
A BILL FOR AN ACT

To amend Title 24 of the Code of the Federated States of Micronesia, as amended, by amending Sections 801 and 803 of Chapter 8 and Sections 901 and 902 of Chapter 9 and to amend title 55 of the Code of the Federated States of Micronesia, as amended, by enacting a new subchapter XII of chapter 6 to establish a Surveillance and Maritime Enforcement Revolving Fund of the Federated States of Micronesia and to provide for the deposit of a portion of revenues from criminal fines, civil penalties and forfeitures imposed pursuant to Title 24 into such fund to be used for the operation and maintenance of Federated States of Micronesia patrol boats, and for other purposes.

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

1 Section 1. Title 24 of the Code of the Federated States of
2 Micronesia, as amended by Public Laws Nos. 10-75, 11-24, 11-26,
3 11-57, 12-14, 12-34, 13-86, 14-47 and 14-55 is hereby further
4 amended by amending section 801 of chapter 8 to read as follows:

5 "Section 801. Forfeiture of property.

6 (1) Any fishing vessel, including its fishing gear,
7 furniture, appurtenances, stores and cargo used in or
8 connected with the commission of any act prohibited by
9 this subtitle, within the territorial sea or internal
10 waters of the Federated States of Micronesia, shall be
11 subject to forfeiture to the Government of the Federated
12 States of Micronesia pursuant to a civil proceeding
13 under this section.

14 (2) Any fishing vessel, including its fishing gear,
15 furniture, appurtenances or stores used in or connected
16 with the commission of any act prohibited by this
17 subtitle, within the exclusive economic zone outside the

1 territorial seas of the Federated States of Micronesia,
2 shall be released upon the posting of a bond or other
3 surety.

4 (3) Any vehicle or aircraft, all or any part of any
5 fish or fish product and the proceeds of the sale of any
6 fish seized in connection with a violation of this
7 subtitle, shall be subject to forfeiture to the
8 Government of the Federated States of Micronesia
9 pursuant to a civil proceeding under this section.

10 (4) The Supreme Court of the Federated States of
11 Micronesia shall have jurisdiction, upon application by
12 the Secretary of the Department of Justice on behalf of
13 the Federated States of Micronesia, to order any
14 forfeiture authorized under subsection (1) of this
15 section.

16 (5) If a judgment is entered for the Government of the
17 Federated States of Micronesia in a civil forfeiture
18 proceeding under this section, the Secretary of the
19 Department of Justice shall seize any property or other
20 interest declared forfeited to the Government of the
21 Federated States of Micronesia, which has not previously
22 been seized pursuant to this subtitle.

23 (6) The forfeited item or items shall be sold and the
24 proceeds deposited into the General Fund of the
25 Federated States of Micronesia and distributed in

1 accordance with subsection [~~6~~] (7) of this section.

2 (7) Fifty percent of the revenues from fines and
3 forfeitures shall be distributed to an FSM State(s)
4 which may be affected by the situation which has given
5 rise to the fine and/or forfeiture. The remaining fifty
6 percent shall be credited to the Surveillance and
7 Maritime Enforcement Revolving Fund established pursuant
8 to Subchapter XII of Chapter 6 of Title 55.

9 (8) Pending completion of the civil forfeiture
10 proceeding, the item or items subject to forfeiture, or
11 any part thereof, may be released at the discretion of
12 the Court upon deposit with the Court of a satisfactory
13 bond, surety or other security at least equal to the
14 fair market value of the seized property. Exoneration
15 of such bond, surety or other security shall be
16 conditional upon return of the released property to the
17 appropriate court upon order, without any impairment of
18 its value, or by paying the monetary value of the
19 released property to the General Fund of the Federated
20 States of Micronesia upon order of the Court. Such
21 bond, surety or other security shall be forfeited in the
22 event that any condition is breached as shall be
23 determined by the Court, and judgment shall be
24 recoverable by the Court against the principal of any
25 surety for any such breach.

1 (9) In the event there is an appeal from an order for
2 forfeiture, the Court may continue any such bond, surety
3 or other security deposited in accordance with
4 subsection (6) of this section during the pendency of
5 the appeal and any retrial or rehearing on remand or may
6 require additional security to be deposited with the
7 Court."

