

THE THIRTIETH LEGISLATURE OF AMERICAN SAMOA

First Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa  
on Monday, the eighth day of January  
two thousand and seven

AN ACT AUTHORIZING THE AMERICAN SAMOA GOVERNMENT TO ENTER INTO A LOAN AGREEMENT WITH THE AMERICAN SAMOA GOVERNMENT EMPLOYEES' RETIREMENT FUND; APPROPRIATING MONIES FOR THE REPAYMENT OF SUCH LOAN AND IDENTIFYING THE SOURCE OF FUNDING; AUTHORIZING THE USE OF LOAN PROCEEDS TO FINANCE THE ACQUISITION, EQUIPPING AND RENOVATION OF CAPITAL IMPROVEMENTS AND PROGRAMS; ADJUSTING THE CAP ON ASGERF INVESTMENTS AND LOANS TO THE AMERICAN SAMOA GOVERNMENT; APPROPRIATING REVENUE AND IDENTIFYING THE SOURCE OF FUNDING; AND PROVIDING FOR AN EARLY EFFECTIVE DATE; AMENDING SECTIONS 7.1444, 11.1002, AND 27.1014 A.S.C.A.; CREATING A SECTION 7.1444.5 A.S.C.A.; AND REPEALING SECTION 7.1444.3 A.S.C.A.

Preamble:

Due to the urgent need to provide authority for the American Samoa Government to enter into a loan agreement with the American Samoa Government Employees' Retirement Fund to finance the acquisition, equipping and renovation of and other improvements to various governmental office buildings and other capital projects of the American Samoa Government, this act shall become effective immediately upon passage by the Legislature and approval by the Governor.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

**Section 1. 7.1444 is amended to read:**

**"7.1444 Investment of reserves exceeding current requirements.**

**(a) The reserves of the Fund in excess of requirements for current operations shall be invested and reinvested by or under authority of the Board of Trustees. At its discretion, the Board may designate one or more of its members**

to supervise this function; in either case, references to the Board in this section are considered to refer to the individual or committee exercising the function.

(b) The Board of Trustees has full power and authority to direct the investment and reinvestment of the fund without distinction between principal and income, in property (defined in (c) below) it considers advisable. The Board may invest and reinvest the fund in property in which a prudent man familiar with those matters and using care, skill, prudence, and diligence enterprise would invest in the conduct of like character and with like aims, insuring that the investments of the fund are diversified so as to minimize the risk of large losses unless to do so would clearly not be prudent. The power to manage investments includes, but is not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, grant consent; and to do all other things necessary or appropriate to its position as an owner or creditor.

(c) The word "property" means and includes real, personal, and mixed property of any and every kind and nature, including but not limited to, bonds, preferred or common stocks, mortgages, interests in any kind of investment trust or common trust fund, notes, leases, oil or gas royalties, or other evidences of rights, interests or obligations, secured or unsecured, and whether or not they are of a wasting asset nature.

(d) All proceeds and income from investments, of whatever nature, must be credited to the account of the Fund. Transactions in marketable securities are carried out at prevailing market prices.

(e) Investments may be held in bearer form, or may be registered either in the name of the fund or the nominee of the custodian.

(f) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time of certificates representing the investments.

(g) Investments may not be made if, after the investment, the fund would own:

(1) any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of 5 percent of Fund assets at cost. This paragraph does not apply to general obligations of the United States or the Dominion of Canada or of the government; or

(2) obligations of the Dominion of Canada, together with its political subdivisions and corporations organized under its law or the law of its provinces in excess of 10 percent of fund assets at cost; or

(3) obligations or other investments issued or guaranteed by the government in excess of ~~10~~ 17.5 percent of Fund assets; provided, however, that this limitation does not apply to the obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease

assignment from another entity whose principal business is outside of American Samoa.

(h) The Board may engage one or more financial institutions as custodians to assume responsibility for the physical possession of Fund assets or evidences of assets. The custodian submits reports, accountings, and other information in a form and at such times as requested by the Board. All costs incurred for custodial services are paid by the Fund. The custodian holds all assets for the account of the Fund and acts only upon instructions of the board. Custodians may not be engaged unless they:

(1) have been continuously engaged in rendering pension trust investment services for a period of 10 or more years; and

(2) are organized under the laws of the United States, a state, or a Territory; and

(3) are custodians for not less than 20 corporate, municipal or governmental retirement funds with total assets of not less than \$30,000,000.

