

SECOND LEGISLATURE OF THE STATE OF TRUK

THIRD REGULAR SESSION, FIRST SPECIAL SESSION, NOVEMBER 1984 ACT NO.: 2-111

AN ACT

To establish a State Authority to consider foreign investment applications referred for recommendation to Truk State by the Secretary of Resources and Development of the Federated States of Micronesia, all as provided for by 32 FSM Code § 201, et seq. (Foreign Investment Act. PL No.2-5), and for other purposes.

Be it enacted by the Legislature of Truk State.

Section 1. Short Title. This Act shall be known and may be cited as the "State Foreign Investment Act."

Section 2. State Authority Established. There is hereby established in the State of Truk a State Authority to consider foreign investment applications referred for recommendation or decision to Truk State by the Federated States of Micronesia, all as presently provided for by 32 FSM Code § 201, et. seq. (Foreign Investment Act. PL No. 2-5). This State Authority, which shall be known as the Truk State Foreign Investment Board, shall be the Truk State Authority to provide official recommendations or decisions to the FSM on advisability of granting national foreign-investment permits.

Section 3. State Foreign-Investment Board-Membership.

a) The Truk State Foreign Investment Board, hereinafter called the "Board", is hereby established. The Board shall be composed of five voting members. The Governor shall appoint two members with the advice and consent of the Truk State Legislature. The Speaker of the Truk State Legislature shall appoint three members. The Director of the State Department of Resources and Development shall serve as an ex-officio, non-voting member of the Board.

b) Members shall serve for a two year term. A member appointed to fill the vacancy occurring during the term for which his predecessor was appointed shall be appointed for the remainder of that term. Each Board member shall hold office until his successor is appointed and qualified. Board members shall be eligible for reappointment.

c) Appointments submitted by the Governor when the Legislature is not in session, shall be consented to by a committee established or designated for that purpose by the Speaker of the Truk State Legislature;

provided that the Governor's initial appointments of members shall be made no longer than thirty days after the effective date of this act, provided that should the Governor fail to appoint his members then the Speaker shall appoint all five voting members.

d) Voting members of the Board shall all be citizens of the Federated States of Micronesia and residents of the State of Truk at the time of appointment.

e) The Board shall elect from among its members, a Chairperson, Vice-Chairperson, and a Secretary-Treasurer during its first meeting.

f) Three voting members of the Board must be present to make up a quorum and action can only be taken by a majority vote of the members present.

g) Vacancies in the membership of the Board shall be filled in the same manner as the original appointment with the Speaker filling vacancies should the Governor fail to act. A vacancy exists in the case of death, resignation, or removal of any Board members.

Section 4. Board Members-Removal. In case of incompetency, neglect of duty, or malfeasance in office, any Board member may be removed from office by the affirmative vote of four voting Board members.

Section 5. Meetings of the Board. Meetings of the Board shall be at such time as there is an application for a foreign investment permit to consider, or when an organizational or study meeting needed. The Chairperson, or his designee, shall call for meetings of the Board. The first meeting of the Board shall be no later than ten days after all appointments have been made and shall be called by the Director of the Department of Resources and Development. Meetings of the Board shall be held in Truk State, unless otherwise authorized by the Speaker; and shall be preceded by at least one week advanced public notice, which notice shall include a radio announcement of the time and place of meeting; and meetings shall at all times be open to the public and the press.

Section 6. Board Meetings-Compensation.

a) Members who are employees of the national and state governments shall not receive compensation for meetings they attend; provided, however, such members shall be given administrative leave during

attendance at meetings of the Board.

b) Members who are not employees of the national and state governments shall receive ten (\$10.00) per day for meetings they attend.

c) All members of the Board shall receive appropriate and necessary travel expenses and per diem at TT or FSM standard rates, whichever is lesser, when performing duties of the Board.

Section 7. Board-Members-Conflict of Interest. A member may not participate in the determination of any matter before the Board if he or any member of his immediate family has an interest in the outcome which may affect the member's impartial consideration of the matter.

Section 8. State Department of R & D - Assistance to Board. The Director of the State Department of Resource and Development shall, beside serving as a non-voting, ex-officio member of the Board, provide clerical, administrative and investigative assistance to the Board.

