

NINTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIFTH SPECIAL SESSION, 1997 CONGRESSIONAL BILL NO. 9-295, C.D.1, C.D.2, C.D.3
PUBLIC LAW NO. 9-155

AN ACT

To further amend title 52 of the Code of the Federated States of Micronesia, as amended, by amending section 115, and 164, and by enacting a new chapter 5, for the purpose of lowering the long-term cost of national government operations by establishing an early retirement program, by creating a freeze on salary increases, by establishing compensatory time in lieu of overtime payments, and for other purposes.

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

Section 1. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new chapter 5 to be entitled the "National Government Employees' Early Retirement Program".

Section 2. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 501 of chapter 5 to read as follows:

"Section 501. Short title. This chapter may be cited as the
National Government Employees' Early Retirement Program."

Section 3. Title 52 of the Code of the Federated States of Micronesia, is hereby further amended by enacting a new section 502 of chapter 5 to read as follows:

"Section 502. Purpose. The purpose of this chapter is to lower
the long-term cost of National Government operations in ways that will promote
the shift in the economy toward private sector development and will minimize the
negative impact on National Government employees."

Section 4. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 503 of chapter 5 to read as follows:

"Section 503. Definitions. As used in this chapter, unless the
context clearly requires otherwise, the term:

(1) 'Agency' means any authority, office, commission,

board, bureau or other entity of the Government of the Federated States of Micronesia outside of the executive, legislative or judicial branches of government, the employees of which authority, office, commission, board, bureau or other entity are subject to the National Public Service System Act and regulations promulgated thereunder.

(2) 'Base salary' means the average bi-weekly rate of pay to an employee over the most recent 26 pay periods based upon an 80 hour bi-weekly pay period. The most recent 26 pay periods shall be determined starting from the date such employee is approved for early retirement. Base salary does not include differentials , including but not limited to foreign service differentials, of allowances for night work, transfer, overtime, holiday work, travel per diem, or other similar allowances.

(3) 'Permanent employee" means an employee who is not employed through a contract that has a specific date of termination and has been appointed to a position in the public service system who has successfully completed a probation period.

(4) 'Program' means the early retirement program with its eligibility requirements and benefits as defined in this chapter.

(5) 'Public service' means all offices and other positions in the National Government of the Federated States of Micronesia not exempted by section 117 of chapter 1 of the National Public Service System Act."

Section 5. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 504 of chapter 5 to read as follows:

"Section 504. Commencement of Early Retirement Program.

(1) The program will commence on the date the President, or his designee, certifies that there are funds available in the program for disbursement to eligible program employees and shall continue from the date of certification for a period not to exceed two years. The certification shall:

(a) Designate the Director of the Office of Administrative Services to direct and supervise all the administrative and technical activities of the program; and

(b) Clearly state the date when the program will end.

(2) Copies of the certification shall be provided to each branch and agency of the National Government."

Section 6. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 505 of chapter 5 to read as follows:

"Section 505. Eligibility; procedures. Eligibility for the benefits under this chapter shall be determined as follows:

(1) Within 60 days of the end of the First Regular Session of the Tenth Congress of the Federated States of Micronesia, before or during which session the President shall have submitted a National Government Restructuring Plan for review and action by the Congress, the President of the Federated States of Micronesia for the executive branch, the Chief Justice of the Supreme Court of the Federated States of Micronesia for the judiciary branch, the Speaker of the Congress of the Federated States of Micronesia for the Congress, and the chief

executive officer of each agency of the National Government shall submit to the President, or his designee, a list for their respective branch or agency of the National Government. Each list may be updated from time to time and shall include each position:

(a) Ineligible for inclusion in the program. A position shall be ineligible if such position is exempt by law from the provisions of the Public Service System Act, or provides essential public services and if abolished would cause the National Government to fail to provide such essential public services;

(b) Which shall be terminated because such position is to be abolished; and

(c) Which may be eligible for inclusion in the program.