(i) In order to secure expert advice and counsel, the Board may engage an investment agent who is an investment counselor as qualified by this subsection. The custodian may be engaged as the investment agent. All costs incurred in this connection are paid by the fund. Persons, firms, or corporations may not be eligible for employment as investment agent which acts as principal for its own account or as broker for a client other than the fund in connection with the sale of any security to or the purchase of any security from the Fund. Investment agents may not be engaged unless:

(1) the principal business of the person, firm, or corporation selected by the Board consists of rendering investment supervisory services; i.e., the giving of continuing advice concerning investment of funds on the basis of the individual needs of each client;

(2) the principal control of the person, firm, or corporation rests with individuals who are actively engaged in the business;

(3) the person, firm, or corporation and its predecessors have been continuously engaged in the business for a period of 10 or more years;

(4) the person, firm, or corporation is registered as an investment advisor under United States law;

(5) the contract between the Board and the investment agent is of no specific duration and is voidable at any time by either party; and

(6) the person, firm, or corporation certifies, in writing, to the Board, that the assets under its direct investment supervision are in excess of \$30,000,000. The Board establishes and may from time to time change operating arrangements with the investment agent in order to facilitate efficient management and timely investment action. Investment may not be made unless in the opinion of the investment agent it is an appropriate investment for the Fund and is an authorized investment, or in the absence of that opinion, unless preceded by a resolution of the Board directing the investment."

Sec 2. 11.1002 is amended to read:

"11.1002 Amount of tax on certain items.

(a) The tax on each item is:

(1) beer, malt extract, alcoholic beverage, tobacco products and smoking accessories:

(A) one hundred ninety percent of the basis of beer as defined in 27.0501(6), and malt extract, except that any person 21 years of age or over may bring into American Samoa tax free an amount of any alcoholic beverage as defined in 27.0501(1) or 27.0501(6) not to exceed 1 liter per trip if such alcoholic beverage is for his personal use and consumption and not for resale; and except further that any alcoholic beverage and tobacco products brought into American Samoa for export at the duty free shop at Pago Pago International Airport is also tax free; one hundred fifty percent (150%) of the basis of beer or malt extract shall be deposited in the general fund and shall be available for appropriation by the Legislature; and forty percent (40%) of the basis of beer or malt extract shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. ~~Upon full repayment of said loan, the assessment and collection of this forty percent (40%) tax shall be repealed~~ 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited into the general fund and shall be available for appropriation by the Legislature;

(B) alcoholic beverages as defined in 27.0501(1) shall be taxed as follows: fifteen (0.15) cents per one percent (1%) of alcohol by weight per liter, with a minimum tax of two dollars (\$2.00) per liter.

Of the revenues collected from the tax on alcoholic beverages, fifty percent (50%) shall be appropriated to fund the Feleti Barstow Public Library; twenty-five percent (25%) shall be appropriated to fund the Office of Administrative Law Judge; twelve and one-half percent (12.5%) shall be deposited in the general fund and shall be available for appropriation by the Legislature; and twelve and one-half percent (12.5%) shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. ~~Upon full repayment of said loan, the twelve and one-half percent (12.5%) dedicated to repayment of the loan~~ 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(C) Twelve point five cents per cigarette, per cigar, or per 10 grams of smoking tobacco, except that any person 21 years of age or over may bring into American Samoa tax free tobacco products not to exceed either 200 cigarettes or 100 cigars and or 2 kilograms of smoking tobacco per trip if such tobacco products are for his personal use and consumption and not for resale; and twenty percent (20%) shall be deposited in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. ~~Upon~~

~~full repayment of said loan, the assessment and collection of this twenty percent (20%) tax shall be reverted into the general fund subject upon appropriation by the Legislature 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.~~

(2) one hundred fifty percent of the basis of firearms and firearm ammunition;

(3) motor vehicles:

(A) twenty-five percent of the basis of motor bicycles, automobiles, trucks, and vans, to be used for commercial purposes;

(B) notwithstanding the provisions of paragraph (A), the tax levied on motor bicycles automobiles, trucks, and vans, imported into American Samoa for personal or family use shall be 10 percent of the basis thereof. If a motor bicycle, automobile, truck or van, are converted to commercial use after being imported for personal or family use, it shall then be subject to the balance of the applicable tax imposed under paragraph (A).

