

A BILL FOR AN ACT

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 change mitigation and adaptation measures, repealing sections 1201 through 1221 of chapter 12 of title 55 of the Code of the Federated States of Micronesia, and replacing with provisions for a new trust fund, 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, as amended, is hereby further  
3 amended by repealing sections 1202 through 1221 in their entirety.

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

7           Section 3. Chapter 12 of title 55, of the Code of the  
8 Federated States of Micronesia, as amended is hereby further  
9 amended by inserting a new section 1201 to read as follows:

10           "Section 1201. Short title.

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

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

16           "Section 1202. Definitions. Unless otherwise specified  
17           or clear from the context, words and phrases used in

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1           this chapter shall have the following meanings:

2           (1) "Board" means the Board of Trustees of the Fund;

3           (2) "Capitalized earning" means earning of more than  
4           one million dollars from previous financial years except  
5           from immediately preceding financial year;

6           (3) "Carryover funds" means appropriated operation  
7           funds of the national government that are lapsable  
8           during the fiscal year and, subject to or as confirmed  
9           by public audit, have remained expended. For purposes of  
10          this title, operation funds are funds under section 2  
11          (Executive Branch), section 3 (Congress), section 4  
12          (Judiciary), section 5 (Public Auditor), section 6  
13          (Agencies), section 7 (Special Program), and section 8  
14          (subsidy) in the annual budget acts.

15          (4) "Corpus" means the totality of the principal and  
16          capitalized earning;

17          (5) "Earning" means the income or the return of the  
18          corpus as a result of investment, which includes  
19          interest, dividend, and appreciation of assets;

20          (6) "Financial year" means a twelve-month period  
21          ending on the last day of each December;

22          (7) "Fiscal year" means the fiscal year of the  
23          National Government;

24          (8) "FSM" means the sovereign nation of the Federated  
25          States of Micronesia;

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1           (9) "Fund" means the FSM National Trust Fund created  
2           by this chapter, including all the accounts and sub-  
3           accounts established herein;

4           (10) "Fund custodians" means one or more firms selected  
5           by the Board to assume responsibility for the physical  
6           possession of the Fund assets or evidences of assets;

7           (11) "Fund managers" means one or more firms selected  
8           by the Board to manage the investment and reinvestment  
9           of the Fund's resources;

10          (12) "National Government" means the National  
11          Government of the FSM;

12          (13) "Other participating entity" means a State or  
13          local government of the FSM participating pursuant to a  
14          memorandum of understanding with the National  
15          Government, or an international organization, agency, or  
16          a foreign government contributing financial assistance  
17          into the Fund;

18          (14) "Sub-accounts" means the sub-accounts established  
19          under section 1213."

20          Section 5. Chapter 12 of title 55 of the Code of the  
21 Federated States of Micronesia, as amended, is hereby further  
22 amended by inserting an new section 1203 to read as follows:

23           "Section 1203. Establishment.

24           There is hereby created the FSM National Trust Fund,  
25           separate from the General Fund of the FSM and all other

1           funds."

2           Section 6. Chapter 12 of title 55 of the Code of the  
3 Federated States of Micronesia, as amended, is hereby further  
4 amended by inserting a new section 1204 to read as follows:

5           "Section 1204. Purpose.

6           (1) The purpose of the Fund is to set aside financial  
7 resources which the National Government may use in the  
8 event of major catastrophic disasters and for  
9 implementing measures and plans in response to climate  
10 change.

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

15           Section 7. Chapter 12 of title 55 of the Code of the  
16 Federated States of Micronesia, as amended, is hereby further  
17 amended by inserting a new section 1205 to read as follows:

18           "Section 1205. Powers.

19           The Fund shall have the powers and privileges expressly  
20 granted herein, and all incidental and necessary powers  
21 that are reasonably necessary to fulfil the purpose of  
22 the Fund."

23           Section 8. Chapter 12 of title 55 of the Code of the  
24 Federated States of Micronesia, as amended, is hereby further  
25 amended by inserting a new section 1206 to read as follows:

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

2           (1) The Fund is vested with juridical personality  
3           separate from the National Government. In particular,  
4           the Fund is vested with the capacity to:

5                     (a) contract;

6                     (b) acquire and dispose of immovable and  
7           movable properties; and

8                     (c) institute legal proceedings on its  
9           behalf.

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

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

15           Section 9. Chapter 12 of title 55 of the Code of the  
16 Federated States of Micronesia, as amended, is hereby further  
17 amended by inserting a new section 1207 to read as follows:

18           "Section 1207. Limitations on Liability.

