

A BILL FOR AN ACT

To further amend title 55 of the Code of the Federated States of Micronesia, as amended, by repealing chapter 12 in its entirety and creating a new chapter 12 in lieu thereof, for the purpose of establishing a National Trust Fund for major catastrophic disasters and emergencies that may occur in the Federated States of Micronesia and a financial scheme for long-term climate mitigation and adaptation measures, and for other purposes.

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

1 Section 1. Chapter 12 of title 55 of the Code of the
2 Federated States of Micronesia hereby repealed in its entirety.

3 Section 2. Title 55 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by creating a
5 new chapter 12 entitled, "FSM National Trust Fund".

6 Section 3. Title 55 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by creating a
8 new section 1201 under chapter 12, to read as follows:

9 "Section 1201. Short title.

10 This act is known and may be cited as the "FSM National
11 Trust Fund Act of 2012."

12 Section 4. Title 55 of the Code of the Federated States of
13 Micronesia, as amended is hereby further amended by inserting a
14 new section 1202 under chapter 12, to read as follows:

15 "Section 1202. Definitions. Unless otherwise specified
16 or clear from the context, words and phrases used in
17 this chapter shall have the following meanings:

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- 1 (1) "Board" means the Board of Trustees of the Fund;
2 (2) "Capitalized earning" means earning of more than
3 one million dollars from previous financial years except
4 from immediately preceding financial year;
5 (3) "Corpus" means the totality of the principal and
6 capitalized earning;
7 (4) "Earning" means the income or the return of the
8 corpus as a result of investment, which includes
9 interest, dividend, and appreciation of assets;
10 (5) "Financial year" means a twelve-month period
11 ending on the last day of each December;
12 (6) "Fiscal year" means the fiscal year of the
13 National Government;
14 (7) "FSM" means the sovereign nation of the Federated
15 States of Micronesia;
16 (8) "Fund" means the FSM National Trust Fund created
17 by this chapter, including all the accounts and sub-
18 accounts established herein;
19 (9) "Fund custodians" means one or more firms selected
20 by the Board to assume responsibility for the physical
21 possession of the Fund assets or evidence of assets;
22 (10) "Fund managers" means one or more firms selected
23 by the Board to manage the investment and reinvestment
24 of the Fund's resources;
25 (11) "National Government" means the National

1 Government of the FSM;

2 (12) "Other participating entity" means a State or
3 local government of the FSM participating pursuant to a
4 memorandum of understanding with the National
5 Government, or an international organization, agency, or
6 a foreign government contributing financial assistance
7 into the Fund;

8 (13) "Sub-accounts" means the sub-accounts established
9 under section 1213."

10 Section 5. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by inserting a
12 new section 1203 under chapter 12, to read as follows:

13 "Section 1203. Establishment.
14 There is hereby created the FSM National Trust Fund,
15 separate from the General Fund of the FSM and all other
16 funds."

17 Section 6. Title 55 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 1204 under chapter 12, to read as follows:

20 "Section 1204. Purpose.
21 (1) The purpose of the Fund is to set aside financial
22 resources which the National Government may use in the
23 event of major catastrophic disasters and for
24 implementing measures and plans in response to climate
25 change.

1 (2) The Fund shall be used exclusively for the
2 purposes as authorized herein, and pursuant to the
3 procedure, conditions and guidelines provided in this
4 chapter."

5 Section 7. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting a
7 new section 1205 under chapter 12, to read as follows:

8 "Section 1205. Powers.

9 The Fund shall have the powers and privileges expressly
10 granted herein, and all incidental and necessary powers
11 that are reasonably necessary to fulfil the purpose of
12 the Fund."

13 Section 8. Title 55 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by inserting a
15 new section 1206 under chapter 12, to read as follows:

16 "Section 1206. Legal status, privileges and immunities.

17 (1) The Fund is vested with juridical personality
18 separate from the National Government. In particular,
19 the Fund is vested with the capacity to:

20 (a) contract;

21 (b) acquire and dispose of immovable and movable
22 properties; and

23 (c) institute legal proceedings on its behalf.

