the member's death. If no such designation is
24 in effect at the time of the death of the member, or if
25 no person, persons, or entity so designated shall

1 survive the member, the member's surviving spouse, if
2 any, shall be deemed to be the beneficiary; otherwise
3 the beneficiary shall be the estate of the member.

4 (4) 'Board' or 'Board of Trustees' means the Board
5 of Trustees provided for herein as the governing body
6 responsible for the direction and operation of the
7 affairs and business of the system. Title to all assets
8 of the plan shall be held for the plan by the Board or
9 its qualified agents or custodians.

10 (5) 'Breakpoint' means \$12,000 in 1997, increased
11 by four percent (4%) per year, compounded annually,
12 beginning in 1998.

13 (6) 'Compensation' means the base salary paid to an
14 employee for services rendered to the Employer.

15 (7) 'Credited Service' means service recognized for
16 purposes of computing the amount of any benefit,
17 determined as provided in subsection 2 of section 605.

18 (8) 'Custodian' means any agent who is qualified
19 and has assumed the responsibility for the physical
20 possession of plan assets.

21 (9) 'Effective Date' means July 1, 1997.

22 (10) 'Employee' means any person employed by the
23 employer as a permanent, presidentially appointed, or
24 elected employee who receives stated compensation other
25 than a pension, severance pay, or retainer or fee under

1 contract.

2 (11) 'Employee Account' means the account credited
3 with employee contributions made by a member and
4 earnings on those contributions.

5 (12) 'Employee Contributions' means amounts
6 contributed pursuant to subsection 1 of section 606.

7 (13) 'Employer' means the Government of the
8 Federated States of Micronesia or any successor with
9 respect to its employees; or any other organization
10 participating in the plan as provided in subsection 2 of
11 section 612 with respect to its employees.

12 (14) 'Enrollment Date' means the first day of any
13 payroll period following the effective date or the date
14 the employee becomes a member of the plan, if later.

15 (15) 'Equivalent Actuarial Value' means the
16 equivalent value determined on the basis of the
17 mortality table based on a fixed blend of 50 percent of
18 the male mortality rates and 50 percent of the female
19 mortality rates from the 1983 Group Annuity Mortality
20 Table set forward three years and interest at the rate
21 of seven percent (7%) per year, compounded annually,
22 except as otherwise specified in the plan.

23 (16) 'Final Average Compensation' means the average
24 annual compensation of a member during the sixty
25 consecutive calendar months in the last 120 calendar

1 months of his employment by the employer affording the
2 highest such average, or during all of the months of his
3 employment by the employer if less than sixty months.

4 (17) 'Fund' means the investment fund or funds
5 established by the Government of the Federated States of
6 Micronesia Retirement System in which employee
7 contributions, government contributions, and pension
8 benefit contributions are invested and which is
9 comprised of the total of all employee accounts, all
10 government accounts, and the pension benefit account as
11 provided for by section 606.

12 (18) 'Government' means the Government of the
13 Federated States of Micronesia.

14 (19) 'Government Account' means the account
15 credited with government contributions on behalf of a
16 member and earnings on those contributions.

17 (20) 'Government Contributions' means amounts
18 contributed pursuant to subsection 2 of section 606.

19 (21) 'Member' means any person included in the
20 membership of the plan, as provided in section 604.

21 (22) 'Normal Retirement Age' means the later of an
22 employee's 60th birthday or the second anniversary of
23 the date he become a member.

24 (23) 'Normal Retirement Date' means the first day
25 of the calendar month coinciding with or immediately

1 following an employee's attainment of normal retirement
2 age.

3 (24) 'Offset Benefit' means an amount equal to the
4 annual pension, payable as a monthly single life
5 annuity, commencing at the member's annuity starting
6 date which is of equivalent actuarial value to the value
7 of the member's accounts.

8 (25) 'Pension' means the annual amount of payments
9 under the plan as provided in section 609.

10 (26) 'Pension Benefit Account' means the account
11 credited with pension benefit contributions and earnings
12 on those contributions.

13 (27) 'Pension Benefit Contributions' means amounts
14 contributed pursuant to subsection 6 of section 606.

15 (28) 'Plan' means the Government of the Federated
16 States of Micronesia Retirement Plan as set forth in
17 this chapter or as amended from time to time.

18 (29) 'Plan Year' means the calendar year.

19 (30) 'System' means the Government of the Federated
20 States of Micronesia Retirement System.