(2) A permanent employee in a position which shall be terminated under section 505(1)(b) of this chapter shall be automatically deemed a participant in the program subject only to the abolishment of the position. Such abolishment may occur at anytime during the program period but not less than 90 days after the employee receives notice that the position is to be abolished, except that such 90-day period can be waived by the employee.

(3) A permanent employee in a position eligible for inclusion in the program under section 505(1)(c) of this chapter may participate in the program by submitting a written application to the Office of Administrative Services and if:

(a) There are funds available in the program;

(b) Long-term cost savings would be achieved by the employees participation in the program; and

(c) The respective branch or agency of government may abolish the position without compromising essential public services or such position may be filled by a permanent or probationary employee and such employees previous position is abolished.

(4) A permanent employee holding a position identified as 'ineligible' for the program under section 505(1)(a) of this title may become eligible for inclusion in the program if he submits a written application and:

(a) A person who is eligible for the program through section 505(1) (b) or (c) agrees, in writing, to become employed in the ineligible position;

(b) The head of the branch or agency containing that ineligible position agrees, in writing, to employ that eligible person in the permanent employee's ineligible position; and

(c) sufficient funds are available in the program."

Section 7. Section 115 of title 52 of the Code of the Federated States of Micronesia, is hereby amended to read as follows:

"Section 115. Tenure. Every regular employee shall be entitled to hold his position during good behavior, subject to suspension, demotion, layoff, dismissal, or termination of employment through the Early Retirement Program, only as provided in this chapter or in chapter 5 of this title and in the regulations adopted in pursuance thereof; provided, however, that the tenure of a contract employee is the term of his contract."

Section 8. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 506 of chapter 5 to read as follows:

"Section 506. Compensation.

(1) Subject to the availability of funds, an employee eligible for participation in the program and less than 60 years of age may choose to receive either:

(a) a lump sum payment equal to 48 bi-weekly base salary payments; or

(b) 52 bi-weekly base salary payments.

(2) (a) Subject to the availability of funds, an employee eligible for participation in the program, who is more than 55 years of age and not yet eligible for FSM Social Security Administration (hereinafter 'SSA') retirement benefits, may retire and may choose to receive the benefits described in section 506(1)(a) or (b), or may receive a lump sum payment equaling 6 base salary pay periods and a monthly amount equal to the monthly SSA retirement benefits that the person would have received if he had been 60 years of age when his employment with the National Government ceased due to his participation in the Early Retirement Program. Such payments shall terminate upon the person reaching the age of 60 or becoming eligible for SSA retirement benefits, whichever occurs first. The Secretary of the Department of Finance may enter into an agreement with the SSA authorizing the SSA to administer the payments under this subsection. The agreement may also provide for the collection of reasonable administrative fees by the SSA.

(b) If a participating employee disputes National Government records that indicate what his age is, and if resolution of the dispute would control the amount of the benefits that the worker would receive under section 506, the worker may request a determination of the dispute by the Director of the Social Security Administration (hereinafter, 'the Director'). Such a request must be in writing. The Director must resolve the dispute promptly, and he may receive any evidence that he deems appropriate in resolving such a dispute. The Director must make written findings explaining his evaluation of the evidence presented to him and explaining his ultimate resolution of the dispute. The Director must also provide a copy of those written findings to the employee in question.

(c) After each eligibility list has been determined, it shall be promptly transmitted to the Director of Social Security, who shall promptly deliver written notification to each worker who is between 53 and 59 years of age and whose position is described in section 505 (1)(c), of the following: how many 'quarters of coverage' the worker has accumulated for the purposes of Social Security benefits, whether that number is sufficient to entitle the worker to Social Security retirement benefits at age 60 and, if not, how many more 'quarters of coverage' the employee would have to accumulate to become entitled to such benefits.