(C) No tax exemption, including that provided by Title 11, Chapter 16, shall be granted for any motor vehicle. All other motor vehicles not taxed under this subsection shall be subjected to the tax under 11.1002(a)(7);

(4) petroleum products:

(A) thirty-five cents a gallon on fuel manufactured for use in motor vehicles, other than diesel fuels, 1.5 cents of this to be used for revenue for law enforcement costs and the driver's training control school and 10 cents of it to be placed in an earmarked revenue fund for road maintenance;

(B) three and one-half cents a gallon on fuel manufactured for use in diesel engines, other than aircraft fuels. An express exception is made for the purpose of extending a full three and one-half cent excise tax credit for fuels which, subject to verification by the Treasurer of American Samoa, were sold to any commercial fishing vessel for the purpose of refueling. For purposes of this section, "Commercial Fishing Vessels" shall be defined as all purse seiners and longliner vessels actively engaged in commercial fishing in excess of five tons dead weight, plus reefers of "Mother Ships" that are used to transship fish products, plus diesel fuel tankers that provide fuel at sea to the commercial fishing vessels;

(C) one and one-half cents a gallon on kerosene and similar petroleum products;

(D) fifteen percent of the basis of lubricating oils;

(E) one cent a gallon on jet and other aircraft fuels, to be placed in the enterprise fund for the operation of Pago Pago International Airport;

(F) three cents a pound of liquified petroleum gas such as butane and propane or mixtures; thereof, and ethane;

(G) thirty-one and one-half cents per gallon, to be collected by the petroleum supplier at the point of sale, on fuel manufactured for use in diesel

engines, excluding diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

(5) forty percent of the basis of all construction materials, as defined in 26.1501 et seq., which are of a lesser quality than the standard grades established under such chapter;

(6) fifteen cents per 12 fluid ounces or fraction thereof on all soft drinks or nonalcoholic carbonated beverages, to be applied to the measure of the container in which it is offered for sale by the importer.

(7) five percent of the basis of all items not listed in subsections (a) (1) through (a)(6) of this section or exempted by this section which are imported for commercial use or resale purposes. The revenues received from the three percent excise tax shall be deposited in the general fund and shall be available for appropriation by the Legislature, except that \$500,000 is appropriated for the student financial aid provided for in 11.0605.

(b) The minimum tax shall be 25 cents.

(c) Items otherwise taxable under subsection (a)(1) and (a)(7) of this section are exempted from the taxes imposed by this section when they are brought into American Samoa for export sale for consumption outside American Samoa; provided that importation and sale of these items are made pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act 4.1001 et seq., that require, among other things, separate storage of these items clearly identified for export sale and a system of delivery to the purchaser ensuring their exportation.

(d) Payment of the taxes imposed by this section on items brought into American Samoa for consumption within American Samoa may be postponed pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act, 4.1001 et. seq., that require, among other things, separate storage of those items clearly identified for domestic sale and consumption and a system of delivery to the importer ensuring payment of the taxes at the time of delivery.

(e) The Treasurer shall promulgate rules under the Administrative Procedures Act, 4.1001 et seq., to ensure that the taxes imposed when the exception set forth in subsection (a)(7) of this section is inapplicable are paid.

(f) One percent (1%) of the five percent excise tax shall be earmarked for the repairs, renovations and upgrading of all public schools facilities and equipment in American Samoa beginning in the fiscal year 1995."

Sec 3. 27.1014 is amended to read:

"27.1014 Customs officers service fees.

(a) Charges shall be collected for services of customs officers from the owner, master or agency of a vessel as follows:

(1) attendance of customs officers at any place other than port of entry, per day, \$15.00;

(2) attendance of customs officers outside of regular business hours, per hour, \$7.50;

(3) granting clearance to commercial vessels per entry and per departure, \$3.00;

(4) granting clearance to noncommercial vessels, per entry and per departure, \$25.00.

(5) processing Customs Declaration of Entry forms, \$5.00 per declaration per vessel. This charge shall not apply to passengers. The revenues from this charge shall be deposited in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. ~~Upon full repayment of said loan, this charge shall be repealed 7.1444.5. Upon full repayment of said loan, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.~~

(b) The schedule of charges in paragraph (a) (1) and (a)(2) contemplates that those charges are calculated per man/per hour, or per man/per day, provided that where attendance of customs officers as paragraph (a)(1) is off Tutuila Island, the cost of travel, per diem, or other costs, including overtime, will be charged and collected from whomsoever requires such off-island attendance of customs officers.”

Sec 4. There is created a section 7.1444.5 which reads:

“7.1444.5 Loan to American Samoa Government—Renovations of Capital Improvements and Projects.

