
A BILL FOR AN ACT

To amend title 25 of the Code of the Federated States of Micronesia by repealing chapters 1 through 4 of subtitle I in their entirety and amending chapters 5 through 7 of subtitle II by renumbering chapters 5 through 7 as chapters 1 through 3, for the purpose of revising and updating the Federated States of Micronesia Environmental Protection Act, and for other purposes.

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

1 Section 1. Chapters 1 through 4 of title 25 of the Code of
2 the Federated States of Micronesia are hereby repealed in their
3 entirety.

4 Section 2. Chapter 5 of title 25 of the Code of the
5 Federated States of Micronesia is hereby renumbered as chapter 1.

6 Section 3. Section 501 of title 25 of the Code of the
7 Federated States of Micronesia entitled "Short title" is hereby
8 amended to read as follows:

9 "Section [~~501~~] 101. Short title.

10 This [~~sub~~]title may be cited as the Federated States
11 of Micronesia Environmental Protection Act."

12 Section 4. Section 502 of title 25 of the Code of the
13 Federated States of Micronesia entitled "Public policy" is
14 hereby amended to read as follows:

15 "Section [~~502~~] 102. Public policy.

16 (1) The Federated States of Micronesia, recognizing
17 the profound impact of man's activity on the
18 interrelations of all components of the natural

1 environment~~al~~, particularly the profound influences
2 of population [~~growth~~] fluctuation and
3 redistribution, cultural change, resource
4 exploitation, and new [~~expanding~~] technological
5 [~~advances~~] developments, and recognizing further the
6 critical importance of restoring and maintaining
7 environmental quality for the overall welfare and
8 development of man, and recognizing further the
9 severe threat posed by anthropogenic climate change
10 and the urgent need to both mitigate and adapt to
11 future changes in the climate, declares that it is
12 the continuing policy of the Federated States of
13 Micronesia, in cooperation with [~~S~~] state and
14 municipal governments, and other concerned public and
15 private organizations, to use all practicable means
16 and measures, including financial and technical
17 assistance, in a manner calculated to foster and
18 promote the general welfare, to create and maintain
19 conditions under which man and nature can exist in
20 productive harmony, and fulfill the social, economic,
21 and other requirements of present and future
22 generations of the Federated States of Micronesia.

23 (2) In order to carry out the policy set forth in
24 this subtitle, it is the continuing responsibility of
25 the Federated States of Micronesia to use all

1 practicable means, consistent with other essential
2 considerations of national policy, to improve and
3 coordinate governmental plans, functions, programs,
4 and resources to the end that the inhabitants of the
5 Federated States of Micronesia may:

6 (a) fulfill the responsibilities for each
7 generation as trustee of the environment for
8 succeeding generations;

9 (b) ~~[assure for all Micronesians]~~ enjoy safe,
10 healthful, productive, and aesthetically and
11 culturally pleasing surroundings;

12 (c) attain the widest range of beneficial uses
13 of the environment without degradation, risk to
14 health or safety, or other undesirable or unintended
15 consequences; ~~[and]~~

16 (d) preserve important historic, cultural, and
17 natural aspects of our Micronesian heritage, and
18 maintain, wherever possible, an environment which
19 supports diversity and variety of individual choice;
20 and

21 (e) remain responsible members of the global
22 community by complying with the international legal
23 obligations accepted by the Federated States of
24 Micronesia upon ratifying or acceding to
25 international environment agreements.

1 (3) The effort to protect and preserve the
2 environment will be carried forward in close
3 cooperation with the ~~[s]~~States in the formulation of
4 policy, enforcement, and other activities.

5 (4) The Federated States of Micronesia recognizes
6 that each person has a responsibility to contribute
7 to the preservation and enhancement of the
8 environment."

9 Section 5. Section 503 of title 25 of the Code of the
10 Federated States of Micronesia entitled "Definitions" is hereby
11 amended to read as follows:

12 "Section ~~[503]~~ 103. Definitions.