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

21                     (2) Obligations of the Fund are not the obligations of  
22           the National Government or its contributors or  
23           participating entity."

24           Section 10. Chapter 12 of title 55 of the Code of the  
25 Federated States of Micronesia, as amended, is hereby further

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1 amended by inserting a new section 1208 to read as follows:

2       "Section 1208. Board.

3           (1) The Fund shall have a Board of Trustees consisting  
4           of the following members whose appointment is vested in  
5           the President of the FSM, and subject to advice and  
6           consent of Congress:

7                   (a) three (3) members from the National  
8                   Government, one of whom shall be selected as chairman of  
9                   the Board;

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

11                   (c) one (1) member from non-government  
12                   organization.

13           (2) The President shall establish such terms and  
14           conditions governing the rights and privileges of board  
15           members.

16           (3) The President may designate representatives of  
17           substantial contributors and donors of the Fund. The  
18           representatives so designated shall be deemed as  
19           honorary board members without right to vote, but may  
20           participate in the proceedings of the Board.

21           (4) Nominations to the Board shall take into account  
22           the need to have adequate geographical representation  
23           from within the FSM, representation of other  
24           participating entities with substantial accounts,  
25           representation of substantial foreign contributors to

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1       the Fund, and complementary experience in the fields of  
2       investment management and public finance. Each trustee  
3       shall serve for a term of four years or until a  
4       successor is appointed. The Board shall elect a chairman  
5       from among its own members representing the National  
6       Government.

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

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

10       (a) obtaining contributions to the und;

11       (b) operation, supervision, management, and  
12       investment of the Fund;

13       (c) adoption of investment policy that  
14       establishes the overall objectives, guidelines and  
15       standards by which investment is to be managed, and the  
16       duties and responsibilities of investment consultant and  
17       fund custodian;

18       (d) management of the Fund's assets, and  
19       retaining the services of reputable investment  
20       consultant, manager and custodian of the Fund, and such  
21       other investment experts to assist the Board in the  
22       discharge of its fiduciary duties;

23       (e) reviewing the asset allocation mix on a  
24       regular basis in conformity with due diligence to ensure  
25       sustainability of the Fund;

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1                   (f) monitoring performance of investment to  
2                   determine whether the rate of return objectives are  
3                   being met, and the policies and guidelines set by the  
4                   Board followed;

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

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

10                   (i) to document and communicate objectives,  
11                   guidelines, and standards to managers of funds or  
12                   investment managers.

13                   (7) The Board may delegate any of its administrative  
14                   responsibilities and powers as necessary through formal  
15                   appointment. The Board may appoint and recruit  
16                   Executive Administrator to handle the administrative  
17                   management of the Trust Fund on a day-to-day basis. The  
18                   Executive Administrator shall report to the Board of  
19                   Trustees through the Chairman of the Board. The  
20                   Executive Administrator shall be recruited based on  
21                   expertise in finance, banking, investment, law and  
22                   business management, and whose compensation shall be  
23                   commensurate with relevant qualifications. The Board  
24                   shall set the procedures and the terms and conditions of  
25                   appointment.

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1           (8) The investment policy and documentation of  
2           investment guidelines are a critical process in the  
3           management of the Trust Fund's assets. In formulating  
4           an investment policy and in making decisions affecting  
5           the Fund, the Board shall consider secured investment  
6           with guaranteed return, and available business  
7           investments, that will ensure that the corpus of the  
8           Fund is sustained. The investment strategy shall be  
9           developed through establishing the proper policy  
10           constraints and define strategic policy allocation that  
11           establishes a clear set of objectives. Along with a  
12           quarterly review of the overall strategy, upon request  
13           or as market conditions dictate, the investment advisor  
14           or consultant shall make suggestions to the Board as to  
15           possible modifications to the asset allocation,  
16           selection of managers, or the investment policy itself.

17           (9) The Board shall meet at least quarterly or as  
18           necessary, and reasonable notice of meetings shall be  
19           given.

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

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

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

3           Section 11. Chapter 12 of title 55 of the Code of the  
4 Federated States of Micronesia, as amended, is hereby further  
5 amended by inserting a new section 1209 to read as follows:

6           "Section 1209. Administrator of the Fund.  
7           During a transition period of five years from the  
8           approval of this amendment, or, whenever the corpus of  
9           the Fund is below \$50 million, the Secretary of Finance  
10           and Administration shall serve as administrator of the  
11           Fund and its accounts. Thereafter when the Board  
12           established pursuant to section 1208 of this chapter  
13           shall have become fully constituted and functioning, the  
14           Board shall take over the responsibility from the  
15           Secretary of Finance and it shall perform the functions  
16           and duties expressly delegated to it pursuant to this  
17           chapter, at which time the Secretary of Finance and  
18           Administration shall provide administrative support to  
19           the Fund and its Board. The Secretary shall also serve  
20           as ex-officio member of the Board."