21 (31) 'System Actuary' means a Fellow of the Society
22 of Actuaries who is engaged by the Board of Trustees to
23 determine the employer contributions to the pension
24 benefit account required by subsection 6 of section 606.

25 (32) 'Valuation Date' means the last business day

1 of each calendar quarter, the first valuation date is
2 September 30, 1997.

3 (33) 'Vesting Service' means service recognized for
4 purposes of determining eligibility for certain benefits
5 under the plan, determined as provided in subsection 1
6 of section 605."

7 Section 4. Title 52 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by enacting a
9 new section 603 of chapter 6 to read as follows:

10 "Section 603. Creation. The Government of the
11 Federated States of Micronesia Retirement System shall
12 be an autonomous agency and a public corporation of the
13 Government of the Federated States of Micronesia."

14 Section 5. Title 52 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by enacting a
16 new section 604 of chapter 6 to read as follows:

17 "Section 604. Membership.

18 (1) Membership Requirements. Every person in the
19 employ of the employer shall become a member of the plan
20 as of the first day of the calendar month, beginning
21 with July 1, 1997 coincident with or immediately
22 following the date he completes 90 days of employment by
23 the employer, provided he is then an employee.

24 (2) Events Affecting Membership.

25 (a) An employee's membership in the plan shall

1 end when he is no longer employed by the employer except
2 that he shall remain a member so long as he meets one of
3 the following requirements:

4 (i) The member is in receipt of a
5 pension.

6 (ii) The member is entitled to an
7 immediate or a deferred pension.

8 (iii) The member's right to his government
9 account is nonforfeitable under the provisions of
10 subsection 2 of section 606, and the member has not
11 received distribution of his government account under
12 the provisions of paragraphs (a) or (b) of subsection 3
13 of section 607.

14 (b) Membership shall continue while on
15 approved leave of absence from service or during a
16 period while he is not an employee but is in the employ
17 of the employer, but no vesting service or credited
18 service shall be counted for that period, except as
19 specifically provided in section 605 and such person's
20 benefit shall be determined in accordance with the
21 provisions of the plan in effect on the date he ceased
22 to be an employee.

23 (c) Membership Upon Reemployment. If an
24 employee's membership in the plan ends and he again
25 becomes an employee, he shall again become a member as

1 of his date of restoration to service as an employee."

2 Section 6. Title 52 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by enacting a
4 new section, 605 of chapter 6 to read as follows:

5 "Section 605. Service.

6 (1) Vesting Service.

7 (a) Vesting Service means the sum of credited
8 service as defined in subsection 2 of section 605 and
9 military service' as defined in the immediately following
10 paragraph (b).

11 (b) For purposes of this section, "military
12 service" means a period of time, up to a maximum of two
13 years, when a member served in the Armed Forces of the
14 United States, including but not limited to the Army,
15 Navy, Air Force, Marine Corps, or Coast Guard.

16 (2) Credited Service.

17 (a) The period of employment of a member
18 during which he was an employee and received or was
19 entitled to received compensation from the employer
20 shall be credited service under the plan. One-twelfth
21 of a year of credited service shall be counted for each
22 completed calendar month of credited service.

23 (b) For a member who became a member on the
24 effective date, credited service shall include the
25 following periods:

1 (i) Periods of employment by the
2 Government of the Trust Territory of the Pacific
3 Islands;

4 (ii) Periods of employment by a State of
5 the Federated States of Micronesia;

6 (iii) Periods of employment by the College
7 of Micronesia-FSM; and

8 (iv) Periods of employment by agencies,
9 instrumentalities, and public corporations of the
10 Federated States of Micronesia.

11 (c) A member whose employment with the
12 employer is terminated for any of the following reasons
13 shall have his credited service for the period of
14 employment ending with such termination cancelled:

15 (i) Defrauding the employer;

16 (ii) An act of dishonesty with respect to
17 the employer, or

18 (iii) Conviction of a felony which
19 occurred while an employee.

20 (3) Restoration of Retired Member or Other Employee
21 to Service;

22 (a) Upon restoration to service with the
23 employer of a member in receipt of a pension, the
24 following shall apply:

25 (i) His pension shall cease and any

1 election of an optional benefit then in effect shall be
2 void.

3 (ii) Any vesting service and credited
4 service to which he was entitled when he retired shall
5 be restored to him.

6 (iii) Upon later retirement, his pension
7 shall be based on the benefit formula then in effect and
8 his compensation and credited service before and after
9 the period when he was not an employee, except that it
10 shall be reduced by an amount of equivalent actuarial
11 value to the plan benefits he received before his
12 restoration to service.

