The President

Palikir, Pohnpei

Federated States of Micronesia

PRESIDENTIAL COMM. NO. 19-288
FSM CONGRESS

March 4, 2016

The Honorable Wesley W. Simina
Speaker
Nineteenth Congress of the Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Speaker Simina:

I am pleased to transmit the enclosed act, which I approved to become Public Law No. 19-67, as follows:

> Congressional Act No. 19-59, entitled: "TO AMEND SECTIONS 1202, 1204, 1211, 1213, 1214, 1215, 1216, 1217 AND 1222 OF TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED BY PUBLIC LAWS NOS. 18-74 AND 18-119, TO UPDATE AND IMPROVE THE FUNCTIONALITY OF THE FSM TRUST FUND, AND FOR OTHER PURPOSES."

I take this opportunity to express our appreciation to Congress for the passage of this act.

Sincerely,

Peter M. Christian
President

Enclosures:

Xc: Chief Justice, FSM Supreme Court
Secretary, Department of Justice
Secretary, Department of Finance and Administration
Legislative Council, CFSM
Library, CFSM
FSM PIO

CONGRESS OF THE FEDERATED STATES OF MICRONESIA
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Office of the Chief Clerk

PRESIDENTIAL COMM. NO. 19288
FSM CONGRESS

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February 08, 2016

His Excellency Peter M. Christian
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Christian:

I have the honor to transmit herewith Congressional Act No. 19-59, "AN ACT TO AMEND SECTIONS 1202, 1204, 1211, 1213, 1214, 1215, 1216, 1217 AND 1222 OF TITLE 55 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AMENDED BY PUBLIC LAWS NOS. 18-74 AND 18-119, TO UPDATE AND IMPROVE THE FUNCTIONALITY OF THE FSM TRUST FUND, AND FOR OTHER PURPOSES.", which was passed by the Nineteenth Congress of the Federated States of Micronesia, Third Regular Session, 2016, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Liwiana Ramon Ioanis
Chief Clerk, Congress of the
Federated States of Micronesia

Enclosures

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PRESIDENTIAL COMM. NO. 19-288
FSM CONGRESS

ACT NO. 19-59

(CONGRESSIONAL BILL NO. 19-103)

We hereby certify that on February 03 the foregoing act passed Second and Final Reading of the Nineteenth Congress of the Federated States of Micronesia, Third Regular Session, 2016, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Wesley W. Simina
Speaker
Congress of the
Federated States of Micronesia

Liwiana Ramon Ioanis
Chief Clerk
Congress of the
Federated States of Micronesia

NINETEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

THIRD REGULAR SESSION, 2016 CONGRESSIONAL BILL NO. 19-103

PUBLIC LAW No. 19- 67

AN ACT

To amend sections 1202, 1204, 1211, 1213, 1214, 1215, 1216, 1217 and 1222 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Laws Nos. 18-74 and 18-119, to update and improve the functionality of the FSM Trust Fund, and for other purposes.

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

Section 1. Section 1202 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Law No. 18-74, is hereby further amended to read as follows:

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

(1) 'Baseline Funding' means the balance of the FSM Trust Fund on January 1, 2016 not including the balances of the State Sub-Accounts;

(2) 'Board' means the Board of Trustees of the Fund appointed pursuant to section 1208 of this title;

(3) 'Contributing government' means the government of any State of the FSM or the National Government once such government has made a contribution of funds to the State Sub-Account's;

(4) 'FSM' means the sovereign nation of the Federated States of Micronesia;

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1 (5) 'Financial year' means the fiscal year of the
2 Fund, which shall be the twelve-month period ending on
3 the last day of each December;
4 (6) 'Fiscal year' means the fiscal year of the
5 National Government;
6 (7) 'Fund' means the FSM Trust Fund created by this
7 chapter, including the accounts therein;
8 (8) 'Fund custodians' means the one or more firms
9 selected by the Board to assume responsibility for
10 the physical possession of the Fund assets or
11 evidences of assets;
12 (9) 'Fund managers' means one or more firms
13 selected by the Board to manage the investment and
14 reinvestment of the Fund's resources;
15 (10) 'Fund returns' means the returns accruing to
16 the Fund by way of income generated from the Fund's
17 resources and the capital appreciation of those
18 resources;
19 (11) 'General Fund' means the General Fund of the
20 Federated States of Micronesia, into which all
21 revenues raised pursuant to the tax laws and other
22 revenue laws shall be deposited.
23 (12) 'National Government' means the National
24 Government of the FSM;
25 (13) 'Other participating government' means a State

