

TITLE 55
GOVERNMENT FINANCE AND CONTRACTS

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CHAPTER 1
Budget Procedures

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Editor's note: PL 4-77 amended sections 102, 103, 106, 107, and 108 of this chapter primarily to ensure compliance with the Compact of Free Association (Compact). PL 4-77 § 14 provides that these amendments shall take effect upon the effective date of the Compact. The Compact took effect on November 3, 1986.

§ 101. Short title.

This chapter shall be known as the “Budget Procedures Act of 1981.”

Source: PL 2-17 § 1.

Editor's note: This law repeals section 5 of PL 1-96.

Cross-reference: FSM Const., art. XII, § 2 states as follows:

Section 2.

- (a) The President shall submit an annual budget to Congress at a time prescribed by statute. The budget shall contain a complete plan of proposed expenditures, anticipated revenues, and other money available to the national government for the next fiscal year, together with additional information that Congress may require. The Congress may alter the budget in any respect.
- (b) No appropriation bills, except those recommended by the President for immediate passage, or to cover the operating expenses of Congress, may be passed on final reading until the bill appropriating money for the budget has been enacted.
- (c) The President may item veto an appropriation in any bill passed by Congress, and the procedure in such case shall be the same as for disapproval of an entire bill by the President.

The provisions of the Constitution are found in Part I of this code.

§ 102. Definitions.

When used in this chapter:

- (1) “Agency” means any agency, commission, authority, board, bureau, or other organization of the National Government established by law, and not specifically part of one of the three branches of the National Government.
- (2) “Annual budget” refers to the annual request for new obligation and expenditure authority during the ensuing fiscal year by all branches and agencies of the National Government for all purposes, including, but not limited to, Government operations, development programs and projects, special programs, contributions, grants, and subsidies.

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(3) “Appropriation” refers to a law enacted by Congress which authorizes the National Government to incur obligations and to make payments out of the National Treasury in accordance with law.

(4) “Compact” refers to the Compact of Free Association, as amended, and its related agreements entered into by and between the Government of the Federated States of Micronesia and the Government of the United States and enacted as United States Public Law No. 108-188, unless otherwise specified herein.

(5) “Congress” refers to the Congress of the Federated States of Micronesia.

(6) “Development Plan” refers to the Development Plan of the Federated States of Micronesia prepared pursuant to title two, section 211 of the Compact, and the infrastructure development plan of the Federated States of Micronesia prepared pursuant to Article V, section 1(e) of the Fiscal Procedures Agreement.

(7) “Executive Branch” refers to the executive branch of the National Government of the Federated States of Micronesia.

(8) “Fiscal Procedures Agreement” means the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as amended, Between the Government of the United States and the Government of the Federated States of Micronesia, entered into in connection with the Compact.

(9) “Fiscal year” refers to each one year period beginning October 1 and ending on the next following September 30. Each Fiscal Year shall be designated by the number of the calendar year in which such Fiscal Year ends.

(10) “JEMCO” refers to the Joint Economic Management Committee established pursuant to the Compact.

(11) “National Government” refers to the National Government of the Federated States of Micronesia and includes all branches and agencies of the Government.

(12) “National Government Compact Budget Request” means the National Government’s annual Compact funding request for the upcoming Fiscal Year and estimated funding levels for the two subsequent Fiscal Years to be consolidated with the States’ Compact Budget Requests and submitted to the United States under Article V of the Financial Procedures Agreement.

(13) “Proposed Budget” shall have the meaning ascribed to it in subsection (2) of section 103 of this chapter.

(14) “Recommended Budget” shall have the meaning ascribed to it in subsection (3) of section 103 of this chapter.

(15) “Recommended National Government Compact Budget Request” means the President’s recommended annual Compact funding request for the National Government for the upcoming Fiscal Year and estimated funding levels for the two subsequent Fiscal Years.

Source: PL 2-17 § 2; PL 4-77 § 8; PL 13-63 § 1.

§ 103. Annual budget.

(1) The Congress, the judicial branch, each of the departments, offices and agencies of the Executive Branch of the National Government, and every proposed recipient of grants, subsidies or contributions from the National Government shall transmit to the President on or before March 1 of each year or at such other time as the President may determine, but not before January 1 of each year, planned operational and development expenditures for the ensuing fiscal year, budget projections for each of the two subsequent fiscal years, and such other information as the President may determine or as may be

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required by law. Planned operational expenses shall be presented in line-item form, including detailed information on planned expenditures for personnel, travel, contract services, fixed assets and other anticipated expenses. The Congress, the Judiciary Branch, and each department, office and agency of the Executive Branch shall transmit to the President, along with its proposed operational expenses for the ensuing fiscal year, a plan for the fiscal year, including an identification of its strategic goals, and a description of its planned accomplishments, for the fiscal year, related to each goal. The planned accomplishments shall, if possible, be expressed in numerical form so that actual performance can be measured against the plan. Congress, the Judiciary Branch and the offices, agencies and departments of the National Government shall not be required to transmit performance-based budgets or other reports tying planned operational expenses to specific tasks or objectives.

(2) The President shall compile, without revision, the planned expenditures and budget projections received from each branch, department, office and agency of the National Government and from proposed recipients of grants, subsidies and contributions from the National Government into a proposed budget for the National Government (the "Proposed Budget").

(3) No later than April 1 of each year, the President shall submit to the Congress the Proposed Budget for the National Government for the ensuing fiscal year. The Proposed Budget shall contain an operations budget and a development budget, and include planned expenditures for all sources of funds. Planned operational expenses shall be presented on a line-item basis. The President shall concurrently submit his recommendations regarding the Proposed Budget (the President's budget recommendations are herein referred to as the "Recommended Budget"). The total Recommended Budget for the year shall not exceed the total of funds estimated to be available for that year. The Proposed Budget and Recommended Budget shall each set forth the following information in such form and detail as the President may determine or as the Congress may require by law:

(a) planned operational expenditures, including planned sources of funds, for each department and office of the executive branch, Congress, the judicial branch, and agencies of the National Government other than agencies or entities which receive National Government appropriations on a subsidy, contribution, or grant basis, and operational budget projections for each of the two subsequent fiscal years;

(b) planned development expenditures, including planned sources of funds, for the ensuing fiscal year and development budget projections for each of the two subsequent fiscal years, with details of all development programs or projects to be funded or undertaken by the National Government in the ensuing fiscal year, relating such programs and projects to specific development goals and objectives set forth in the Development Plan of the Federated States of Micronesia, as prepared in accordance with the Compact and approved by the Congress, and identifying any amendments to the program and project listings contained in such plan; and

(c) planned subsidies, contributions, or grants for the ensuing fiscal year and projected subsidies, contributions, or grants for each of the two subsequent fiscal years, for the FSM Telecommunications Corporation, the College of Micronesia, international and regional organizations, and such other public and private entities as authorized by law.

(4) The President shall submit along with the Proposed Budget and the Recommended Budget the following:

(a) a budget message which shall include such supporting economic financial, statistical, program performance, and other information, data and recommendations as the President may determine are in the public interest;

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(b) proposed legislation to appropriate funds for the National Government during the ensuing fiscal year reflecting the amounts contained in the Recommended Budget and including all activities and outputs to be funded by Compact Sector Grants;

(c) anticipated revenues and other money to be made available to the National Government from all sources in the ensuing fiscal year and each of the two subsequent fiscal years including, but not limited to, taxes, fees, fines, interest income, revenue from fishing agreements, Compact financial assistance, United States Federal program assistance, foreign financial and technical assistance, reimbursements, and loans;

(d) the Recommended National Government Compact Budget Request for the ensuing fiscal year;

(e) statements of the balance of the General Fund and any special funds of the National Treasury for the fiscal year last concluded, including the actual revenue by source, all appropriations, and the obligations and expenditures pursuant to each appropriation;

(f) statements of the projected balance of the General Fund and any special funds of the National Treasury for the fiscal year in progress including all appropriations, estimated revenues by source, and anticipated obligations. If the projected balance for any fund indicates a deficit, recommendations as to how the deficiency is to be met;

(g) actual revenues received to date, by source, in the fiscal year in progress, and for the same period in the preceding year;

(h) an analysis of major trends over the three years budgeted regarding funding sources, spending emphases, staffing levels, and program expansions and contractions; and

(i) for the Judiciary Branch, the Congress, and each department, office and agency of the Executive Branch, a plan for the ensuing fiscal year, including an identification of its strategic goals and its planned accomplishments for the fiscal year, such planned accomplishments to be expressed, if possible, in numerical form so that actual performance can be measured against the plan;

(j) such other financial information and data as may be necessary or desirable in order to make known in reasonable and practicable detail the financial condition of the National Government.

(5) Congress may, on or before May 30 of each year, either:

(a) by resolution, authorize the President to submit the Recommended National Government Compact Budget Request to the United States under Article V of the Financial Procedures Agreement; or

(b) by resolution, recommend changes to the Recommended National Government Compact Budget Request in any respect consistent with the Compact.

(6) The Recommended National Government Compact Budget shall be the National Government Compact Budget for the ensuing fiscal year for purposes of submittal to the United States under Article V of the Fiscal Procedures Agreement if:

(a) Congress fails to take action with respect to the Recommended National Government Compact Budget Request on or before May 30; or

(b) Congress, by resolution, authorizes the President to submit the Recommended National Government Compact Budget to the United States;

(7) If, on or before May 30, Congress adopts a resolution recommending changes pursuant to paragraph (5)(b) of this section, the National Government Compact Budget Request for submittal under Article V of the Fiscal Procedures Agreement should be in conformance with the terms of that resolution.

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Source: PL 2-17 § 3; PL 4-77 § 9; PL 6-70 § 1; PL 13-63 § 2; PL 14-61 § 1.

Cross-references: FSM Const., art. XII, § 2. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Editor's note: The preamble to PL 14-61 states the purpose of Congress “to eliminate the requirement that Congress must amend the Recommended National Government Compact Budget by means of a bill and permit Congress to propose amendments by resolution”

§ 104. Balanced budget.

(1) Based on all available information, the Congress, prior to adopting the annual budget bill under section 106 of this chapter, shall adopt a resolution setting forth the total funds estimated to be available for appropriation from the General Fund and any special funds of the National Treasury during the ensuing fiscal year. The Congress may from time to time adopt resolutions revising the amount estimated to be available for appropriation based on the most recent information.

(2) Except as may occur due to a downward revision of revenue projections, total appropriations for a fiscal year shall not exceed the amount embodied in the resolution referred to in subsection (1) of this section.

Source: PL 2-17 § 4; PL 13-63 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 105. Supplemental appropriations and rescissions.

(1) The President shall transmit to Congress such proposed supplemental appropriations as may be necessary on account of laws enacted after the transmission of the annual budget or which are otherwise in the public interest. He shall accompany such proposals with a statement of the reasons therefor, including the reasons for their omission from the annual budget. Whenever such proposed supplemental appropriation would create a deficit for the General Fund or any specific fund of the National Treasury, the President shall so notify Congress and make recommendations as to how such deficit is to be met.

(2) The President from time to time may transmit to Congress proposed rescissions to cancel budgetary authority previously provided by the Congress. These proposals may be accepted in whole or in part by passage of a rescission bill by the Congress.

(3) If at any time the amount appropriated for a given fiscal year exceeds the amount of total funds estimated to be available for such year due to a downward adjustment in revenue projections, the President shall transmit to Congress either a proposed rescission bill or a proposal for covering the anticipated deficiency by the end of the following fiscal year.

Source: PL 2-17 § 5; PL 13-63 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 106. Appropriations by Congress.

(1) The Congress, after receipt of the proposed budget from the President and no later than September 30 of each year, shall, by Act, adopt the annual budget of the National Government of the ensuing fiscal year. Congress may elect to initially or permanently exclude, from the annual budget Act, that portion of the budget proposed to be funded by Compact sector. In no event shall the budget adopted or any amendments thereto provide funding for the personnel, contractual services, or travel expenses of any branch or agency of the National Government in an amount greater than 110 percent of the aggregate funding appropriated for such branch or agency for such categories in the initial budget Act of the immediately preceding fiscal year, except where funding in excess of such limit shall be deemed essential by the Congress on the face of the appropriating legislation.

(2) That portion of the budget submission that is to be funded by local revenues may be altered by Congress in any respect.

(3) Funds to be received and expended pursuant to the JEMCO-approved Compact sector allocation for the National Government shall be appropriated by act of Congress within 45 days of the return of the Compact sector allocation from JEMCO or by September 30, whichever is later. The appropriation legislation covering Compact funds shall comply with the terms of the Compact and the Fiscal Procedures Agreement with respect to the receipt of Compact sector funds, shall allow for reprogramming of funds to the extent permitted under the Compact and chapter 3 of this title, and may require, as a condition to such reprogramming, prior notice to Congress.

(4) The budget alteration authority of Congress shall be executed by means of appropriations legislation. Appropriations or authorizations for the expenditure of funds shall be made by law, except as provided in section 108 of this chapter.

(5) Congress may restrict by law the expenditure of funds for a specific purpose.

Source: PL 2-17 § 6; PL 4-77 § 10; PL 5-119 § 1; PL 13-13 § 1; PL 13-63 § 5.

Cross-reference: FSM Const., art. XII, § 2 states as follows:

Section 2.

(a) The President shall submit an annual budget to Congress at a time prescribed by statute. The budget shall contain a complete plan of proposed expenditures, anticipated revenues, and other money available to the national government for the next fiscal year, together with additional information that Congress may require. The Congress may alter the budget in any respect.

(b) No appropriation bills, except those recommended by the President for immediate passage, or to cover the operating expenses of Congress, may be passed on final reading until the bill appropriating money for the budget has been enacted.

(c) The President may item veto an appropriation in any bill passed by Congress, and the procedure in such case shall be the same as for disapproval of an entire bill by the President.

The provisions of the Constitution are found in Part I of this code.

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The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress and are found in title 3 of this code.

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§ 107. Requests to the United States Government.

The President shall consult with the Congress in the formulation and submission of all requests made to the United States Government for additional assistance, services, and programs pursuant to the Compact.

Source: PL 2-17 § 7; PL 4-77 § 11; PL 13-63 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 108. Continuing resolution.

In the event a budget has not become law prior to the beginning of a fiscal year, the head of each branch of Government and the head of each agency established by law may continue to expend funds from projected local revenues for National Government operations expenses after the beginning of the fiscal year upon the adoption by Congress of a continuing resolution. Such expenditures shall be in accordance with appropriations laws appropriating funds for the immediately preceding fiscal year. A continuing resolution of the Congress which would authorize the expenditure of Compact financial assistance is hereby made conditional on such funds being available to the National Government as of the beginning of the relevant fiscal year, either pursuant to a continuing resolution adopted by the United States Congress or pursuant to appropriation acts of the United States Congress.

Source: PL 2-17 § 8; PL 4-77 § 12; PL 13-63 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 109. Emergency account.

In the event of a major natural disaster or other emergency threatening the lives or safety of citizens of the Federated States of Micronesia requiring immediate Governmental action, an emergency account shall be established in the Department of Finance. All Governmental expenses related to such emergency shall be charged to such account. The President is hereby authorized to reprogram up to \$200,000 of the funds appropriated from local revenues or other funds not dedicated to specific purposes under the Compact or other agreements with foreign governments to such account. The President shall present funding requests to the Congress to cover emergency expenditures.

Source: PL 2-17 § 9; PL 4-77 § 13; PL 5-16 § 1; PL 13-63 § 8.

Cross-reference: The statutory provisions on Emergency Proclamations are found in chapter 8 of title 11 (Crimes) of this code. The "Disaster Relief Assistance Act of 1989" is codified at chapter 7 of title 41 (Public Health, Safety and Welfare) of this code. The statutory provisions on the Disaster Relief Fund are found in subchapter II of chapter 6 of this title.

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The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 111. Reports.

Within 30 days of the completion of each quarter of each fiscal year, each department of the Executive Branch and each agency of the National Government shall transmit to Congress and to the President a report on its activities during the quarter just completed, including

- (a) a comparison of its actual accomplishments for the quarter, and the year to date, with the planned accomplishments set forth in the plan described in section 103(1) of this chapter; and
- (b) a description of any factors that may have caused actual performance to vary from the plan.

Source: PL 13-63 § 9.

Editor's note: This section bore no title in PL 13-63 § 9. It was therefore entitled "Reports" based on its contents. PL 13-63 amended much of this chapter, but did not add a section 110.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code.

CHAPTER 2
Financial Management

SECTIONS

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- § 226. Required reports.
- § 227. Closing out accounts and transfer of unexpended balance.
- § 228. Rules and regulations.

Editor’s note: PL 4-77 made substantive amendments to sections 202, 209, 210, and 212 of this chapter primarily to ensure compliance with the Compact of Free Association. PL 4-77 § 14 provides that these amendments shall take effect upon the effective date of the Compact of Free Association. The Compact took effect on November 3, 1986.

Cross-reference: Provisions on funds may also be found in chapter 6 of this title.

§ 201. Short title.

This chapter shall be known as the “Financial Management Act of 1979.”

Source: PL 1-45 § 1.

§ 202. Declaration of policy.

It is the declared policy of the Government of the Federated States of Micronesia that:

(1) The accounting of the Federated States of Micronesia Government shall provide full disclosure of the results of financial operations, adequate financial information needed in the management of operations, and the formulation and execution of the national budget and shall ensure effective control over income, expenditures, funds, property, and other assets, whether tangible or intangible.

(2) The accounting of the Federated States of Micronesia shall be performed in a manner consistent with generally accepted accounting principles as established by the United States Governmental Accounting Standards Board.

(3) Full consideration be given to the needs and responsibilities of both the legislative and executive branches of the Government in the establishment of accounting and reporting systems and such other fiscal requirements.

(4) It is the responsibility of the executive branch to maintain accounting systems and to produce financial reports with respect to the operations of the executive departments and staff offices, including central facilities which gather and disseminate information on the results of the financial operations of the Federated States of Micronesia Government as a whole.

(5) Emphasis shall be placed on effectuating systematic and orderly improvements in financial management of the Federated States of Micronesia Government in order to formulate, adopt, and maintain simplified and more effective accounting systems, financial reporting procedures, budget processes, auditing requirements, and procedures and to safeguard against duplication and to eliminate systems and processes that do not serve a purpose commensurate with the costs involved.

(6) The Secretary of Finance, together with the Budget Officer, shall conduct a continuous review program for the improvement of accounting and financial reporting in the Government of the Federated States of Micronesia.

Source: PL 1-45 § 2; PL 4-77 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

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Case annotations: In general, to the extent that the Financial Management Regulations are consistent with the Financial Management Act, such uniform standards and procedures serve to prevent misappropriation and expenditures in excess of budgetary allowances. *Mackenzie v. Tuuth*, 5 FSM R. 78, 85 (Pon. 1991).

§ 203. Department and Secretary of Finance.

Pursuant to the provisions of subsection (1)(a) of section 203 of title 2 of this code, there is hereby created at the seat of the Government of the Federated States of Micronesia an executive department known as the Department of Finance which shall be headed by the Secretary of Finance.

Source: PL 1-45 § 3.

Cross-reference: Section 203 of title 2 (Executive) of this code is on executive branch departments.

§ 204. Secretary of the Department of Finance and Administration—General duties.

(1) The Secretary of the Department of Finance and Administration shall prepare and review plans for the improvement and management of revenue and for the support of the public credit; supervise the collection of all revenues; prescribe the forms of keeping and rendering all public accounts and returns; grant, subject to statutory provisions, all warrants for moneys to be issued from the National Treasury in pursuance of appropriations by law; prepare and issue reports and fiscal information as may be required by law; and generally perform all such services relative to finances as he shall be directed to perform from time to time.

(2) The Secretary of the Department of Finance and Administration shall ensure that all allottees comply with reporting requirements of section 226 of this title.

(3) The Secretary of the Department of Finance and Administration may delegate the authority for such functions to such extent as he may deem practicable and is permissible by law.

Source: PL 1-45 § 4(1); PL 11-80 § 1.

§ 205. Secretary of Finance—Accounting duties.

(1) The Secretary of Finance of the Federated States of Micronesia shall be the general accountant of the General Fund of the Federated States of Micronesia. He shall record and audit, or cause to be recorded and audited, every receipt and disbursement of money paid to, by, or through the National Treasury of the Federated States of Micronesia. He shall have full and complete supervision of all funds of the Federated States of Micronesia, including the power to withhold his approval when necessary to prevent misappropriation of public funds as well as the disbursement of public moneys in excess of specific appropriations.

(2) The Secretary of Finance shall keep a complete set of double entry books in which he shall open or cause to be opened all Government accounts and for the several amounts as shown by the appropriation bill, or any other appropriation that may at any time be made by the Congress of the Federated States of Micronesia, and he shall record his daily business transactions in detail therein. He shall also keep ledgers in which he shall open, arrange, and keep in a methodical and systematic manner the various accounts so that the status and condition of all funds and appropriations, of all assets and liabilities, and of all income and expenditures of all funds of the Federated States of Micronesia may at any time be ascertained and known; and further, he shall keep such books and all such other auxiliary books and documents as he may deem necessary for the correct and proper administration of his office.

Source: PL 1-45 § 4(2), (3).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotations: A Financial Management Regulation that bears no reasonable relationship to the fiscal accounting and management objectives of the Financial Management Act is in excess of the statutory authority granted to the Secretary of Finance. *Mackenzie v. Tuuth*, 5 FSM R. 78, 86-87 (Pon. 1991).

The Secretary of Finance lacks the authority to terminate administratively the fiscal year prior to its lawful expiration period where such termination precludes the judiciary from making obligations during the entire fiscal year for which an appropriation is made. *Mackenzie v. Tuuth*, 5 FSM R. 78, 88 (Pon. 1991).

§ 206. National Treasury—Established.

There is hereby established within the Department of Finance the National Treasury of the Federated States of Micronesia which shall be comprised of offices, records, supplies, fixtures, materials, and such other facilities as may be necessary and as designated as places of deposit of the public money.

Source: PL 1-45 § 5.

§ 207. Treasurer—Duties.

(1) The Secretary of Finance shall have full responsibility and authority for the National Treasury and shall be legally responsible for the administration, collection, and safekeeping of all moneys due and paid into the Treasury of the Federated States of Micronesia as general realizations of the Government of the Federated States of Micronesia, and for the disbursement and appropriation thereof pursuant to law.

(2) He shall perform his duties in accordance with section 1, article XII of the Constitution and shall undertake such other duties that may be prescribed by law or through administrative directives issued by the President from time to time.

(3) The Secretary may delegate authority conferred upon him by this section.

Source: PL 1-45 § 6.

Cross-reference: Section 1, article XII of the Constitution states as follows:

Section 1.