21           Section 12. Chapter 12 of title 55 of the Code of the  
22 Federated States of Micronesia, as amended, is hereby further  
23 amended by inserting an new section 1210 to read as follows:

24           "Section 1210. Resources of the Fund.  
25           (1) The fund balance of the FSM Trust Fund shall be

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1 deemed transferred to the FSM National Trust Fund, in  
2 particular to a sub-account referred to as "A account",  
3 upon the approval of this act.

4 (2) The resources of the Fund shall consist of the  
5 transferred balance and all contributions to the Fund  
6 including foreign contribution to the FSM trust fund,  
7 from whatever sources, and all the earnings thereof.  
8 The resources of the Fund shall be held in trust and  
9 administered by the Board, or the Secretary of Finance  
10 and Administration during the transition period under  
11 section 1209; and shall used only for the purpose of,  
12 and in accordance with, this chapter.

13 (3) Carryover funds of up to two million dollars are  
14 automatically swept into the FSM National Trust Fund  
15 without further act of Congress.

16 (4) No part of the Fund shall revert or transfer to  
17 the general fund at any time."

18 Section 13. Chapter 12 of title 55 of the Code of the  
19 Federated States of Micronesia, as amended, is hereby further  
20 amended by inserting a new section 1211 to read as follows:

21 "Section 1211. Contributions to the Fund.

22 (1) Contribution to the Fund in the form of foreign  
23 financial assistance shall be subject to approval by  
24 Congress. The President may negotiate with foreign  
25 country or organization for possible contribution to the

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1           Fund.

2           (2) The Fund shall not issue negotiable or  
3           transferable obligations evidencing indebtedness for any  
4           loan.

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

8           (4) Contribution to the Fund shall not in and of  
9           itself constitute or imply any commitment by the  
10          contributor to make any further contribution to the  
11          Fund.

12          (5) There shall be appropriated every fiscal year at  
13          least one million US dollars (\$1 million) from the  
14          General Fund of the Federated States of Micronesia as  
15          annual contribution to the Fund."

16          Section 14. Chapter 12 of title 55 of the Code of the  
17 Federated States of Micronesia, as amended, is hereby further  
18 amended by inserting a new section 1212 to read as follows:

19          "Section 1212. Fund managers and custodians.

20          (1) The Board shall appoint one or more Fund managers  
21          and custodians from time to time on such terms and  
22          conditions as it determines. No Fund custodian shall be  
23          engaged unless it:

24                  (a) is a bank duly chartered to transact business  
25          in the Federated States of Micronesia or is a United

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1           States bank or trust company regulated by the Federal  
2           Reserve Board, a state authority or the federal  
3           comptroller of the currency as is appropriate;

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

5                   (c) has the capacity to clear securities  
6           transactions through the Depository Trust Company I.D.  
7           System; and

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

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

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

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

22           (5) The compensation and expenses of the Fund managers  
23           and custodians in carrying out their duties in  
24           administration of the Fund shall be expenses of the  
25           Fund."

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1 Section 15. Chapter 12 of title 55 of the Code of the  
2 Federated States of Micronesia, as amended, is hereby further  
3 amended by inserting a new section 1213 to read as follows:

4 "Section 1213. Sub-Accounts.

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

7 (a) A Account, reserved for major  
8 catastrophic disasters and emergencies; and

9 (b) B Account, reserved for National  
10 Government programs on climate change mitigation and  
11 adaptation measures.

12 (c) C Account, is a holding account of  
13 financial assistance to support program that has a  
14 period of three (3) years or more.

15 (d) D Account, which holds the interest  
16 earnings of the trust fund when the value of the fund  
17 reaches \$25 million. Section 1214 shall govern the use  
18 of this account.

19 (2) All contributions to the Fund shall be deposited  
20 in the appropriate sub-accounts. With regard to foreign  
21 contribution to the Fund, the terms and conditions of  
22 the assistance shall govern at all times. A foreign  
23 financial assistance for a project or program that has  
24 implementation period of 3 years or more shall be  
25 deposited in a separate holding account where it shall

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1           be accounted separately to ensure conformity with the  
2           terms and conditions of assistance.