13 (b) Upon restoration to service with the
14 employer of a member who is described in either of the
15 immediately following subparagraphs (i) or (ii), any
16 vesting service and credited service to which he was
17 entitled when he terminated employment shall be restored
18 to him.

19 (i) A former employee who is entitled
20 to, but not in receipt of a pension.

21 (ii) A former employee who had not
22 previously received a distribution of either his
23 employee account or his government account.

24 (c) Upon restoration to service with the
25 employer of any other former employee, such employee

1 shall be treated as a new employee, and no credited
2 service or vesting service to which he was previously
3 entitled shall be restored.

4 Section 6. Title 52 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by enacting a
6 new section 606 of chapter 6 to read as follow:

7 "Section 606. Accounts.

8 (1) Employee Account.

9 (a) Beginning on his enrollment date, a member
10 shall contribute six percent (6%) of his compensation to
11 the plan. Such contributions and earnings thereon shall
12 be credited to the member's employee account.

13 (b) A member shall at all times be 100% vested
14 in, and have a nonforfeitable right to, his employee
15 account.

16 (2) Government Account.

17 (a) The employer shall contribute to the plan
18 on behalf of each of its members an amount equal to one-
19 third of the amount of employee contributions. Such
20 contributions and earnings thereon shall be credited to
21 the member's government account.

22 (b) Except as provided in the immediately
23 following paragraph (c), a member shall be vested in,
24 and have a nonforfeitable right to, his government
25 account after the completion of five years of vesting

1 service or upon meeting the requirements for a pension
2 as determined in section 608.

3 (c) A member whose employment with the
4 employer is terminated for any of the following reasons
5 shall forfeit his entire government account:

6 (i) Defrauding the employer,

7 (ii) An act of dishonesty with respect to
8 the employer, or

9 (iii) Conviction of a felony which
10 occurred while an employee.

11 (3) Valuation of the Employee Accounts and
12 Government Accounts. The trustees shall value the
13 employee accounts and government accounts at least
14 quarterly. On each valuation date there shall be
15 allocated to the accounts of each member his
16 proportionate share of the increase or decrease in the
17 fair market value of his accounts, based on a uniform
18 allocation method which applies uniformly to all plan
19 members. Whenever an event requires a determination of
20 the value of the member's accounts, the value shall be
21 computed as of the valuation date coincident with or
22 immediately preceding the date of determination plus
23 contributions to the accounts after such valuation Date
24 and minus withdrawals from the accounts after such
25 valuation date, subject to the provisions of subsection

4 of section 606.

(4) Discretionary Power of the Board. The Board reserves the right to change from time to time the procedures used in valuing the accounts or crediting (or debiting) the accounts if it feels, after due deliberation and upon the advice of counsel and/or the current recordkeeper, that such an action is justified in that it results in more accurate reflection of the fair market value of assets. In the event of a conflict between the provisions of this section and such new administrative procedures, those new administrative procedures shall prevail.

(5) Statement of Accounts. At least once a year, each member shall be furnished with a statement setting forth the value of his accounts and the vested portion of his accounts.

(6) Pension Benefit Account.

(a) In addition to its government contributions, the employer shall contribute to the plan on behalf of each of its members an amount equal to a percentage of each member's compensation where such percentage is determined annually by the system actuary as the amount required to pay for the pension benefits provided by section 608.

(b) The percentage required by the immediately

1 preceding paragraph (a) shall be the amount determined
2 by the system actuary using a generally accepted
3 actuarial funding method approved by the Board of
4 Trustees.

5 Section 7. Title 52 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by enacting a
7 new section 607 of chapter 6 to read as follow:

8 "Section 607. Distribution of Accounts upon Termination
9 of Employment.

10 (1) Eligibility. Upon a member's termination of
11 employment, the vested portion of his accounts, as
12 determined under section 606, shall be distributed as
13 provided in this section.

14 (2) Form of Distribution. Distribution of the
15 vested portion of a member's accounts shall be made in a
16 cash lump sum. If a member dies before the distribution
17 is made, the vested portion of his accounts shall be
18 paid to his beneficiary in a cash lump sum.

19 (3) Date of Payment of Distribution.

20 (a) Except as otherwise provided in this
21 section, distribution of the vested portion of a
22 member's accounts shall be made as soon as
23 administratively practicable following the latest of:

24 (i) The member's termination of
25 employment,

1 (ii) The date his last paycheck from the
2 employer is issued, or

3 (iii) The member's 60th birthday.