13 The following words, for the purpose of this
14 ~~[sub]~~title shall have the following meanings:

15 (1) [~~"Board" means the Secretary of Human~~
16 ~~Resources]~~ "Director" means the Director of the
17 Office of Environment and Emergency Management;

18 (2) [~~"Chairman of the Board" or "chairman" means~~
19 ~~the Secretary of Human Resources or his designee]~~
20 "Exclusive Economic Zone" means the exclusive
21 economic zone defined in title 18 of the Code of the
22 Federated States of Micronesia;

23 (3) "Office" means the Office of Environment and
24 Emergency Management of the Federated States of
25 Micronesia;

1 (4) "Person" means the Federated States of
2 Micronesia, a State, municipality, political
3 subdivision, a public or private institution,
4 corporation, partnership, joint venture, association,
5 firm, or company organized or existing under the laws
6 of the Federated States of Micronesia or any State or
7 country, lessee or other occupant of property, or
8 individual, acting singly or as a group;

9 [~~(4)~~] (5) "Pollutant" means one or more substances
10 or forms of energy which, when present in the air,
11 land, or water, are or may be harmful or injurious to
12 human health, welfare, or safety, to animal or plant
13 life, or to property, or which unreasonably interfere
14 with the enjoyment by the people of life or property.

15 [~~(5)~~] "~~Primary drinking water regulation~~" means a
16 regulation which:

17 ~~(a) Applies to public water systems;~~

18 ~~(b) Specifies contaminants which, in the~~
19 ~~judgment of the Boards, may have any adverse effect~~
20 ~~on the health of persons; and~~

21 ~~(c) Specifies for each such contaminant~~
22 ~~either:~~

23 ~~(i) A maximum contaminant level, if, in~~
24 ~~the judgment of the Board, it is economically and~~
25 ~~technologically feasible to ascertain the level of~~

1 ~~such contaminant in water in public water systems; or~~
2 ~~(ii) If, in the judgment of the Board, it~~
3 ~~is not economically or technologically possible to so~~
4 ~~ascertain the level of such contaminant, each~~
5 ~~treatment technique known to the Board which leads to~~
6 ~~a reduction in the level of such contaminant;~~

7 ~~(d) Contains criteria and procedures to~~
8 ~~assure a supply of drinking water which dependably~~
9 ~~complies with such maximum contaminant levels,~~
10 ~~including quality control and testing procedures to~~
11 ~~ensure compliance with such levels and to ensure~~
12 ~~proper operation and maintenance of the system and~~
13 ~~requirements as to:~~

14 ~~(i) The minimum quality of water which~~
15 ~~may be taken into the system; and~~

16 ~~(ii) Siting for new facilities for public~~
17 ~~water systems.~~

18 ~~(6) "Secondary drinking water regulation" means a~~
19 ~~regulation which applies to public water systems and~~
20 ~~which specifies the maximum contaminant level which~~
21 ~~in the judgment of the Board is requisite to protect~~
22 ~~the public welfare. Such regulations may apply to~~
23 ~~any contaminant in drinking water:~~

24 ~~(a) Which may adversely affect the odor or~~
25 ~~appearance of such water and consequently may cause a~~

1 ~~substantial number of persons served by the public~~
2 ~~water system providing such water to discontinue its~~
3 ~~use; or~~

4 ~~(b) Which may otherwise adversely affect the~~
5 ~~public welfare. Such regulations may vary according~~
6 ~~to geographic or other circumstances.~~

7 ~~(7) "Trust Territory Environmental Protection~~
8 ~~Board" means the board established pursuant to 25~~
9 ~~F.S.M. C. 201.]"~~

10 Section 6. Chapter 6 of title 25 of the Code of the
11 Federated States of Micronesia is hereby renumbered as chapter
12 2.

13 Section 7. Sections 601 through Section 605 entitled
14 "RESERVED" are amended to read as follows:

15 "Sections ~~[601]~~ 201 - ~~[605]~~ 205. RESERVED."

16 Section 8. Section 606 of title 25 of the Code of the
17 Federated States of Micronesia entitled "Technical assistance"
18 is hereby amended to read as follows:

19 "Section ~~[606]~~ 206. Technical assistance.

20 The President shall provide the ~~[Board]~~ Office with
21 necessary technical and legal assistance through
22 departments, offices, and agencies of the National
23 Government."