24 (2) The Fund shall be exempt from any exchange control
25 regulations, restrictions, or moratoria.

1 (3) Within the scope of its official activities, the
2 Fund, and its properties and assets, shall be exempt
3 from all direct taxation."

4 Section 9. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 1207 under chapter 12, to read as follows:

7 "Section 1207. Limitations on Liability.

8 (1) No contributor shall be liable, by reason of its
9 contribution, for the acts or obligations of the Fund.

10 (2) Obligations of the Fund are not the obligations of
11 the National Government or its contributors or
12 participating entity."

13 Section 10. Title 55 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by inserting a
15 new section 1208 under chapter 12, to read as follows:

16 "Section 1208. Board.

17 (1) The Fund shall have a Board of Trustees consisting
18 of the following members whose appointment is vested in
19 the President of the FSM, and subject to advice and
20 consent of Congress:

21 (a) three (3) members from the National
22 Government, one of whom shall be selected as chairman of
23 the Board;

24 (b) two (2) members from the private sector; and

25 (c) one (1) member from non-government

1 organization.

2 (2) The President shall establish such terms and
3 conditions governing the rights and privileges of board
4 members.

5 (3) The President may designate representatives of
6 substantial contributors and donors of the Fund. The
7 representatives so designated shall be deemed as
8 honorary board members without the right to vote, but
9 may participate in the proceedings of the Board.

10 (4) Nominations to the Board shall take into account
11 the need to have adequate geographical representation
12 from within the FSM, representation of other
13 participating entities with substantial accounts,
14 representation of substantial foreign contributors to
15 the Fund, and complementary experience in the fields of
16 investment management and public finance. Each trustee
17 shall serve for a term of four years or until a
18 successor is appointed. The Board shall elect a chairman
19 from among its own members representing the National
20 Government.

21 (5) All powers of the Fund shall be vested in and
22 exercisable by the Board.

23 (6) The functions of the Board shall include:

24 (a) obtaining contributions to the Fund;

25 (b) operation, supervision, management, and

1 investment of the Fund;

2 (c) adoption of investment policy that
3 establishes the overall objectives, guidelines and
4 standards by which investment is to be managed, and the
5 duties and responsibilities of investment consultant and
6 fund custodian;

7 (d) management of the Fund's assets, and
8 retaining the services of reputable investment
9 consultant, manager and custodian of the Fund, and such
10 other investment experts to assist the Board in the
11 discharge of its fiduciary duties;

12 (e) reviewing the asset allocation mix on a
13 regular basis in conformity with due diligence to ensure
14 sustainability of the Fund;

15 (f) monitoring performance of investment to
16 determine whether the rate of return objectives are
17 being met, and the policies and guidelines set by the
18 Board followed;

19 (g) taking appropriate action whenever the
20 objectives of the Fund are not met or if policies and
21 guidelines set by the Board are not achieved;

22 (h) anticipating financial needs of the Fund,
23 considering its risk tolerance; and

24 (i) to document and communicate objectives,
25 guidelines, and standards to managers of funds or

1 investment managers.

2 (7) The Board may delegate any of its administrative
3 responsibilities and powers as necessary through formal
4 appointment. The Board may appoint and recruit an
5 Executive Administrator to handle the administrative
6 management of the Trust Fund on a day-to-day basis. The
7 Executive Administrator shall report to the Board of
8 Trustees through the Chairman of the Board. The
9 Executive Administrator shall be recruited based on
10 expertise in finance, banking, investment, law and
11 business management, and whose compensation shall be
12 commensurate with relevant qualifications. The Board
13 shall set the procedures and the terms and conditions of
14 appointment.

15 (8) The investment policy and documentation of
16 investment guidelines are a critical process in the
17 management of the Trust Fund's assets. In formulating
18 an investment policy and in making decisions affecting
19 the Fund, the Board shall consider secured investment
20 with guaranteed return, and available business
21 investments, that will ensure that the corpus of the
22 Fund is sustained. The investment strategy shall be
23 developed through establishing the proper policy
24 constraints and define strategic policy allocation that
25 establishes a clear set of objectives. Along with a

1 quarterly review of the overall strategy, upon request
2 or as market conditions dictate, the investment advisor
3 or consultant shall make suggestions to the Board as to
4 possible modifications to the asset allocation,
5 selection of managers, or the investment policy itself.