(a) Public money raised or received by the national government shall be deposited in a General Fund or special funds within the National Treasury. Money may not be withdrawn from the General Fund or special funds except by law.

(b) Foreign financial assistance received by the national government shall be deposited in a Foreign Assistance Fund. Except where a particular distribution is required by the terms or special nature of the assistance, each state shall receive a share equal to the share of the national government and to the share of every other state.

The other provisions of the Constitution are found in Part I of this code.

§ 208. General Fund of the Federated States of Micronesia—Created.

There is hereby created a General Fund of the Federated States of Micronesia to be known as the “General Fund.” This General Fund shall be the successor fund to and replaces the “General Fund of the Congress of the Federated States of Micronesia,” as well as the “General Fund of the Interim Congress of the Federated States of Micronesia” formerly established by Public Law No. 7-150.

Source: PL 1-45 § 7.

Cross-reference: Section 1, article XII of the Constitution states as follows:

Section 1.

(a) Public money raised or received by the national government shall be deposited in a General Fund or special funds within the National Treasury. Money may not be withdrawn from the General Fund or special funds except by law.

(b) Foreign financial assistance received by the national government shall be deposited in a Foreign Assistance Fund. Except where a particular distribution is required by the terms or special nature

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of the assistance, each state shall receive a share equal to the share of the national government and to the share of every other state.

The other provisions of the Constitution are found in Part I of this code.

§ 209. Deposits to the General Fund.

(1) Unless otherwise provided by this chapter or other law, the following shall be deposited in the General Fund:

(a) all public moneys raised or received by the Federated States of Micronesia National Government pursuant to laws imposing taxes on income or other taxes, duties, or tariffs based on imports, or other revenues collected based on fines, fees, licenses, interests, rents, or other collections of the Federated States of Micronesia made specifically applicable within the jurisdiction of the Federated States of Micronesia;

(b) all funds allotted to the Federated States of Micronesia National Government from the Compact Financial Assistance Fund; and

(c) all other funds received by the Federated States of Micronesia National Government from the United States Government and designated for the Federated States of Micronesia National Government.

(2) Compact of Free Association financial assistance shall be accounted for in accordance with financial accounting and reporting requirements of the Compact.

(3) All balances of the United States Grant Special Fund are hereby transferred to, and deposited in, the General Fund of the Federated States of Micronesia.

Source: PL 1-45 § 8; PL 4-77 § 3.

§ 210. Foreign Assistance Fund.

(1) *Definitions.*

(a) “Agreement” shall refer to any arrangement, understanding, covenant, compact, transaction or other agreement, in any form, entered into by and between an official of the National Government, or the National Government’s designee, and a foreign governmental entity, for the receipt or acceptance of financial assistance or aid, on behalf of any National or State governmental entity.

(b) “Foreign financial assistance” shall refer to currency, money, accounts or notes receivable, offered as aid or assistance to the National Government of the Federated States of Micronesia, other than foreign aid or assistance received from the United States of America pursuant to, or authorized by, the provisions of the Compact of Free Association between the Federated States of Micronesia and the United States of America.

(c) “Foreign in-kind assistance” shall refer to any and all foreign assistance in the form of goods, services, or other modes of assistance not covered under subsection (1)(b) hereof.

(2) *Approval by Congress.* The President shall submit any agreement for the acceptance or receipt of foreign financial assistance to the Congress no later than the first regular or special session of Congress convened immediately subsequent to the execution of such agreement, for approval by resolution.

(a) No such agreement shall be valid, and no funds may be received pursuant to such agreement, unless and until Congress approves the agreement by resolution.

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(b) Should the Congress not approve such agreement by resolution before the adjournment of the first regular session following the President's submission of the agreement to Congress, that agreement shall be deemed disapproved.

(3) *Foreign Assistance Fund.* There is hereby established within the National Treasury of the Federated States of Micronesia a Foreign Assistance Fund which shall initially consist of all unobligated balances of foreign assistance funds from the preceding fiscal year, and all foreign assistance funds designated for the National Government and made available beginning October 1, 1996. Thereafter, the Department of Finance shall receive, maintain a complete record of, and where applicable, deposit all foreign financial assistance as defined in subsection (1) of this section into the Fund, pursuant to the Financial Management Act of 1979.

(a) The President or the President's designee shall notify the Congress of the receipt of foreign financial assistance, the amount thereof in U.S. dollars, and, where applicable, the deposit of such assistance into the Fund, no later than the first session of Congress, be it regular or special, convened subsequent to such receipt.

(b) Where the foreign financial assistance received is denominated in the form of goods or services, the President or the President's designee shall notify the Congress of the value thereof in U.S. dollars, and the destination where such goods have been delivered, or location where such services have been rendered, no later than the first session of the Congress convened subsequent to such receipt.

(4) *Development of Fund—Duties of the Department of Finance.* The Division of Investment Management of the Department of Finance shall, upon approval of the President and in cooperation with the Department of External Affairs, actively seek foreign assistance funding, foster productive use of foreign assistance, and produce reports on the acquisition, use, expenditure of, and fiscal obligations attendant upon, foreign assistance available to or received by the National Government of the Federated States of Micronesia.

(5) *Reports.* No later than April 1 of each year, the President shall submit to the Congress a report on the status of the Foreign Assistance Fund, which report shall include:

- (a) a complete and accurate accounting of all foreign financial assistance received;
- (b) a complete and accurate record of the manner in which the foreign financial assistance was distributed as among and between the States and the National Government; and
- (c) whether such distribution comports with the provisions of article XII, section 1(b) of the Constitution.

Source: PL 9-74 §1.

Cross-reference: Section 1, article XII of the Constitution states as follows:

Section 1.

(a) Public money raised or received by the national government shall be deposited in a General Fund or special funds within the National Treasury. Money may not be withdrawn from the General Fund or special funds except by law.

(b) Foreign financial assistance received by the national government shall be deposited in a Foreign Assistance Fund. Except where a particular distribution is required by the terms or special nature of the assistance, each state shall receive a share equal to the share of the national government and to the share of every other state.

The other provisions of the Constitution are found in Part I of this code.

§ 211. Program Fund.

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(1) *Definitions.* The term “programs” shall include all funds made available to the Federated States of Micronesia pursuant to sections 221(a), 221(c), and 224 (program funds) of the Compact of Free Association and United States statute through categorical, block, consolidated project, or discretionary grants. It shall also include grants received from any international or United Nations organization. It shall not include other funds received pursuant to the Compact of Free Association, or funds received from the United States Department of Interior derived from its annual departmental budget, or those funds known as transition funds, nor indirect costs received for the administration of Federal programs.

(2) *Program review.* Prior to the submittal of any first year or first time application, proposal, or preexpenditure report or any application, proposal, or preexpenditure report that requests funding for \$50,000 or more to any United States Federal agency, the President or his designee shall submit such application, proposal, or preexpenditure report to the Congress of the Federated States of Micronesia for its review and approval by resolution. If Congress is not in session, the appropriate committee shall review and approve the application, proposal, or preexpenditure report. The scope of such review shall be complete, with the ability to approve any aspect of any application, proposal, or preexpenditure. The approval of any application, proposal, or preexpenditure report by the appropriate committee shall not obligate funds from the National Treasury where they were not otherwise appropriated pursuant to law. The Congress or the appropriate committee shall complete its review within 40 days of submission.

(3) *Program Fund.* There is hereby created within the National Treasury of the Federated States of Micronesia a Program Fund into which all funds received by the Federated States of Micronesia from program sources, as defined in subsection (1) of this section, shall be deposited. The President or his designee shall notify Congress of grant awards and deposits to the Fund. Funds shall be administered and withdrawn by the President or his designee. Funds derived from United States program sources shall be accounted for and shall be in accordance with reporting requirements of the United States Government. Initially, the Program Fund shall consist of all prior year unobligated balances of program funds and all program funds designated for the National Government of the Federated States of Micronesia and made available beginning October 1, 1982.

(4) *Program reports.* Prior to the submittal of any application, proposal, or preexpenditure report to any United States Federal agency, the President or his designee shall submit such application, proposal, or preexpenditure report to the Congress of the Federated States of Micronesia, whether or not its review and approval by the Congress of the Federated States of Micronesia is required by subsection (2) of this section.

Source: PL 2-68 § 1; PL 4-77 § 5; PL 6-22 § 1; renumbered by PL 9-74 § 2.

Editor's note: PL 4-77 § 4 repealed former section 210 of this chapter pertaining to the United States Grant Special Fund.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 212. Enhanced Operations and Maintenance Fund.

(1) There is created within the National Treasury of the Federated States of Micronesia an Enhanced Operations and Maintenance Fund.

(2) All United States grant funds allotted to the President of the Federated States of Micronesia by the Trust Territory Government or United States Government specifically for enhanced

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operations and maintenance activities in the States shall be deposited in the Enhanced Operations and Maintenance Fund.

- (3) United States grant funds for enhanced operations and maintenance include funding for:
- (a) the purchase of necessary spare parts, equipment, and various utility maintenance supplies;
 - (b) the employment of skilled personnel;
 - (c) the initiation or enhancement of training programs to upgrade technical skills in the public works area; and
 - (d) such other activities as may be authorized by appropriation laws of the United States Government and agreed to by the Federated States of Micronesia Government and the Trust Territory Government for enhanced operations and maintenance.

(4) The President or his designee shall notify Congress of all grant awards and deposits to the Enhanced Operations and Maintenance Fund.

(5) Any portion of enhanced operations and maintenance funding made available to and accepted by the National Government to cover its costs for the administration of the enhanced operations and maintenance program shall be deposited in the United States Grant Special Fund and may be withdrawn by appropriation laws enacted by the Congress of the Federated States of Micronesia in accordance with section 211 of this chapter.

(6) Deposits in the Enhanced Operations and Maintenance Fund shall be made available to and administered by the President of the Federated States of Micronesia or his designee in accordance with a written plan prepared by the National and four State Governments and approved by the High Commissioner of the Trust Territory Government. The plan shall set forth all proposed expenditures of such funds as may be available to each State by the terms of the appropriation laws of the United States Government or by the actions of the High Commissioner pursuant to authority set forth in the appropriation laws of the United States. The extent that the terms of the appropriation laws of the United States do not allocate such funds specifically to the States, and such laws do not so empower the High Commissioner to act in this regard, or the High Commissioner chooses not to act, such funds shall be allocated by the President in an equitable manner which reflects the needs of each State based on a plan prepared by the National and four State Governments, subject to the approval of Congress by resolution. If Congress is not in session, the appropriate committee shall review and approve the manner of distribution of the funds. The Congress or the committee shall complete its review within 30 days of submission. If the Congress or the appropriate committee fails to act within 30 days of submission, the proposed distribution of funds shall be deemed approved. The President shall be the allottee of the funds and shall have the authority to make suballotments to the Governors at such times and in such manner as may be required by sound financial management techniques. All funds which have been allotted to the President or suballotted to the Governors of the States shall be administered, managed, and accounted for in accordance with applicable law, including, but not limited to, the provisions of this chapter, and regulations pursuant thereto.

Source: PL 3-23 § 1; PL 3-28 § 1; PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 213. Capital Improvement Program Fund.

(1) There is hereby created within the National Treasury of the Federated States of Micronesia a Capital Improvement Program Fund.

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(2) All United States grant funds, including United States federal program funds, but excluding funds made available pursuant to the Compact of Free Association, allotted to the President of the Federated States of Micronesia by the Trust Territory Government or other agency of the United States Government specifically for capital improvement projects in the States shall be deposited in the Capital Improvement Program Fund.

(3) United States grant funds and federal program funds for the Capital Improvement Program shall include funding for the development of the basic infrastructure of the Federated States of Micronesia in conformance with the intent of the original Capital Improvement Program and other funding transferred under any agreement between the National Government of the Federated States of Micronesia and the Government of the Trust Territory of the Pacific Islands, or other agency of the United States Government, regarding the transfer of capital improvement project funding and administration.

(4) The President or his designee shall notify Congress of all grant awards and deposits to the Capital Improvement Program Fund.

(5) Any portion of capital improvement funding made available to and accepted by the National Government to cover its costs for the administration of the Capital Improvement Program shall be deposited in the General Fund and may be withdrawn by appropriation laws enacted by the Congress of the Federated States of Micronesia.

(6) Deposits in the Capital Improvement Program Fund shall be made available to and administered by the President or his designee in accordance with written agreements between the National Government of the Federated States of Micronesia and the Trust Territory Government or other agency of the United States Government for the transfer of capital improvement project funding and administration. The funds shall be allocated among the States in accordance with the terms of the appropriation laws of the United States, or by the actions of the High Commissioner or other authorized official of the United States Government pursuant to authority set forth in the appropriation laws of the United States. To the extent that the terms of the appropriation laws of the United States do not allocate such funds specifically to the States, and such laws do not so empower the High Commissioner or an official of the United States Government to act in this regard, or the High Commissioner or official chooses not to act, such funds shall be allocated by the President in an equitable manner which reflects the needs of each State, subject to the approval of Congress by resolution. If Congress is not in session, the appropriate committee shall review and approve the manner of distribution of the funds. Congress or the appropriate committee shall complete its review within 30 days of submission. If the Congress or the appropriate committee fails to act within 30 days of submission, the proposed distribution of funds shall be deemed approved. The President shall be the allottee of the funds and shall have the authority to make suballotments to the Governors at such times and in such manner as may be required by sound financial management techniques. All funds which have been allotted to the President or suballotted to the Governors of the States shall be administered, managed and accounted for in accordance with applicable law, including, but not limited to, the provisions of this chapter, and regulations pursuant thereto.

Source: PL 3-28 § 2; PL 3-81 § 1; PL 4-77 § 6; renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 214. Transition.

The President of the Federated States of Micronesia is hereby authorized to negotiate and enter into such an agreement or agreements with the High Commissioner as may be deemed necessary and appropriate by the President for the purpose of providing for an early, smooth, and orderly transition and implementation of this chapter.

Source: PL 1-45 § 10; PL 2-68 § 2 (part), PL 3-23 § 2 (part), PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 215. Allotment of funds—Definitions.

(1) For purposes of this chapter, “allotment” means the delegation of authority to a person to create legally enforceable financial obligations in accordance with applicable law on behalf of the Federated States of Micronesia, within specified limits set forth in an appropriation act of the Congress of the Federated States of Micronesia or as may be required by the terms of funding available from other sources.

(2) For purposes of this chapter, “allot” means to make an allotment.

(3) For purposes of this chapter, “allottee” means a person to whom an allotment is made.

Source: PL 1-115 § 1 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 216. Allotment of funds—Authority.

The authority to make allotments shall be vested in the President of the Federated States of Micronesia or his designee. The President or his designee shall make an allotment not later than ten days before the beginning of the fiscal year for which the appropriation is available, or not more than 30 days after the act under which an appropriation is made available takes effect, whichever is later, unless otherwise provided by regulations issued pursuant to the authority of section 228 of this chapter. An allottee shall be notified immediately after the making of an allotment. If sound financial management practices and techniques so require, allotments may be made monthly, quarterly, or at other intervals, provided that the allottee of such funds is made aware of the periodic nature of his allotment(s).

Source: PL 1-115 § 1 (part); PL 2-68 § 2 (part); PL 2-69 § 1; PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 217. Allotment of funds—Allottees.

(A) Unless otherwise specifically required by law, funds shall be allotted as follows:

(1) The President of the Federated States of Micronesia, or his designee(s), shall be the allottee of all funds appropriated for the operations or activities of the executive branch of the Federated States of Micronesia Government.

(2) The Speaker of the Congress of the Federated States of Micronesia, or his designee(s), shall be the allottee of all funds appropriated for the operations or activities of the Congress.

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(3) The Chief Justice of the Supreme Court of the Federated States of Micronesia, or his designee(s), shall be the allottee of all funds appropriated for the operations or activities of the judicial branch of the Federated States of Micronesia Government.

(4) The Public Auditor shall be the allottee of all funds appropriated to the Public Auditor.

(5) The Governor of a State, or his designee(s), shall be the allottee of all funds appropriated to the State.

(6) The President of the Federated States of Micronesia, or his designee(s), shall be the allottee of any funds appropriated for any activity, entity, or person not included within the provisions of paragraphs (1) through (5) of this subsection.

(B) Unless specifically prohibited by law, whenever the President of the Federated States of Micronesia, the Speaker of the Congress of the Federated States of Micronesia, the Chief Justice of the Supreme Court of the Federated States of Micronesia or the Governor of a State is named as the allottee, such official may designate as the allottee another officer who is subject to his supervision and control.

Source: PL 1-115 § 1 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); PL 4-114 § 14; PL 6-79 § 1; renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Case annotation: Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. *Udot Municipality v. FSM*, 10 FSM R. 354, 359 (Chk. 2001).

When the trial court ordered an injunction to prevent further dissipation of existing appropriated funds because it found that 1) the broad language in the appropriations contained little guidance as to what specific projects were to be funded; 2) there were no fair and transparent procedures to apply for such funds; 3) an unlawful implementation procedure was being used; and 4) that there was a lack of oversight and compliance with the Financial Management Act and related regulations, the trial court acted entirely within its discretion. There was no abuse of discretion in issuing the injunction enjoining the allottees from obligating funds and the FSM from disbursing funds until such time as new procedures were put in place. *FSM v. Udot Municipality*, 12 FSM R. 29, 52-53 (App. 2003).

§ 218. Obligation of funds—Definition of “obligation.”

For purposes of this chapter, “obligation” means legal liability for salaries and wages, contractual services, contracts entered into for the purchase of supplies and equipment, construction, and land; and loans or other commitments requiring the payment of money.

Source: PL 1-115 § 2 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Case annotation: Earmarking \$50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality’s standing by making its claim moot when the appropriation still has an undifferentiated category called “other needs,” and when the municipality’s past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. *Udot Municipality v. FSM*, 10 FSM R. 354, 358 (Chk. 2001).

§ 219. Documentary evidence required to support obligations.

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No amount shall be recorded as an obligation of the Government of the Federated States of Micronesia unless it is supported by documentary evidence of:

(1) a binding agreement in writing, between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by United States or Federated States of Micronesia law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed; or

(2) a valid loan agreement, showing the amount of the loan to be made and the terms or schedule of repayment thereof; or

(3) an order required by United States or Federated States of Micronesia law to be placed with an agency; or

(4) an order issued pursuant to United States or Federated States of Micronesia law authorizing purchases without advertising when necessitated by public exigency or for perishable subsistence supplies or within specific monetary limitations; or

(5) a grant or subsidy payable:

(a) from appropriations made for payment of or contributions toward sums required to be paid in specific amounts fixed by United States or Federated States of Micronesia law, or in accordance with formulae prescribed by United States or Federated States of Micronesia law, or

(b) pursuant to an agreement authorized by, or plans approved in accordance with and authorized by United States or Federated States of Micronesia law; or

(6) a liability which may result from pending litigation brought under authority of United States or Federated States of Micronesia law; or

(7) employment or services of persons or expenses of travel in accordance with United States or Federated States of Micronesia law, or services performed by public utilities; or

(8) any other legal liability of the Federated States of Micronesia against an appropriation or funds legally available therefor; or

(9) in the case of representation expenses and official expense allowance expenses, an affidavit of the allottee or sub-allottee describing the amount and nature of the expenditure, or a written contract or written receipt, submitted in a timely manner in accordance with the provisions of section 224A of this title, shall be deemed to be sufficient documentary evidence to support a legal obligation.

Source: PL 1-45 § 12(1); PL 1-115 § 2 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); PL 6-52 § 4; renumbered by PL 9-74 § 2; PL 10-50 § 1.

§ 220. Obligations prohibited after time limits.

No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for the liquidation of amounts obligated in accordance with section 219 of this chapter; provided, however, that no appropriation shall remain available for expenditure for any period beyond that authorized by United States or Federated States of Micronesia law.

Source: PL 1-45 § 12(2); PL 1-115 § 2 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Case annotations: The Secretary of Finance lacks the authority to terminate administratively the fiscal year prior to its lawful expiration period where such termination precludes the judiciary from making obligations during the entire fiscal year for which an appropriation is made. *Mackenzie v. Tuuth*, 5 FSM R. 78, 88 (Pon. 1991).

§ 221. Overobligation of funds prohibited.

Unless otherwise specifically authorized by law, no officer or employee of the Federated States of Micronesia, or allottee of funds shall make or authorize an expenditure from, or create or authorize an obligation pursuant to any appropriation, apportionment, reapportionment, or allotment of funds of the United States Government or the Federated States of Micronesia Government:

- (1) in excess of the sum made available by law; or
- (2) in advance of the availability of funds; or
- (3) for purposes other than those for which an allotment has been made.

Source: PL 1-45 § 11(1); PL 1-115 § 3 (part); PL 2-47 § 1 (part); PL 2-68 § 1 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Case annotation: When the information is sufficiently definite to put the accused on notice that he is charged with, in his capacity as NNDA Executive Director, being a member of a conspiracy to violate 55 F.S.M.C. 221(2), 55 F.S.M.C. 221(3) and 11 F.S.M.C. 529 and when the court has previously stated that nothing before it indicates that the information is not a plain, concise and definite statement of the essential facts constituting the offense, the accused's motion to dismiss on the ground of defective information will be denied. *FSM v. Kansou*, 15 FSM R. 373, 380-81 (Chk. 2007).

In implementing the provisions of the Financial Management Act the Secretary of Finance must disburse funds within 30 days of the submission of a payment request unless the withholding of payment approval is necessary to prevent the misappropriation or over-obligation of a specific appropriation. *Mackenzie v. Tuuth*, 5 FSM R. 78, 88 (Pon. 1991).

§ 222. Overobligations to be reported.

In the case of a violation of section 221 of this chapter, the Director of Finance shall immediately report to the President and to the Congress of the Federated States of Micronesia all pertinent facts together with a statement of the action taken or proposed to be taken with respect thereto.

Source: PL 1-45 § 11(2); PL 1-115 § 3 (part); PL 2-47 § 1 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 223. Overobligations—Criminal penalties.

Any officer or employee of the Federated States of Micronesia Government, or an allottee, who knowingly and willfully violates sections 221 or 222 of this chapter shall, upon conviction, be fined not more than \$20,000 or imprisoned for not more than 20 years, or both.

Source: PL 1-45 § 11(3); PL 1-115 § 3 (part); PL 2-47 § 1 (part); PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 224. Disbursement procedures.

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Unless otherwise specifically provided by law, the following procedures shall control the administration and management of all funds appropriated from the General Fund of the Federated States of Micronesia or made available to the Federated States of Micronesia from other sources:

(1) All such funds shall remain in the custody and control of the Secretary of Finance until they are obligated and disbursed by him in accordance with law.