24 Section 9. Sections 607 of title 25 of the Code of the
25 Federated States of Micronesia entitled "RESERVED" is hereby

1 amended to read as follows:

2 "Section. [607] 207. RESERVED."

3 Section 10. Section 608 of title 25 of the Code of the
4 Federated States of Micronesia entitled "Reports" is hereby
5 amended to read as follows:

6 "Section [608] 208. Reports.

7 The [Board] Director shall transmit to the President
8 and Congress, no later than September 30th of each
9 year, an environmental quality report for the
10 preceding calendar year, [~~which shall set forth:~~

11 ~~(1) the status and conditions of the major natural,~~
12 ~~artificial, or altered environmental classes of the~~
13 ~~Federated States of Micronesia, including, but not~~
14 ~~limited to, the air the waters, including marine,~~
15 ~~estuarine, and fresh water, and the terrestrial~~
16 ~~environmental, including, but not limited to, the~~
17 ~~forest, mangrove areas, beaches, reefs, drylands,~~
18 ~~wetlands, and urban and rural environment;~~

19 ~~(2) current and foreseeable trends in the quality,~~
20 ~~management, and utilization of such environments and~~
21 ~~the effects of those trends on the social, economic,~~
22 ~~and other requirements of the Federated States of~~
23 ~~Micronesia;~~

24 ~~(3) the adequacy of available natural resources for~~
25 ~~fulfilling human and economic requirements of the~~

1 ~~Federated States of Micronesia in the light of~~
2 ~~expected population pressures;~~
3 ~~(4) a review of the programs and activities~~
4 ~~(including regulatory activities) of the National~~
5 ~~Government, State governments, local governments, and~~
6 ~~nongovernmental entities or individuals, with~~
7 ~~particular reference to their effect on the~~
8 ~~environment, the conservation, development, and~~
9 ~~utilization of the Federated States of Micronesia;~~
10 ~~and~~
11 ~~(5) a program for remedying the deficiencies of~~
12 ~~existing programs and activities, together with~~
13 ~~recommendations for legislation.]~~
14 covering the status and conditions of the environment
15 of the Federated States of Micronesia, and a review
16 of the programs and activities (including regulatory
17 activities) of the [HYPERLINK](http://www.fsmlaw.org/fsm/index.htm)
18 "<http://www.fsmlaw.org/fsm/index.htm>"National
19 Government, state governments, municipal governments
20 and nongovernmental entities, with particular
21 reference to their effect on the environment of the
22 Federated States of Micronesia."

23 Section 11. Section 609 of title 25 of the Code of the
24 Federated States of Micronesia is hereby amended to read as
25 follows:

1 "Section [~~609~~] 209. General powers and duties of the
2 [Board] Office.

3 The [~~Board~~] Office shall have the power and duty to
4 work in close cooperation with the States to protect
5 the environment, human health, welfare, and safety
6 and to abate, control, and prohibit pollution or
7 contamination of air, land, and water in accordance
8 with this [~~sub~~] title and with the regulations
9 adopted and promulgated pursuant to this [~~sub~~]title,
10 including measures undertaken to prohibit or regulate
11 the testing, storage, use, disposal, import and
12 export of radioactive, toxic chemical, or other
13 harmful substances. The [~~Board~~] Office shall balance
14 the needs of economic and social development with
15 [~~against~~] those of environmental quality and shall
16 adopt regulations and pursue policies which, to the
17 maximum extent possible, promote both these needs and
18 the policies set forth in section [~~502~~] 102 of this
19 title."

20 Section 12. Section 610 of title 25 of the Code of the
21 Federated States of Micronesia is hereby amended to read as
22 follows:

23 "Section [~~610~~] 210. Specific powers and duties of
24 the [Board] Office.