6 (9) The Board shall meet at least quarterly or as
7 necessary, and reasonable notice of meetings shall be
8 given.

9 (10) For purposes of board meetings, three-fifths of
10 trustees shall constitute a quorum.

11 (11) Except where otherwise provided in this chapter,
12 questions before the Board shall be decided by a
13 majority of votes of trustees present and voting at the
14 meeting.

15 (12) The Board shall establish its own bylaws and rules
16 of procedure."

17 Section 11. Title 55 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 1209 under chapter 12, to read as follows:

20 "Section 1209. Administrator of the Fund.

21 During a transition period of five years from the
22 approval of this amendment, or, whenever the corpus of
23 the Fund is below \$50 million, the Secretary of Finance
24 shall serve as administrator of the Fund and its
25 accounts. Thereafter when the Board established

1 pursuant to section 1208 of this chapter shall have
2 become fully constituted and functioning, the Board
3 shall take over the responsibility from the Secretary of
4 Finance and it shall perform the functions and duties
5 expressly delegated to it pursuant to this chapter, at
6 which time the Secretary of Finance and Administration
7 shall provide administrative support to the Fund and its
8 Board. The Secretary shall also serve as ex-officio
9 member of the Board."

10 Section 12. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by inserting a
12 new section 1210 under chapter 12, to read as follows:

13 "Section 1210. Resources of the Fund.

14 (1) The fund balance of the FSM Trust Fund shall be
15 deemed transferred to the FSM National Trust Fund, in
16 particular to a sub-account referred to as "A account",
17 upon the approval of this act.

18 (2) The resources of the Fund shall consist of the
19 transferred balance and all contributions to the Fund
20 including foreign contribution to FSM trust fund, from
21 whatever sources, and all the earnings thereof. The
22 resources of the Fund shall be held in trust and
23 administered by the Board, or the Secretary of Finance
24 and Administration during the transition period under
25 section 1209; and shall used only for the purpose of,

1 and in accordance with, this chapter.

2 (3) No part of the Fund shall revert or transfer to
3 the General Fund at any time."

4 Section 13. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 1211 under chapter 12, to read as follows:

7 "Section 1211. Contributions to the Fund.

8 (1) Contribution to the Fund in the form of foreign a
9 financial assistance shall be subject to approval by
10 Congress. The President may negotiate with a foreign
11 country or organization for possible contribution to the
12 Fund.

13 (2) The Fund shall not issue negotiable or
14 transferable obligations evidencing indebtedness for any
15 loan.

16 (3) Contributions shall be made for the purpose of the
17 Fund without further restriction as to use, except such
18 restrictions or conditions as foreign donors may impose.

19 (4) Contribution to the Fund shall not in and of
20 itself constitute or imply any commitment by the
21 contributor to make any further contribution to the
22 Fund.

23 (5) There shall be appropriated every fiscal year at
24 least one million US dollars (\$1 million) from the
25 General Fund of the Federated States of Micronesia as

1 annual contribution to the Fund.”

2 Section 14. Title 55 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 1212 under chapter 12, to read as follows:

5 “Section 1212. Fund managers and custodians.

6 (1) The Board shall appoint one or more Fund managers
7 and custodians from time to time on such terms and
8 conditions as it determines. No Fund custodian shall be
9 engaged unless it:

10 (a) is a bank duly chartered to transact business
11 in the Federated States of Micronesia or is a United
12 States bank or trust company regulated by the Federal
13 Reserve Board, a state authority or the federal
14 comptroller of the currency as is appropriate;

15 (b) has a net worth in excess of \$10,000,000;

16 (c) has the capacity to clear securities
17 transactions through the Depository Trust Company I.D.
18 System; and

19 (d) has at least 10 years experience as a
20 custodian of financial assets.

