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1989

A BILL FOR AN ACT

To amend title 58 of the Code of the Federated States of Micronesia by amending sections 512, 513, 521, 522, 524, 525, 531, 535, and 564, as established by Public Law No. 5-121, and to further amend title 55 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-16, 5-88, 5-119 and 5-121, by amending sections 625 and 627, for the purpose of authorizing bank borrowings, establishing procedures for pledges of funds, altering committee voting requirements, expanding the waiver of sovereign immunity, and for other purposes.

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

1 Section 1. Section 512 of title 58 of the Code of the Federated
2 States of Micronesia, as established by Public Law No. 5-121, is
3 hereby amended to read as follows:

4 "Section 512. Definitions. As used in this chapter, these
5 terms shall have the following meanings, unless otherwise
6 required by context:

7 (1) 'Bond' or 'Bonds' means any bond, note or other
8 evidence of indebtedness issued under this chapter
9 including any indebtedness for borrowed money to any
10 commercial bank or similar financial institution and any
11 reimbursement obligation to a provider of Credit
12 Enhancement;

13 (2) 'Bond Fund' means the fund created pursuant to
14 section 523 of this chapter;

15 (3) 'Committee' means the committee referred to in
16 section 524 of this chapter;

17 (4) 'Compact of Free Association' means the Compact
18 of Free Association between the Federated States of
19 Micronesia and the United States of America;

20 (5) 'Credit Enhancement' means bond insurance,
21 letters of credit, or similar credit enhancement
22 instruments;

23 (6) 'Federated Development Authority' means the FSM
24 instrumentality of that name;

25 (7) 'FSM' means the Federated States of Micronesia;

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C. B. No. 5-429

1 (8) 'FSM Fiscal Agent' means any fiscal agent
2 selected and acting pursuant to subchapter V of this
3 chapter;

4 (9) 'Indenture' means any indenture, agreement or
5 other instrument pursuant to which the Bonds shall be
6 issued, as approved by the resolution;

7 (10) 'Pledged Compact Funds' means the amounts
8 payable under the Compact of Free Association which the
9 President of the Federated States of Micronesia is
10 authorized to pledge to the payment of the Bonds following
11 legislative action by the FSM and its constituent States
12 and made available for expenditure through the Bond
13 Repayment Fund;

14 (11) 'Pledged Funds' means the Pledged Compact Funds
15 and/or other pledged moneys, and investment earnings
16 thereon;

17 (12) 'Resolution' means the resolution or resolutions
18 of the committee authorizing the issuance and sale of the
19 Bonds in one or more series, on the terms and conditions,
20 and substantially in the form, approved therein or pursuant
21 to procedures provided therein;

22 (13) 'Secretary' means the Secretary of Finance of
23 the Federated States of Micronesia;

24 (14) 'State' means any constituent State of the
25 Federated States of Micronesia;

1 (15) 'Swap instruments' has the meaning set forth in
2 section 531(1)(p) of this chapter; and

3 (16) 'Trustee' means the FSM Fiscal Agent appointed
4 as such in the Indenture and any successors or assigns, who
5 will act as such for the benefit of the holders of the
6 Bonds."

7 Section 2. Section 513 of title 58 of the Code of the Federated
8 States of Micronesia, as established by Public Law No. 5-121, is
9 hereby amended to read as follows:

10 "Section 513. Purpose; Bonds; Costs of Issuance.

11 (1) The purpose of this chapter is to authorize
12 borrowing by the FSM for the benefit of itself and/or any
13 one or more of its constituent States in anticipation of
14 receipt from the United States of America of grant funds
15 under the Compact of Free Association. Any such borrowing
16 may be from any commercially reasonable source whatsoever,
17 and may be accomplished through the issuance of Bonds in
18 any commercially reasonable manner, including, without
19 limitation, Bonds publically offered in the United States
20 of America or elsewhere, Bonds or other evidences of
21 indebtedness issued in private placements, bank borrowings,
22 and other types of financings, so long as the procedures
23 set forth herein are followed. It is necessary and
24 appropriate that the FSM, in cooperation with the State
25 governments of the FSM, use all practical means to enhance

1 the benefits derived from moneys payable to the FSM and the
2 State governments pursuant to the Compact of Free
3 Association by participating in a financing secured by all
4 or a portion of such payments due from the United States of
5 America. This method of financing is in the public
6 interest and serves a public purpose.

7 (2) The securities evidencing this indebtedness may
8 be general or limited obligations of the FSM, entitled
9 'Federated States of Micronesia Compact Financing Bonds,'
10 may bear additional designations indicating the purpose of
11 the financing as the committee may determine, may be issued
12 in one or more series (including refundings), and may be
13 secured by the full faith and credit of the FSM, a pledge
14 of grant funds under the Compact of Free Association,
15 Credit Enhancement, or other moneys, all as specified in
16 the resolution.