(3) Subject to the availability of funds, an employee who is more than 60 years of age and eligible to receive SSA retirement benefits and who is otherwise eligible to participate in the program, shall receive a lump sum payment equal to 6 bi-weekly base salary periods.

(4) The following adjustments shall be made from each

payment due to an employee:

(a) Any advance annual or sick leave owed by the employee;

(b) Any salary advance;

(c) Any per diem or other travel advance including outstanding travel authorizations; and any other adjustment which the employee may owe to the National Government, or which the National Government may owe to the employee.

(d) If authorized by the employee in writing, amounts requested by the employee to be deducted from compensation received pursuant to subsection (1)(b) of this section, and remitted to a third party, provided that no more than two such remittances shall be permitted for each employee at any one time and that each such remittance must be in effect for at least six months, unless otherwise provided by law. A remittance under this sub-section shall be binding upon the employee in accordance with the terms of the request therefor, including but not limited to any prohibition on canceling the remittance without the consent of the third-party payee, provided that the terms of the remittance are otherwise in accordance with applicable law, including but not limited to usury laws.

(5) For purposes of this chapter, compensation received by an employee pursuant to this chapter shall be exempted from the:

(a) Provisions of sections 901 and 902 of title 53 to the extent that such compensation shall not be deemed wages received by the employee;

(b) Provisions of section 121 of title 54 to the extent that such compensation shall not be deemed wages or salaries received by the employee; and

(c) Provisions of section 603(6) of title 53 to the extent that such compensation shall not be deemed dollars earned in a quarter by the employee.

(6) If a participating employee dies, his entitlement to compensation under the program shall survive and the remainder shall be paid to persons or entities in accordance with the general law of descent and distribution or in accordance with customary law if the applicable jurisdiction does not have general law of descent and distribution."

Section 9. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 507 of chapter 5 to read as follows:

"Section 507. Ineligibility for re-employment. Any employee who receives compensation under the program shall not be eligible for re-employment in any capacity by the National Government or any agency of the National Government prior to September 30, 2001, except that such ineligibility shall not apply to program participants who are re-employed by the National Government in the following positions:

(1) members of the Congress of the Federated States of Micronesia;

(2) the President and Vice President of the Federated States of Micronesia; and

(3) persons appointed to any positions by the President

with the advice and consent of the Congress of the Federated States of
Micronesia."

Section 10. Title 52 of the Code of the Federated States of Micronesia is hereby further
amended by enacting a new section 508 of chapter 5 to read as follows:

"Section 508. Program Loan; Fund.

(1) The program shall be funded from loan proceeds obtained from the
Asian Development Bank, or from funds from the General Fund otherwise
appropriated for such use, as authorized by law. Upon disbursement of the loan
proceeds, such funds shall be deposited in a National Government Employee's
Early Retirement Fund (hereinafter 'Retirement Fund') which is hereby created
and established. The Retirement Fund shall be separate from the General Fund
or any other funds of the National Government. Money in the Retirement Fund
shall be invested prudently.

(2) In order to facilitate the National Government's
repayment of the funds borrowed from the Asian Development Bank as
authorized by law, the National Government shall continue to appropriate funds
for each position abolished and vacated pursuant to the program in the same
amount budgeted for each fiscal year of the program for each respective position
held by the employee. The funds so appropriated shall be deposited by the
President, or his designee, in the Retirement Fund. On or before September 30,
2001, the balance in the Retirement Fund must equal or exceed the principal
amount borrowed from the Asian Development Bank. At any time during the
term of the loan, if the amount in the Retirement Fund exceeds the principal

amount remaining, the amount in excess of the principal may be withdrawn and revert to the General Fund.

(3) Money in the Retirement Fund may only be withdrawn, unless otherwise provided by law, by the President, or his designee, for the following purposes:

(a) Payment of compensation to employees participating in the program;

(b) Payment to the SSA for payments and the administration of compensation to employees participating in the program and pursuant to section 506 of this chapter;

(c) Repayment of any loan obligations directly related to the program; or

(d) Payment for training costs related to the program, but not exceeding \$175,000 in total. Any funds remaining in the Retirement Fund after the loan has been paid in full shall revert to the General Fund.