8 Section 2. Title 24 of the Code of the Federated States of
9 Micronesia, as amended by Public Laws Nos. 10-75, 11-24, 11-26,
10 11-57, 12-14, 12-34, 13-86, 14-47 and 14-55 is hereby further
11 amended by amending section 803 of chapter 8 to read as follows:

12 "Section 803. Disposition of forfeited or seized goods.

13 (1) Notwithstanding any other provision of this
14 subtitle, any vessel, vehicle, aircraft or other item
15 ordered to be forfeited pursuant to this subtitle may be
16 disposed of in such manner as prescribed by law after
17 the expiration of the time provided for the filing of a
18 notice of appeal.

19 (2) Any vessel, vehicle, aircraft or other item seized
20 under this subtitle, but not forfeited in any legal
21 proceedings, may be held by the Government of the
22 Federated States of Micronesia until all fines, orders
23 for costs and penalties imposed under this subtitle have
24 been paid and, failing payment within the time allowed,
25 be sold and the balance of the proceeds returned to the

1 owner or apparent owner in accordance with this subtitle
2 after deduction of all fines, orders for costs,
3 penalties imposed under this subtitle and costs of sale.

4 (3) The proceeds of sale of all forfeited items shall
5 be deposited into the General Fund of the Federated
6 States of Micronesia until distributed in accordance
7 with subsection 7 of Section 801."

8 Section 3. Title 24 of the Code of the Federated States of
9 Micronesia, as amended by Public Laws Nos. 10-75, 11-24, 11-26,
10 11-57, 12-14, 12-34, 13-86, 14-47 and 14-55 is hereby further
11 amended by amending section 901 of chapter 9 to read as follows:

12 "Section 901. Civil Penalties.

13 (1) Any person who is found by the Supreme Court of
14 the Federated States of Micronesia in a civil proceeding
15 to have committed an act prohibited by this subtitle
16 shall be liable to the Federated States of Micronesia
17 for a civil penalty.

18 (2) Each day of a continuing violation shall
19 constitute a separate offense, for which a separate
20 penalty shall be assessed.

21 (3) In determining the amount of the penalty, the
22 Supreme Court of the Federated States of Micronesia
23 shall take into account the nature, circumstances,
24 extent and gravity of the prohibited acts committed and,
25 with respect to the violator, the degree of culpability,

1 any history of prior offenses, whether there are
2 multiple violations which together constitute a serious
3 disregard of conservation and management measures and
4 such other matters as justice may require.

5 (4) The Secretary is authorized to initiate all
6 proceedings under this section and to recover the amount
7 assessed as a civil penalty.

8 (5) The proceeds of civil penalties shall be deposited
9 into the General Fund of the Federated States of
10 Micronesia. Fifty percent of the proceeds from civil
11 penalties shall then be distributed to any FSM State
12 which may be affected by the situation which has given
13 rise to this action. The remaining fifty percent shall
14 be credited to the Surveillance and Maritime Enforcement
15 Revolving Fund established pursuant to Subchapter XII of
16 Chapter 6 of Title 55."

17 Section 4. Title 24 of the Code of the Federated States of
18 Micronesia, as amended by Public Laws Nos. 10-75, 11-24, 11-26,
19 11-57, 12-14, 12-34, 13-86, 14-47 and 14-55 is hereby further
20 amended by amending section 902 of chapter 9 to read as follows:

21 "Section 902. Criminal penalties.

22 (1) Any person who commits an act prohibited by this
23 subtitle is subject to criminal prosecution.

24 (2) The Captain and any crew member of a fishing
25 vessel, who is subject to criminal charges solely for

1 violations of this subtitle occurring outside the
2 territorial waters but within the exclusive economic
3 zone of the Federated States of Micronesia shall be
4 released upon posting of reasonable bond or other
5 surety.

6 (3) Unless otherwise provided, all maximum penalties
7 described in this subtitle shall be applicable in both
8 civil and criminal proceedings in respect to the same
9 prohibited acts. In addition to any fine, any criminal
10 violation shall also be punishable by imprisonment for
11 not more than ten (10) years, if in the commission of
12 any such offense the person:

13 (a) uses a dangerous weapon;

14 (b) engages in conduct that causes bodily injury
15 to any authorized officer or authorized observer or
16 other officer authorized to enforce the provisions of
17 this subtitle; or

18 (c) threatens any such person with bodily injury.

19 (4) Each day of a continuing violation shall be
20 considered a separate offense, for which a separate
21 penalty shall be assessed.