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1 government of the FSM;
2 (14) 'Real value' means the value of contributions to
3 the Fund adjusted annually at the beginning of the
4 financial year in the same percentage as the United
5 States Bureau of Labor Statistics Consumer Price Index
6 for All Urban Consumers All Items, United States City
7 Average of the previous 12 months; and
8 (15) 'Reinvestment' means the process whereby Fund
9 returns, whether in the form of income or appreciation,
10 become part of the capital of the Fund."
11 Section 2. Section 1204 of title 55 of the Code of
12 the Federated States of Micronesia (Annotated), is hereby
13 amended to read as follows:
14 "Section 1204. Purpose.
15 (1) The purpose of the Account A and Account B
16 portion of the Fund is to create a disciplined
17 approach to ensure the protection of the Fund's Real
18 Value into perpetuity while providing a sustainable
19 source to supplement the needs of the General Fund.
20 Specifically, the accounts shall:
21 (a) assist the National Government and other
22 participating governments to achieve greater financial
23 autonomy in the management of their recurrent budgets;

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(b) enable the FSM at all levels of government to meet long-term maintenance and operating costs of social and economic infrastructure; and

(c) enable the FSM at all levels of government to improve existing levels of social and economic infrastructure.

(2) The purpose of the State Sub-Account's A and B of the Fund are distinct and defined in section 1217 of this chapter."

Section 3. Section 1211 of title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 1211. Contributions to the Fund.

(1) Contributions to Account A.

(a) A contribution to the Fund may be in the form of a grant or, with the agreement of a majority of all trustees, in the form of an unsecured loan which bears interest (or its equivalent) at a rate no greater than three percent (3%) and is otherwise cost-free.

(b) The Fund may refuse a contribution if it considers that it would not be in the interest of the Fund or the FSM to accept it. The Fund shall notify Congress of the nature, amount, source and terms of any contribution that it has decided to accept or refuse, whereupon the Fund may conditionally accept or refuse

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1 the contribution. Acceptance or refusal shall become
2 final no earlier than 180 days after notice to Congress,
3 unless Congress directs by law otherwise.
4 (c) The Fund shall not issue negotiable or
5 transferable obligations evidencing indebtedness for
6 any loan.
7 (d) Contributions shall be made for the
8 purpose of the Fund without further restriction as to
9 use, except such restrictions as Congress may provide by
10 law. Except for repayment of loans, contributions
11 shall not be refunded to contributors.
12 (e) A contribution to the Fund shall not in
13 and of itself constitute or imply any commitment by the
14 contributor to make any further contribution to the
15 Fund.
16 (2) Contributions to the State Sub-Account's A and B
17 of the Fund are outlined in section 1217 of this chapter
18 and excluded from the provisions above."
19 Section 4. Section 1213 of title 55 of the Code of the
20 Federated States of Micronesia (Annotated), as amended by Public
21 Law No.18-119, is hereby further amended to read as follows:
22 "Section 1213. Accounts.
23 (1) The Fund shall be divided into Account A and
24 Account B.
25 (2) All contributions to the Fund shall be deposited

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to Account A. Thereafter, the Board shall ensure that a portion of the Fund returns in each financial year is reinvested at the end of that financial year as capital of Account A, such portion being the amount necessary to maintain the opening balance of Account A's capital for the following financial year at the real value of all contributions to the Fund minus all principal repayments made on loans to the Fund.

(3) If shortfalls are incurred when the Fund's investment return net of expenses was insufficient to maintain Account A's Real Value, such shortfalls shall be made up via a transfer from Account B or via future withholdings of transfers into Account B. Transfers into Account B shall be suspended until such shortfalls are reduced to zero.

(4) All contributions to the Fund shall be deposited within 90 days from the date of appropriation. The Secretary of Finance and Administration shall submit proof of deposit and a balance statement to the Congress of the Federated States of Micronesia within the next 10 business days from the deposit.

(5) Repayment of loans to the Fund and payment of the expenses of the Fund shall be made from Account A. The amount, if any, of Fund returns in each financial year which remains after such repayment of loans and payment

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of expenses, and after reinvestment in accordance with subsection (2) of this section, shall be transferred to Account B. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from Account A.

(6) Account B shall consist of funds transferred from Account A and the returns therefrom while in Account B. Funds in Account B may be distributed to the National Government in accordance with section 1214 of this chapter or transferred to Account A in accordance with section 1213 (3) and section 1215 of this chapter. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from Account B.

(7) It is anticipated that funds in Account A will be placed in longer term, higher yielding investments than are funds in Account B."

Section 5. Section 1214 of title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 1214. Distributions to National Government.

(1) At the end of each financial year the Board shall determine the maximum amount of funds available for distribution to the National Government in the following fiscal year. Such amount shall be the lesser

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of 5 percent of the average total Fund balances of the 5 previous financial years (inclusive) or the entire balances of Account B. For the years 2017, 2018, 2019, 2020, and 2021, the average shall be calculated with the available number of years since 2016. For the purposes of this calculation, the balances of the State Sub-Accounts are calculated separately and subject to provisions in section 1217 of this chapter.