3           (3) The D Account shall commence receiving deposits  
4           immediately upon determination by the Board, or in its  
5           absence the Secretary of Finance and Administration,  
6           that the value of the trust fund has reached \$25  
7           million."

8           Section 16. Chapter 12 of title 55 of the Code of the  
9 Federated States of Micronesia, as amended, is hereby further  
10 amended by inserting a new section 1214 to read as follows:

11           Section 1214. Use of Fund.

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

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

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

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

25                   (b) investment in accordance with the investment

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1           policy and guidelines duly adopted by the Board;

2                   (c) with respect to the A account,

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

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

17                   (d) with respect to the B account,

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

21                           (ii) major relocation in the event of  
22           catastrophic disasters.

23                   (e) with respect to the C account, the terms and  
24           condition of the relevant grant awards shall govern the  
25           use of funds.

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1                   (f) with respect to the D Account, the funds  
2                   shall be used to supplement the operation of the  
3                   national government.

4                   (4) Except for initial mobilization ordered by the  
5                   President, Congressional authorization is required  
6                   before any portion of the Fund is utilized."

7           Section 17. Chapter 12 of title 55 of the Code of the  
8 Federated States of Micronesia, as amended, is hereby further  
9 amended by inserting a new section 1215 to read as follows:

10           "Section 1215. Major Catastrophic Disaster.

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

21           (2) Without need for any further express  
22           authorization, every instance of catastrophic disaster,  
23           the President shall have authority to decree, obligate  
24           and expend from the Fund up to a maximum amount of  
25           \$500,000 to defray the cost of initial mobilization."

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1 Section 18. Chapter 12 of title 55 of the Code of the  
2 Federated States of Micronesia, as amended, is hereby further  
3 amended by inserting a new section 1216 to read as follows:

4 "Section 1216. Miscellaneous restrictions.

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

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

9 Section 19. Chapter 12 of title 55 of the Code of the  
10 Federated States of Micronesia, as amended, is hereby further  
11 amended by inserting a new section 1217 to read as follows:

12 "Section 1217. Books and Records.

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

22 (2) All records and reports of the Fund returns shall  
23 clearly segregate and identify gross returns, management  
24 fees, and net returns.

25 (3) The books and records of the Fund shall

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1           separately account for each of the sub-accounts,  
2           including the application of expenses charged against  
3           the Fund."

4           Section 20. Chapter 12 of title 55 of the Code of the  
5 Federated States of Micronesia, as amended, is hereby further  
6 amended by inserting a new section 1218 to read as follows:

7           "Section 1218. Audits.

8           (1) At the end of each financial year the accounts of  
9           the Fund shall be audited either by the FSM Public  
10          Auditor, or by an independent auditor who has no  
11          connections with the Fund managers and is appointed by  
12          the Board.

13          (2) The auditor shall satisfy himself or herself that  
14          the accounts of the Fund have been properly prepared in  
15          accordance with accounting standards adopted by the  
16          International Accounting Standards Committee or an  
17          entity of similar stature, and he shall either:

18                   (a) state in his report that:

19                           (i) the accounts have been properly  
20                   prepared in accordance with the books and records of the  
21                   Fund;

22                           (ii) the books and records of the Fund  
23                   have been properly kept and contain information adequate  
24                   for the purpose of his audit;

25                           (iii) the balance sheet and income and

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1 expenditure accounts of the Fund give a true and fair  
2 view of the Fund's financial position; and

3 (iv) the financial affairs of the Fund have  
4 been properly conducted in accordance with this chapter;  
5 or

6 (b) notify the Board that he is unable to  
7 complete his report as provided in sub-paragraph (a),  
8 giving his reasons therefor.

9 (3) The auditor shall include in his report  
10 information on the performance of the Fund managers in  
11 the investment of the Fund in accordance with the  
12 guidelines laid down by the Board with particular  
13 comparative reference to the performance of managers of  
14 other funds of a similar size and nature.

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

16 Section 21. Chapter 12 of title 55 of the Code of the  
17 Federated States of Micronesia, as amended, is hereby further  
18 amended by inserting a new section 1219 to read as follows:

19 "Section 1219. Annual Reports.

20 Within six months of the end of the financial year the  
21 Board shall publish and shall submit to the President  
22 and the Congress of the FSM:

23 (1) An annual report on the activities and management  
24 of the Fund;

25 (2) The accounts of the Fund for that year audited in