(e) Relending to the States for their early retirement programs."

Section 11. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 509 of chapter 5 to read as follows:

"Section 509. Freeze on salary increases; compensatory time and overtime compensation. Notwithstanding any other applicable law, there is hereby enacted:

(1) A freeze on annual salary step increases of all employees in the public service system; and

(2) Compensatory time, with which employees in the public service shall be credited in lieu of receiving overtime compensation as otherwise authorized under the National Public Service Act and regulations promulgated thereunder. Compensatory time means those hours authorized in advance and worked by an employee outside established work hours and for which the employee is credited with one hour in the form of leave with pay for each hour of work an employee is directed to and performs work in excess of the regular 40 hour workweek as provided by law. Compensatory time shall be accrued by National Government employees and shall be included in the compensation received by a program participant pursuant to subsection (4)(c) of section 506 of this chapter; except that any accumulation of time in excess of 280 hours shall be forfeited unless taken before the end of the calendar year in which the excess was accumulated. For purposes of computing whether a program employee's accrued compensatory and/or annual leave hours are in excess of 280 hours, accrued compensatory time and annual leave shall be included in computing the 280-hour ceiling."

Section 12. Section 164 of title 52 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 164. Differentials. To compensate for unusual circumstances of employment which create hardships for public service employees, the following differentials are provided for them; provided that in no case may an employee receive differentials under both subsections (1) and (2) of this section:

(1) Night work differential. An employee whose tour of duty includes regularly scheduled hours falling between 7 p.m. and 6 a.m. shall be paid a

differential of fifteen percent of the adjusted base salary for all hours falling within that period.

(2) Hazardous work differential. An employee whose position entails unusual and extreme hazards to his health or safety shall be paid a differential of twenty-five percent of the adjusted base salary for all hours in which hazardous work is performed.

(3) Holiday differential. An employee who is required to work on a legal holiday shall be compensated at double his adjusted base salary for all such hours worked.

(4) Typhoon emergency differential. Employees who are required to work in a location and a period in which a typhoon or other natural catastrophe has been declared by competent authority, and in which other Government employees are released from work because of such conditions, shall be compensated for the hours worked while such emergency remains in force at the rate of two and one-half times the adjusted base salary. The differential provided in this subsection shall not limit the employee's right to any other differential or allowance to which he may otherwise be entitled by law or regulations."

Section 13. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 510 of chapter 5 to read as follows:

"Section 510. Annual report. The President, or his designee, shall submit a report to the Congress of the Federated States of Micronesia not later than May 1 of each year, which report shall provide as of the end of the second quarter of the fiscal year the following information:

(1) A full accounting of the status of the Retirement

Fund;

(2) A full accounting of the status of the Asian Development Bank funds received by the National Government in accordance with law;

(3) The status of the program, including details regarding actual expenditures and estimated expenditures for the year in progress;

(4) The status of repayments into the Retirement Fund and a projection of how the fund balance will meet or exceed the original principal amount before September 30, 2001, as required by law."

Section 14. Title 52 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new section 511 of chapter 5 to read as follows:

"Section 511. Act supersedes other laws. The provisions of this chapter shall supersede in their entirety any other provisions of any law that may be interpreted as inconsistent with any provision of this chapter."

Section 15. Severability. If any provision of this act, or amendments thereto, or application thereof to any person, thing or circumstances is held invalid, the invalidity does not affect the provisions or application of this act, or amendments that can be given effect without the invalid provisions or application, and to this end, the provisions of this act, and the amendments thereto, are severable.

Section 16. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

April 27, 1997

for /s/ Jacob Nena
Bailey Olter
President
Federated States of Micronesia