25 For the purposes set forth in section [~~604~~] 209 of

1 this chapter, the [~~Board~~] Director is authorized and
2 empowered to:

3 (1) adopt, approve, amend, revise, promulgate, and
4 repeal regulations [~~, in the manner which is or may be~~
5 ~~provided by law,~~] to effect the purposes of this
6 [~~sub~~]title, and enforce such regulations which shall
7 have the force and effect of law[~~+~~]. These may
8 include regulations to give effect to the obligations
9 contained in the following international
10 environmental treaties ratified by the Federated
11 States of Micronesia

12 (a) Basel Convention on the Control of Trans
13 boundary Movements of Hazardous Wastes and Their
14 Disposal;

15 (b) Montreal Protocol on Substances that
16 Deplete the Ozone Layer;

17 (c) Stockholm Convention on Persistent Organic
18 Pollutants; and

19 (d) Waigani Convention to Ban the Importation
20 into Forum Island Countries of Hazardous and
21 Radioactive Wastes within the South Pacific Region.

22 (2) [~~adopt, approve, amend, revise, promulgate, and~~
23 ~~repeal primary and secondary drinking water~~
24 ~~regulations,~~] in accordance with regulations adopted
25 under this section may collect fees from persons

1 submitting applications or receiving permits or
2 licenses. Fees collected under this subsection shall
3 be paid to the Treasury of the Federated States of
4 Micronesia for credit to the General Fund of the
5 Federated States of Micronesia;

6 (3) accept appropriations, loans, and grants from
7 ~~[the United States Government or any agency thereof~~
8 ~~and other]~~ any appropriate sources, public or
9 private, which ~~[loans, grants, and appropriations]~~
10 shall not be expended for other than the purposes of
11 this ~~[sub]~~title;

12 (4) adopt and provide for the continuing
13 administration of nationwide programs for the
14 protection of the environment, human health, welfare,
15 and safety of the Federated States of Micronesia ~~[and~~
16 ~~for the prevention, control, and abatement of~~
17 ~~pollution of the air, land, and water, including~~
18 ~~programs for the abatement or prevention of the~~
19 ~~contamination of drinking water systems]~~, and from
20 time to time review and modify such programs as
21 necessary; and

22 (5) ~~[establish criteria for classifying air, land,~~
23 ~~and water in accordance with present and future uses;~~
24 ~~[(6) establish and provide for the continuing~~
25 ~~administration of a permit system whereby a permit~~

1 ~~shall be required for the discharge by any person or~~
2 ~~any pollutant in the air, land, or water, or for the~~
3 ~~conduct by any person of any activity, including, but~~
4 ~~not limited to, the operation, construction,~~
5 ~~expansion, or alteration of any installation, which~~
6 ~~results in or may result in the discharge of any~~
7 ~~pollutant in the air, land, or water, provide for the~~
8 ~~issuance, modification, suspension, revocation, and~~
9 ~~termination of such permits, and for the posting of~~
10 ~~any appropriate bond;]~~

11 ~~(7)] collect information and establish~~
12 ~~recordkeeping, monitoring, and reporting requirements~~
13 ~~as necessary and appropriate to carry out the~~
14 ~~purposes of this [sub]title~~

15 ~~[(8) conduct a study of those United States~~
16 ~~environmental protection laws which contain standards~~
17 ~~applicable to the Government of the Federated States~~
18 ~~of Micronesia, pursuant to section 161(b) of the~~
19 ~~Compact of Free Association, and make recommendations~~
20 ~~as to any necessary modifications of those laws in~~
21 ~~light of the particular circumstances of the~~
22 ~~Federated States of Micronesia.]”~~

23 Section 13. Chapter 7 of title 25 of the Code of the
24 Federated States of Micronesia is hereby renumbered as chapter
25 3.

1 Section 14. Section 701 of title 25 of the Code of the
2 Federated States of Micronesia entitled "Cooperative
3 agreements" is hereby amended to read as follows:

4 "Section ~~[701]~~ 301. Cooperative agreements.