(2) Such funds shall be deemed to be obligated as of the date the person or entity to whom the funds are allotted enters into a legally binding written agreement supported by the documentary evidence required by section 219 of this chapter or rules and regulations issued pursuant to authority vested by section 228 of this chapter.

(3) The Secretary of Finance shall disburse such funds as may be required to liquidate valid obligations within 30 days of their becoming payable, as indicated by valid documentary evidence of such obligation and a valid claim for payment, if required by the terms of the document evidencing the obligation.

Source: PL 1-115 § 4; PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Case annotations: In general, to the extent that the Financial Management Regulations are consistent with the Financial Management Act, such uniform standards and procedures serve to prevent misappropriation and expenditures in excess of budgetary allowances. *Mackenzie v. Tuuth*, 5 FSM R. 78, 85 (Pon. 1991).

A Financial Management Regulation that bears no reasonable relationship to the fiscal accounting and management objectives of the Financial Management Act is in excess of the statutory authority granted to the Secretary of Finance. *Mackenzie v. Tuuth*, 5 FSM R. 78, 86-87 (Pon. 1991).

In implementing the provisions of the Financial Management Act the Secretary of Finance must disburse funds within 30 days of the submission of a payment request unless the withholding of payment approval is necessary to prevent the misappropriation or over-obligation of a specific appropriation. *Mackenzie v. Tuuth*, 5 FSM R. 78, 88 (Pon. 1991).

A municipality may have standing when it has demonstrated a threatened economic injury and a sufficient stake in the controversy's outcome and this threatened economic injury is a direct result of, and can be traced to, the illegality of the subject provision in the appropriation and the manner in which it was being implemented, when the injury would be redressed by a favorable decision, when the injury is not a generalized injury shared by substantially the whole population, but it is asserting its own legal rights and interests, and is not resting its claim to relief on the legal rights or interests of third parties, and when its complaint falls within the zone of interest to be protected by the statutory and constitutional provisions in question. *FSM v. Udot Municipality*, 12 FSM R. 29, 46 (App. 2003).

§ 224A. Representation expenses, delegation expenses and official expense allowances— Accounting and Advances.

Representation expenses and official expense allowance expenses shall be accounted for by affidavit, written contract or written receipt. Delegation expenses shall be accounted for by written contract or written receipt. The Secretary of Finance, upon specific written request containing specific justification satisfactory to the Secretary of Finance, shall make advance payments of representation expenses and advance payments of official expense allowances if the recipient of such advance payment agrees to submit affidavits or receipts for actual expenditures and return to the Secretary of Finance all amounts advanced but not accounted for by affidavit, contract or receipt no later than one month after the end of the fiscal year and, upon leaving office, to return to the Secretary of Finance all amounts advanced but not expended.

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Source: PL 6-52 § 1; renumbered by PL 9-74 § 2; PL 10-50 § 2; PL 11-18 § 1.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

Editor's note: PL 10-50 was signed into law on October 22, 1997. PL 10-50 contained a section 3 which read as follows:

Section 3. The amendments in this act which pertain to the timely submission of affidavits or receipts and the use of affidavits as documentary evidence to support a legal obligation shall be deemed effective as of March 12, 1990.

§ 224B. Representation expense, delegation expense and official expense allowance—

Definitions.

(1) For purposes of this chapter, “official expense allowance expense” means expenses incurred for goods or services necessary to carry out the official duties of the allottee or sub-allottee.

(2) For purpose of this chapter, “representation expense” means expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the purposes and goals of the National Government.

(3) For purposes of this chapter, “delegation expense” means an expense incurred in the course of delegation operations, including, but not limited to, official public relations, travel, entertainment activities or constituent services necessary to carry out the functions of a State delegation in the Congress of the Federated States of Micronesia.

Source: PL 6-52 § 2; renumbered by PL 9-74 § 2; PL 11-18 § 2.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 224C. Purchases of supplies and personal property involving less than \$1,000.

For any purchase of supplies and personal property involving less than \$1,000, including the cost of shipping, the Secretary of Finance or his designee shall approve such purchase upon certification of the availability of funds for such purchase and upon satisfaction of the requirements under section 218 of this chapter pertaining to documentary evidence; PROVIDED, however, that the head of each branch of the National Government shall have the authority to prescribe a more restrictive rule which shall be binding upon that branch with the full force and effect of the law. For purposes of this section, the Office of the Public Auditor shall be considered a separate branch of the National Government. For purposes of this section, the agencies, boards, authorities, commissions and corporations of the National Government shall be considered part of the executive branch.

Source: PL 6-52 § 3; renumbered by PL 9-74 § 2.

§ 225. Reversion of unexpended funds; Cancellation of obligations.

(1) Unless otherwise provided by law, all sums of money which are appropriated for any fiscal period, and which are not extended during the period, shall lapse and shall not be issued or applied in any future fiscal period to the particular purpose for which the appropriation has been so made, unless a valid obligation has been made before the expiration of the fiscal period by which a liability to issue or apply the same has been incurred, and a certified copy of such valid obligation has been deposited with the Secretary of Finance.

(2) The Secretary of Finance is authorized to cancel an obligation not liquidated within one year of the time it became payable, as indicated by valid documentary evidence of such obligation, if the

reason for not liquidating the obligation was the failure of a party to submit a valid claim for payment as required by the terms of the document evidencing the obligation.

Source: PL 1-45 § 13; PL 1-115 § 5; PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

§ 226. Required reports.

(1) *Required reports from allottees.*

(a) Not later than May 1 of each year, each allottee shall submit a report to the Congress of the Federated States of Micronesia which shall provide for the full accounting of each line item, or subsection apportioning funds, as of the end of the second quarter of the fiscal year, detailing obligations incurred against all sums appropriated by the Congress of the Federated States of Micronesia or made available to an allottee from other sources, to include a detailed explanation and full justification for each major deviation from a line item, or subsection apportioning funds.

(b) Not later than October 31 of each year, each allottee shall submit a report to the Congress of the Federated States of Micronesia which shall provide for the full accounting of each line item, or subsection apportioning funds as of the end of the fiscal year, detailing obligations and expenditures incurred against all sums appropriated by the Congress of the Federated States of Micronesia or made available to an allottee from other sources, to include a detailed explanation and full justification for each major deviation from a line item, or subsection apportioning funds.

(c) The reports required by subparagraphs (a) and (b) above shall include a statement by the allottee of the status of the project, program, or list the achievements of the department or agency for which the funds were allotted. For all allottees, except those receiving allotments for governmental operations, the statement shall detail the percentage of completion of the project or program and shall include an estimation of the completion date for the project or program, where appropriate.

(2) *Required reports from the Secretary of the Department of Finance and Administration.*

(a) Not later than January 31 of each year, the Secretary of the Department of Finance and Administration shall submit unaudited financial statements of the National Government to the Congress of the Federated States of Micronesia, or, he shall provide in writing, an explanation of why he is unable to provide such reports. The explanation shall include a date by which he will provide the required reports.

(b) Ten days prior to each session of Congress, whether a regular or special session, the Secretary of the Department of Finance and Administration shall submit, to the Speaker of the Congress and to the Chairman of the Committee on Ways and Means, an accurate report of current projected revenues for the fiscal year. This report shall detail projected revenues by source and shall reflect appropriations made during the fiscal year. The report should show the balance of funds available for appropriation by the Congress.

Source: PL 1-115 § 6; PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2; PL 11-80 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotation: When a party has standing, a court may order an accounting of public funds because the Financial Management Act requires that public funds be properly accounted. *Udot Municipality v. FSM*, 10 FSM R. 354, 361 (Chk. 2001).

§ 227. Closing out accounts and transfer of unexpended balance.

In all cases where an appropriation of public money is made and an unexpended balance remains to the credit of the appropriation on the books of the Secretary of Finance after the purposes of the appropriation have been accomplished, or after the time has expired within which those purposes may be accomplished, or after a time when the reasons for the appropriation have ceased to exist, the Secretary, upon the receipt of a certificate from the head of the Department or other public officer who is charged with the duty of expending the appropriation that all obligations have been fully paid and satisfied, may close out the appropriation account and transfer the unexpended balance to the credit of the General Fund of the Federated States of Micronesia.

Source: PL 1-45 § 14; PL 1-115 § 7; PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Case annotations: The Secretary of Finance lacks the authority to terminate administratively the fiscal year prior to its lawful expiration period where such termination precludes the judiciary from making obligations during the entire fiscal year for which an appropriation is made. *Mackenzie v. Tuuth*, 5 FSM R. 78, 88 (Pon. 1991).

§ 228. Rules and regulations.

The Secretary of Finance is hereby authorized to issue and promulgate rules and regulations implementing the provisions of this chapter which, upon approval by the President of the Federated States of Micronesia, shall have the force and effect of law.

Source: PL 1-45 § 15; PL 1-115 § 7; PL 2-68 § 2 (part); PL 3-23 § 2 (part); PL 3-28 § 3 (part); PL 4-77 § 7 (part); renumbered by PL 9-74 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: In general, to the extent that the Financial Management Regulations are consistent with the Financial Management Act, such uniform standards and procedures serve to prevent misappropriation and expenditures in excess of budgetary allowances. *Mackenzie v. Tuuth*, 5 FSM R. 78, 85 (Pon. 1991).

A Financial Management Regulation that bears no reasonable relationship to the fiscal accounting and management objectives of the Financial Management Act is in excess of the statutory authority granted to the Secretary of Finance. *Mackenzie v. Tuuth*, 5 FSM R. 78, 86-87 (Pon. 1991).

A party has standing to challenge both the legality of the process and compliance with the Financial Management Act and related regulations to the extent that such compliance impacts upon the relief that it requests when it has more than a general interest in the legality of this process as it contends that, under a fair and transparent application process, it would receive at least the opportunity to apply for and receive some of the funds for its own projects. Thus, the trial court in finding standing properly recognized and focused on the party's threatened economic injury when the process by which the Faichuk appropriations were being administered was alleged to be unlawful. *FSM v. Udot Municipality*, 12 FSM R. 29, 45 (App. 2003).

Although the Financial Management Act does not create a private right of action for parties in general to contest violations of its provisions, a party has standing when it requests the opportunity to seek funding from the challenged public laws without participating in an unlawful process and the FSM's failure to comply with the Act and its related regulations impacts upon the relief that it requests and when, in order for it to seek funding, determination of what portion of funds remained unobligated and might still be available was necessary and an

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accounting was a necessary and appropriate tool to achieve this. *FSM v. Udot Municipality*, 12 FSM R. 29, 45 (App. 2003).

CHAPTER 3
Internal Fiscal Procedures
For Compact Implementation

Editor's note: Chapter 3, which was originally reserved for Government Contracts in the 1982 edition of the Code, was renumbered chapter 4 in the 1987 supplement.

PL 4-77 § 1, which is codified in this chapter, enacted verbatim the text of the Agreement on Internal Budget and Finance Procedures under the Compact of Free Association, which had been previously approved by the State Legislatures.

PL 4-77 § 14 provides that this chapter shall take effect upon the effective date of the Compact of Free Association. The Compact took effect on November 3, 1986.

PL 13-72 § 1 repealed chapter 3 in its entirety. PL 13-72 § 2 enacted a new chapter 3 entitled Internal Fiscal Procedures for Compact Implementation.

SECTIONS

- § 301. **Purpose.**
- § 302. **Definitions.**
- § 303. **Division of Compact Funds among National and State Governments.**
- § 304. **Compact Planning Estimates.**
- § 305. **Compact Budget Requests.**
- § 306. **Plan for the Division of Annual Economic Assistance.**
- § 307. **Grant Allocations—Approval, Notification, Rejection.**
- § 308. **Appeal of Special Conditions.**
- § 309. **Grant Acceptance.**
- § 310. **Review of Spending Authority Legislation.**
- § 311. **Compact Financial Assistance Fund.**
- § 312. **Operational Reserve Fund.**
- § 313. **Infrastructure Maintenance Fund.**
- § 314. **Drawdown Procedures—Cash Disbursement to National and State Treasures.**
- § 315. **Reprogramming/Re-Allocation of Compact Funds.**
- § 316. **Internal Reporting Requirements.**
- § 317. **Compact Quarterly Financial Reporting Requirements.**
- § 318. **Internal Annual Final Cash Transactions Report.**
- § 319. **Compact Annual Final Cash Transactions Report.**
- § 320. **Annual Report of the President to the Government of the United States.**
- § 321. **Accounting and Record Keeping.**
- § 322. **Financial Records—Access.**
- § 323. **Enforcement.**
- § 325. **Delegation of Authority.**
- § 326. **Transition—Original Compact.**

§ 301. Purpose.

The purpose of this chapter is to establish fiscal procedures for the Compact period beginning in Fiscal Year 2004. The provisions set forth hereinafter recognize the right of the State Governments and the National Government of the Federated States of Micronesia to authorize the use of Compact funds in accordance with their own respective laws, plans, policies and prerogatives consistent with the terms and

conditions set forth in the Compact and contained herein. The President is hereby empowered to ensure compliance with such terms and conditions, and to ensure accountable financial management of all Compact funds.

Source: PL 13-72 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 302. Definitions.

For purposes of this chapter only, the following terms shall have the following meanings:

(1) “Accrued Expenditures” means charges incurred by a Government during a given period requiring the provision of funds for:

- (a) goods and other tangible property received;
- (b) services performed by employees, contractors, sub-grantees, subcontractors, and other third party non-contractors; and
- (c) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments, all as evidenced by a pending disbursements report.

(2) “Annual Report” means the Annual Report of the President of the Federated States of Micronesia to the Government of the United States in compliance with Section 214 of the Compact.

(3) “Compact” means the Compact of Free Association, as amended, and its related agreements entered into by the Government of the Federated States of Micronesia and the Government of the United States and enacted as United States Public Law No. 108-188, unless otherwise specified herein.

(4) “Compact Budget Request” means the annual Compact funding request for the upcoming Fiscal Year and estimated funding levels for the two subsequent Fiscal Years.

(5) “Congress” means the Congress of the Federated States of Micronesia, unless otherwise specified herein.

(6) “Fiscal Procedures Agreement” means the “Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as amended, Between the Government of the United States and the Government of the Federated States of Micronesia” entered into in connection with the Compact.

(7) “Fiscal Year” means each one year period beginning October 1 and ending on the next following September 30. Each Fiscal Year shall be designated by the number of the calendar year in which such Fiscal Year ends.

(8) “Government” means a State Government or the National Government of the Federated States of Micronesia, unless otherwise specified.

(9) “Grant Award” means a formal offer of funds by the Government of the United States to the Government of the Federated States of Micronesia pursuant to the terms of the Compact for the purpose of funding programs and activities within a specific Sector.

(10) “JEMCO” means the Joint Economic Management Committee established pursuant to the Compact and the Fiscal Procedures Agreement.

(11) “Obligation” shall have the same meaning as defined in the respective Financial Management Acts of the Governments.

(12) “Operational Grant” means a grant associated with a Sector Grant program that continues from a given period to a subsequent period as defined in Article I, Section 1 of the Fiscal Procedures Agreement.

(13) “Original Compact” means the Compact of Free Association between the Government of the Federated States of Micronesia and the Government of the United States in the form that was effective as of November 3, 1986 through September, 2003.

(14) “Plan for the Division of Annual Economic Assistance” means the comprehensive plan for the division of economic assistance for a Fiscal Year, including Annual Grant budgets by Sector, as described in Article V, Section 1(b) of the Fiscal Procedures Agreement, and may include such additional reports, narratives, summaries, documentation and other information as the President deems appropriate.

(15) “Secretary” means the Secretary of the Department of Finance and Administration for the Federated States of Micronesia, or his successor in the executive structure of the National Government of the Federated States of Micronesia.

(16) “Sector” means one of the six grant sectors described in Section 211(a) of the Compact and Article II, Section 1, of the Fiscal Procedures Agreement, as such sectors may be adjusted during the term of the Compact.

(17) “Sector Grant” means the funds that are to be provided pursuant to a given Sector.

(18) “State” means any of the states of the Federated States of Micronesia.

Source: PL 13-72 § 4.

§ 303. Division of Compact Funds among National and State Governments.

(1) The Compact Budget Requests for Fiscal Years 2005 and 2006 of the National Government and of each State Government under section 305 of this chapter shall be based upon a division of Compact funds in the following proportions:

Chuuk	38.57%
Kosrae	11.06
Pohnpei	25.69
Yap	16.03
National Government	8.65

(2) For Fiscal Year 2007 and thereafter, the chief executives of the National Government and each of the State Governments shall have the authority to enter, from time to time, into one or more agreements setting forth the proportionate amounts of Compact funds that shall be the basis of each Government’s Compact Budget Request under sections 305 and 306 of this chapter, provided that the National Government’s proportionate amount of Compact funds for each Fiscal Year shall be ten percent (10%) of the estimated level of Compact funding for that year. An agreement regarding the division of Compact funds may be limited to a specified period of time and shall only be effective when signed by the chief executive of each and every Government.

Source: PL 13-72 § 5; PL 13-93 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 304. Compact Planning Estimates.

No later than November 15 of the Fiscal Year preceding a given Fiscal Year, the President shall transmit the following Compact planning estimates to each State Government:

(1) Estimated levels of Compact funding available to each respective State for the upcoming Fiscal Year. Such estimates shall:

(a) be in accordance with the division of Compact funds established pursuant to section 303 of this chapter that is effective for the relevant Fiscal Year;

(b) reflect the Compact fund one (1) decrement; and

(c) reflect the amount of Sector funds that were unobligated by each respective Government in the previous Fiscal Year, which amount shall be added to the estimated level of funding available to that Government for the same Sector for the upcoming Fiscal Year.

(2) Estimated levels of Compact funding available for the two Fiscal Years subsequent to the upcoming Fiscal Year.

Source: PL 13-72 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 305. Compact Budget Requests.

No later than May 15 of the year preceding a given Fiscal Year, each State Government shall submit to the President a Compact Budget Request for the upcoming Fiscal Year. The Compact Budget Request shall not exceed the estimated levels of Compact funding provided to the respective Government pursuant to section 304 of this chapter.

Source: PL 13-72 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 306. Plan For the Division of Annual Economic Assistance.

(1) The President shall consolidate the Compact Budget Requests of all of the States and the National Government Compact Budget Request, conforming with the requirements of section 103 of this title, into the Plan for the Division of Annual Economic Assistance. The National Government Compact Budget Request included in the Plan for the Division of Annual Economic Assistance shall constitute, for Fiscal Year 2007 and each fiscal year thereafter, ten percent (10%) of the estimated level of Compact funding for that year. No modification to a State's Compact Budget Request shall be made in the consolidation process without the prior consent of the relevant State Government, except to the extent that such Compact Budget Request exceeds the estimated levels of Compact funding provided to that State Government pursuant to section 304 of this chapter.

(2) No later than July 3 of the year preceding a given Fiscal Year, the President shall submit the Plan for the Division of Annual Economic Assistance to the Government of the United States and shall transmit a copy to Congress and to each State Government.

Source: PL 13-72 § 8; PL 13-93 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 307. Grant Allocations—Approval, Notification, Rejection.

(1) Upon receipt of notice of approval by JEMCO of Sector Grant allocations, the President shall transmit such notice to Congress and to each State Government.

(2) Any State may elect not to accept receipt of all or any part of its share of an approved Sector Grant allocation for the upcoming Fiscal Year. Written notice of such election, detailing those portions not accepted by amount and by Sector, shall be provided to the President and to Congress not

later than September 20 of the current Fiscal Year, or within 20 days of receiving notice of the Sector Grant award, whichever is later. Congress may, by resolution, determine that the National Government will not accept receipt of all or any part of its share of an approved Sector Grant allocation for the upcoming Fiscal Year. Any election by a State or by the National Government not to accept receipt of approved Sector Grant funds may be explicitly stated to be subject to further events.

(3) The election by any State or by the National Government not to accept receipt of its respective share of an approved Sector Grant allocation for the upcoming Fiscal Year shall not be a basis for rejection by the Federated States of Micronesia of the Sector Grant allocation unless such rejection is approved by resolution of Congress. In the event that Congress does approve such a rejection, the President shall immediately transmit written notification of the rejection of the Sector Grant allocation to the Government of the United States.

(4) Except with respect to Compact funds not accepted by a Government pursuant to subsection (2) of this section or disputed pursuant to section 308 of this chapter, each recipient Government agrees to abide by all terms and conditions enumerated in each Sector Grant Award, the provisions of this chapter and the terms of the Compact, including the Fiscal Procedures Agreement.

Source: PL 13-72 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 308. Appeal of Special Conditions.

(1) If, at any time, JEMCO or the Government of the United States imposes, or notifies the Federated States of Micronesia of its intent to impose, any special conditions or restrictions on any Compact Grant Awards, the President shall immediately notify any and all affected State Governments thereof and provide such Government(s) with copies of all relevant documentation, including the explanation that is received from the United States or JEMCO of the conditions and restrictions and the reasons therefor.

(2) Any affected Government may, subject to the terms of this subsection, dispute the decision to impose special conditions or restrictions by submitting a written appeal for reconsideration within 20 days of the Federated States of Micronesia's receipt of the Grant Award to which such conditions or restrictions were attached or the date notification of the intent to impose special conditions was received by the Federated States of Micronesia from the Government of the United States, in accordance with the terms of the Fiscal Procedures Agreement. Any and all such appeals shall be addressed to the Government of the United States and routed through the Office of the President. The President shall submit any such appeal(s) to the Government of the United States within ten (10) days of his receipt thereof unless the President determines that the submitting of the appeal is not in the best interests of the nation.

Source: PL 13-72 § 10; PL 13-85 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 309. Grant Acceptance.

The President shall sign and return to the Government of the United States each Grant Award, unless rejected pursuant to section 307(3) of this chapter, and shall transmit a copy thereof to Congress and each State Government.

Source: PL 13-72 § 11; PL 13-85 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 310. Review of Spending Authority Legislation.

(1) Prior to disbursement of Compact funds, the Secretary and each State Government shall submit to the President a copy of the effective legislation detailing by Sector the allocation and spending authority for Compact funds.

(2) If the President determines that the proposed spending authority contained in legislation submitted by a Government differs from its proportional share of a Sector Grant Award, the President shall promptly notify the Government of the relevant State.

Source: PL 13-72 § 12.

§311. Compact Financial Assistance Fund.

(1) There is hereby created a “Compact Financial Assistance Fund” to be administered by and under the authority of the Secretary.

(2) The Compact Financial Assistance Fund shall be established at a bank or commercial financial institution organized in accordance with the laws of the United States or a state of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution organized in accordance with the laws of the Federated States of Micronesia, in either case for the purpose of receiving payments of Grant funds pursuant to the Compact.