21 (2) The Board shall adopt investment guidelines for
22 the Fund managers. In so doing, it shall ensure that
23 the capital of the Fund is prudently invested in a
24 balanced portfolio so as to maximize returns while
25 protecting capital and maintaining adequate liquidity.

1 (3) The Board may delegate to the Fund managers and
2 custodians responsibility for the day-to-day
3 administration of the Fund.

4 (4) The Fund managers and custodians shall provide
5 such reports on the value and disposition of the
6 resources of the Fund, such reviews of its performance,
7 and such advice on it as are required by the Board.

8 (5) The compensation and expenses of the Fund managers
9 and custodians in carrying out their duties in
10 administration of the Fund shall be expenses of the
11 Fund."

12 Section 15. Title 55 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by inserting a
14 new section 1213 under chapter 12, to read as follows:

15 "Section 1213. Sub-Accounts.

16 (1) The Fund shall consist of three (3) sub-accounts
17 as follows:

18 (a) A-Account, reserved for major catastrophic
19 disasters and emergencies; and

20 (b) B-Account, reserved for National Government
21 programs on climate change mitigation and adaptation
22 measures.

23 (c) C-Account, is a holding account of financial
24 assistance to support program that has a period of three
25 (3) years or more.

1 (2) All contributions to the Fund shall be deposited
2 in the appropriate sub-accounts. With regard to foreign
3 contribution to the Fund, the terms and conditions of
4 the assistance shall govern at all times. A foreign
5 financial assistance for a project or program that has
6 implementation period of 3 years or more shall be
7 deposited in a separate holding account where it shall
8 be accounted separately to ensure conformity with the
9 terms and conditions of assistance."

10 Section 16. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by inserting a
12 new section 1214 under chapter 12, to read as follows:

13 Section 1214. Use of Fund.

14 (1) The Fund shall be used in accordance with the
15 provisions of this section. The President shall have
16 authority to issue guidelines, if necessary, to further
17 implement this section.

18 (2) No part of the corpus of the Fund may be used at
19 any time, except pursuant to subsection (3) of this
20 section.

21 (3) The Fund may be used for the following purposes:

22 (a) to defray the operational cost associated
23 with normal business transactions (e.g., investment
24 management fees, executive administrator's salary, and
25 applicable fees for other service providers) involving

1 the Fund;

2 (b) investment in accordance with the investment
3 policy and guidelines duly adopted by the Board;

4 (c) with respect to the A-Account,

5 (i) cost of mobilization decreed by the
6 President up to a maximum of \$500,000 as a response to
7 major catastrophic disaster, as the term is defined
8 under section 1215, occurring anywhere in the FSM, by
9 reason of which the President has declared a state of
10 emergency; and

11 (ii) further response to a catastrophic
12 disaster as authorized by Congress, where initial
13 mobilization by the President is deemed insufficient.
14 In the event Congress allocates additional resources,
15 and if the corpus of the Fund is below \$50 million, any
16 additional allocation authorized by Congress shall not
17 exceed 25 percent of the total deposit in the A-Account
18 as of the close of immediately preceding financial year.

19 (d) with respect to the B-Account,

20 (i) major programs of FSM in accordance with
21 approved national policy on climate change mitigation
22 and adaptation strategy; and

23 (ii) major relocation in the event of
24 catastrophic disasters.

25 (4) Except for initial mobilization ordered by the

1 President, Congressional authorization is required
2 before any portion of the Fund is utilized."

3 Section 17. Title 55 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by inserting a
5 new section 1215 under chapter 12, to read as follows:

6 "Section 1215. Major Catastrophic Disaster.

7 (1) A "major catastrophic disaster" means the
8 occurrence of widespread injuries or deaths of persons,
9 massive destruction of properties, or sudden loss or
10 inundation of landmass of the Federated States of
11 Micronesia as a result of unusual movement of the tide
12 or ocean (for example, a tsunami), or a combination of
13 any of the foregoing, the impact or the magnitude of
14 which is so severe that the regular resources of the
15 National Government might not be adequate to respond to
16 the devastation.