4 (b) In lieu of a distribution as described in
5 the immediately preceding paragraph (a) above, a member
6 may, in accordance with such procedures as the Board
7 shall prescribe, elect to have the distribution of the
8 vested portion of his accounts made as of any date which
9 is before the date described in the immediately
10 preceding paragraph (a) and which is coincident with or
11 following the later of:

12 (i) The date he terminates employment,

13 or

14 (ii) The date his last paycheck from the
15 employer is issued. However, a member eligible for an
16 early retirement pension pursuant to subsection 3 or 4
17 of section 608 shall elect to have the distribution of
18 the vested portion of his accounts made as soon as
19 administratively practicable following the later of:

20 (A) The date his pension begins, or

21 (B) The date his last paycheck from
22 the employer is issued.

23 (c) In the case of the death of a member
24 before the distribution of his accounts, the vested
25 portion of his accounts shall be distributed to his

beneficiary as soon as administratively practicable following later of:

(i) The member's date of death, or

(ii) The date the member's last paycheck from the employer is issued.

(4) Status of Accounts Pending Distribution. Until completely distributed under subsection 3 of section 607, the accounts of a member who is entitled to a distribution shall continue to be invested as part of the funds of the plan.

(5) Proof of Death and Right of Beneficiary or other Person. The Board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of the accounts of a deceased member as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive."

Section 8. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 608 of chapter 6 to read as follow:

"Section 608. Eligibility for and Amount of Pension Benefits.

(1) Normal Retirement.

(a) The right of a member to his normal

retirement pension shall be nonforfeitable as of his
normal retirement age. A member who has attained his
normal retirement age may retire from service and
receive a normal retirement pension beginning on his
normal retirement date or he may postpone his retirement
and remain in service after his normal retirement age,
in which event the provisions of subsection 2 of section
608 shall be applicable.

(b) Subject to the provisions of subsection 1
of section 609, the annual normal retirement pension
payable upon retirement on a member's normal retirement
date shall be equal to the excess, if any of (i) over
(ii), determined as follows:

(i) Floor Benefit: The lesser of \$10,000
or the sum of (A) and (B), multiplied by (C) determined
as follows:

(A) 1.25% of the member's final
average compensation.

(B) 0.25% of the portion of the
member's final average compensation in excess of the
breakpoint in effect as of his termination date.

(C) His years (including partial
years) of credited service not in excess of 25.

(ii) An amount equal to the member's
offset benefit.

(2) Late Retirement.

(a) If a member postpones his retirement as provided in paragraph (a) of subsection 1 of section 608, upon his termination of employment from the employer, he shall be entitled to a late retirement pension beginning on the first day of the calendar month after the Board receives his written application to retire.

(b) The late termination pension shall be an immediate pension beginning on the member's late retirement date and, subject to provisions of subsection 1 of section 609, shall be equal to an amount determined in accordance with paragraph (b) of subsection 1 of section 608 based on the member's credited service and final average compensation as of his late retirement date and the breakpoint in effect as of his termination date.

(3) Early Retirement.

(a) A member who has not reached his normal retirement age, but who terminates employment from the employer on a date on or after the latest of:

(i) The second anniversary of the date he became a member,

(ii) His 55th birthday, and

(iii) The date he completed 25 years of

effective date meets the requirements for a normal, late or early retirement pension, other than the requirement that his retirement date must be no earlier than the second anniversary of the date he became a plan member, he shall nonetheless be allowed to retire from service prior to July 1, 1999 and receive a pension in an amount determined in accordance with paragraph (b) of subsection 1 of section 608, paragraph (b) of subsection 1 of section 608, or paragraph (b) of subsection 604 of section, whichever is applicable."

Section 9. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 609 of chapter 6 to read as follow:

"Section 609. Payment of Pensions.

(1) Automatic Form of Pension Payment. The member's pension shall be payable in monthly installments equal to one-twelfth (1/12) of the annual pension ending with the last monthly payment before death, unless the member has elected an optional benefit as provided in subsection 3 of section 609.

(2) In any case, a lump sum payment of equivalent actuarial value shall be made in lieu of all pension benefits if the annual pension payable to the member determined as of the member's retirement date amounts to \$500 or less. Any lump sum benefit payable shall be

made as soon as practicable following the determination that the amount qualifies for distribution under the provisions of this paragraph (2). In no event shall a lump sum payment be made following the date pension payments have commenced as an annuity.