(3) The purpose of the Compact Financial Assistance Fund is to account for Compact funds received from the Government of the United States by the Government of the Federated States of Micronesia on behalf of itself and each of the State Governments from the time of receipt of such Compact funding and until such funding is disbursed to the respective Government to which such funding accrues.

(4) The accounting records and accounts maintained for the Compact Financial Assistance Fund shall be in sufficient detail to provide a full and complete accounting of Compact funds received by the Federated States of Micronesia.

Source: PL 13-72 § 13.

§ 312. Operational Reserve Fund.

(1) There is hereby created an “Operational Reserve Fund” to be administered by and under the authority of the Secretary.

(2) The Operational Reserve Fund shall be an interest-bearing account established at a bank or commercial financial institution organized in accordance with the laws of the United States or a state of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution organized in accordance with the laws of the Federated States of Micronesia, in either case for the purpose of receiving payments of Grant funds pursuant to Article IV, Section 5(b)(2) of the Fiscal Procedures Agreement.

(3) Funds on deposit in the Operational Reserve Fund may be used to cover unanticipated delays of payments from the Government of the United States of funds in respect of Grant Awards, provided that the Government of the United States has approved any such use of funds.

(4) In the event of an unanticipated delay of payments, the Secretary shall promptly notify the President and the Government of each affected State.

(5) If requested by the Government of a State affected by an unanticipated delay of payments, the President shall make reasonable efforts to obtain approval from the Government of the United States for the use of Operational Reserve Funds.

(6) Any unobligated funds remaining in the Operational Reserve Fund as of the date of the final payment in respect of Operational Grants during any Fiscal Year shall be disbursed pursuant to section 317(5) of this chapter.

(7) The Secretary shall pay all interest and other earnings on the Operational Reserve Account to the Government of the United States pursuant to Article IV, Section 5(b)(2) of the Fiscal Procedures Agreement.

(8) If the President and the Government of every State agree that the Operational Reserve Account is no longer necessary, the President shall use reasonable efforts to obtain the consent of the Government of the United States to discontinue its use.

Source: PL 13-72 § 14.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 313. Infrastructure Maintenance Fund.

(1) There is hereby created an “Infrastructure Maintenance Fund” to be administered by and under the authority of the Secretary.

(2) The Infrastructure Maintenance Fund shall be comprised of five interest-bearing accounts, one for each Government, established at a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution organized in accordance with the laws of the Federated States of Micronesia, in either case for the purpose of receiving infrastructure maintenance contributions from the Government of the United States and the Government of the Federated States of Micronesia pursuant to Article VII, Section 7 of the Fiscal Procedures Agreement.

(3) Not later than February 15 of each Fiscal Year, each Government shall contribute from non-Compact sources not less than five percent of its proportional share of annual public infrastructure grants for that Fiscal Year to the Infrastructure Maintenance Fund, provided that a Government may delay such contribution, or any portion thereof, until August 1 of that Fiscal Year by written notification thereof to the President.

(4) The Secretary shall deposit the contributions of each Government into that Government's account in the Infrastructure Maintenance Fund.

(5) The President shall certify to the Government of the United States, pursuant to Article VII, Section 7(b) of the Fiscal Procedures Agreement, the consolidated total amount of contributions to the Infrastructure Maintenance Fund for each Fiscal Year:

(a) Not later than March 1 with respect to contributions received on or before February 15; and

(b) Not later than August 15 with respect to contributions received after February 15.

(6) The Secretary shall deposit matching contributions received from the Government of the United States into each Government's account in the Infrastructure Maintenance Fund proportionally based upon the amount contributed by each Government in that Fiscal Year.

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(7) Not later than 90 days after the end of each Fiscal year, the President shall transmit an annual financial report for the previous Fiscal Year, pursuant to Article VII, Section 7(b) of the Fiscal Procedures Agreement, showing all deposits into the Infrastructure Maintenance Fund by the Government of the United States and the Government of the Federated States of Micronesia, the amount of income generated by the fund and the fund balance.

(8) Each Government shall submit to the President an annual infrastructure maintenance plan not later than May 15 detailing the planned uses of funds available to that Government from the Infrastructure Maintenance Fund.

(9) The President shall submit to the Government of the United States an annual infrastructure maintenance plan not later than July 3.

(10) Funds on deposit in the Infrastructure Maintenance Fund shall be utilized by each Government in accordance with its infrastructure maintenance plan.

(11) The Secretary shall disburse available funds from the Infrastructure Maintenance Fund account of a requesting Government after:

(a) the requesting Government has submitted Accrued Expenditure reports evidencing an authorized expenditure or obligation of such funds; and

(b) the Secretary has determined that the requesting Government has complied with each relevant requirement under this section.

Source: PL 13-72 § 15.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 314. Drawdown Procedures—Cash Disbursement to National and State Treasuries.

(1) Pursuant to Article IV, Section 5 of the Fiscal Procedures Agreement, the Government of the Federated States of Micronesia will receive an advance payment for Compact Sector Operational Grants equivalent to two-twelfths (2/12) of the annual total at the beginning of the Fiscal Year and will receive advance payments equivalent to one-twelfth (1/12) of the annual total at the beginning of each subsequent month of the Fiscal Year, except November.

(2) Any State Government or the Secretary may request an accelerated disbursement of funds by submitting to the President an Annual Cash Drawdown Schedule for Compact Operational Grants for the upcoming Fiscal Year based upon appropriated budgets. The request shall detail by month the Government's anticipated cash disbursement requirements from Compact Sector Operational Grants, and shall include supporting documentation.

(3) The President shall use reasonable efforts to obtain the approval of the Government of the United States for any accelerated disbursement of funds and shall promptly notify the affected State Government or Secretary of a decision by the Government of the United States.

(4) The Secretary shall request cash disbursement for non-Operational Grants from the Government of the United States on behalf of each Government on the basis of accrued expenditures pursuant to Article IV, section 5 of the Fiscal Procedures Agreement.

(5) Upon receipt of Compact funds, the Secretary shall determine whether the amount and allocation of such funds is consistent with the Sector Grant Awards. The Secretary shall immediately notify the President and the Government of any affected State of any discrepancy and determine the cause.

(6) If the Secretary determines that Compact funds have been withheld or suspended pursuant to Article IV, Section 5(c) of the Fiscal Procedures Agreement, the Secretary shall immediately notify the President and, if the withholding or suspension affects a State, the Government of that State.

The Secretary shall withhold from disbursement to the affected Government that portion of the Compact funds not received as a result of such withholding or suspension.

(7) Any Government whose Compact funding is withheld or suspended pursuant to Article IV, Section 5(c) of the Fiscal Procedures Agreement may dispute such withholding or suspension through the Office of the President and in the manner set forth in the Fiscal Procedures Agreement.

(8) Unless otherwise provided in this section, the Secretary shall disburse funds from the Compact Financial Assistance Fund to the National Treasury and each State Treasury not later than the close of the business day following the day upon which the Secretary receives notice of the receipt of such funds. No Sector Grant funds that a Government has elected not to accept under section 307(2) of this chapter shall be disbursed unless the Government gives notice in writing to the President and to Congress that it is withdrawing its election under section 307(2) of this chapter and requests disbursement of such funds.

Source: PL 13-72 § 16.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 315. Reprogramming/Re-Allocation of Compact Funds.

(1) No Government shall re-allocate Compact funds from one Sector to another Sector during the course of the Fiscal Year.

(2) A Government shall reprogram funds within an approved Sector Grant only upon receipt of the prior written approval of the President. Within 20 days of the end of each fiscal quarter, the President shall notify Congress of any reprogramming that he has approved during that quarter with respect to Sector Grant funds received or to be received by the National Government.

(3) The President shall not unreasonably withhold approval of requests for reprogramming of up to 15 percent (15%) of a Government's proportional share of a total Sector budget or its proportional share of \$1,000,000, whichever is less, within an approved Sector Grant during the Fiscal Year; provided that such reprogramming requests do not include and would not require any of the following:

- (a) any revision of the scope or performance objectives of a Sector Grant or infrastructure project;
- (b) an extension of the period of funding availability;
- (c) changes in key persons specifically named in a Sector Grant award;
- (d) the contracting out or otherwise obtaining the services of a third party to perform non-construction related activities (except general support services) that are central to the purposes of the Sector Grant; or
- (e) any revision that would result in the need for additional funding over and above the original award.

(4) For proposed changes in Sector Grant budgets and projects that would include or require any of the revisions described or exceed the financial limits provided in subsection (3) of this section, the President shall use his best efforts to obtain the prior approval of the Government of the United States.

Source: PL 13-72 § 17.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 316. Internal Reporting Requirements.

(1) For each fiscal quarter, not later than 20 days after the end of such fiscal quarter, each State Government and the Secretary shall submit to the President the following reports:

- (a) for all Governmental fund types:
 - (i) a statement of revenues and expenditures;
 - (ii) a comparison of budget and actual expenditures by function;
- (b) with respect to Operational Grants, a budget execution report for each function, including major offices, cost centers, budget activities and performance reports; and
- (c) with respect to all Sector Grants, including the matching share of the Infrastructure Maintenance Fund provided by the Government of the United States:
 - (i) a Standard Form SF 269, or reasonable facsimile thereof approved by the Government of the United States; and
 - (ii) a Federal Cash Transactions Report, or a Standard Form SF 272, or reasonable facsimile thereof approved by the Government of the United States.

(2) The Members of JEMCO appointed by the Federated States of Micronesia shall at least twice annually submit written reports to the President, Congress and the States including the following information:

- (a) a summary of actions taken by JEMCO since the date of the last report to Congress;
- (b) a description of any significant unresolved issues before JEMCO or relating to the Compact; and
- (c) the schedule for future JEMCO meetings.

Such reports shall be submitted to Congress no later than April 1 and September 15 of each year, and at such other times as there may be significant developments relating to the interpretation or implementation of the Compact.

(3) At least twice annually the members appointed by the Federated States of Micronesia to the Joint Trust Fund Committee, formed pursuant to the Agreement between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, As Amended, Regarding A Trust Fund, shall submit reports to the President, Congress and the States including the following information:

- (a) the current balance of the funds in the Compact Trust Fund and a comparison with the balances as of
 - (i) the same date of the previous year and
 - (ii) the date of the last previous report to Congress;
- (b) an analysis of the performance of investments made with funds in the Compact Trust Fund, including a comparison with generally-accepted measures of investment performance for the same period; and
- (c) a description of significant investment strategy decisions relating to funds in the Compact Trust Fund.

Such reports shall be submitted to Congress no later than April 1 and September 15 of each year, and at such other times as there may be significant developments relating to the Compact Trust Fund.

Source: PL 13-72 § 18.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 317. Compact Quarterly Financial Reporting Requirements.

For each fiscal quarter, not later than 30 days after the end of such fiscal quarter, the President shall submit to the Government of the United States a consolidated report reflecting information provided in each of the reports provided pursuant section 316(1) of this chapter.

Source: PL 13-72 § 19.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 318. Internal Annual Final Cash Transactions Report.

Not later than 80 days after the end of each Fiscal Year, each State Government and the Secretary shall submit to the President a final cash transactions report for each Sector Grant. For Operational Grants, the reports shall include the amount of unobligated Operational Grant funding that will carry over to subsequent Fiscal Years.

Source: PL 13-72 § 20.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 319. Compact Annual Final Cash Transactions Report.

Not later than 90 days after the end of each Fiscal Year, the President shall submit to the Government of the United States a final cash transactions report for each Sector Grant. For Operational Grants, the reports shall include the amount of unobligated Operational Grant funding that will carry over to subsequent Fiscal Years.

Source: PL 13-72 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 320. Annual Report of the President to the Government of the United States.

Not later than the last day in February of each year, the President shall submit the Annual Report to the President of the United States in accordance with Article V, Section 1(d), of the Fiscal Procedures Agreement and Section 214 of the Compact, and shall transmit copies of the Annual Report to the Congress and the Government of each State.

Source: PL 13-72 § 22.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 321. Accounting and Record Keeping.

(1) All obligation and expenditure of Compact Funds shall be in accordance with the Compact and this chapter.

(2) The financial reporting systems of each Government shall provide full disclosure of the financial position and results of operations of each accounting fund in accordance with a uniform and standardized format. The financial information generated from these systems shall include, but not be

limited to, all pertinent information needed to prepare comprehensive annual financial reports as required by the Fiscal Procedures Agreement and the Compact.

Source: PL 13-72 § 23.

§ 322. Financial Records—Access.

The Secretary shall have full and complete access to all financial records for all Compact funds of the State and National Governments of the Federated States of Micronesia.

Source: PL 13-72 § 24.

§ 323. Enforcement.

(1) Each State Government and the Secretary shall immediately report to the President any violation of this chapter.

(2) If the President of the Federated States of Micronesia determines that any Government is not in compliance with one or more provisions of the Compact, this chapter, or rules and regulations promulgated pursuant to this chapter, he shall confer with the appropriate Government in an effort to remedy the effects of such noncompliance and to ensure future compliance with such provisions.

(3) Notwithstanding any provision to the contrary in this chapter, the President may withhold Compact financial assistance until such time as the non-compliant Government has complied with all of the provisions of the Compact, this chapter, and any rules and regulations promulgated pursuant to this chapter.

Source: PL 13-72 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 324. Implementation.

The President may establish rules, regulations, and forms as necessary to comply with the provisions of this chapter.

Source: PL 13-72 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 325. Delegation of Authority.

The President and each State Government may designate officials of the National and State Governments, respectively, to act on their behalf with respect to the duties and responsibilities vested in them by this chapter. Such designations shall be in writing.

Source: PL 13-72 § 27.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 326. Transition—Original Compact.

(1) Until all funds received under the Original Compact categories have been exhausted, each State Government shall, no later than December 15 of each year, submit to the President a report setting forth expenditures made and year-end fund balances by Original Compact category for the

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previous Fiscal Year; provided however, that this subsection (1) of this section shall not apply to funds received pursuant to section 211 of the Original Compact.

(2) Available capital project funds that were allotted to any of the State or the National Governments pursuant to section 211 of the Original Compact that subsequently lapse or are de-appropriated pursuant to the laws of the respective State or National Government shall revert to the current account of the respective government following submission of the relevant lapse provision or de-appropriation legislation to the Secretary.

(3) Each State finance officer shall promptly close out Original Compact capital project accounts upon project completion. Unused spending authority resulting from project close-out shall revert to the current account of the respective government.

(4) Nothing in this section shall be deemed to change or modify the distribution of capital account funds between a State and any of its municipalities as it existed as of September 30, 2003.

Source: PL 13-72 § 28; PL 13-85 § 3.

CHAPTER 4
Government Contracts

SECTIONS

- § 401. Short title.
- § 402. Definitions.
- § 403. Competitive bidding required.
- § 404. Citizen-bidder preference—Amount.
- § 405. Citizen-bidder preference—Eligibility.
- § 406. Bonding and insurance.
- § 407. Exception—Foreign aid requirements.
- § 408. Emergencies.
- § 409. Qualifications of bidders.
- § 410. Advertisement for bids.
- § 411. Bids—Opening, rejection.
- § 412. Bids—Information.
- § 413. Award to lowest responsible bidder.
- § 414. Effect of restraint of competition.
- § 415. Effect of advance disclosure of terms of bid.
- § 416. Assignment of contracts.
- § 417. Institution of legal actions.
- § 418. Regulations.
- § 419. Implementation of Infrastructure Development Plan.

Editor's note: Chapter 3, originally reserved for Government Contracts in the 1982 edition of the code, was renumbered chapter 4.

Chapter 4, originally reserved for Public Auditor in the 1982 edition of the code, has been renumbered chapter 5.

§ 401. Short title.

This chapter is known and may be cited as the “Public Contracts Act.”

Source: PL 2-65 § 1.

§ 402. Definitions.

As used in this chapter:

- (1) “Citizen bidder” means:
 - (a) until the termination of the Trusteeship, any business in which at least 51 percent of the interest therein is owned by a citizen or citizens of the Trust Territory of the Pacific Islands;
 - (b) upon termination of the Trusteeship, any business in which at least 51 percent of the interest therein is owned by a citizen or citizens of the Federated States of Micronesia;
 - (c) until the termination of the Trusteeship, a business which has been a resident of the Trust Territory of the Pacific Islands for at least one year immediately prior to the submission of its bid;

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(d) upon termination of the Trusteeship, a business which has been a resident of the Federated States of Micronesia for at least one year immediately prior to the submission of its bid; and

(e) upon termination of the Trusteeship, a business which has paid gross revenue taxes to the Federated States of Micronesia for the one year period immediately prior to the submission of its bid.

(2) “Contracting officer” means the official in charge of letting a contract for a National Government agency.

(3) “Lowest responsible bidder” means the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract.

(4) “National Government agency” means any branch, department, office, division, board, bureau, commission, committee, institution, or authority of the National Government of the Federated States of Micronesia.

Source: PL 2-65 § 2; PL 4-4 § 1.

§ 403. Competitive bidding required.

All contracts for construction projects involving \$20,000 or more or for the purchase of personal property involving \$50,000 or more made on behalf of any National Government agency shall be let by free and open competitive bidding, by sealed bids, to the lowest responsible bidder in accordance with the provisions of this chapter.

Source: PL 2-65 § 3.

§ 404. Citizen-bidder preference—Amount.

(1) Citizen bidders who qualify to bid under the provisions of this chapter shall receive preference over noncitizen bidders in determining the award of the contract.

(2) For the purpose of determining the preference to be given to citizen bidders, the amount of the bid of each citizen bidder shall be reduced according to the following formula, and such reduction shall be used solely for the purpose of determining the lowest responsible bidder:

(a) for all contracts for construction projects involving at least \$20,000, but less than \$500,000, or for the purchase of personal property involving a least \$50,000, but less than \$500,000, the amount of the bid of each citizen bidder shall be reduced by 15 percent;

(b) for all contracts for construction projects involving at least \$500,000, but less than \$1,500,000, the amount of the bid of each citizen bidder shall be reduced by ten percent;

(c) for all contracts for construction projects involving at least \$1,500,000, but less than \$10,000,000, or for the purchase of personal property involving at least \$1,500,000, but less than \$10,000,000, the amount of the bid of each citizen bidder shall be reduced by five percent; and

(d) there shall be no citizen bidder preference with respect to contracts for construction projects involving \$10,000,000 or more, or for the purchase of personal property involving \$10,000,000 or more.

Source: PL 2-65 § 4; PL 4-4 § 2.

§ 405. Citizen-bidder preference—Eligibility.

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In order for a bidder to be eligible to receive the citizen bidder preference provided for in section 404 of this chapter, such bidder shall meet the following criteria:

- (1) The bidder shall be a citizen as defined under section 402(1) of this chapter;
- (2) The bidder shall be bidding for a construction project or for the sale of personal property in response to an advertisement for bids made pursuant to this chapter;
- (3) The bidder shall include in his written notice of intention to bid a statement that he is submitting his bid as a citizen bidder and provide sufficient documentation of his eligibility to receive the citizen bidder preference; and
- (4) For construction projects, the bidder shall commit that until the termination of the Trusteeship, at least 25 percent of all workers employed at all times at the job site shall be citizens of the Trust Territory of the Pacific Islands; that upon termination of the Trusteeship, at least 25 percent of all workers employed at the job site at all times shall be citizens of the Federated States of Micronesia; and that at least 25 percent of all materials and supplies utilized in the construction project shall be purchased from within the Federated States of Micronesia.

Source: PL 2-65 § 5; PL 4-4 § 3.

§ 406. Bonding and insurance.

Except for contracts for construction projects involving \$150,000 or less, or for the purchase of personal property involving \$10,000,000 or less, the contracting officer is hereby authorized to impose such bonding and insurance requirements that, in his best judgment, are necessary and appropriate to ensure proper performance of the contract by the contractor. Such bonding and insurance requirements may include, but need not be limited to, bid guarantee, performance bond, or payment bond.

Source: PL 2-65 § 6; PL 4-4 § 4.

§ 407. Exception—Foreign aid requirements.

The provisions of this chapter shall not apply if the Federated States of Micronesia has entered into an agreement for a foreign aid project, the terms of which require that construction contracts or contracts for the purchase of personal property which are necessary for the completion of the project shall be let to nationals of the donor country.

Source: PL 2-65 § 7; PL 4-4 § 6 (part); PL 4-100 § 1.

§ 408. Emergencies.

In case of emergency affecting public health, safety, or convenience so declared in writing by the President upon application by the head of any National Government agency setting forth the nature of the emergency and the danger to the public health, safety, or convenience caused by delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.

Source: PL 2-65 § 8; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 409. Qualifications of bidders.

Before any prospective bidder may be entitled to submit a bid for the performance of a contract covered by section 403 of this chapter, he shall, not less than ten calendar days prior to the date designated for opening bids, give written notice to the contracting officer of his intention to bid, and

such officer shall satisfy himself of the prospective bidder's financial ability to perform the work intended and of his experience and competence in performing similar work. Whenever it appears to the contracting officer that the prospective bidder is not fully qualified and able to perform the intended work, the contracting officer shall refuse to receive or consider any bid offered by the prospective bidder. Upon being determined not to be fully qualified, a prospective bidder may appeal this determination within ten days after notice of disqualification in accordance with the Administrative Procedures Act, chapter 1 of title 17 of this code.

Source: PL 2-65 § 9; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 410. Advertisement for bids.

Publication of a call for sealed bids shall include posting of notice for at least ten days in the immigration office and in one other prominent public place in each State in the Federated States of Micronesia, the use of radio and newspaper media when considered appropriate by the contracting officer, and any other means he may consider feasible. The notice shall state in clear terms the project that is to be bid on.

Source: PL 2-65 § 10; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 411. Bids—Opening, rejection.

The time of opening sealed bids shall not be less than 30 days after the final publication. All bids shall be sealed and delivered to the contracting officer and, in the presence of all bidders who attend, shall be opened by him at the hour and places as stated in the advertisement and may be inspected by any bidder. Any bid which does not comply with the requirements of the advertisement shall be rejected. If two or more bids are the same and the lowest, the contracting officer may accept the one he chooses. If no bids are received, the contracting officer may have the project done without further compliance with this chapter.

Source: PL 2-65 § 11; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 412. Bids—Information.

All bids on construction project contracts shall include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the construction project contract. The bid shall also indicate the nature and scope of the work to be performed by such joint contractor or subcontractor.

Source: PL 2-65 § 12; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 413. Award to lowest responsible bidder.

All contracts shall be in writing and shall be executed by the National Government agency which is authorized to let contracts in its own name and shall be made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids pursuant to section 412 of this chapter. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work.

Source: PL 2-65 § 13; PL 4-4 §§ 5, 6 (part); PL 4-100 § 2 (part).

Erratum: PL 4-4 § 5 reads “writing”, where 1987 supplement reads “writng.”

§ 414. Effect of restraint of competition.