22 (5) Fines shall be deposited into the General Fund of
23 the Federated States of Micronesia. Fifty percent of
24 the proceeds from criminal fines shall be distributed to
25 any FSM State(s) which may be affected by the situation

1 which has given rise to the action. The remaining fifty
2 percent shall be credited to the Surveillance and
3 Maritime Enforcement Revolving Fund established pursuant
4 to Subchapter XI of Chapter 6 of Title 55."

5 (6) Criminal penalties shall be imposed without regard
6 to whether the person committing the prohibited act is
7 also subject to civil proceedings for the same
8 violation, and without regard to the amount of any civil
9 penalty imposed or which may be imposed in such civil
10 proceedings.

11 (7) Nothing in this subtitle shall be interpreted to
12 allow the abatement of a criminal prosecution upon the
13 late satisfaction of a civil judgment or payment of a
14 fine or other determination pursuant to administrative
15 proceedings under this subtitle."

16 Section 5. Title 55 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by enacting a
18 new subchapter XII of chapter 6 entitled "SURVEILLANCE AND MARINE
19 ENFORCEMENT REVOLVING FUND".

20 Section 6. Title 55 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by enacting a
22 new section 671 of subchapter XII of chapter 6 to read as follows:

23 "Section 671. Surveillance and Marine Enforcement
24 Revolving Fund Established. There is hereby created
25 within the Treasury of the Federated States of

1 Micronesia the Marine Enforcement Revolving Fund
2 referred to in this Chapter as the "SMERF," separate
3 from the General Fund of the Federated States of
4 Micronesia and all other funds.

5 Section 7. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by enacting a
7 new section 672 of subchapter XII of chapter 6 to read as follows:

8 Section 672. Purpose. The purpose of the SMERF is to
9 establish an ongoing revolving fund to be used only for
10 the ongoing operation and maintenance of FSM patrol
11 boats and to provide for a portion of revenues from
12 criminal fines, civil penalties and forfeitures imposed
13 pursuant to Chapter 8 and Chapter 9 of Title 24 of this
14 Code to be deposited into such account.

15 Section 8. Title 55 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by enacting a
17 new section 673 of subchapter XII of chapter 6 to read as follows:

18 Section 673. Deposits. All future criminal fines,
19 civil penalties and forfeitures received by the
20 Federated States of Micronesia pursuant to Chapter 8 and
21 Chapter 9 of Title 24, after distribution of those
22 portions provided by sections 801 of chapter 8 and
23 sections 901 and 902 of chapter 9 of this Title, shall
24 be deposited in the SMERF. Any unexpended moneys in the
25 SMERF at the end of the fiscal year in excess of

1 \$950,000 shall lapse and revert to the General Fund.
2 Any unexpended funds in an amount of less than \$950,000
3 shall not lapse. In the event the projected balance of
4 the fund at the close of a fiscal year is less than
5 \$450,000, an amount sufficient to create a total balance
6 of the SMERF on the beginning of the next fiscal year of
7 at least \$450,000 shall be appropriated.

8 Section 9. Title 55 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by enacting a
10 new section 674 of subchapter XII of chapter 6 to read as follows:

11 Section 674. Administration. The Fund shall be
12 administered by the Secretary of Justice of the
13 Federated States of Micronesia or his or her designee,
14 who shall establish regulations and procedures, pursuant
15 to [chapter 1 of title 17](#) of this code necessary and
16 appropriate for the effectuation and implementation of
17 the provisions of this chapter. Distributions from the
18 fund shall be only for the purchase of fuel and for
19 routine maintenance for patrol and enforcement vessels
20 of the Federated States of Micronesia.

21 Section 10. Title 55 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by enacting a
23 new section 675 of subchapter XII of chapter 6 to read as follows:

24 Section 675. Reporting. The Secretary of Justice of
25 the Federated States of Micronesia or his or her

1 designee shall report to the President and the Congress
2 of the Federated States of Micronesia on the status of
3 the SMERF at the close of each fiscal year and at such
4 other times as may be required.

5 Section 11. Effective date. This Act shall take effect upon
6 its approval by the President, or upon its becoming law without
7 such approval, except as otherwise provided by law.

8

9 Date: 2/11/08

Introduced by: /s/ Joseph J. Urusemal
Joseph J. Urusemal

10

11

12

13

14

15

16

17

18

19

20

21

22

23