

CHAPTER 14

Loans to States

SECTION

§ 1401. Set-off rights of the National Government.

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(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”.

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