(3) Optional Form of Payment. Any member may elect to convert the pension otherwise payable to him into an optional form of benefit of equivalent actuarial value, as provided in the following option: a reduced pension payable during the member's life, and after his death payable at 50% of his reduced pension during the life of, and to, the spouse to whom the member was married on his annuity starting date."

Section 10. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 610 of chapter 6 to read as follow:

"Section 610. Board of Trustees.

(1) Board of Trustees.

(a) All powers vested in the system shall be exercised by the Board of Trustees, composed of seven members call trustees, appointed by the President with the advice and consent of the Senate. The Board shall select a chairman by a majority vote. Members shall serve for a term of four years. Vacancies shall be filled in the same manner as the original appointment.

1 (b) Four members constitute a quorum of the
2 Board for the transaction of business. The concurrence
3 of four members constitutes official action of the
4 Board. The Board may adopt rules and regulations
5 governing the conduct of its affairs.

6 (c) Each trustee of the Board shall receive
7 compensation for attendance at meetings of the Board at
8 a rate established by the Board in conformance with the
9 law of the Federated States of Micronesia. No trustee
10 may receive any other compensation, but shall be
11 reimbursed for actual travel, subsistence and out-of-
12 pocket expenses incurred in the discharge of the
13 trustee's responsibilities.

14 (d) No trustee shall be liable for any
15 decision made in the good faith non-malicious
16 fulfillment of his duties.

17 (i) Any moneys provided for
18 compensation, travel, subsistence and out-of-pocket
19 expenses incurred by trustees in the discharge of their
20 responsibilities shall not be paid from the fund, but
21 shall be paid from an appropriation made by Congress.

22 (2) Board of Trustees - Powers and Duties. The
23 system, through its trustees, has the following powers
24 and duties:

25 (a) To maintain and operate a retirement

1 system program for the employees of the employer.

2 (b) To establish its internal organization and
3 management.

4 (c) To adopt a seal.

5 (d) To sue or be sued in its corporate name.

6 (e) To employ, retain or contract with
7 individuals or organizations for their services as
8 qualified managers and specialists.

9 (f) To adopt rules and regulations as
10 necessary for the exercise of the system's powers,
11 performance of its duties and administration of its
12 operations.

13 (g) To adopt and maintain a travel
14 authorization policy consistent with the laws and
15 policies of the Government.

16 (h) To provide for the installation of a
17 system of accounts and records which will give full
18 effect to the requirements of this plan; to adopt all
19 necessary actuarial tables to be used in the operation
20 of the system; and to provide for the compilation of
21 statistical and financial data as required for actuarial
22 valuations, periodic surveys and calculations.

23 (i) To obtain information from the
24 participating members and employer as necessary for the
25 proper operation of the system.

1 (j) To authorize expenditures in accordance
2 with the provisions of the plan.

3 (k) To have accounts of the system audited as
4 of the end of each plan year, and submit an annual
5 report to the Government as soon as possible following
6 the close of the year, including, among other things, a
7 balance sheet showing the financial and actuarial
8 condition of the system; a statement of income and
9 expenditures for the year; a statement showing changes
10 in the assets, liabilities, and reserves during the
11 year; a statement of investments owned by the system;
12 and other financial or statistical data as necessary for
13 a proper interpretation of the condition of the system
14 and the result of its operation. The Board shall also
15 cause a synopsis of the report to be published for
16 distribution among the members.

17 (m) To appoint the system actuary, under such
18 arrangements as the Board may establish, to carry out
19 the requirements of subsection 6 of section 606.

20 (n) To appoint an attorney, under such
21 arrangements as the Board may establish, to advise the
22 Board and the administrator on all legal matters to
23 which the system is a party or in which the plan is
24 legally interested, and represent the system in
25 connection with legal matters before the executive.

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branch, legislature, boards and other agencies of the
Government and before courts in any jurisdiction.

(c) To do any and all other things necessary
to the full and convenient exercise of the above powers.

(3) Administrator: Powers and Duties.

(a) The Board shall appoint an administrator
to be its chief executive officer. The administrator
serves at the pleasure of the Board, which shall fix his
compensation in a manner consistent with the laws and
policies of the Government. The administrator shall
have full charge and control of the operation and
maintenance of the system.

(b) The administrator has the following powers
and duties:

(i) To see that all rules and
regulations of the system are enforced.

(ii) To attend, unless excused by the
Board, all meetings of the Board and to submit reports
on the affairs of the system as required by the Board.