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to such an agreement.

Source: PL 2-65 § 14; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 415. Effect of advance disclosure of terms of bid.

Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

Source: PL 2-65 § 15; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 416. Assignment of contracts.

No contracts awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority.

Source: PL 2-65 § 16; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

§ 417. Institution of legal actions.

Any citizen taxpayer in the Federated States of Micronesia or any *bona fide* unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the Federated States of Micronesia Supreme Court to enjoin execution of any contract entered into in violation of this chapter.

Source: PL 2-65 § 17; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 418. Regulations.

The President may issue regulations to implement this chapter in accordance with the provisions of the Administrative Procedures Act, chapter 1 of title 17 of this code.

Source: PL 2-65 § 18; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 419. Implementation of Infrastructure Development Plan.

(1) Notwithstanding any provision of law to the contrary, the National Government shall have jurisdiction, in coordination with the respective state, over activities relating to any public contract that is or may be awarded for a civil works project to implement any part of the Infrastructure Development Plan and that is supported by funds provided through Section 211 of the Amended Compact of Free Association, as that Plan may be amended from time to time, including but not limited

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to all contract management activities, all bidding and pre-bidding procedures for such public contracts, and all activities performed by any citizen or noncitizen contractor or subcontractor pursuant to any such public contract. Except for this section, the provisions of chapter 4 shall not apply to public contracts referred to in this subsection.

(2) Notwithstanding section 205 of title 32 of this code, no Foreign Investment Permit shall be required to conduct any activity referred to in subsection (1) of this section.

(3) The President shall be responsible for establishing procurement procedures specifically for use with all public contracts referred to in subsection (1) of this section, which shall

(a) meet or exceed prevailing international standards for free and open competitive bidding, transparency, and fairness to all parties,

(b) effectively and efficiently facilitate the execution and implementation of public contract referred to in subsection (1) of this section,

(c) protect resident workers, and

(d) protect the public interest.

Such procurement procedures shall take effect upon adoption by the President in accordance with title 17 of this code.

(4) Any citizen taxpayer in the Federated States of Micronesia may seek to enjoin a public contract referred to in subsection (1) of this section to the same extent and in the same manner as such remedy is available to *bona fide* unsuccessful bidders on the contract under the procurement procedures established and approved by the President pursuant to subsection (3) of this section.

(5) The courts of the Federated States of Micronesia shall recognize and give full force and effect to the dispute resolution methods established by the President pursuant to subsection (3) of this section.

Source: PL 14-48 § 1.

Cross-reference: Title 32 of this code is on Business Regulation. The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

CHAPTER 5
Public Auditor

Editor's note: Chapter 4, originally reserved for the Public Auditor in the 1982 edition of the code, has been renumbered chapter 5.

SECTIONS

- § 501. Short title.**
- § 502. Definitions.**
- § 503. Appointment—Tenure—Removal—Salary.**
- § 504. Benefits.**
- § 505. Duties.**
- § 506. Powers.**
- § 507. Types of audits and audit standards.**

§ 501. Short title.

This chapter shall be known as the “National Public Auditor Act of the Federated States of Micronesia.”

Source: PL 3-47 § 1.

§ 502. Definitions.

As used in this chapter, “public funds from the National Government” means funds or reimbursements from the National Government arising from the National tax revenues, including National tax revenue shared with the states pursuant to article IX, section 5 of the Constitution of the Federated States of Micronesia, and all grants, subsidies, or contributions in the form of money, goods, or services from any source which are received from the National Government by appropriation law, or otherwise.

Source: PL 3-47 § 2.

Cross-reference: Art. IX, sec. 5 of the Constitution states as follows:

Section 5. National taxes shall be imposed uniformly. Not less than 50% of the revenues shall be paid into the treasury of the state where collected.

The provisions of the Constitution are found in Part I of this code.

§ 503. Appointment—Tenure—Removal—Salary.

The appointment, tenure, removal, and salary of the Public Auditor for the National Government of the Federated States of Micronesia shall be as follows:

(1) *Appointment.* The Public Auditor shall be appointed by the President with the advice and consent of Congress.

(2) *Tenure.* The Public Auditor shall serve for a term of four years and until a successor is confirmed. An individual may be reappointed for an additional term or terms with the advice and consent of Congress.

(3) *Removal.* The Congress may remove the Public Auditor from office for cause by a two-thirds vote. In the event of such removal, the Chief Justice shall appoint an Acting Public Auditor until a successor is confirmed.

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(4) *Salary.* The Public Auditor shall receive an annual salary of which shall not exceed \$40,000, and shall be determined based on qualifications and experience. Upon the appointment of a Public Auditor the salary level for the position shall be fixed by the President with the advice and consent of Congress. Such salary shall not be reduced during the Public Auditor's term of office. In the event of removal or of a vacancy in the office, the successor shall be entitled to the salary attendant to the office as of the date of succession.

Source: PL 3-47 § 3; PL 9-38 § 1; PL 12-38 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 504. Benefits.

At the time he is confirmed the Public Auditor shall be entitled to all benefits, other than those covered by chapter 3 of title 52 of this code, as are available to all regular Government prime contract employees under the same terms and conditions which apply to members of the National Public Service System.

Source: PL 3-47 § 4.

Cross-reference: Chapter 3 of title 52 (Public Employment) of this code is on Exempt Employees.

§ 505. Duties.

The duties of the Public Auditor shall be as follows:

(1) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government and of other public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organizations receiving public funds from the National Government.

(2) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records associated with any project, program, and activity receiving funding in whole or in part from public funds of the National Government.

(3) The Public Auditor shall perform audits as otherwise specifically required by statute.

(4) The Public Auditor shall have the discretion to perform audits, or assist in the performance of audits, upon request by the States.

(5) The Public Auditor shall have the exclusive audit jurisdiction over public funds of the National Government of the Federated States of Micronesia, but he shall have the authority to contract for independent auditing services to be performed under his supervision in instances where specialized expertise is required, or where auditing requirements are beyond the capacity of the Public Auditor's staff and separate funding is available.

(6) The Public Auditor shall file a report at least once a year with the Congress. The Public Auditor may file other reports at such other times as he may determine. All reports of the Public Auditor shall be made available to the public.

(7) The Public Auditor may submit recommendations with his audit reports which shall be confined to matters within the jurisdiction of the Public Auditor, including compliance or noncompliance with laws governing the expenditure of public moneys, and the need for amendments or new laws to secure the efficient expenditure of public funds.

(8) The Public Auditor shall keep a complete and accurate record or file of all audit reports, inspections, investigations, releases, audit work papers, and other materials pertaining to the work of the Office of the Public Auditor.

Source: PL 3-47 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 506. Powers.

The powers of the Public Auditor shall be as follows:

(1) The Public Auditor may examine and inspect all books, records, files, papers, documents, and all financial affairs of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government, as well as other public legal entities, including States and nonprofit organizations receiving funds from the National Government.

(2) The Public Auditor may audit the records of any contractor performing public work on a cost-reimbursement-type contract for the National Government of the Federated States of Micronesia to verify the cost charged to the public contract. Any contractor performing public work pursuant to a contract with the National Government of the Federated States of Micronesia shall keep and maintain records adequate to establish the validity of costs charged to the National Government.

(3) The Public Auditor may by subpoena summon persons to appear at a reasonable time before him and administer oaths to such persons. He may question such persons, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the due execution of the duties vested in the Public Auditor by this chapter.

(4) The Public Auditor may issue subpoenas *duces tecum* within a reasonable time requiring the production of books, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

(5) Any subpoena or subpoena *duces tecum* issued under the authority of the Public Auditor shall run in the name of the Federated States of Micronesia and shall be addressed to the chief or other officer of the Division of Security and Investigation of the Office of the Attorney General of the National Government of the Federated States of Micronesia. The subpoena or subpoena *duces tecum* shall be signed by the Public Auditor and shall identify the witness to be served or the books, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection and audit.

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(6) Any officer to whom such subpoena or subpoena *duces tecum* is directed shall forthwith serve or execute the same upon delivery thereof to him.

(7) Any person who willfully fails or refuses to appear upon receiving service of a subpoena, or who willfully fails or refuses to produce any books, records, documents, or other relevant financial papers or objects designated in a subpoena *duces tecum* properly issued by the Public Auditor, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned for not more than one year, or both. Failure by the Public Auditor to comply in any material respect with the requirements of this chapter shall relieve any person of the obligation to appear or the obligation to produce designated materials, and such failure shall be defense in any proceeding against such person for punishment.

(8) Any person subject to a subpoena *duces tecum* shall have only those privileges against producing books, records, documents, or other relevant financial papers or objects which are authorized under the rules of evidence of the Supreme Court of the Federated States of Micronesia, the Constitution of the Federated States of Micronesia, the Trust Territory Bill of Rights, or other applicable law.

Source: PL 3-47 § 6.

Cross-reference: The provisions of the Trust Territory Bill of Rights are found in sections 101 to 114 of title 1 (General Provisions) of this code. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 507. Types of audits and audit standards.

The types of audits and applicable audit standards shall be as follows:

(1) Three types of audits may be performed:

(a) *Financial and compliance.* This type of audit determines whether the financial statements of an audited entity present fairly the financial position and results of financial operations in accordance with generally accepted accounting principles and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(b) *Economy and efficiency.* This type of audit determines whether an entity is managing and utilizing its resources economically and efficiently, the causes of inefficiencies or uneconomical practices, and whether the entity has complied with laws and regulations concerning economy and efficiency.

(c) *Program results.* This type of audit determines whether the desired results or benefits established by the Congress or other authorizing body are being achieved and whether the program administrators have considered alternatives that might yield desired results at a lower cost.

(2) Any given audit or review may include one or more of the objectives in subsection (1) of this section in the reasonable exercise of the Public Auditor's discretion.

(3) The Public Auditor shall perform audits in conformity with generally accepted audit standards as established by the American Institute of Certified Public Accountants.

Source: PL 3-47 § 7.

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**SUBCHAPTER I
Imprest Revolving Funds**

§ 601. Short title.

This subchapter shall be known as the "Imprest Revolving Funds Act of 1982".

Source: PL 2-60 § 1.

Cross-reference: Provisions on funds, such as the General Fund, Foreign Assistance Fund, and Program Fund, are found in chapter 2 (Financial Management) of this title. Provisions on the Student Loan Revolving Fund and the Aid to Nonpublic Schools Fund are found in title 40 (Education) of this code. The Passport Revolving Fund is found at 50 F.S.M.C. 207.

§ 602. Purpose.

The purpose of this subchapter is to establish six ongoing imprest revolving funds to provide, subject to the provisions of section 604 of this subchapter, sources of advanced funding for authorized expenses of the Federated States of Micronesia Mission to the United Nations, New York; the Federated States of Micronesia Embassy, Washington, D.C.; the Federated States of Micronesia Consulate, Honolulu; the Federated States of Micronesia Consulate, Guam; the Federated States of Micronesia Embassy, Tokyo, Japan; and the Federated States of Micronesia Embassy, Suva, Fiji. Such authorized expenses shall include those incurred during official travel by qualified College of Micronesia-FSM

employees and officials, by any individual on a National or State Government travel authorization, and medical referral patients and their attendants.

Source: PL 2-60 § 2; PL 3-64 § 1; PL 5-21 § 7; PL 7-123 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 603. Establishment.

There is hereby established an ongoing imprest revolving fund within the General Fund for each of the following offices of the National Government of the Federated States of Micronesia:

- (1) Federated States of Micronesia Mission to the United Nations, New York;
- (2) Federated States of Micronesia Embassy, Washington, D.C.;
- (3) Federated States of Micronesia Consulate, Honolulu;
- (4) Federated States of Micronesia Consulate, Guam;
- (5) Federated States of Micronesia Embassy, Tokyo, Japan; and
- (6) Federated States of Micronesia Embassy, Suva, Fiji.

Source: PL 2-60 § 3; PL 3-64 § 2; PL 5-21 § 8; PL 7-123 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 604. Authorized uses of the funds.

Each fund established pursuant to section 603 of this subchapter may be utilized as a source of advanced funding for the following authorized expenses of the office for which that fund was established:

(1) Each fund established pursuant to section 603 of this subchapter may be utilized as a source of advanced funding for medical expenses of personnel in the office for which that fund was established if and to the extent that health insurance provided for such personnel by or through the National Government of the Federated States of Micronesia may reasonably be expected to cover such expenses. Advanced funds which are subsequently determined not to be covered by such insurance shall be promptly reimbursed by the personnel to or for whom paid.

(2) All of the funds established pursuant to section 603 of this subchapter may be utilized as sources of advanced funding for authorized expenses incurred during travel by:

- (a) employees and officials of the College of Micronesia-FSM and any individuals who have been issued a valid National or State Government travel authorization; and
- (b) medical referral patients and their attendants who have been issued valid travel authorizations.

(3) The Secretary of Finance of the National Government of the Federated States of Micronesia shall determine "authorized expenses" for the purposes of subsections (1) and (2) of this section through the establishment of policies and procedures.

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(4) The funds shall not be utilized for any purpose other than as permitted by this section.

Source: PL 2-60 § 4; PL 3-64 § 3; PL 7-123 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 605. Disbursements and reimbursements.

Money advanced from the funds shall be reimbursed and deposited back into the respective fund from which the advance was made. Procedures for disbursements from and reimbursements to the funds shall be established by the Secretary of Finance.

Source: PL 2-60 § 5.

§ 606. Policies and procedures.

The funds shall be generally administered, managed, and accounted for in accordance with policies and procedures established by the Secretary of Finance.

Source: PL 2-60 § 6.

§ 607. Authorization.

(1) The sum of \$140,000, or so much thereof as may be necessary, is hereby authorized to be used within the General Fund of the Federated States of Micronesia for the purpose of funding the imprest revolving funds. The sums authorized by this subsection shall be apportioned as follows:

(a)	Federated States of Micronesia Mission to the United Nations, New York	\$40,000
(b)	Federated States of Micronesia Embassy, Washington, D.C.	40,000
(c)	Federated States of Micronesia Consulate, Honolulu	20,000
(d)	Federated States of Micronesia Consulate, Guam	10,000
(e)	Federated States of Micronesia Embassy, Tokyo, Japan	20,000
(f)	Federated States of Micronesia Embassy, Suva, Fiji	10,000

(2) All funds authorized by this subchapter shall be allotted, managed, administered, and accounted for in accordance with applicable law, including, but not limited to, the Financial Management Act of 1979. The allottee shall be responsible for ensuring that these funds, or so much thereof as may be necessary, are used solely for the purpose specified in this subchapter, and that no obligations are incurred in excess of the sum authorized.

Source: PL 2-60 § 8; PL 3-64 § 5; PL 5-21 § 9; PL 7-123 § 4.

Cross-reference: The Financial Management Act of 1979 is codified at chapter 2 (Financial Management) of this title.

**SUBCHAPTER II
Disaster Relief Fund**

§ 608. Definitions.

As used in this subchapter:

(1) “Disaster” means any hurricane, typhoon, cyclone, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, explosion, civil disturbance, or other catastrophe in any part of the Federated States of Micronesia which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant disaster assistance under this subchapter, above and beyond emergency services by the National Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(2) “Emergency” means any hurricane, typhoon, cyclone, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, explosion, civil disturbance, or other catastrophe in any part of the Federated States of Micronesia which requires national emergency assistance to supplement State and local efforts to save lives and protect property, provide for public health and safety, or to avert or lessen the threat of disaster.

Source: PL 2-64 § 2.

Cross-reference: The provisions on Emergency Proclamations are found in chapter 8 of title 11 (Crimes) of this code. The provisions of the "Disaster Relief Assistance Act of 1989" are found in chapter 7 of title 41 (Public Health, Safety and Welfare) of this code. The provision on the Emergency Account is found at section 109 of this title.

§ 609. Establishment.

(1) There is created a Disaster Relief Fund to be used for natural disaster and emergency relief throughout the Federated States of Micronesia.

(2) Moneys for the Disaster Relief Fund shall be derived from appropriations by the Congress of the Federated States of Micronesia and the State legislatures, United States grants, funds designated for such purposes from international organizations and from any and all other appropriate sources.

(3) The Disaster Relief Fund shall be administered in accordance with the provisions of this subchapter.

Source: PL 2-64 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 610. Request—Declaration.

All requests for a determination by the President that an emergency or disaster exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that national assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency or disaster, and will define the type and extent of national aid required. As a prerequisite to emergency or disaster assistance under this subchapter, the Governor shall take appropriate action under State law and direct execution of any State emergency or disaster plan. Based upon such Governor's request, the President may find and declare that a disaster or an emergency exists.

Source: PL 2-64 § 3.

Cross-reference: The provisions of the "Disaster Relief Assistance Act of 1989" are codified at chapter 7 of title 41 (Public Health, Safety and Welfare) of this code. The statutory provision on the Emergency Account is found at section 109 of this title.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 611. Use of Disaster Relief Fund.

(1) Upon declaring that a disaster or emergency exists, the President may authorize such expenditure of moneys from the Disaster Relief Fund as in his opinion are necessary to carry out the purposes of this subchapter, providing that they are consistent with the type and extent of aid requested by the Governor of the affected State.

(2) Expenditures from the Disaster Relief Fund may be used for necessary food, clothing, shelter, medical supplies, compensation for crop damage, transportation, debris clearance, reconstruction and repair of seawalls and other damaged property, building materials, and such other matters as the President determines to be necessary and occasioned by the emergency or disaster.

Source: PL 2-64 § 4.

§ 612. Use of local firms and individuals.

In the expenditure of national funds for debris clearance, distribution of supplies, reconstruction, and other emergency or disaster assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such emergency or disaster.

Source: PL 2-64 § 5.

Cross-reference: The provisions of the "Disaster Relief Assistance Act of 1989" are codified at chapter 7 of title 41 (Public Health, Safety and Welfare) of this code. The statutory provision on the Emergency Account is found at section 109 of this title.

**SUBCHAPTER III
Maritime Operations Revolving Fund**

§ 613. Establishment.

There is created and established the Maritime Operations Revolving Fund, referred to in this subchapter as the "Fund," separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 3-8 § 1.

§ 614. Purpose.

The purpose of the Fund is to establish an ongoing revolving fund to allow appropriations for and revenues from the operation of all National Government vessels under the direct operational control

of the Department of Transportation and Communication to be used for the ongoing operation and maintenance of such vessels.

Source: PL 3-8 § 2; PL 7-32 § 1.

Cross-reference: The statutory provisions on Admiralty and Maritime are found in title 19 of this code.

§ 615. Deposits.

All future appropriations for the operation and maintenance of the vessels, as well as revenues received from the operation of these vessels, shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 3-8 § 3.

§ 616. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this code.

Source: PL 3-8 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Chapter 1 of title 17 of this code is on FSM Administrative Procedures.

§ 617. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 3-8 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**SUBCHAPTER IV
Supply Stock Revolving Fund**

§ 618. Establishment.

There is hereby created and established the Supply Stock Revolving Fund, hereinafter referred to as the "Fund," separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 4-74 § 1.

§ 619. Purpose.

The purpose of the Fund is to permit the Division of Supply to maintain a stock of items commonly purchased by the Government which can then be requisitioned by various Government agencies.

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Source: PL 4-74 § 2.

§ 620. Deposits.

All future appropriations for the Fund as well as revenues received from the transfer of goods purchased with money from the Fund shall be deposited in the Fund. Any unexpended monies in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 4-74 § 3.

§ 621. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this code.

Source: PL 4-74 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The provisions of chapter 1 of title 17 of this code are on FSM Administrative Procedures.

§ 622. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year. Such report shall include an audited income statement, balance sheet and inventory of goods in stock.

Source: PL 4-74 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

SUBCHAPTER V Bond Repayment Fund

§ 623. Definitions.

As used in this subchapter, these terms shall have the following meanings unless otherwise required by context:

- (1) “Borrowing” means a borrowing authorized by and undertaken pursuant to title 58 of this code.
- (2) “Resolution” means a resolution relating to the terms of a Borrowing, duly adopted, as may be required or permitted pursuant to title 58 of this code.

Source: PL 5-121 § 33.

Cross-reference: The provisions of title 58 of this code are on Compact Funds Financing.

§ 624. Establishment.

There is hereby created and established the Bond Repayment Fund, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 5-121 § 34.

§ 625. Purpose.

The purpose of the Bond Repayment Fund is to provide for the deposit and disbursement of funds pledged by a State government and/or the National Government which participates in a Borrowing if such funds are not otherwise deposited with the Trustee pursuant to section 522(1) of chapter 5 of title 58 of this code.

Source: PL 5-121 § 35; PL 5-136 § 11.

Cross-reference: Section 522 of chapter 5 (Compact Funds Financing) of title 58 of this code is on the Pledge of Funds.

§ 626. Sub-funds established.

When a Borrowing is contemplated, a new sub-fund within the Bond Repayment Fund may be established by Resolution.

Source: PL 5-121 § 36.

§ 627. Deposits.

All funds pledged by and received, other than those funds deposited with a Trustee pursuant to section 522(1) of chapter 5 of title 58 of this code, from a State government or from the National Government for the purpose of securing its financial obligations related to or resulting from a Borrowing shall be deposited into the sub-fund of the Bond Repayment Fund established in connection with that Borrowing. Any unexpended moneys in a sub-fund of the Bond Repayment Fund shall not revert to the General Fund at the end of the fiscal year.

Source: PL 5-121 § 37; PL 5-136 § 12, modified.

Cross-reference: Section 522 of chapter 5 (Compact Funds Financing) of title 58 of this code is on the Pledge of Funds.

§ 628. Disbursements.

The moneys deposited into a sub-fund of the Bond Repayment Fund established in connection with a Borrowing shall be available for disbursement, pursuant to the terms of the Resolution setting forth the terms of the Borrowing, and of any and all other agreements relating to the Borrowing to which the National Government is a party. All such disbursements shall be without additional appropriation from such sub-fund to satisfy all financial obligations related to or resulting from the Borrowing.

Source: PL 5-121 § 38.

§ 629. Administration.

The Bond Repayment Fund and each sub-fund therein shall be administered by the Secretary of Finance or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this code.

Source: PL 5-121 § 39, modified.

Cross-reference: The provisions of chapter 1 of title 17 of this code are on FSM Administrative Procedures.

SUBCHAPTER VI Fisheries Observer Revolving Fund

§ 630. Establishment.

There is hereby created and established the Fisheries Observer and Port Sampler Revolving Fund, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 7-76 § 2; PL 16-14 § 1.

§ 631. Purpose.

The purpose of the Fund is to provide an ongoing revolving fund for the receipt and disbursement of funds associated with the fisheries observer and port sampler programs as established by sections 106(1)(b), 106(1)(c), 606(1) and 606(2) of title 24 of this code.