(2) In order to enable the National Government to prepare its annual budget and estimates for the next fiscal year, by January 30 of each year the Board shall inform the National Government of the maximum amount of funds available for distribution in the next fiscal year.

(3) The Board shall distribute to the National Government each fiscal year the maximum amount of funds available for distribution or such lesser amount as the National Government may specify. The distribution shall be made at such times and in such proportions as the National Government and the Board agrees.

(4) Notwithstanding the foregoing, no funds shall be distributed to the National Government prior to October 1, 2023.

(5) Funds distributed to the National Government shall be deposited in the General Fund of the FSM for

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1 appropriation and expenditure consistent with the
2 purposes of the Fund. Such appropriation and
3 expenditure may, but need not, include transfers to
4 other levels of government in the FSM for their use in
5 ways consistent with the purposes of the Fund.
6 (6) This section may apply to the State Sub-Account's
7 A and B with additional provisions defined in section
8 1217 of this title."
9 Section 6. Section 1215 of title 55 of the Code of the
10 Federated States of Micronesia (Annotated), is hereby amended to
11 read as follows:
12 "Section 1215. Transfers to Account A.
13 (1) Transfers from Account B.
14 (a) The Board shall transfer funds from Account
15 B to Account A to the extent necessary to make up any
16 shortfall of funds in Account A needed for
17 reinvestment, repayment of loans to the Fund, payment
18 of the expenses of the Fund, and to maintain the Real
19 Value of Account A, pursuant to section 1213 of this
20 chapter.
21 (b) The Board may transfer to Account A any
22 funds in Account B in excess of an amount equal to the
23 sum of all funds transferred from Account A to Account B
24 during the five most recent financial years. Such a
25 transfer may only occur at the end of a financial year

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and after there have been at least five financial years in which funds were in fact transferred from Account A to Account B. Funds transferred to Account A pursuant to this subsection shall be deemed to be additional contributions to the Fund.

(2) State Sub-Account's A and B of the Fund may be subject to the provisions above after certain conditions are met as defined in section 1217 of this chapter."

Section 7. Section 1216 of title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 1216. Miscellaneous restrictions.

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

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

(3) The Fund shall not invest more than 40 percent in non-U.S. securities or instruments denominated in currencies other than the U.S. dollar except as prudent and necessary to avoid exchange rate risks on loans which must be repaid in a currency other than the US dollar."

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1 Section 8. Section 1217 of title 55 of the Code of the
2 Federated States of Micronesia (Annotated), as amended by Public
3 Law No. 18-74, is hereby further amended to read as follows:
4 "Section 1217. Other participating government accounts.
5 (1) There are hereby-created State Sub-A accounts,
6 including A and B sub-accounts, for each of the States
7 of the Federated States of Micronesia; with the
8 condition that the State Sub-Account A for each
9 individual state must meet an initial threshold balance
10 of $2,000,000 USD, independent of the balance of the
11 other state's Sub-Account A, before establishing a State
12 Sub-Account B for that state.
13 (2) Any donor, including the State and Foreign
14 Governments may make contributions to a State Sub-A
15 account or Sub-A accounts.
16 (3) National Government contributions to State sub-
17 accounts shall only be to the long-term, Sub-A account A
18 of that state or states.
19 (4) Contributions to a State Sub-A account made by
20 the National Government shall remain the property of the
21 National Government unless conditions are met for
22 transfers to Sub-Account B, with the relevant State
23 being the beneficiary of the proceeds subject to the
24 conditions of the A account B. Contributions made by the
25 National Government to a State Sub-A account shall not

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be withdrawn or disbursed except to cover the compensation and expenses of the Fund managers and custodians in carrying out their duties in administration of the Fund in accordance with sections 1212 and 1213.

(5) State Sub-A accounts shall be subject to this chapter and shall be managed and administered in the same manner as the National Government Accounts A and B except that distributable funds or assets shall be made available to the other participating governments rather than the National Government.

(6) States may withdraw their own contributions to their States Sub-A account A and contributions made on their behalf by NGO's and other donors if allowed under the terms of the contribution, beginning October 1, 2023.

(7) In the event that a state meets the initial threshold requirement to establish a State Sub-Account B under (1) above, States may withdraw from their State Sub-A account B beginning October 1, 2023. Fund expenses shall be prorated between the accounts of different governments in proportion to their relative share of the total Fund."

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1 Section 9. Section 1222 of title 55 of the Code of the
2 Federated States of Micronesia (Annotated), is hereby deleted to
3 in its entirety:
4 Section 10. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.
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9
10 3/4, 2016
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Peter M. Christian
15 President
Federated States of Micronesia
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