(iii) To keep the Board advised on the
needs of the system and approve demands for payment of
obligations within the purposes and amount authorized by
the Board.

(iv) To keep all books, records, files
and accounts of the system and receive and act on all

1 applications for annuities, benefits, and refunds.

2 (v) To prepare periodic reports relative
3 to the operations of the system and an annual report as
4 of the close of each plan year reflecting the results of
5 the financial operations of the system and including all
6 important financial, actuarial, and statistical data
7 pertinent to its operation.

8 (c) The administrator may employ clerical or
9 other assistance as necessary for the proper
10 administration of the system. The administrator may
11 also engage actuarial or other professional services to
12 assist in the preparation of the annual reports, to
13 advise in matters of policy, and to make annual
14 actuarial valuations.

15 (d) The costs and expenses of the
16 administration of the system, including any custodial,
17 actuarial, and audit fees incurred in connection with
18 the financial operations of the system shall be paid out
19 of the system.

20 (4) Agents of the Retirement System: Immunity from
21 or Indemnification for Civil Liability; Defense of
22 Agents.

23 (a) For purposes of this subsection 4, "Agent"
24 means a trustee or employee of the system.

25 (b) Notwithstanding any law to the contrary,

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1 no agent shall be liable in any civil action founded
2 upon a statute or the case law of the Government for
3 damage, injury, or loss caused by or resulting from the
4 agent's performing or failing to perform any duty which
5 is required or authorized to be performed by a person
6 holding the position to which the agent was appointed,
7 unless the agent acted with a malicious or improper
8 purpose, except when the plaintiff in a civil action is
9 the Government.

10 (c) Except as provided in paragraphs (d) and
11 (f) of this subsection 4, the Government shall indemnify
12 a agent from liability by paying any judgment in, or
13 settlement or compromise of, any civil action arising
14 under national law, the law of a state, or the law of a
15 foreign jurisdiction, including fees and costs incurred,
16 unless the loss, injury or damage for which the judgment
17 or settlement amount required to be paid;

18 (i) Is fully covered by a policy of
19 insurance for civil liability purchased by the
20 Government;

21 (ii) Is caused by or is the result of the
22 agent's performing an act authorized or required to be
23 performed by a person holding the position to which the
24 agent was appointed so as to effect a malicious or
25 improper purpose; or

1 (iii) Is caused by or is the result of the
2 agent's failure to perform an act required or authorized
3 to be performed by a person holding the position to
4 which the agent was appointed so as to effect a
5 malicious or improper purpose.

6 (d) The Government shall not indemnify a
7 agent who would otherwise be entitled to indemnification
8 under paragraph (c) of this subsection 4 if the agent
9 fails to cooperate fully under the defense of the civil
10 action which is made available to the agent under
11 paragraph (c) of this subsection 4. The Government
12 shall not indemnify a agent for any portion of a
13 judgment that represents punitive or exemplary damages.

14 (e) The Attorney General shall represent and
15 defend a agent in any civil action for which immunity is
16 conferred under paragraph (b) of this subsection 4, or
17 when the Attorney General determines that
18 indemnification is available to the agent under
19 paragraph (c) of this subsection 4 and the agent against
20 whom the action is brought has submitted a written
21 request for representation and has provided the Attorney
22 General with all process or complaint served upon the
23 agent within a reasonable period of time, but no more
24 than five days, after being served with the process or
25 complaint. The Attorney General may terminate the

representation and defense of the agent at any time if,
after representation and defense is accepted, the
Attorney General determines that indemnification would
not be available to the agent under paragraph (c) of
this subsection 4.

(f) A agent may retain counsel of the agent's
own choice at the agent's own expense. If the agent
chooses to retain counsel at the agent's own expense,
the Government shall not indemnify the agent even though
the agent would have been entitled to indemnification
under paragraph (c) of this subsection 4. The Attorney
General may enter an appearance in any action in which
the agent is represented by counsel of the agent's own
choice, even though no request for the appearance has
been made by the agent.

(g) Nothing in this subsection 4 precludes a
agent from compromising or settling any claim against
the agent at the agent's own expense. If such a
settlement or compromise is effected, however, he shall
be deemed to have waived any claims which the agent
might have made under this subsection unless the
provisions of paragraph (i) of this subsection 4 apply.