Source: PL 7-76 § 3, modified; PL 16-14 § 2.

Cross-reference: The provisions of title 24 of this code are on Marine Resources.

§ 632. Deposits.

All future appropriations for the Fund as well as revenues received pursuant to the provisions of section 403(2) of title 24 of this code shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year, PROVIDED, however, that any amount in excess of \$200,000 shall be paid into the General Fund.

Source: PL 7-76 § 4, modified; PL 16-14 § 3.

Cross-reference: The provisions of title 24 of this code are on Marine Resources.

§ 633. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia, or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this code.

Source: PL 7-76 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The provisions of chapter 1 of title 17 of this code are on FSM Administrative Procedures.

§ 634. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 7-76 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

SUBCHAPTER VII
Asian Development Bank Loan Fund

§ 640. Establishment.

There is hereby created and established the Asian Development Bank Loan Fund, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 7-101 § 4.

§ 641. Purpose.

The purpose of the Fund is to provide an ongoing revolving fund for the receipt and disbursement of funds associated with the ADB Loan Agreement of 1992.

Source: PL 7-101 § 5.

§ 642. Deposits.

All revenues received pursuant to the ADB Loan Agreement of 1992, the Subsidiary Loan Agreement by and between the Government of the Federated States of Micronesia and the Micronesian Long Line Fishing Corporation, any appropriation made for purposes of facilitating repayment of the Loan or execution of the project identified in the Loan Agreement, and as well as any and all revenue from any and all other sources associated with the subject matter of the ADB Loan Agreement of 1992, shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 7-101 § 6.

§ 643. Disbursements.

The Secretary of Finance is hereby authorized to make disbursements from moneys available in the Fund, without further authorization or appropriation of the Congress of the Federated States of Micronesia for the purposes of execution of the project identified in the ADB Loan Agreement of 1992, repayment of the proceeds of the Loan, interest on the Loan and any and all other charges or fees associated with the Loan as set forth in the Loan Agreement. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year, PROVIDED, however, that upon final payment and satisfaction of the Loan, all unexpended moneys in this Fund shall revert to the General Fund.

Source: PL 7-101 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 644. Administration.

The Fund shall be administered by the Secretary of Finance of the Federated States of Micronesia, who shall administer the Fund in accordance with the ADB Loan Agreement of 1992,

generally accepted accounting standards and sound financial practices for the effectuation and implementation of the provisions of this subchapter.

Source: PL 7-101 § 8.

§ 645. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 7-101 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**SUBCHAPTER VIII
Controlled Substance Procurement
Revolving Fund**

§ 650. Establishment.

There is hereby created and established the Controlled Substance Procurement Revolving Fund, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 7-81 § 2.

§ 651. Purpose.

The purpose of the Fund is to provide an ongoing revolving fund for the receipt and disbursement of funds associated with the purchase and sale of controlled substances for the health care systems of the Federated States of Micronesia.

Source: PL 7-81 § 3.

Cross-reference: The statutory provisions on Public Health, Safety and Welfare are found in title 41 of this code.

§ 652. Deposits.

All future appropriations for the Fund as well as moneys received from the sale of controlled substances shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year; PROVIDED, however, that any amount in excess of \$15,000 shall be paid into the General Fund.

Source: PL 7-81 § 4.

§ 653. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this code.

Source: PL 7-81 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The provisions of chapter 1 of title 17 of this code are on FSM Administrative Procedures.

§ 654. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 7-81 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**SUBCHAPTER IX
Aquaculture Revolving Fund**

§ 655. Establishment.

There is hereby created and established the Aquaculture Revolving Fund, referred to in this subchapter as the “Fund”, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 10-152 § 2.

§ 656. Purpose.

The purpose of the Fund is to permit revenues from the operations of the FSM Aquaculture Center, referred to in this subchapter as the "Center", to be used for the expenses of the Center.

Source: PL 10-152 § 3.

§ 657. Deposits.

All future appropriations for the Fund and all revenues derived from the operations of the Center shall be deposited in the Fund. An initial deposit equal to the amount of retained earnings on deposit with the Center on June 1, 1998, is hereby authorized. Any unexpended monies in this Fund shall not revert to the General Fund at the end of the fiscal year.

Source: PL 10-152 § 4.

§ 658. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia or his designee in accordance with the provisions of this title and any other applicable laws.

Source: PL 10-152 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 659. Annual Report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 10-152 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

SUBCHAPTER X ADB Water Loan Fund

Editor's note: This subchapter was renumbered from subchapter IX to subchapter X by section 7 of PL 10-152.

§ 660. Establishment.

There is hereby created and established the ADB Water Loan Fund, separate from the General Fund of the FSM and all other funds.

Source: PL 9-135 § 6.

Editor's note: The other sections of PL 9-135 that are not codified are set forth for reference as follows:

Section 1. Title. This act may be referred to as the "ADB Water Project Authorization Act".

Section 2. Definitions. Unless otherwise defined or required by the context, terms used in this act shall have the following meanings:

(1) "Bank" means the Asian Development Bank.

(2) "Congress" means the Congress of the FSM.

(3) "FSM" means the Federated States of Micronesia.

(4) "Financing Agreement" means a three-party agreement between the FSM, a State, and utility company within that State in substantially the form heretofore submitted to Congress and labeled "Congress Draft".

(5) "Loan Agreement" means the Loan Agreement (Special Operations) (Water Supply and Sanitation Project) between the FSM and the Bank in substantially the form heretofore submitted to Congress and labeled "Negotiated Draft 14/viii/96".

(6) "President" means the President of the FSM or his designee, or in the absence of the President, the Vice President of the FSM or his designee.

(7) "Project" means the water supply and sanitation project contemplated by the Loan Agreement.

(8) "State" means a state of the FSM.

Section 3. Borrowing Authorization. Congress hereby authorizes the President to execute the Loan Agreement, borrow money from the Bank as provided for therein, and otherwise exercise the rights and perform the obligation of the FSM therein, all in the name of and on behalf of the FSM.

Section 4. Relending Authorization. Congress hereby authorizes the President to execute a Financing Agreement with each of the States, relend money to each State as provided for therein, and otherwise exercise the rights and perform the obligations of the FSM therein, all in the name of and on behalf of the FSM. Said Agreement shall not allow the acceleration or calling in of a State's loan unless that State shall have materially defaulted or such call for acceleration is necessitated by a call or acceleration by the Bank of its loan to the FSM.

...

Section 12. Appropriation of Loan Proceeds. If and to the extent that such an appropriation is necessary, all sums directly or indirectly received as proceeds of the loan contemplated under the Loan Agreement are hereby appropriated to the ADB Water Loan Fund for the purpose of implementing the Project. Such funds may not be obligated until received from or made available by the Bank.

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Section 13. Other Appropriation. The sum of \$772,100, or so much thereof as may be necessary, is hereby appropriated from the General Fund of the FSM for the fiscal year ending September 30, 1997, to the ADB Water Loan Fund, to be used to finance the local cost-sharing component (counterpart support) attributable to the FSM National Government under the Loan Agreement and Financing Statements.

Section 14. Repayment Authorization. The sum of up to \$10,600,000 is hereby authorized to be appropriated in future years when and as necessary for repaying the loan from the Bank.

Section 15. All funds appropriated by this act shall be allotted, managed, administered, and accounted for in accordance with applicable law, including, but not limited to, the Financial Management Act of 1979. The allottee shall be responsible for ensuring that these funds, or so much thereof as may be necessary, are used solely for the purposes specified in this act, and that no obligations are incurred in excess of the sums appropriated. The authority of the allottee to obligate funds appropriated by this act shall not lapse.

This subchapter was renumbered from subchapter IX to subchapter X by section 7 of PL 10-152.

§ 661. Purpose.

The purpose of the Fund is to provide an ongoing revolving fund for the receipt and disbursement of funds associated with the Loan Agreement (Special Operations) (Water Supply and Sanitation Project) between the Federated States of Micronesia and the Asian Development Bank (hereinafter referred to in this subchapter as the "Loan Agreement").

Source: PL 9-135 § 7.

Editor's note: This subchapter was renumbered from subchapter IX to subchapter X by section 7 of PL 10-152.

§ 662. Deposits.

All revenues received pursuant to the Loan Agreement, the Financing Agreements whereby proceeds of the loan are relented to the States, any appropriation heretofore or hereafter made for purpose of facilitating repaying of the loan or execution of the project identified in the Loan Agreement, and any and all revenue from any and all other sources associated with the subject matter of the Loan Agreement, including investment earnings on sums in the Fund, shall be deposited in the Fund.

Source: PL 9-135 § 8.

§ 663. Disbursement.

The Secretary of Finance is hereby authorized to make disbursements from moneys available in the Fund, without further authorization or appropriation of the Congress of the Federated States of Micronesia, for the purpose of execution of the project identified in the Loan Agreement, repayment of the proceeds of the loan, interest on the loan, and any and all other charges or fees associated with the loan as set forth in the Loan Agreement. Unexpended moneys in the Fund shall not revert to the General Fund nor lapse at the end of the fiscal year; PROVIDED, however, that upon final payment and satisfaction of the loan, all unexpended moneys in the Fund shall revert to the General Fund, except that unexpended monies earned by the Fund on the investment of a State or utility's payment into the Fund shall be distributed to the State.

Source: PL 9-135 § 9.

Editor's note: This subchapter was renumbered from subchapter IX to subchapter X by section 7 of PL 10-152.

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Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 664. Administration.

The Fund shall be administered by the Secretary of Finance of the Federated States of Micronesia, who shall administer the Fund in accordance with the Loan Agreement, applicable law, generally accepted accounting standards, and sound financial practices for the effectuation and implementation of the provisions of this subchapter.

Source: PL 9-135 § 10.

§ 665. Annual Report.

The President or his designee shall report to the Congress of the Federated States of Micronesia and to the Governor of each participating State on the status of the Fund at the close of each fiscal year.

Source: PL 9-135 § 11.

Editor's note: This subchapter was renumbered from subchapter IX to subchapter X by section 7 of PL 10-152.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

SUBCHAPTER XI External Debt Management Fund

Editor's note: PL 12-17 § 9 created this subchapter as subchapter X. However, because PL 9-135 had created the current subchapter X as subchapter IX, and because PL 10-152 had renumbered that subchapter as subchapter X, PL 12-17 created another competing subchapter X. Since PL 12-17 creates new sections with numbers greater than the current subchapter X, a codification decision was made to refer to the subchapter created by PL 12-17 § 9 as subchapter XI.

§ 667. Establishment.

There is hereby created and established an External Debt Management Fund, separate from the General Fund of the FSM and all other funds.

Source: PL 12-17 § 10.

§ 668. Purpose.

The purpose of the Fund is to provide an ongoing fund for the receipt and disbursement of funds associated with the loans from the Asian Development Bank (referred to as the “Bank” in this subchapter) with respect to the Basic Social Services Project, the Public Sector Reform Program, and any other loan from an external lender if the National Government authorizing legislation for that loan provides that the loan is to be repaid out of the Fund, all said loans hereinafter referred to collectively as the “subject loans” and individually as a “subject loan”.

Source: PL 12-17 § 11.

§ 669. Accounts within the Fund.

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The Fund shall contain the following accounts:

- (1) a disbursing account for each of the subject loans (except the Public Sector Reform Program loan, as to which all disbursing of loan proceeds has been completed) to receive and disburse the portion of the proceeds of that loan intended for the use of the National Government;
- (2) a master repayment account for use by the National Government of its own share of the subject loans and in consolidating repayments from the State repayment accounts;
- (3) a repayment account for each State for use by the National Government on behalf of the State in reserving funds for repayment of the State's share of the subject loans; and
- (4) such other accounts as may be deemed appropriate.

Source: PL 12-17 § 12.

§ 670. Deposits.

- (1) Funds received pursuant to the loan agreements between the Federated States of Micronesia and the external lender with respect to a subject loan shall be deposited in the appropriate disbursing account.
- (2) Funds appropriated by the National Government for execution of the programs and projects of a subject loan shall be deposited in the appropriate disbursing account.
- (3) Funds received from a State or from a trust account administered by the National Government on behalf of a State for repayment of the State's portion of a subject loan shall be deposited in the State's repayment account.
- (4) Funds appropriated by the National Government for repayment of a subject loan shall be deposited in the master repayment account.
- (5) Funds received from any other source associated with the subject loans shall be deposited in the appropriate account.
- (6) Investment returns or losses shall remain with the account earning or suffering them.

Source: PL 12-17 § 13.

§ 671. Disbursements.

- (1) The Secretary of the Department of Finance and Administration is hereby authorized to make the following disbursements of moneys available in the Fund, without further authorization or appropriation by the Congress of the Federated States of Micronesia, for the following and no other purposes:
 - (a) execution of the programs and projects of the subject loans to the extent and in the manner called for in the applicable loan agreements or appropriating legislation applicable to the subject loan associated with that disbursing account;
 - (b) from a disbursing account to the master repayment account with respect to any surplus funds remaining after the programs and projects associated with that disbursement account have been executed;
 - (c) from the master repayment account for repayment of a subject loan in accordance with its terms;
 - (d) from a State repayment account for repayment of a subject loan in accordance with its terms;
 - (e) from a State repayment account to the State as called for by written agreement between the State and the National Government; or
 - (f) as otherwise required by law.
- (2) Unexpended moneys in the Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 12-17 § 14.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 672. Administration.

The Fund shall be administered by the Secretary of the Department of Finance and Administration, who shall administer the fund in accordance with the applicable loan agreements, financing or relending agreements, law, generally accepted accounting standards, and sound financial practices for the effectuation and implementation of the provisions of this subchapter.

Source: PL 12-17 § 15.

§ 673. Annual Report.

The President of the Federated States of Micronesia, or his designee, shall report to the Congress of the Federated States of Micronesia and to the Governor of each participating State on the status of the Fund at the close of each fiscal year.

Source: PL 12-17 § 16.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**SUBCHAPTER XII
Medical Licensing Revolving Fund**

Editor's note: PL 13-54 does not contain a section explicitly adding a new subchapter XI entitled Medical Licensing Revolving Fund; however, PL 13-54 §§ 1 to 5 imply by reference a subchapter XI. This assignment of subchapter numbers, however, conflicts with PL 12-17 §§ 9 to 16, which created sections 667-673 of a subchapter X of chapter 6. PL 12-17 does not address the existing subchapter X of chapter 6, entitled ADB Water Loan Fund, which was added by PL 9-135 §§ 6 to 11 as subchapter IX and renumbered by PL 10-152 § 7 as subchapter X. This subchapter has therefore been redesignated as subchapter XII and new sections 666 to 670 have been renumbered as sections 674 to 678, respectively.

§ 674. Establishment.

There is created and established the “Medical Licensing Revolving Fund”, referred to in this subchapter as the “Fund”, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 13-54 § 1.

§ 675. Purpose.

The purpose of the Fund is to establish an ongoing revolving fund to allow appropriations for and revenues from the operation of the “Medical Licensing Board”.

Source: PL 13-54 § 2.

§ 676. Deposits.

All future appropriations for the operation of the “Medical Licensing Board”, shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 13-54 § 3.

§ 677. Administration.

The Fund shall be administered by the President of the Federated States of Micronesia or his designee, who shall establish regulations and procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter, pursuant to chapter 1 of title 17 of this Code.

Source: PL 13-54 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Chapter 1 of title 17 of this code is on Administrative Procedure.

§ 678. Annual report.

The President or his designee shall report to the Congress of the Federated States of Micronesia on the status of the Fund at the close of each fiscal year.

Source: PL 13-54 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

SUBCHAPTER XIII Maritime Surveillance Revolving Fund

Editor's note: PL 16-66, which was signed into law on February 14, 2011, by Vice President Alik L. Alik, in his capacity as Acting President, creates a subchapter XII. This, however, conflicts with PL 13-54, which impliedly created a subchapter XI, but which in turn conflicted with PL 12-17 §§ 9 to 16, which created sections 667 to 673 of a subchapter X of chapter 6. PL 12 to 17, in its turn, does not address the existing subchapter X of chapter 6, entitled ADB Water Loan Fund, which was added by PL 9-135 §§ 6 to 11 as subchapter IX and renumbered by PL 10-152 § 7 as subchapter X. To address this series of misnumbering of subchapters and sections, this subchapter is redesignated as subchapter XIII, and new sections 671 to 674 as sections 679 to 682, respectively.

§ 679. [§ 671.] Establishment.

There is hereby created and established a Maritime Surveillance Revolving Fund, separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 16-66 § 2.

§ 680. [§ 672.] Purpose.

The purpose of the Fund is to provide reliable funding for fuel, oil, provisions, and spare parts for the patrol and surveillance boats of the National Government of the Federated States of Micronesia. The Fund shall not be used for salaries or overtime.

Source: PL 16-66 § 3; PL 17-79 § 1.

§ 681. [§ 673.] Deposits.

All future appropriations for the Fund, as well as revenues received pursuant to the provisions of sections 901 and 902 of title 24 on and after October 1, 2011, shall be deposited in the Fund. Any unexpended moneys in this Fund shall neither revert to the General Fund nor lapse at the end of the fiscal year; PROVIDED, HOWEVER, that any amount in excess of \$500,000 shall be paid into the General Fund.

Source: PL 16-66 § 4; PL 16-74 § 1.

Cross-reference: Title 24 of this code is on Marine Resources.

§ 682. [§ 674.] Administration.

The fund shall be administered by the President of the Federated States of Micronesia, or his designee, who shall establish procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter.

Source: PL 16-66 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

SUBCHAPTER XIV
External Debt Management Fund

Editor's note: PL 14-46 § 7 enacted a new subchapter XVI of this chapter entitled External Debt Management Fund. This subchapter has been renumbered XIV so that the sections §§ 8 to 14, which add sections 1601 to 1607 can be placed in this chapter retaining its section numbers.

PL 14-46 was signed into law by President Joseph J. Urusemal on November 28, 2005.

§ 1601. Establishment.

There is hereby created and established an External Debt Management Fund, separate from the General Fund of the FSM and all other funds.

Source: PL 14-46 § 8.

§ 1602. Purpose.

The purpose of the Fund is to provide an ongoing fund for the receipt and disbursement of funds associated with the loans from the Asian Development Bank (referred to herein as the "Bank") with respect to the Omnibus Infrastructure Development Project (referred to herein as the "Project"), and any other loan from an external lender if National Government authorizing legislation for that loan provides that the loan is to be repaid out of the Fund. All said loans are hereinafter referred to collectively as the "subject loans" and individually as a "subject loan".

Source: PL 14-46 § 9.

§ 1603. Accounts within the Fund.

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The Fund shall contain the following accounts:

- (1) a disbursing account for each of the subject loans to receive and lend the portion of the proceeds of that loan intended for the use by the Four State Governments;
- (2) a master repayment account for use by the National Government in consolidating repayments from the State repayment accounts;
- (3) a repayment account for each State for use by the National Government on behalf of the State reserving funds for repayment of the State's share of the subject loans; and
- (4) such other accounts as may be deemed appropriate.

Source: PL 14-46 § 10.

§ 1604. Deposits.

- (1) Funds received pursuant to the loan agreements between the Federated States of Micronesia and the external lender with respect to a subject loan shall be deposited in the appropriate disbursing account.
- (2) Funds appropriated by the National Government if any, for execution of the project of the subject loans shall be deposited in the appropriate disbursing account.
- (3) Funds received from a State or from a trust account administered by the National Government on behalf of a State for repayment of the State's portion of the subject loans shall be deposited in the State's repayment account.
- (4) Funds appropriated by the National Government, if any, for repayment of the subject loans shall be deposited in the master repayment account.
- (5) Funds received from any other source associated with the subject loans shall be deposited in the appropriate account.
- (6) Investment returns or losses and associated fees, costs and changes shall remain with the account earning or suffering them.

Source: PL 14-46 § 11.

§ 1605. Disbursements.

- (1) The Secretary of the Department of Finance and Administration is hereby authorized to make the following disbursements of moneys available in the Fund, without further authorization or appropriation by the Congress of the Federated States of Micronesia, for the following and no other purposes:
 - (a) execution of the programs and projects of the subject loans to the extent and in the manner called for in the applicable loan agreements or appropriating legislation applicable to the subject loans associated with that disbursing account;
 - (b) from a disbursing account to the master repayment account with respect to any surplus funds remaining after the programs and projects associated with that disbursement account have been executed;
 - (c) from the master repayment account for repayment of the subject loans in accordance with their terms;
 - (d) from a State repayment account for repayment of the subject loans in accordance with their terms;
 - (e) from a State repayment account to the State as called for by written agreement between the State and the National Government; or
 - (f) as otherwise required by law.

(2) Unexpended moneys in the Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

Source: PL 14-46 § 12.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1606. Administration.

The Fund shall be administered by the Secretary of the Department of Finance and Administration, who shall administer the fund in accordance with the applicable loan agreements, financing or relending agreements, law, generally accepted accounting standards, and sound financial practices for the effectuation and implementation of the provisions of this subchapter.

Source: PL 14-46 § 13.

§ 1607. Annual Report.

The President of the Federated States of Micronesia, or his designee, shall report to the Congress of the Federated States of Micronesia and to the Governor of each participating State on the status of the Fund at the close of each fiscal year.

Source: PL 14-46 § 14.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**SUBCHAPTER XV
Immigration, Customs and Quarantine
Overtime Revolving Fund**

Editor's note: PL 16-56 § 1 enacted a new subchapter XVII of this chapter entitled Immigration, Customs and Quarantine Overtime Revolving Fund.

Vice President Alik L. Alik signed PL 16-56 into law in his capacity as Acting President on December 17, 2010.

§ 1608. Establishment of Immigration, Customs and Quarantine Overtime Revolving Fund.

There is hereby established an Immigration, Customs and Quarantine Revolving Fund, referred to in this subchapter as the "Fund", separate from the General Fund of the Federated States of Micronesia and all other funds, and consisting of sub-accounts for each of the following divisions of the National Government of the Federated States of Micronesia:

- (1) the Division of Customs of the Department of Finance;
- (2) the Division of Immigration and Labor of the Department of Justice; and
- (3) the Agriculture Unit of the Department of Resources and Development.

Source: PL 16-56 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1609. Purpose.

The purpose of the Fund is to provide reliable funding for overtime incurred by the Division of Customs of the Department of Finance, the Division of Immigration and Labor of the Department of Justice, and the Agriculture Unit of the Department of Resources and Development.

Source: PL 16-56 § 3.

§ 1610. Deposits.