17 (2) Without need for any further express
18 authorization, every instance of catastrophic disaster,
19 the President shall have authority to decree, obligate
20 and expend from the Fund up to a maximum amount of
21 \$500,000 to defray the cost of initial mobilization."

22 Section 18. Title 55 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting a
24 new section 1216 under chapter 12, to read as follows:

25 "Section 1216. Miscellaneous restrictions.

1 (1) Except as provided in subsection 1211(1) of this
2 chapter, the Fund shall not borrow money.

3 (2) The Fund shall not be used to guaranty the debt of
4 another person or entity."

5 Section 19. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting a
7 new section 1217 under chapter 12, to read as follows:

8 "Section 1217. Books and Records.

9 (1) The Board and the Secretary of Finance and
10 Administration, during a transition period pursuant to
11 section 1209, shall have the responsibility to keep all
12 proper books and records of account of the assets,
13 property, liabilities, income and expenditure, and
14 transactions involving the Fund, and to cause Fund
15 manager if one is retained to keep such books and
16 records, and to produce these promptly at the direction
17 of the President or upon audit.

18 (2) All records and reports of the Fund returns shall
19 clearly segregate and identify gross returns, management
20 fees, and net returns.

21 (3) The books and records of the Fund shall separately
22 account for each of the sub-accounts, including the
23 application of expenses charged against the Fund."

24 Section 20. Title 55 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 1218 under chapter 12, to read as follows:

2 "Section 1218. Audits.

3 (1) At the end of each financial year the accounts of
4 the Fund shall be audited either by the FSM Public
5 Auditor, or by an independent auditor who has no
6 connections with the Fund managers and is appointed by
7 the Board.

8 (2) The auditor shall satisfy himself that the
9 accounts of the Fund have been properly prepared in
10 accordance with accounting standards adopted by the
11 International Accounting Standards Committee or an
12 entity of similar stature, and he shall either:

13 (a) state in his report that:

14 (i) the accounts have been properly prepared
15 in accordance with the books and records of the Fund;

16 (ii) the books and records of the Fund have
17 been properly kept and contain information adequate for
18 the purpose of his audit;

19 (iii) the balance sheet and income and
20 expenditure accounts of the Fund give a true and fair
21 view of the Fund's financial position; and

22 (iv) the financial affairs of the Fund have
23 been properly conducted in accordance with this chapter;
24 or

25 (b) notify the Board that he is unable to

1 complete his report as provided in sub-paragraph (a),
2 giving his reasons therefor.

3 (3) The auditor shall include in his report
4 information on the performance of the Fund managers in
5 the investment of the Fund in accordance with the
6 guidelines laid down by the Board with particular
7 comparative reference to the performance of managers of
8 other funds of a similar size and nature.

9 (4) The auditor shall submit his report to the Board."

10 Section 21. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by inserting a
12 new section 1219 under chapter 12, to read as follows:

13 "Section 1219. Annual Reports.

14 Within six months of the end of the financial year the
15 Board shall publish and shall submit to the President
16 and the Congress of the FSM:

17 (1) An annual report on the activities and management
18 of the Fund;

19 (2) The accounts of the Fund for that year audited in
20 accordance with section 1218 of this chapter; and

21 (3) The report of the auditor under section 1218 of
22 this chapter."

23 Section 22. Termination and transition of funds.

24 (1) Upon the effective date of this act, all the
25 activities of the FSM Trust Fund established by Public

1 Law No. 10-150 shall automatically cease.

2 (2) The Secretary of the Department of Finance shall
3 settle all legal obligations of the trust fund within a
4 period not exceeding six (6) months, and thereafter
5 submit a final report to the President.

6 (3) Upon approval of the final report, all the
7 leftover funds of the FSM Trust Fund shall automatically
8 paid to the FSM National Trust Fund.

9 Section 23. This act shall become law upon approval by the
10 President of the Federated States of Micronesia or upon its
11 becoming law without such approval.

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13 Date: 5/9/12

Introduced by: /s/ Florencio S. Harper
Florencio Singkoro Harper
(by request)

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