(h) If the Attorney General denies
representation to the agent under paragraph (c) of this
subsection 4 and the agent proceeds to judgment in the

1 action for which representation was denied, the agent
2 may commence an action against the Government in the
3 Trial Division of the Supreme Court to recover
4 reasonable costs and fees incurred by the agent in
5 defending against that action, including attorney's
6 fees, court costs, investigative costs, and expert
7 witness fees. The Government shall pay the judgment or
8 reimburse the agent if the agent has satisfied the
9 judgment in an action for which representation was
10 denied, provided the agent was found not liable in that
11 action or the agent established by a preponderance of
12 the evidence that the agent is entitled to
13 indemnification under paragraph (c) of this subsection
14 4. A finding of negligence against the agent in the
15 civil action for which representation was denied shall
16 not be binding upon the Trial Division of the Supreme
17 Court in any action brought under this paragraph. The
18 agent shall commence any action under this paragraph no
19 later than two years after entry of judgment in the
20 action for which the agent was denied representation if
21 no appeal is filed, or two years after the conclusion of
22 the final appeal from the judgement if an appeal is
23 filed.

24 (i) If the Attorney General denies
25 representation to the agent under paragraph (c) of this

1 subsection 4 and the agent negotiates a compromise or
2 settlement without any entry of judgement in the action
3 for which representation was denied, the agent may seek
4 to introduce a bill in Congress to secure an
5 appropriation to reimburse the agent for the amount of
6 the settlement or that portion which constitutes a
7 reasonable settlement, and for reasonable costs and fees
8 incurred by the agent in defending against that action,
9 including attorney's fees, court costs, investigative
10 costs, and expert witness fees.

11 (j) Any moneys which the Government is
12 required to pay a agent under this subsection shall be
13 paid from an appropriation made by Congress at the next
14 session after the requirement to pay inures to the
15 agent. The appropriation shall be sufficient to include
16 any post-judgment interest which the agent was required
17 to pay if the agent has personally satisfied the
18 judgment, or at an appropriate rate for the period from
19 the entry of judgment for which indemnification is
20 available until the appropriation is enacted if the
21 judgment was not satisfied. Any bill necessary to
22 effect a payment required by paragraphs (h) and (i) of
23 this subsection 4 shall be submitted by the agent to a
24 member of Congress; all other bills necessary to effect
25 payments required by this subsection shall be initiated

1 by the Attorney General.

2 (k) This subsection 4 shall not be construed
 3 as eliminating, waiving, reducing, or limiting any
 4 defense, immunity, or jurisdictional bar conferred upon
 5 or available to a agent or the Government by any other
 6 statute or by case law.

7 (l) This subsection 4 shall apply to all
 8 causes and actions not reduced to judgment. This
 9 subsection 4 shall apply to any action rising under
 10 national law, the law of a state, or the law of a
 11 foreign jurisdiction."

12 Section 11. Title 52 of the Code of the Federated States of
 13 Micronesia, as amended, is hereby further amended by enacting a
 14 new section 611 of chapter 6 to read as follow:

15 "Section 611. Investment of the Fund.

16 (1) General.

17 (a) The fund shall be invested and reinvested
 18 by or under authority of the Board of Trustees. At its
 19 discretion, the Board may designate its chairman or an
 20 investment committee consisting of two or more members
 21 of the Board to supervise this function. In either
 22 case, references to "the Board" in this section shall be
 23 deemed to refer to the individual or committee
 24 exercising this investment function.

25 (b) The Board shall have full power to manage

1 the investments as, in its considered judgment, seems
 2 most appropriate to the requirements and objectives of
 3 the employee accounts, government accounts, and pension
 4 benefit account within the fund, including, but not
 5 limited to, the power to hold, purchase, sell, convey,
 6 assign, transfer, dispose of, lease, subdivide, or
 7 partition any assets held or proceeds thereof, to
 8 execute or cause to be executed relevant documents; to
 9 enter into protective agreements, execute proxies, or
 10 grant consent; and to do all other things necessary or
 11 appropriate to its position as an owner or creditor.

12 (c) All proceeds and income from investments,
 13 of whatever nature, shall be credited to the account of
 14 the fund. Transactions in marketable securities shall
 15 be carried out at prevailing market prices.

16 (d) The Board may commingle securities and
 17 moneys subject to the crediting of receipts and earnings
 18 and charging of payments to the appropriate accounts
 19 established by the plan.

20 (e) No member of the Board and no employee of
 21 the Board shall have any direct or indirect interest in
 22 the income, gains or profits on any investment made by
 23 the Board, nor shall any such person receive any pay or
 24 emolument for services in connection with any investment
 25 made by the Board. Membership in the plan under the

terms of the plan shall not be construed to include interest, pay or emolument within the meaning of this paragraph.