All future appropriations for the Fund as well as payments received pursuant to title 50, section 115 and any other payments received to defray actual costs to the National Government for overtime accrued by officials of the Division of Customs of the Department of Finance, the Division of Immigration and Labor of the Department of Justice, and the Agriculture Unit of the Department of Resources and Development shall be deposited in the appropriate sub-fund. Any unexpended monies in this Fund shall neither revert to the General Fund nor lapse at the end of the fiscal year; PROVIDED, HOWEVER, that any amount in a sub-fund in excess of \$500,000 shall be paid into the General Fund.

Source: PL 16-56 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1611. Authorized uses of the funds.

Each sub-fund established pursuant to section 1608 of this subchapter may be utilized as a source of funding for authorized overtime by the division of the National Government for which that sub-fund was established. The funds shall not be utilized for any purpose other than as permitted by this section.

Source: PL 16-56 § 5.

§ 1612. Administration.

The Fund and each sub-fund therein shall be administered by the President of the Federated States of Micronesia, or his designee, who shall establish procedures necessary and appropriate for the effectuation and implementation of the provisions of this subchapter.

Source: PL 16-56 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

CHAPTER 7
Development Matching Grant

SECTIONS

- § 701. Definitions.**
- § 702. Establishment.**
- § 703. Purpose—Administration.**
- § 704. Powers of designated entity or agency.**
- § 705. Eligibility.**
- § 706. Authorization.**
- § 707. Report**

§ 701. Definitions.

Unless the context requires otherwise, the following definitions apply in this chapter:

- (1) “Agriculture” means the science, art, or business of cultivating soil, producing crops, and raising livestock.
- (2) “Entity” means any State entity created by any State government of the Federated States of Micronesia pursuant to the authority vested in the State by section 601 of title 24 of this code.
- (3) “1 to 1 ratio” means that for every dollar a State appropriates pursuant to this chapter, the National Government shall appropriate one dollar as matching funds therefor.

Source: PL 3-88 § 1.

Cross-reference: Title 24 of this code is on Marine Resources.

§ 702. Establishment.

There is established a natural resources development matching grant, which may be cited as the “development matching grant.”

Source: PL 3-88 § 2.

§ 703. Purpose—Administration.

The purpose of the development matching grant is to provide matching funds on a 1 to 1 ratio to any State of the Federated States of Micronesia that appropriates funds for either agricultural resources development projects or marine resources development projects, or both, to be administered as follows:

- (1) For marine resources development projects, and for those States that have already established entities pursuant to 24 F.S.M.C. 1001, such development matching grant shall be administered by those entities, but for those State that have not established such entities, the development matching grant shall be administered by an appropriate State agency to be designated by the State law which appropriates the matching funds.
- (2) For agricultural resources development projects, the development matching grant shall be administered by an appropriate State agency to be designated by the State law which appropriates the matching funds.

Source: PL 3-88 § 3.

Editor's note: PL 12-34 § 104 renumbered former chapter 6 as chapter 10 of title 24. Therefore, the reference to 24 F.S.M.C. 601 is revised to 24 F.S.M.C. 1001.

Cross-reference: 24 F.S.M.C. 1001 is on State Entities Authorized.

§ 704. Powers of designated entity or agency.

The entity or agency designated to administer the development matching grant shall be provided with the power and authority to effectively carry out the purpose of this chapter, which powers may include, but not be limited to, the following:

(1) In the case of agricultural resources development projects, the designated agency shall be provided with the following powers:

(a) to provide guidance to the State government in establishing agricultural resources development policy;

(b) to make regulations concerning the development and promotion of agriculture within such State and, whenever practicable, to promote agricultural products abroad;

(c) to serve as a conduit for public funds, to establish and operate facilities required for the development of agriculture and the marketing of agricultural products, and to sponsor research studies to improve and develop agriculture in the State;

(d) to establish and support programs to promote, support, and guide agriculture and associations relating to agriculture; and

(e) to formulate an annual comprehensive agricultural development project plan to be submitted to the Congress of the Federated States of Micronesia for its review and approval as a condition precedent to the receipt of any funds under the development matching grant.

(2) In the case of marine resources development projects, the entity or agency designated by State law in compliance with this chapter shall be provided with the following powers:

(a) to provide guidance to the State government in establishing marine resources development policy;

(b) to make regulations concerning the exploitation of living or nonliving marine resources as permitted by law;

(c) to serve as a conduit for public funds, to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations, and to participate in large-scale commercial fishing and related activities which are not suitable for investment by the private sector;

(d) to establish and support programs to promote, support, and guide fishing cooperative associations; and

(e) to formulate an annual comprehensive marine resources development project plan to be submitted to the Congress of the Federated States of Micronesia for its review and approval as a condition precedent to the receipt of any funds from the development matching grant.

Source: PL 3-88 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 705. Eligibility.

In order to be eligible for the development matching grant, a State shall meet the following criteria:

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(1) A State shall submit to the Congress of the Federated States of Micronesia an annual comprehensive development project plan which shall set forth in detail the projects for which the funds shall be used and the amount of funds needed for the project or projects.

(2) A State shall submit the report of its activities in the previous year, where applicable, setting forth in detail the projects funded by the development matching grant, the amount of funds used on each project or projects, the amount of funds remaining unexpended, plus a narrative report of the activities during the previous fiscal year.

(3) A State shall first appropriate the required State funds to match the congressional appropriation. Such State may appropriate funds for either agricultural resources development projects or for marine resources development projects, or for both.

(4) No State may receive any funds from the development matching grant in excess of \$250,000 during one fiscal year. For the purpose of computing the \$250,000 to be appropriated to each State pursuant to this act for fiscal year 1985, any appropriation to any State of the Federated States of Micronesia made pursuant to title 24 of this code for fiscal year 1985 shall be included.

(5) The funds appropriated pursuant to this chapter shall not be used to defray the administrative expenses of any of the projects funded by this chapter.

Source: PL 3-88 § 5.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 706. Authorization.

There is authorized to be appropriated from the General Fund of the Federated States of Micronesia the sum of \$1,000,000 for each of the fiscal years 1985 through 1989 for the purpose of funding the development matching grant.

Source: PL 3-88 § 6.

§ 707. Report.

The Governor of any State of the Federated States of Micronesia receiving funds from the development matching grant shall submit the annual report of the State's activities to the President of the Federated States of Micronesia and the Speaker of the Congress of the Federated States of Micronesia no later than 30 days after the close of the fiscal year in which the funds were obtained and used. Failure to submit said report shall be sufficient cause to disqualify a State from receiving funding from the development matching grant. Such disqualification shall be removed upon the submission to the President and the Speaker of the required report.

Source: PL 3-88 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 8
Chuuk State Commission
on Improvement Projects
[REPEALED]

Editor's note: PL 17-75 repealed section 801 of this chapter. The provisions of PL 17-75 state as follows:

Section 1. Purpose. To eliminate the Chuuk State Commission on Improvement Projects (“CSCIP”).

Section 2. Ninety (90) days after the act becomes law, section 801 of title 55 of the Code of the Federated States of Micronesia, as amended, is repealed in its entirety.

Section 3. Upon the elimination of the CSCIP, all assets of CSCIP shall revert to the FSM National Government.

PL 17-75 was signed into law by President Manny Mori on February 12, 2013.

While the repeal in PL 17-75 was specifically to section 801, the stated purpose of this Act in section 1 was to eliminate the CSCIP. The other sections of this chapter are therefore repealed by implication.

SECTIONS

§ 801. Commission created [REPEALED by PL 17-75].

§ 802. Commission—Organization; Quorum; Interim manager [REPEALED by Implication by PL 17-75].

§ 803. Commission—Authority [REPEALED by Implication by PL 17-75].

§ 804. Chuuk State Development Authorities [REPEALED by Implication by PL 17-75].

§ 801. Commission created [REPEALED by PL 17-75].

There is hereby created a Chuuk State Commission on Improvement Projects (“CSCIP”). The commission shall be composed of the following: a representative from each of the election districts within the State of Chuuk, or his designee, and the director of the Office of Planning and Statistics of the Chuuk State Government. A majority of the mayors of the district shall select a person from within the district to represent the district on the CSCIP.

Source: PL 10-109 § 2; PL 11-60 § 1; Repealed by PL 17-75 § 2.

§ 802. Commission—Organization; Quorum; Interim manager [REPEALED by Implication by PL 17-75].

(1) The commission shall meet to organize itself and to select a chairman and a vice chairman. The presence of a majority of the representatives from the five election districts shall be necessary to constitute a quorum. Meetings shall be conducted according to bylaws adopted by the members. The chairman will have the authority to vote at a meeting only in order to break a tie.

(2) Until such time as sufficient representatives have been selected to constitute a quorum to organize, the President of the Federated States of Micronesia is authorized to appoint an interim manager to carry out duties and responsibilities authorized under subsections (1) through (5) of section 803 of this chapter.

Source: PL 10-109 § 3; PL 10-135 § 1; PL 10-153 § 1; repealed by implication by PL 17-75 §§ 1 and 2.

§ 803. Commission—Authority [REPEALED by Implication by PL 17-75].

The commission shall have the authority to:

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- (1) Obligate funds appropriated and allotted to the commission by the Congress for projects in Chuuk;
- (2) Award and enter into contracts for projects, giving priority to bids by Micronesian citizens or corporations qualified and capable of performing fully and without delay such projects;
- (3) Assess damage to private property caused by projects and negotiate written settlements on amounts of compensation, such written settlements to be treated as obligations for purposes of the Financial Management Act of 1979;
- (4) Establish priorities for the performance of projects, ensuring that each district is treated as equally as possible;
- (5) Submit all reports required by applicable law, including, but not limited to, the Financial Management Act of 1979; and
- (6) Appoint an executive director, who may carry out such duties of the commission as the commission deems advisable; the commission may authorize the executive director to hire staff.

Source: PL 10-109 § 4; PL 10-135 § 2; repealed by implication by PL 17-75 §§ 1 and 2.

§ 804. Chuuk State Development Authorities [REPEALED by Implication by PL 17-75].

Where an appropriation designates a “Development Authority” as an allottee in Chuuk State, the designation shall refer to an entity created by Chuuk State law. In the event that such an entity has not been created by Chuuk State law or has been abolished, the executive director of the Chuuk State Commission on Improvement Projects or his designee shall serve as allottee.

Source: PL 10-121 § 1; PL 11-30 § 1; repealed by implication by PL 17-75 §§ 1 and 2.

Editor’s note: Chapter 8 was originally reserved in the 1982 edition of this Code.

PL 17-75 repealed section 801 of this chapter. The provisions of PL 17-75 state as follows:

Section 1. Purpose. To eliminate the Chuuk State Commission on Improvement Projects (“CSCIP”).

Section 2. Ninety (90) days after the act becomes law, section 801 of title 55 of the Code of the Federated States of Micronesia, as amended, is repealed in its entirety.

Section 3. Upon the elimination of the CSCIP, all assets of CSCIP shall revert to the FSM National Government.

PL 17-75 was signed into law by President Manny Mori on February 12, 2013.

While the repeal in PL 17-75 was specifically to section 801, the stated purpose of this Act in section 1 was to eliminate the CSCIP. The other sections of this chapter are therefore repealed by implication.

CHAPTER 9
Sale of Code and Supplements

SUBCHAPTER I
Code

SECTIONS

- § 901. Authorized.**
§ 902. Proceeds of sale.

SUBCHAPTER II
First Supplement

SECTIONS

- § 903. Authorization for sale of First Supplement to the Code.**
§ 904. Proceeds of sale.

SUBCHAPTER III
Second Supplement

SECTIONS

- § 920. Authorization for sale of 1997 edition of F.S.M.C.**
§ 921. F.S.M.C. Special Fund Established.
§ 922. Purpose.
§ 923. Deposits.
§ 924. Expenditures and Accounting.
§ 925. Allottee.

SUBCHAPTER I
Code

§ 901. Authorized.

Copies of the Code of the Federated States of Micronesia, provided for by contract between the National Government and Book Publishing Company entered into on September 22, 1981, shall be made available for sale to the branches and agencies of the National and State governments of the Federated States of Micronesia, other entities, and members of the public who may desire them. The price of the code for such sale shall be \$85 per two-volume set.

Source: PL 2-57 § 1.

Cross-reference: The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

§ 902. Proceeds of sale.

Any proceeds of sales authorized by section 901 of this subchapter shall be deposited in the General Fund of the Federated States of Micronesia.

Source: PL 2-57 § 2.

Cross-reference: The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

SUBCHAPTER II First Supplement

§ 903. Authorization for sale of First Supplement to the Code.

Copies of the First Supplement to the Code of the Federated States of Micronesia provided for by contract between the National Government and Book Publishing Company shall be made available for sale to the branches and agencies of the National and State governments of the Federated States of Micronesia, other entities, and members of the public who may desire them. The price of the supplement for such sale shall be \$20 per two-volume set.

Source: PL 4-40 § 1.

Cross-reference: The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

§ 904. Proceeds of sale.

Any proceeds of sales authorized by section 903 of this subchapter shall be deposited in the General Fund of the Federated States of Micronesia.

Source: PL 4-40 § 2.

Cross-reference: The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

SUBCHAPTER III Second Supplement

§ 920. Authorization for sale of 1997 edition of F.S.M.C.

(1) The sale of the 1997 edition of the Code of the Federated States of Micronesia to the public is hereby authorized.

(2) The sale price of the 1997 edition of the code shall be determined by the presiding officer of the Congress of the Federated States of Micronesia, who shall take into account the anticipated public demand for the code, as well as the costs associated with completing and publishing it.

(3) The sale price of the 1997 edition of the F.S.M.C. shall be set with the intent:

- (a) to recover the costs of publishing, and
- (b) to allow for appropriately timed supplements or updates to be completed and published.

Source: PL 9-62 § 4; amended by PL 10-25 § 18.

Cross-reference: For provisions on the Code of the Federated States of Micronesia, see §§ 220 to 234 of title 1 (General Provisions) of this code. For the statutory provision on the legal status of laws included in the F.S.M.C. enacted after the first supplement, see 6 F.S.M.C. 1303.

§ 921. F.S.M.C. Special Fund Established.

There is hereby created and established, the “F.S.M.C. Special Fund,” referred to in this subchapter as the “Fund,” separate from the General Fund of the Federated States of Micronesia and all other funds.

Source: PL 9-62 § 5, modified.

Cross-reference: The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

§ 922. Purpose.

The purpose of the Fund is to establish an ongoing fund to allow for the receipt of revenues from the sale of the 1997 edition of the Code of the Federated States of Micronesia and any supplement, update, pocket part, or other addition of the F.S.M.C. and any future appropriations to be used for the preparation and publication of additional supplements, updates, pocket parts, or other additions to the F.S.M.C.

Source: PL 9-62 § 4; amended by PL 10-25 § 19.

Cross-reference: For the statutory provisions of other funds separate from the General Fund, see chapter 6 (Funds) of this title.

§ 923. Deposits.

All future appropriations from the General Fund for the cost of producing supplements, updates, pocket parts, or other additions to the 1997 edition of the F.S.M.C., and all revenues received from the sale of the 1997 edition of the F.S.M.C. and further supplements, updates, pocket parts or other additions to the F.S.M.C. shall be deposited into the Fund. Any unexpended monies in this Fund shall not revert to the General Fund unless Congress dissolves the Fund.

Source: PL 9-62 § 4; amended by PL 10-25 § 20.

Cross-reference: The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code.

§ 924. Expenditures and Accounting.

(1) As part of each year’s budget, Congress may appropriate such amount as it deems proper for the purpose of authorizing expenditures from the Fund. It may also appropriate an amount of money to be transferred from the General Fund to this Fund to meet these expenditures. In the event that the Fund has insufficient funds in it to meet any obligations, no obligation shall be incurred or expenditure allowed.

(2) The Fund shall be accounted for and administered in accordance with the applicable provisions of this title 55 of this code.

Source: PL 9-62 § 8, modified.

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Cross-reference: The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code.

Title 55 of this code is on Government Finance and Contracts.

§ 925. Allottee.

The Speaker of the Congress of the Federated States of Micronesia is hereby designated the allottee of the Fund.

Source: PL 9-62 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

CHAPTER 10
Kosrae State Commission
on Improvement Projects
[REPEALED]

Editor's note: Section 1 of PL 8-64 repealed chapter 10 in its entirety. It also provided the following in its Section 2:

“All activities of the Kosrae State Commission on Improvement Projects shall terminate within 60 days of the effective date of this act during which time the Commission shall provide for the orderly transference of responsibility for all projects currently under the authority and control of the Commission to the municipality or municipalities where the project(s) is located, and shall further provide for the transfer of all assets held, managed or controlled by the Commission to the Municipalities of Kosrae in equal proportion; except that assets, funds or property intended for use in a particular project shall be transferred to the municipality where the project is located.”

Section 3 of PL 8-64 provided that the repeal in Section 1 of this Act shall take effect 60 days after becoming law. PL 8-64 was signed into law by the President on April 14, 1994.

CHAPTER 11
Trust Territory Financial Management

SUBCHAPTER I
General Provisions

SECTIONS

- § 1111. **Expenditures in excess of amount available.**
- § 1112. **Documentary evidence of Trust Territory obligations.**
- § 1113. **Time limitation on availability of appropriations or funds.**

SUBCHAPTER II
General Fund of the Congress of Micronesia

SECTIONS

- § 1121. **Purpose.**
- § 1122. **General Fund established—Deposit of revenues.**
- § 1123. **Disbursements.**

SUBCHAPTER III
Department of Finance

SECTIONS

- § 1131. **Director's administrative responsibilities generally.**
- § 1132. **Records of transactions.**
- § 1133. **Director's accounting and fund supervisory duties.**
- § 1134. **Accounting methods.**
- § 1135. **Lapse of unexpended funds.**
- § 1136. **Closing out accounts and transfer of unexpended balance.**
- § 1137. **Rules and regulations.**

SUBCHAPTER I
General Provisions

§ 1111. Expenditures in excess of amount available.

(1) No officer or employee of the Trust Territory shall make or authorize an expenditure from or create or authorize an obligation under any appropriation, apportionment, reapportionment, or allotment of funds of the United States Congress or the Congress of Micronesia in excess of the amount available therefrom; nor shall any such officer or employee involve the Trust Territory Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose.

(2) In case of a violation of subsection (1) of this section, the director of the Department of Finance shall immediately report to the High Commissioner and the Congress all pertinent facts together with a statement of the action taken thereon.

(3) Any officer or employee of the Trust Territory who shall knowingly and willfully violate subsections (1) or (2) of this section shall upon conviction be fined not more than \$1,000, or imprisoned for not more than one year, or both.

Source: COM PL 6-108 §§ 1-3; TT Code 1980, 77 TTC 404.

§ 1112. Documentary evidence of Trust Territory obligations.

No amount shall be recorded as an obligation of the Trust Territory unless it is supported by documentary evidence of:

(1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by United States or Trust Territory law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services performed; or

(2) a valid loan agreement, showing the amount of the loan to be made and the terms of repayment thereof; or

(3) an order required by United States or Trust Territory law to be placed with an agency; or

(4) an order issued pursuant to a United States or Trust Territory law authorizing purchases without advertising when necessitated by public exigency or for perishable subsistence supplies or within specific monetary limitations; or

(5) a grant or subsidy payable:

(a) from appropriations made for payment of, or contributions toward, sums required to be paid in specific amounts fixed by United States or Trust Territory law, or in accordance with formulae prescribed by United States or Trust Territory law; or

(b) pursuant to an agreement authorized by, or plans approved in accordance with and authorized by, United States or Trust Territory law; or

(6) a liability which may result from pending litigation brought under authority of United States or Trust Territory law; or

(7) employment or services or expenses of travel in accordance with United States or Trust Territory law, and services performed by public utilities; or

(8) any other legal liability of the Trust Territory against an appropriation or fund legally available therefor.

Source: COM PL 6-111 § 1; TT Code 1980, 77 TTC 406.

§ 1113. Time limitation on availability of appropriations or funds.

No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for the liquidation of amounts obligated in accordance with section 1112 of this chapter; but no such appropriation shall remain available for expenditure for any period beyond that authorized by United States or Trust Territory law.

Source: COM PL 6-111 § 2; TT Code 1980, 77 TTC 406.

**SUBCHAPTER II
General Fund of the Congress of Micronesia**

§ 1121. Purpose.

The purpose of this subchapter is to create a general fund, and to control all disbursements therefrom.

Source: COM PL 3-1 § 1; TT Code 1970, 77 TTC 1251; TT Code 1980, 77 TTC 451.

§ 1122. General Fund established—Deposit of revenues.

There is hereby established a General Fund of the Congress of Micronesia, into which all revenues raised pursuant to the tax laws and other revenue laws of the Trust Territory shall be deposited.

Source: COM PL 3-1 § 2; TT Code 1970, 77 TTC 1252; TT Code 1980, 77 TTC 452.

§ 1123. Disbursements.

The Trust Territory treasurer is hereby authorized to make such disbursements from the General Fund of the Congress of Micronesia as may be authorized and appropriated thereby.

Source: COM PL 3-1 § 3; TT Code 1970, 77 TTC 1253; TT Code 1980, 77 TTC 453.

**SUBCHAPTER III
Department of Finance**

§ 1131. Director's administrative responsibilities generally.

The director of the Department of Finance of the Trust Territory shall be personally responsible for the administration, collection, and safekeeping of all moneys due and paid into the Treasury of the Trust Territory as general realization of the Congress of Micronesia, and for the disbursement and appropriation thereof, pursuant to law; provided, that in case of larceny or embezzlement of any moneys by any officer of his department or other persons, the director shall be allowed to state in evidence that he had no collusive knowledge thereof, and the establishment of this fact shall discharge him from personal responsibility.

Source: COM PL 6-33 § 1; TT Code 1980, 77 TTC 501.

§ 1132. Records of transactions.

The director of the Department of Finance of the Trust Territory shall keep, or cause to be kept, in appropriate books, a clear, distinct, and full record of all the transactions and business of his Department.

Source: COM PL 6-33 § 2; TT Code 1980, 77 TTC 502.

§ 1133. Director's accounting and fund supervisory duties.

The director of the Department of Finance shall be the general accountant of the General Fund of the Congress of Micronesia. He shall audit or cause to be audited and cause to be recorded every receipt and disbursement of money made to, by, or through the Treasury of the Trust Territory. He shall have complete supervision of all funds of the Congress of Micronesia. Further, he shall have the power, by

withholding his approval when necessary, to prevent the misappropriation of public funds as well as the disbursement of public moneys in excess of specific appropriations.

Source: COM PL 6-33 § 3; TT Code 1980, 77 TTC 503.

§ 1134. Accounting methods.