5 (1) The ~~[Board]~~ Director is authorized to enter
6 into written cooperative agreements with the States
7 or State agencies ~~[for the purpose of:~~

8 ~~(a) collecting data and any information~~
9 ~~relative to identifying the local needs with respect~~
10 ~~to controlling, protecting, and enhancing the~~
11 ~~environmental quality of the State;~~

12 ~~(b) acting as an agent of the Board in~~
13 ~~implementing programs at the State level;~~

14 ~~(c) providing funds from the Board for the~~
15 ~~purpose of implementing environmental protection~~
16 ~~program activities within each State;~~

17 ~~(d) conducting investigations, making studies,~~
18 ~~reviewing local grievances, and making~~
19 ~~recommendations as needed to the Board; and~~

20 ~~(e) performing any other activities within the~~
21 ~~jurisdiction of the Board.]~~

22 to assist in achieving the purposes set out in this
23 title.

24 (2) ~~[Such function or functions delegated to the~~
25 ~~States pursuant to subsection (1) of this section may~~

1 ~~be reassumed and performed by the Board if such~~
2 ~~delegation will result in the actual termination of~~
3 ~~any financial grant received by the Board. Notice of~~
4 ~~such reassumption shall be by written notice to each~~
5 ~~State or State agency involved.]~~

6 The Director is authorized to enter into written
7 cooperative agreements with the departments or
8 agencies of the National Government of the Federated
9 States of Micronesia to assist in achieving the
10 purposes of this title. "

11 Section 15. Section 702 of title 25 of the Code of the
12 Federated States of Micronesia entitled "Environment impact
13 statements" is hereby amended to read as follows:

14 "Section [702] 302. Environmental impact statements.

15 (1) ~~[The National Government and its agencies~~ Any
16 ~~person, prior to taking any action that may~~
17 ~~significantly affect the quality of the environment~~
18 ~~within the exclusive economic zone of the Federated~~
19 ~~States of Micronesia, or within the boundaries of the~~
20 ~~National Capital Complex at Palikir, must~~ submit an
21 environmental impact statement to the [Board]
22 Director, in accordance with regulations established
23 by the [Board] Director [~~7~~ ~~prior to taking any major~~
24 ~~action significantly affecting the quality of the~~
25 ~~human environment. This requirement shall apply to~~

1 ~~any such action funded in any part by the National~~
2 ~~Government or its agencies; provided, that in such~~
3 ~~case the recipient of the funds may be required to~~
4 ~~submit the environmental impact statement as~~
5 ~~condition to its receipt of funds].~~

6 (2) The environmental impact statements required by
7 subsection (1) of this section [~~shall be a~~] are
8 public documents, and [~~shall~~] must include a detailed
9 statement on:

10 (a) the environmental impact of the
11 proposed action;

12 (b) any adverse environmental effects
13 which cannot be avoided should the proposal be
14 implemented;

15 (c) the alternatives to the proposed
16 action;

17 (d) the relationship between local short-
18 term uses of the environment and the maintenance and
19 enhancement of long-term productivity; and

20 (e) any irreversible and irretrievable
21 commitments of resources which would be involved in
22 the proposed action should it be implemented."

23 Section 16. Section 703 of title 25 of the Code of the
24 Federated States of Micronesia entitled "Right of entry" is
25 hereby amended to read as follows:

1 "Section [~~703~~] 303. Right of entry.
2 Whenever it is necessary for the purposes of this
3 [~~sub~~]title, the [~~Board~~] Director, or any [~~member~~]
4 officer, agent, or employee when duly authorized by
5 the [~~Board~~] Director or by court order, may, at
6 reasonable times, enter any establishment or upon any
7 property."

8 Section 17. Section 704 of title 25 of the Code of the
9 Federated States of Micronesia entitled "Violation -
10 Enforcement action" is hereby amended to read as follows:

11 "Section [~~704~~] 304. Violation – Enforcement action.
12 Any person who violates any provision of this
13 [~~sub~~]title, or any permit, regulation, standard, or
14 order issued or promulgated under this [~~sub~~]title,
15 shall be subject to enforcement action by the [~~Board~~]
16 Office. Such enforcement action may include, but is
17 not limited to:

18 (1) an order to cease and desist from the
19 violation, or to comply within a specific time
20 period;

21 (2) an order to clean up or abate the effects of
22 any pollutant;

23 (3) the imposition of a civil penalty up to
24 \$[~~10,000~~] 100,000 for each day of the violation.