(a) In accordance with the provisions of section 7.1444(g)(3), which limits any investment in obligations or other instruments issued or guaranteed by the government to no more than seventeen and one-half percent of Fund assets at cost, the Governor, on behalf of the American Samoa Government (ASG), and the Board of Directors of the American Samoa Government Employees’ Retirement Fund (ASGERF) are authorized to enter into a loan agreement whereby the ASGERF will lend and ASG will borrow an amount not to exceed \$20,000,000.

(b) The Governor is authorized to utilize the \$20,000,000 loan amount in financing the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu’a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disable), executive office building-tax office extension, executive office building-roof, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building and funding the Pacific Arts Festival. The Governor shall determine the application of available loan proceeds as between the various improvements set forth in this section (the “Improvements”) so as to

accomplish, as nearly as may be, all of such Improvements. If the Governor shall determine that it has become impractical to accomplish any of such Improvements or portions thereof for any reason, including changed conditions, lack of funding or costs substantially in excess of those estimated, the Governor shall not be required to finance all of such Improvements. Any remaining proceeds of the loan amount may be used to finance additional capital projects as approved by the Legislature.

(c) Such loan shall be general obligation of American Samoa Government and the Governor is authorized to pledge the full faith and credit of American Samoa Government to the full and prompt payment of the principal of and interest on such loan. The Governor, and/or his designee(s), are authorized to negotiate the terms of the loan, including an interest rate, repayment terms and such other terms and conditions as may be required, except that the interest rate shall be fixed at seven and one-half percent (7.5%). The Governor and the ASGERF Board are further authorized to execute all instruments and documents necessary to conclude the transaction, including promissory notes which evidence the indebtedness of ASG. The Governor is authorized to pledge the Full Faith and Credit of ASG as well as to provide collateral as required by the ASGERF Board to secure the loan.

(d) Interest and principal payments on the loan authorized in this section shall be amortized over a ten-year term and payments to be made monthly.

(e) There is appropriated such sums from the Government's general funds necessary for repayment of the loan authorized in this section, in order to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu'a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building and for funding the Pacific Arts Festival.

(f) Funds shall be made available from the following sources as identified below, for repayment of the loan authorized in this section to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu'a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building and for funding the Pacific Arts Festival:

(1) Forty percent (40%) of the excise taxes collected on beer and malt extract as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(A).

(2) Twelve and one-half percent (12.5%) of the excise taxes collected on alcoholic beverages as imposed pursuant to A.S.C.A., Section 11.1002(a)(1)(B).

(3) Twenty percent (20%) of the excise taxes collected on tobacco products as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(C).

(4) All of the revenues collected from the Customs Entry Declaration Forms Processing Fee as imposed pursuant to A.S.C.A., section 27.1014(a)(5).”

**Sec 5. Appropriation of revenue.**

There is appropriated such sums from the Government’s general funds necessary for repayment of the loan authorized in this section, in order to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu’a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building and for funding the Pacific Arts Festival.

**Sec 6. Source of funding.**

Funds shall be made available from the following sources as identified below, for repayment of the loan authorized in this section to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu’a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building and for funding the Pacific Arts Festival:

(1) Forty percent (40%) of the excise taxes collected on beer and malt extract as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(A).

(2) Twelve and one-half percent (12.5%) of the excise taxes collected on alcoholic beverages as imposed pursuant to A.S.C.A., Section 11.1002(a)(1)(B).

(3) Twenty percent (20%) of the excise taxes collected on tobacco products as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(C).

(4) All of the revenues collected from the Customs Entry Declaration Forms Processing Fee as imposed pursuant to A.S.C.A., section 27.1014(a)(5).

**Sec 7. Sunset provision.**

"7.1444.5 is hereby repealed on the date that the loan approved is fully paid and 7.1444(g)(3) shall be reenacted in the form in which it existed on the day before the effective date of this Act. Specifically, the limit on Fund assets that may be obligated and invested by ASGERF shall be restored to 10 percent."

**Sec 8. Repealer.**

"7.1444.3 is hereby repealed."

**Sec 9. Effective Date.**

Due to the urgent need to provide authority for the American Samoa Government to enter into a loan agreement with the American Samoa Government Employees' Retirement Fund to finance the acquisition, equipping and renovation of and other improvements to various governmental office buildings and other capital projects of the American Samoa Government, this act shall become effective immediately upon passage by the Legislature and approval by the Governor.

*Lolo M. Moliga*  
LOLO M. MOLIGA  
President of the Senate

*Savali Talavou Ale*  
SAVALI TALAVOU ALE  
Speaker, House of Representatives

Hereby Approved this 23<sup>rd</sup> day of April 2007  
*[Signature]*  
Governor of American Samoa