The director of the Department of Finance shall keep a complete set of double entry books in which he shall open or cause to be opened all Government accounts and the several amounts as shown by the appropriation bill, or any other appropriation that may be at any time made by the Congress of Micronesia, and he shall record his daily business transactions in detail therein. He shall also keep ledgers in which he shall open, arrange, and keep in a methodical and systematic manner the various accounts so that the status and condition of all funds and appropriations, of all assets and liabilities, and of all income and expenditures of the General Fund of the Congress of Micronesia may at any time be ascertained and known; and further, he shall keep such books and all such other auxiliary books as he may deem necessary for the correct and proper administration of his office.

Source: COM PL 6-33 § 4; TT Code 1980, 77 TTC 504.

§ 1135. Lapse of unexpended funds.

Unless otherwise provided by law, all sums of money which are appropriated to the public service for any fiscal period, and which are not expended during the period, shall lapse and shall not be issued or applied in any future fiscal period to the particular service for which the appropriation has been so made, unless a contract of engagement has been made and entered into before the expiration of the fiscal period by which a liability to issue or apply the same has been incurred, and a certified copy of such contract or engagement has been deposited with the director of the Department of Finance.

Source: COM PL 6-33 § 5, TT Code 1980, 77 TTC 505.

§ 1136. Closing out accounts and transfer of unexpended balance.

In all cases where appropriation of public money is made and an unexpended balance remains to the credit of the appropriation on the books of the director of the Department of Finance after the purposes of the appropriation have been accomplished, or after the time has expired within which those purposes may be accomplished, or after a time when the reasons for the appropriation have ceased to exist, the director, upon the receipt of a certificate from the head of the Department or other public officer who is charged with the duty of expending the appropriation that they have been fully paid and satisfied may, with the written approval of the High Commissioner, close out the appropriation account and transfer the unexpended balance to the credit of the General Fund of the Congress of Micronesia.

Source: COM PL 6-33 § 6, TT Code 1980, 77 TTC 506.

§ 1137. Rules and regulations.

The Director of Finance is hereby given the authority to prescribe departmental rules and regulations which are necessary to carry out the intent of this chapter.

Source: COM PL 6-33 § 7; TT Code 1980, 77 TTC 507.

CHAPTER 12
FSM Trust Fund

SECTIONS

- § 1201. Short title.
- § 1202. Definitions.
- § 1203. Establishment.
- § 1204. Purpose.
- § 1205. Powers.
- § 1206. Legal status, privileges and immunities.
- § 1207. Limitations on Liability.
- § 1208. Board.
- § 1209. Administrator of the Fund.
- § 1210. Resources of the Fund.
- § 1211. Contributions to the Fund.
- § 1212. Fund managers and custodians.
- § 1213. Accounts.
- § 1214. Distributions to National Government.
- § 1215. Transfers to the A Account.
- § 1216. Miscellaneous restrictions.
- § 1217. Other participating government accounts.
- § 1218. Books and Records.
- § 1219. Audits.
- § 1220. Annual Reports.
- § 1221. Termination of Fund.
- § 1222. Fund Transfer.

§ 1201. Short title.

This Act is known and may be cited as the “FSM Trust Fund Act.”

Source: PL 10-150 § 2.

Editor's note: This chapter was formerly on Public Projects, but the provision on Public Projects was moved to Chapter 13 by section 23 of PL 10-150 to accommodate this new Chapter 12 on FSM Trust Fund. Section 23 of PL 10-150 read as follows:

Section 23. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by renumbering existing chapter 12 as chapter 13 and renumbering existing section 1201 as section 1301.

§ 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 amount of Compact of Free Association assistance provided to a government in fiscal year 2001, adjusted for inflation to the final year of the first Compact;
- (2) “Board” means the Board of Trustees of the Fund;
- (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 S Account;

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- (4) "FSM" means the sovereign nation of the Federated States of Micronesia;
- (5) "Financial year" means the fiscal year of the Fund, which shall be the 12-month period ending on the last day of each December;
- (6) "Fiscal year" means the fiscal year of the National Government;
- (7) "Fund" means the FSM Trust Fund created by this chapter, including the accounts therein;
- (8) "Fund custodians" means the one or more firms selected by the Board to assume responsibility for the physical possession of the Fund assets or evidences of assets;
- (9) "Fund managers" means the one or more firms selected by the Board to manage the investment and reinvestment of the Fund's resources;
- (10) "Fund returns" means the returns accruing to the Fund by way of income generated from the Fund's resources and the capital appreciation of those resources;
- (11) "National Government" means the National Government of the FSM;
- (12) "Other participating government" means a State or local government of the FSM participating pursuant to a memorandum of understanding with the National Government;
- (13) "Real value" means the value of contributions to the Fund when adjusted to reflect inflation and population change. For purposes of determining "real value" at any one time, the value of a contribution in the form of a loan shall be the principal balance then owing. The inflation adjustment shall be made to current prices in line with movements in the US Consumer Price Index. Population refers to the number of FSM citizens residing in the FSM. When current population figures are not available, the Board shall use such estimates thereof as it finds to be reasonable. Such estimates may be extrapolated from the most recent population census based on the population growth rate prior thereto;
- (14) "Reinvestment" means the process whereby Fund returns, whether in the form of income or appreciation, become part of the capital of the Fund; and
- (15) "Renewal Compact" means the renewed economic assistance provisions contained in Title Two of the Compact of Free Association.

Source: PL 10-150 § 3; PL 12-16 § 1.

§ 1203. Establishment.

There is hereby created the FSM Trust Fund, separate from the General Fund of the FSM and all other funds.

Source: PL 10-150 § 4.

§ 1204. Purpose.

- (1) The purpose of the Account A and Account B portion of the Fund is to create a single investment fund in which all levels of government may participate in order to contribute to the long-term financial viability of the FSM by providing an additional source of revenue and to enhance the capacity of the National Government to receive and effectively utilize external resources in order to:
 - (a) assist the National Government and other participating governments to achieve greater financial autonomy in the management of their recurrent budgets;
 - (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 S Account portion of the Fund is to:

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(a) provide a funding source to promote financial stability and provide an orderly adjustment process for each of the contributing governments in the event of significant reductions in economic assistance under the Renewed Compact; or

(b) enable a transfer of FSM's own resources into the A Account in the event of minimal or no reductions in economic assistance under the Renewed Compact.

Source: PL 10-150 § 5; PL 12-16 § 2.

§ 1205. Powers.

The Fund shall have the powers and privileges of a corporation, including all powers necessary for the fulfillment and achievement of its purposes.

Source: PL 10-150 § 6.

§ 1206. Legal status, privileges and immunities.

(1) The Fund shall possess juridical personality and, in particular, the capacity to:

(a) contract;

(b) acquire and dispose of immovable and movable property; and

(c) institute legal proceedings.

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

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

Source: PL 10-150 § 7.

§ 1207. Limitations on Liability.

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

(2) Obligations of the Fund are not obligations of the National Government or any other participating government.

Source: PL 10-150 § 8.

§ 1208. Board.

(1) The Fund shall have a Board of Trustees consisting of five trustees appointed and removable by the President of the FSM with the advice and consent of the Congress of the FSM. Nominations to the Board shall take into account the need to have adequate geographical representation from within the FSM, representation of other participating governments with substantial accounts, representation of substantial foreign contributors to the Fund, and complementary experience in the fields of investment management and public finance. Each trustee shall serve for a term of four years or until a successor is appointed, provided, however, that two of the trustees on the initial board shall be appointed to two-year terms. The Board shall elect a chairman from among its own members.

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

(3) The functions of the Board shall include:

(a) obtaining, along with others, contributions to the Fund;

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

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- (c) investment and distribution of resources of the Fund.
- (4) Trustees shall serve as such without payment of compensation from the Fund or any other source. Reasonable expenses of the Board itself shall be provided for annually in the national budget of the FSM and not paid out of the Fund.
- (5) The Board shall meet as necessary, and reasonable notice shall be given of meetings.
- (6) For the purposes of meetings of the Board, three-fifths of trustees shall constitute a quorum.
- (7) Except where otherwise provided in this chapter, questions before the Board shall be decided by a majority of votes of trustees present and voting at the meeting.
- (8) The Board shall establish its own bylaws and rules of procedure.

Source: PL 10-150 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1209. Administrator of the Fund.

The Secretary of Finance and Administration of the FSM, or his cabinet-level successor, shall serve as administrator of the Fund and all its accounts, and shall provide necessary administrative support to the Fund and its Board.

Source: PL 10-150 § 10.

§ 1210. Resources of the Fund.

The resources of the Fund shall consist of all contributions to the Fund, from whatever sources, and all Fund returns. The resources of the Fund shall be held in trust and administered by the Board and used only for the purpose of and in accordance with this chapter.

Source: PL 10-150 § 11.

§ 1211. Contributions to the Fund.

(1) *Contributions to the A Account.*

(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 the contribution. Acceptance or refusal shall become final no earlier than 180 days after notice to Congress, unless Congress directs by law otherwise.

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

(d) Contributions shall be made for the purpose of the Fund without further restriction as to use, except such restrictions as Congress may provide by law. Except for repayment of loans, contributions shall not be refunded to contributors.

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(e) A contribution to the Fund shall not in and of itself constitute or imply any commitment by the contributor to make any further contribution to the Fund.

(2) *Contributions to the S Account.* The National Government and each of the State Governments may contribute to the S Account, the increased financial assistance that is received, pursuant to section 231 of the Compact of Free Association, during fiscal years 2002 and 2003. The amounts that may be contributed by the National Government and each of the State Governments shall be determined by the Secretary of the FSM Department of Finance and Administration, and shall be appropriated by each contributing government pursuant to its financial management laws and regulations.

Source: PL 10-150 § 12; PL 12-16 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1212. Fund managers and custodians.

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

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

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

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

(d) has at least ten years experience as a custodian of financial assets.

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

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

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

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

Source: PL 10-150 § 13.

§ 1213. Accounts.

(1) The Fund shall be divided into an A Account, a B Account and an S Account.

(2) All contributions to the Fund shall be deposited to the A Account, except for the contributions which qualify to be deposited to the S Account, as provided for in section 1211(2) of this chapter. 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 the A Account, such portion being the amount necessary to maintain the opening balance of the A Account'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.

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(3) Repayment of loans to the Fund and payment of the expenses of the Fund shall be made from the A Account. The amount, if any, of Fund returns in each financial year which remains after such repayment of loans and payment of expenses, and after reinvestment in accordance with subsection (2) of this section, shall be transferred to the B Account. Except as provided in this subsection or upon termination of the Fund, no funds may ever be removed from the A Account.

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

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

(6) Funds in the S Account may be used by the contributing governments to offset the negative impact of reductions, if any, under the Renewed Compact as follows:

(a) no withdrawals shall be made from the S Account by any contributing government that receives a funding level during the first year of the Renewed Compact that is greater than, the same as, or within four percent (4%) of, its Baseline Funding level. Any contributing government that is prohibited from making a withdrawal from the S Account by this subsection, may make a transfer pursuant to section 1215(2) of this chapter;

(b) in the event that any contributing government's funding level during the first year of the Renewed Compact is reduced by more than four percent (4%) but less than twenty percent (20%) of its Baseline Funding level, that contributing government shall be entitled to draw, upon request, an amount from the S Account each year as follows, PROVIDED THAT each contributing government shall be limited to withdrawing no more than the total of its contributions and the earnings on its contributions:

(i) first year: up to the amount of reduction minus four percent (4%) of the Baseline Funding level;

(ii) second year: up to the amount of reduction minus eight percent (8%) of the Baseline Funding level;

(iii) third year: up to the amount of the reduction minus 12 percent (12%) of the Baseline Funding level;

(iv) fourth year: up to the amount of the reduction minus 16 percent (16%) of the Baseline Funding level;

(v) fifth year: up to the amount of the reduction minus 20 percent (20%) of the Baseline Funding level;

(c) in the event that any contributing government's funding level during the first year of the Renewed Compact is reduced by more than 20 percent (20%) of the Baseline Funding level, that contributing government shall be entitled to draw down, upon request, an amount in each year, in a manner to be determined by an Act of the Congress of the Federated States of Micronesia following consultations with the affected government.

Source: PL 10-150 § 14; PL 12-16 § 4.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1214. Distributions to National Government.

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(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 of the total funds in the B Account or an amount calculated as follows:

(a) Calculate a percentage rate of net return on the Fund for the financial year just ended by dividing

(i) the total Fund returns for that financial year, less the portions thereof required for reinvestment, repayment of loans, and payment of expenses during or for that financial year, by

(ii) the average daily balance of the Fund during that financial year.

(b) Then calculate the percentage rate of net return on the Fund for each of the four (or fewer) years immediately preceding the financial year just ended in which there were in fact Fund returns.

(c) Then calculate the average rate of net return over the prior five (or fewer) financial years by adding the percentage rates of net return for those financial years, determined in accordance with subsections (1)(a) and (1)(b) of this section, and dividing the total by the number of financial years involved.

(d) Finally, multiply that average rate of net return by the average daily balance of the Fund during the financial year just ended.

(2) In order to enable the National Government to prepare its annual budget and estimates for the next fiscal year, by January 15 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 agree.

(4) Notwithstanding the foregoing, no funds shall be distributed to the National Government prior to October 1, 2001.

(5) Funds distributed to the National Government shall be deposited in the General Fund of the FSM for appropriation and expenditure consistent with the purposes of the Fund. Such appropriation and expenditure may, but need not, include transfers to other levels of government in the FSM for their use in ways consistent with the purposes of the Fund.

Source: PL 10-150 § 15.

§ 1215. Transfers to the A Account.

(1) *Transfers from the B Account.*

(a) The Board shall transfer funds from the B Account to the A Account to the extent necessary to make up any shortfall of funds in the A Account needed for reinvestment, repayment of loans to the Fund, and payment of the expenses of the Fund pursuant to section 1213 of this chapter.

(b) The Board may transfer to the A Account any funds in the B Account in excess of an amount equal to the sum of all funds transferred from the A Account to the B Account during the five most recent financial years. Such a transfer may only occur at the end of a financial year and after there have been at least five financial years in which funds were in fact transferred from the A Account to the B Account. Funds transferred to the A Account pursuant to this subsection shall be deemed to be additional contributions to the Fund.

(2) *Transfers from the S Account.* If each contributing government receives a funding level during the first year of the Renewed Compact that is greater than, the same as, or within four percent (4%) of its Baseline Funding level, then the following transfers may be made:

(a) funds contributed to the S Account by each of the contributing governments, and the earnings accrued on these funds, may be transferred to the A Account if the terms of the Renewed Compact require the FSM to contribute to a trust fund established between the US and the FSM; or

(b) if the terms of the Renewed Compact do not require the FSM to contribute to a trust fund established between the US and the FSM, then at the request of a contributing State Government, funds contributed by that government and the earnings accrued on those funds may be transferred into that State's trust fund, provided that the State trust fund has been established with the principles of real asset protection similar in form and purpose to that of the FSM Trust Fund.

Source: PL 10-150 § 16; PL 12-16 § 5.

§ 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 in instruments denominated in currencies other than the US 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.

Source: PL 10-150 § 17; PL 12-16 § 6.

Erratum: The first word of subsection (3) has been capitalized for format consistency.

§ 1217. Other participating government accounts.

Contributions may be made to the Fund for the benefit of other participating governments in the FSM, in which case the Board shall establish separate A, B and S Accounts within the Fund in the name of each such government. Such accounts shall be subject to this chapter and administered in the same manner as the National Government A, B and S Accounts except that distributable funds or assets shall be made available to the other participating governments rather than the National Government. Fund expenses shall be prorated between the accounts of different governments in proportion to their relative share of the total Fund.

Source: PL 10-150 § 18; PL 12-16 § 7.

§ 1218. Books and Records.

(1) The Board shall cause the Fund managers to keep all proper books and records of account of the assets, property, liabilities, income and expenditure, and transactions of the Fund, and to produce these promptly in order to facilitate audit.

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

(3) The books and records of the Fund shall separately account for each government's account, including the pro rata application of expenses of the Fund.

Source: PL 10-150 § 19.

§ 1219. Audits.

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

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

(a) state in his report that:

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

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

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

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

(b) notify the Board that he is unable to complete his report as provided in subparagraph (a), giving his reasons therefor.

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

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

Source: PL 10-150 § 20.

§ 1220. Annual Reports.

Within six months of the end of the financial year the Board shall publish and shall submit to the President and the Congress of the FSM and to the Governor or chief executive officer of each other participating government:

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

(2) The accounts of the Fund for that year audited in accordance with section 1219 of this chapter; and

(3) The report of the auditor under section 1219 of this chapter.

Source: PL 10-150 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 1221. Termination of Fund.

(1) The Fund may be terminated only by an Act of the Congress of the FSM.

(2) Upon termination of operations the Fund shall immediately cease all activities, except those incidental to the orderly realization and conservation of its assets and the settlement of its

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obligations; upon termination of the Fund, disposition of assets of any other participating government's account shall be made only after consultation with such government.

(3) Until final settlement of the obligations of the Fund and the distribution of its assets, the Fund shall remain in existence and all rights and obligations of the Fund under this chapter consistent with the termination of the Fund's operations shall continue unimpaired.

(4) No distribution of assets shall be made until all liabilities to creditors have been discharged. Subsequently, the assets of the Fund shall be distributed to the General Fund of the FSM, or in the case of other participating governments, as requested by them.

Source: PL 10-150 § 22.

Cross-reference: The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code.

§ 1222. Fund Transfer.

Notwithstanding any other provision of this chapter 12 of this title, in the event that no Trust Fund Board has been appointed as of the date that a trust fund for the FSM is established pursuant to the Compact of Free Association, as amended (referred to hereafter in this section as the "Compact Trust Fund"), funds previously appropriated for the FSM Trust Fund, including any sub-accounts thereof, may, by action of the allottee of such funds, be allotted for, and deposited into, the Compact Trust Fund.

Source: PL 13-48 § 1.

CHAPTER 13
Public Projects

SECTION

§ 1301. Labeling of public projects.

§ 1301. Labeling of public projects.

All buildings, equipment, and other tangible items funded by public project funds appropriated by the Congress of the Federated States of Micronesia shall bear a label, sign, or other marking in a conspicuous place which shall display the words "FUNDED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA." This section shall apply to all projects funded by appropriations made since May 13, 1985.

Source: PL 5-88 § 1.

Editor's note: This chapter was formerly Chapter 12 of Title 55, but was moved to Chapter 13 by section 23 of PL 10-150 to accommodate new Chapter 12 on FSM Trust Fund. Section 23 of PL 10-150 read as follows:

Section 23. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by renumbering existing chapter 12 as chapter 13 and renumbering existing section 1201 as section 1301.

PL 9-40 which was signed into law on December 22, 1995 established lapsing dates for public projects appropriations. PL 9-40 read as follows:

Section 1. Notwithstanding any contrary provision of law, the authority of any allottee to obligate funds already appropriated by the Congress of the Federated States of Micronesia for state public projects shall lapse as of September 30, 1997, unless an earlier date is provided for in the respective appropriation act.

Section 2. The Department of Finance of the Federated States of Micronesia shall deliver to each Member of the Congress of the Federated States of Micronesia, and to every allottee of public project funds that has a positive fund balance, no later than one hundred and twenty (120) days prior to the lapse date established in section 1 of this act, written notification of the upcoming lapse date, which notification shall include a list of all public project accounts with a positive fund balance, and the amount of the balance remaining in each account.

Section 3. The authority of any allottee to obligate funds henceforth appropriated by the Congress of the Federated States of Micronesia for state public projects shall lapse at the end of the second fiscal year following the original fiscal year of appropriation, unless otherwise provided for in the respective appropriation act.

Section 4. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Section 1 of PL 9-40 was amended by PL 10-6 which was signed into law on July 8, 1997. PL 10-6 read as follows:

Section 1. Section 1 of Public Law No. 9-040 is hereby amended to read as follows:

"Section 1. Notwithstanding any contrary provision of law, the authority of any allottee to obligate funds already appropriated by the Congress of the Federated States of Micronesia for state public projects shall lapse as of September 30, 1998, unless an earlier date is provided for in the respective appropriation act, or unless a later lapse is provided by amendment thereto becoming law after December 22, 1995."

Section 2. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

CHAPTER 14
Loans to States

SECTION

§ 1401. Set-off rights of the National Government.

§ 1401. Set-off rights of the National Government.

(1) Notwithstanding any law to the contrary, if any payment required to be made by a state of the Federated States of Micronesia pursuant to the terms of a loan from the National Government is not made when due, the National Government shall be entitled to exercise any or all of the following rights of set-off:

(a) The National Government may withhold and apply to the payment of said delinquency any funds which it owes and would otherwise be required to pay to the state without previously or subsequently seeking or obtaining any judicial approval of such action;

(b) The National Government, without previously seeking or obtaining any judicial approval of such action, may withhold for possible future application to the payment of said delinquency any funds which it owes and would otherwise be required to pay to the state, provided that such withholding shall cease and the funds so withheld shall be promptly paid to the state if, within 60 days after the date the withheld funds were required to be paid to the state, legal action has not been commenced in the FSM Supreme Court to seek judicial determination of the rights of the state and National Government to the funds. If such legal action is timely commenced, the funds withheld shall be disposed of as directed by the Court; and

(c) The National Government may withhold and apply to said delinquency any funds which it owes and would otherwise be required to pay to the state to the extent authorized in advance to do so by the FSM Supreme Court.

(2) Funds subject to set-off under this section are limited to the state's share of National Government tax receipts and the state's share of any funds received from the United States under section 211 or section 217 of the Compact of Free Association. Funds are "required to be paid to a state" for purposes of this section whenever they must be disbursed, remitted, credited, or otherwise transferred to the account and for the benefit of the state, whether through cash, check, wire transfer, book entry, or other means.

(3) Funds withheld pursuant to this section shall be invested by the Secretary of Finance in good faith in the same manner as other National Government funds and any net investment gains or losses shall accrue to or be borne by the party ultimately entitled to receive such funds. Unless a withholding or application was both wrongful and in bad faith, the state shall not be entitled to any recovery of damages or interest, whether for the period before or after judgment, beyond return of the amount wrongfully withheld as adjusted by such net investment gains or losses.

(4) No funds shall be released from the General Fund or any Special Fund of the Treasury of the Federated States of Micronesia pursuant to any existing or future agreement by the National Government to lend money to a State, or on behalf of a State under circumstances wherein the State will or may be under an obligation to make repayments, without the Secretary of Finance first certifying that the State has, by appropriate legislative and executive action, bound itself to be subject to the set-off provisions of this section.

Source: PL 9-136 § 3.

Editor's note: The word "set-of" in subsection (4) of this section was corrected to "set-off".

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Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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CHAPTER 15
Compact Management Board
[REPEALED]

Editor's note: This chapter was enacted by PL 13-75 on January 27, 2005, over President Joseph J. Urusemal's veto.

PL 13-75 was repealed in its entirety by PL 15-9 § 3 on September 12, 2007, with President Manny Mori's signature.