(f) No member of the Board, employee or agent shall become an endorser or surety or in any manner an obligator of investments made by the fund, nor shall any member, employee or agent be held liable for actions taken in good faith and in performance of his duties.

(g) Due bills may be accepted from the brokers against payment for securities purchase, pending delivery within a reasonable period of time of certificates representing such investments.

(2) Custodian. The Board shall engage one or more fund custodians to assume responsibility for the physical possession of fund assets or evidences of assets. The custodian shall submit such reports, accountings and other information in such forms and at such times as requested by the Board. All costs incurred for custodial services shall be paid from the fund. The custodian shall hold all assets for the account of the fund and shall act only upon the instruction of the Board, its administrator, or a member, committee or agent so authorized by the Board. No custodian shall be engaged unless it:

(a) Is a United States bank or trust company

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regulated by the United States Federal Reserve Board,

(b) Has a net worth in excess of \$10 million.

(c) Is a member of the Depository Trust

Company, I.D. System.

(d) Has at least ten years experience as a
custodian of financial assets.

(e) Has at least \$1 billion in custodial
assets.

(3) Investment Consultant.

(a) In order to secure expert advice and
counsel, the Board may engage one or more investment
consultants which shall be an investment counsel as
hereinafter qualified. All costs incurred in this
connection shall be paid from the fund.

(b) No investment consultant shall be engaged
unless:

(i) The principal business of the
person, firm or corporation selected by the Board
consists of rendering investment supervisory services,
that is, the giving of continuous advice as to the
investment of funds on the basis of the individual needs
of each client;

(ii) The person, firm or corporation and
its predecessors have been continuously engaged in such
business for a period of ten or more years;

1 (iii) The person, firm or corporation is
2 registered as an investment advisor under laws of the
3 United States of America as from time to time are in
4 effect;

5 (iv) The contract between the Board and
6 the investment counsel is of no specific duration and is
7 voidable at any time upon reasonable notice by either
8 party; and

9 (v) The person, firm or corporation
10 certifies, in writing, to the Board, that the assets
11 under its direct investment supervision are in excess of
12 \$200 million.

13 (c) No investment shall be made unless in the
14 opinion of the investment consultant, or investment
15 managers reviewed by the consultant, it is an
16 appropriate investment for the fund and is an authorized
17 investment under the provisions of this section or, in
18 the absence of such opinion, unless preceded by a
19 resolution of the Board directing such investment.

20 (4) Investment Policy. The Board, with assistance
21 of the investment consultant, shall establish a written
22 investment policy which shall set asset allocation
23 guidelines and define permitted asset classes.

24 (a) The investment policy shall be for the
25 exclusive purpose of:

(i) Providing benefits to members and beneficiaries; and

(ii) Defraying reasonable expenses of administering the plan;

(A) With the care, skill, prudence, and diligence that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and aims;

(B) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly not prudent to do so; and

(C) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title."

Section 12. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 612 of chapter 6 to read as follow:

"Section 612. General Provisions.

(1) Employer's Contributions. It is the intention of the employer to continue the plan and make the contributions that are necessary to maintain the plan on a sound actuarial basis. However, subject to the

provisions of section 613, the employer may discontinue
its contributions for any reason at any time. Any
forfeitures shall be used to reduce the employer's
contributions otherwise payable.

(2) Construction.

(a) The plan shall be construed, regulated and
administered under the laws of the Federated States of
Micronesia.

(b) The masculine pronoun shall mean the
feminine where appropriate, and vice versa.

(c) The titles and headings of the sections,
subsections and paragraphs in this chapter are for
convenience only. In case of ambiguity or
inconsistency, the text rather than the titles or
headings shall control."

Section 13. Title 52 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a
new section 613 of chapter 6 to read as follow:

"Section 613. Amendment.

(1) Amendment of Plan. The Government reserves the
right at any time and from time to time, and
retroactively if deemed necessary or appropriate, to
amend in whole or in part any or all of the provisions
of the plan. However, no amendment shall make it
possible for any part of the fund be used for, or

diverted to, purposes other than for the exclusive
benefit of persons entitled to benefits under the plan,
before the satisfaction of all liabilities with respect
to them.

(2) Additional Participating Employers. The Board
may include the employees of another employer in the
membership of the plan upon appropriate action by that
employer necessary to adopt the plan."

Section 14. 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: 3/10/97

Introduced by:

Joseph J. Urusemal
 (by request)