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:

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

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

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

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

"Section 602. Definitions.

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

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

(3) 'Beneficiary' means any person, persons, or entity named by a member by written designation filed with the Board to receive the member's accounts in the event of the member's death. If no such designation is in effect at the time of the death of the member, or if no person, persons, or entity so designated shall
survive the member, the member's surviving spouse, if any, shall be deemed to be the beneficiary; otherwise the beneficiary shall be the estate of the member.

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

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

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

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

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

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

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

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

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

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

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

(15) 'Equivalent Actuarial Value' means the equivalent value determined on the basis of the mortality table based on a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1963 Group Annuity Mortality Table set forward three years and interest at the rate of seven percent (7%) per year, compounded annually, except as otherwise specified in the plan.

(16) 'Final Average Compensation' means the average annual compensation of a member during the sixty consecutive calendar months in the last 120 calendar
months of his employment by the employer affording the
highest such average, or during all of the months of his
employment by the employer if less than sixty months.

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

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

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

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

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

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

(23) 'Normal Retirement Date' means the first day
of the calendar month coinciding with or immediately
following an employee's attainment of normal retirement age.

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

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

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

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

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

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

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

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

(32) 'Valuation Date' means the last business day
of each calendar quarter, the first valuation date is
(33) "Vesting Service" means service recognized for
purposes of determining eligibility for certain benefits
under the plan, determined as provided in subsection 1
of section 605."

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

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

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

"Section 604. Membership.

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

(2) Events Affecting Membership.

(a) An employee's membership in the plan shall
end when he is no longer employed by the employer except
that he shall remain a member so long as he meets one of
the following requirements:

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

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

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

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

(c) Membership Upon Reemployment. If an
employee's membership in the plan ends and he again
becomes an employee, he shall again become a member as
of his date of restoration to service as an employee."

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

"Section 605. Service.

(1) Vesting Service.

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

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

(2) Credited Service.

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

(b) For a member who became a member on the effective date, credited service shall include the following periods:
(i) Periods of employment by the Government of the Trust Territory of the Pacific Islands;

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

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

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

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

(i) Defrauding the employer;

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

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

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

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

(i) His pension shall cease and any
election of an optional benefit then in effect shall be void.

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

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

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

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

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

(c) Upon restoration to service with the employer of any other former employee, such employee
shall be treated as a new employee, and no credited
service or vesting service to which he was previously
entitled shall be restored.

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

"Section 606. Accounts.

(1) Employee Account.

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

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

(2) Government Account.

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

(b) Except as provided in the immediately
following paragraph (c), a member shall be vested in,
and have a nonforfeitable right to, his government
account after the completion of five years of vesting.
service or upon meeting the requirements for a pension as determined in section 609.

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

(i) Defrauding the employer.

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

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

(3) Valuation of the Employee Accounts and Government Accounts. The trustees shall value the employee accounts and government accounts at least quarterly. On each valuation date there shall be allocated to the accounts of each member his proportionate share of the increase or decrease in the fair market value of his accounts, based on a uniform allocation method which applies uniformly to all plan members. Whenever an event requires a determination of the value of the member’s accounts, the value shall be computed as of the valuation date coincident with or immediately preceding the date of determination plus contributions to the accounts after such valuation date and minus withdrawals from the accounts after such valuation date, subject to the provisions of subsection
(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
preceding paragraph (a) shall be the amount determined
by the system actuary using a generally accepted
actuarial funding method approved by the Board of
Trustees.

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

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

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

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

(3) Date of Payment of Distribution.

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

(i) The member's termination of
employment.
(ii) The date his last paycheck from the employer is issued, or

(iii) The member's 60th birthday.

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

(i) The date he terminates employment, or

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

(A) The date his pension begins, or

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

(c) In the case of the death of a member before the distribution of his accounts, the vested 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.
12. 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."
(b) Four members constitute a quorum of the Board for the transaction of business. The concurrence of four members constitutes official action of the Board. The Board may adopt rules and regulations governing the conduct of its affairs.

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

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

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

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

(a) To maintain and operate a retirement
system program for the employees of the employer.

(b) To establish its internal organization and management.

(c) To adopt a seal.

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

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

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

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

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

(i) To obtain information from the participating members and employer as necessary for the proper operation of the system.
(i) To authorize expenditures in accordance with the provisions of the plan.

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

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

(n) To appoint an attorney, under such arrangements as the Board may establish, to advise the Board and the administrator on all legal matters to which the system is a party or in which the plan is legally interested, and represent the system in connection with legal matters before the executive.
branch, legislature, boards and other agencies of the
Government and before courts in any jurisdiction.

(o) 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
applications for annuities, benefits, and refunds.

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

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

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


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

(b) Notwithstanding any law to the contrary,
no agent shall be liable in any civil action founded
upon a statute or the case law of the Government for
damage, injury, or loss caused by or resulting from the
agent's performing or failing to perform any duty which
is required or authorized to be performed by a person
holding the position to which the agent was appointed,
unless the agent acted with a malicious or improper
purpose, except when the plaintiff in a civil action is
the Government.

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

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

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

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

(e) The Attorney General shall represent and defend a agent in any civil action for which immunity is conferred under paragraph (b) of this subsection 4, or when the Attorney General determines that indemnification is available to the agent under paragraph (c) of this subsection 4 and the agent against whom the action is brought has submitted a written request for representation and has provided the Attorney General with all process or complaint served upon the agent within a reasonable period of time, but no more than five days, after being served with the process or 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
action for which representation was denied, the agent may commence an action against the Government in the Trial Division of the Supreme Court to recover reasonable costs and fees incurred by the agent in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees. The Government shall pay the judgment or reimburse the agent if the agent has satisfied the judgment in an action for which representation was denied, provided the agent was found not liable in that action or the agent established by a preponderance of the evidence that the agent is entitled to indemnification under paragraph (c) of this subsection. A finding of negligence against the agent in the civil action for which representation was denied shall not be binding upon the Trial Division of the Supreme Court in any action brought under this paragraph. The agent shall commence any action under this paragraph no later than two years after entry of judgment in the action for which the agent was denied representation if no appeal is filed, or two years after the conclusion of the final appeal from the judgment if an appeal is filed.

(i) If the Attorney General denies representation to the agent under paragraph (c) of this
subsection 4 and the agent negotiates a compromise or settlement without any entry of judgment in the action for which representation was denied, the agent may seek to introduce a bill in Congress to secure an appropriation to reimburse the agent for the amount of the settlement or that portion which constitutes a reasonable settlement, and for reasonable costs and fees incurred by the agent in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees.

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

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

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

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

"Section 611. Investment of the Fund.

(1) General.

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

(b) The Board shall have full power to manage
the investments as, in its considered judgment, seems most appropriate to the requirements and objectives of the employee accounts, government accounts, and pension benefit account within the fund, including, but not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, or grant consent; and to do all other things necessary or appropriate to its position as an owner or creditor.

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

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

(e) No member of the Board and no employee of the Board shall have any direct or indirect interest in the income, gains or profits on any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment 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
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;
(iii) The person, firm or corporation is registered as an investment advisor under laws of the United States of America as from time to time are in effect;

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

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

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

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

(a) The investment policy shall be for the 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."
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: 3/10/77

Introduced by: (by request)