25 Penalties collected under this subsection shall be

1 paid to the Treasury of the Federated States of
2 Micronesia for credit to the General Fund of the
3 Federated States of Micronesia;

4 (4) a civil action commenced in the Trial Division
5 of the Federated States of Micronesia Supreme Court
6 to enjoin the violation;

7 (5) a civil action for damages commenced in the
8 Trial Division of the Federated States of Micronesia
9 Supreme Court. Such action may be in addition to any
10 civil penalties imposed hereunder. In determining
11 such damages, the Court shall take into consideration
12 all relevant circumstances, including, but not
13 limited to, the extent of harm caused by the
14 violation, the nature and persistence of the
15 violation, the length of time over which the
16 violation occurred, and corrective action, if any,
17 taken by the violator. Damages collected under this
18 subsection shall be paid to the Treasury of the
19 Federated States of Micronesia for credit to the
20 General Fund of the Federated States of Micronesia;
21 and

22 (6) conducting a public hearing to determine the
23 authenticity of the facts upon which the alleged
24 violation is based, adequate notice of which and
25 opportunity to appear and be heard at which shall be

1 afforded to all interested persons.”

2 Section 18. Section 705 of title 25 of the Code of the
3 Federated States of Micronesia entitled “Administrative
4 procedure applicable” is hereby amended to read as follows:

5 “Section [705] 305. Administrative procedure
6 applicable.

7 The provisions of sections [704] 304 and [707] 307 of
8 this chapter shall be interpreted consistently with
9 the provisions of any law concerning administrative
10 procedure which is or may hereafter become Federated
11 States of Micronesia law. In the event of conflict
12 between the two, the provisions of the latter shall
13 supersede and be controlling.”

14 Section 19. Section 706 of title 25 of the Code of the
15 Federated States of Micronesia entitled “Judicial review” is
16 hereby amended to read as follows:

17 “Section [706] 306. Judicial review.

18 (1) Any person who is or will be adversely affected
19 by the enforcement of any standard, policy,
20 regulation, permit, order, or penalty [~~of the Board~~
21 ~~and~~] imposed under this title or regulations made
22 pursuant to this title and who alleges its invalidity
23 may file a petition for a declaratory judgment
24 thereon in the Trial Division of the Federated States
25 of Micronesia Supreme Court.

1 (2) The Court shall declare the standard, policy,
2 regulation, permit, order, or penalty invalid if it
3 finds that it exceeds the statutory authority of the
4 ~~[Board]~~ Director, or that it is arbitrary and
5 capricious."

6 Section 20. Section 707 of title 25 of the Code of the
7 Federated States of Micronesia entitled "False statements" is
8 hereby amended to read as follow:

9 "Section ~~[707]~~ 307. False statement.
10 Any person who knowingly makes any false statement,
11 representation, or certification in any application,
12 record, report, plan, or other document filed or
13 required to be maintained under this ~~[sub]~~title, or
14 by any permit, regulation, or order issued under this
15 ~~[sub]~~title, or who falsifies, tampers with, or
16 knowingly renders inaccurate any monitoring device or
17 method required to be maintained under this
18 ~~[sub]~~title or by a permit, regulation, or any order
19 issued under this ~~[sub]~~title, is guilty of a
20 misdemeanor, and upon conviction thereof, shall be
21 punished by a fine of not more than \$~~[10,000]~~
22 100,000, or by imprisonment for not more than six
23 months, or by both."

24 Section 21. Section 708 of title 25 of the Code of the
25 Federated States of Micronesia is hereby repealed in its

1 entirety.

2 Section 22. Title 25 of the Code of the Federated States of
3 Micronesia is hereby amended by enacting a new section 308
4 which shall be entitled "Authorized officers" to read as
5 follows:

6 "Section 308. Authorized officers.
7 Agreements made under section 301 of this title may
8 include the authorization by the Director of officers
9 of National and state government agencies to perform
10 the duties and exercise the powers provided in this
11 title or in regulations adopted and promulgated
12 pursuant to this title."

13 Section 23. This act shall become law upon approval by
14 the President of the Federated States of Micronesia or upon its
15 becoming law without such approval.

16

17 Date: 1/17/12

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)

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