Section 9. Duties of the Board.

a) As soon as the Secretary of Resources and Development of the FSM, or other appropriate office or officer of the FSM, delivers a copy of an application for a foreign investment permit to the Board, or its designated agent for service, the Board shall:

(i) Determine whether or not the business activities proposed will take place in more than one municipality;

(ii) If deemed necessary or advisable, refer the application to the State Director of Resources and Development for review and investigation. The Director shall collect any further information requested by the Board, or information which he feels will be useful for the evaluation of the application, and shall present all information obtained to the Board within sufficient time for the Board to evaluate the same and meet all deadlines for responding with a recommendation or decision to the FSM Foreign Investment Board or to the appropriate FSM agency; and the Board shall;

(iii) furnish the municipal council of the municipality affected by the projected business activity, a copy of the application, and request examination and recommendation as to the approval of the application, which recommendation, to be considered, must be returned by the date set by the Board, and state reasons for the recommendation offered.

b) The Board shall, in the time available and to the best of its ability, and in the manner it deems most effective, obtain opinions and recommendations from members of the State Legislature and other local groups and leaders concerning the applications; in its discretion, hold public hearings, make studies, investigations and inquiries relevant to the applications, and evaluate the applications according to the standard of this act.

c) The Board shall, within the time limit prescribed by law, forward to the FSM Foreign Investment Board, or appropriation FSM agency, a recommendation or decision as to the approval of the application. If the Board recommends or decides that the foreign investment permit should be granted, it may also recommend or place limitations or conditions on the issuance of the permit.

Section 10. Standards for Board Recommendation. In deciding whether or not to recommend or decide for or against the application for foreign investment permit, the Board shall consider all relevant factors, including:

a) The economic, social, or environmental need for the business activity to be performed;

b) the degree to which such activities will effect change in exports or imports;

c) the extent to which such activities will deplete a non-renewable natural resources, or will disturb the environmental balance or the conservation of renewable natural resources, or will pollute the atmosphere, or water;

d) the extent of participation by citizens at the outset in the ownership and management of the enterprise, and in the case of an applicant

which is a corporation chartered outside the state or the FSM the degree of willingness and specific plans to form a state or FSM corporation in the future and to offer at least 51% of the ownership and capital to citizens;

e) the willingness and specific plans of the applicant to give employment preference to citizens and to train citizens for positions in management and at other levels by instituting training programs;

f) the extent to which the capital, managerial skills and technical skills required for such an enterprise are available among residents of the state or FSM citizens at the current time or can be expected to be available in the near future;

g) the extent to which an operation will contribute to the overall economic well-being of the State or the nation, and the extent of which any interest, including economic, social, traditional, or environmental, of any municipality, state, or the nation may be affected;

h) the recommendations, if any, of the municipal councils concerned; and

i) at the option of the Board, the results of a character-analysis and financial report, the latter to be provided at applicant's expense, from a financial reporting service.

Section 11. Notice to Governor and Municipal Councils-Board's Recommendations or Decisions. The Board shall deliver a copy of the recommendation or decision it makes on an application for foreign investment permit, together with a statement of reasons in support of the action taken, to the Governor and affected municipal councils, at the same time as the Board forwards its recommendation or decision to the FSM Foreign Investment Board, or other appropriate FSM agency.

Section 12. Board May Require Production of Information. In carrying out the duties imposed by this act, the Board may, informally or by subpoena, require the attendance of any citizen or non-citizen at a meeting or hearing conducted by the Board, and may require such person to testify or to produce at, before, or after such meeting or hearing documents, information, bank statements, official corporation documents and all things relevant to the enforcement of the provisions of this act.

Section 13. Appropriation.

1) The sum of \$5,000, or so much thereof as may be necessary, is appropriated from the General Fund of the State for the purpose of

funding the operation of the State Foreign Investment Board during FY '85.

2) The sum appropriated by Subsection (1) shall be administered by and is allotted to the Truk State Foreign Investment Board, which shall be responsible to the Speaker, for ensuring that these funds are used only for the purposes specified in Subsection (1), and in accordance with the State Financial Management Act, and that no obligations are incurred in excess of the sum appropriated. Any part of this appropriation not obligated as of September 30, 1985, shall revert to the General Fund of the State.

3) The Truk State Foreign Investment Board shall submit a report to the Legislature before April 15, 1985, which shall:

a) Provide for the full disclosure of the obligations incurred against the sum appropriated by Subsection (1), and indicate the status of the funds as of April 1, 1985;

b) indicate the planned use, during the remainder of the fiscal year, of funds not obligated as of April 1, 1985, provided that a supplemental report covering the actual use and obligations of the funds shall be submitted to the Legislature or an appropriate committee thereof, within 20 days after the closing of the fiscal year; and

c) present the fiscal support requirements of the Board during FY '86.

Section 14. Severability. If any provision of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Section 15. Construction. As used in this act, the singular shall take the plural and any gender, the other, as the context requires. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

Section 16. Effective Date. This Act shall take effect upon approval by the Governor, or upon its becoming law without such approval.

Singed by: [Signature]
Simeon Innocenti, Speaker
Truk State Legislature

Attested to: [Signature]
Dátasi Albert
Legislative Chief Clerk
Truk State Legislature

Date: 1984 21, 1984

Approved by: [Signature]
Erhart Aten, Governor
Truk State Government

Date: 1984 21, 1984

OVERRIDDEN AND PASSED
1/9/85.