17 (3) The costs of issuance of such Bonds, including
18 printing, filing fees with regulatory agencies, such as the
19 United States Securities and Exchange Commission, legal,
20 rating agency, financing advisors', placement agent's,
21 underwriters', Trustee's and similar fees and expenses, and
22 fees or premiums for Credit Enhancement, may also be paid
23 from the proceeds of sales of the Bonds. The costs of
24 issuance may also include prior expenditures incurred in
25 connection with such issuance.

1 (4) In the event Bonds that are general obligations
2 of the FSM are issued in a financing in which the FSM
3 and/or any State does not participate in the proceeds
4 therefrom, the participating State or States shall provide
5 assurance satisfactory to the Secretary that the FSM and/or
6 the non-participating States will be protected from any
7 loss arising in connection with such Bonds before such
8 Bonds may be issued."

9 Section 3. Section 521 of title 58 of the Code of the Federated
10 States of Micronesia, as established by Public Law No. 5-121, is
11 hereby amended to read as follows:

12 "Section 521. Authorization; Validity.

13 (1) The FSM is authorized to issue Bonds for the
14 benefit of itself and/or any one or more of its constituent
15 States in one or more series (including refundings), each
16 series to be authorized by the Secretary acting for the
17 committee, following the adoption of the resolution fixing
18 the terms and conditions of the issue and the form of the
19 Bonds or setting forth procedures for such determination.

20 (2) As specified in the resolution, the Bonds shall
21 be valid general or limited obligations of the FSM, payable
22 from one or more of the following: general funds of the
23 FSM, general funds of any State, Pledged Funds, proceeds of
24 any Credit Enhancement or swap instruments, and proceeds of
25 refunding bonds or other indebtedness. The validity of the

1 Bonds shall not be affected by the validity or regularity
2 of the projects thereby funded. No subsequent
3 appropriation will be necessary by the Congress of the
4 Federated States of Micronesia for moneys for payment of
5 the principal of, or interest or premium, if any, on the
6 Bonds. This chapter and the resolution shall constitute
7 the sole and complete authorization for payment of the
8 principal of, and interest and premium, if any, on the
9 Bonds.

10 (3)(a) If the Bonds constitute general obligations of
11 the FSM, all Bonds issued in certificate form shall contain
12 on the face thereof a statement to the following effect:
13 'This Bond constitutes a general obligation of the
14 Federated States of Micronesia and the full faith and
15 credit of the Federated States of Micronesia is pledged to
16 the payment of principal of, and interest and premium, if
17 any, on this Bond.'

18 (b) If the Bonds constitute limited obligations of
19 the FSM, all Bonds issued in certificate form shall contain
20 on the face thereof a statement to the following effect:
21 'This Bond constitutes a limited obligation of the
22 Federated States of Micronesia, payable solely [state
23 sources of repayment]. Neither the taxing power nor the
24 full faith and credit of the Federated States of Micronesia
25 is pledged to the payment of the principal of, or interest

1 or premium, if any, on this Bond.'"

2 Section 4. Section 522 of title 58 of the Code of the Federated
 3 States of Micronesia, as established by Public Law No. 5-121, is
 4 hereby amended to read as follows:

5 "Section 522. The Pledge of Funds.

6 (1) Upon the recommendation of the committee as set
 7 forth in the resolution or pursuant to procedures
 8 established thereby, the President may pledge all or any
 9 part of the Pledged Funds to secure payment of the Bonds
 10 and any payment to the provider of any Credit Enhancement.
 11 Notwithstanding any provisions of title 55 of the Code of
 12 the Federated States of Micronesia or any other provision
 13 of law, tThe Pledged Compact Funds so pledged shall be paid
 14 directly by the United States of America to the Trustee for
 15 the benefit of the holders of the Bonds. Any pledge
 16 pursuant to the provisions hereof shall be irrevocable and
 17 valid and binding from the time such pledge is made and
 18 shall be deemed a valid obligation of the Pledged Funds,
 19 notwithstanding the provisions of section 220 of title 55
 20 of the Code of the Federated States of Micronesia. The
 21 Pledged Funds so pledged and thereafter received by the
 22 Trustee shall immediately be subject to the lien of such
 23 pledge without any physical delivery thereof or further
 24 act, and the lien of any such pledge shall be valid and
 25 binding as against all parties having claims of any kind in

1 tort, contract, or otherwise against the FSM or any of its
2 political subdivisions, irrespective of whether such
3 parties have notice thereof. Neither the resolution nor
4 the Indenture by which a pledge is created need be filed or
5 recorded in the records of the FSM in order to perfect the
6 lien or give notice of the pledge; PROVIDED that the FSM
7 shall give due written notice of the pledge to the United
8 States of America.

9 (2) The committee shall determine the extent of the
10 pledge, provisions for release of moneys or other assets
11 from the pledge, and other matters relevant thereto, all as
12 evidenced in the resolution or the Indenture; PROVIDED,
13 however, that the committee may not make such a
14 determination nor any recommendation to the President
15 regarding the pledge until it receives from each
16 participating State and, if participating, from the FSM:

17 (a) A copy of a statute or statutes that:

18 (i) Identifies the source and amount of
19 funds to be used to secure the borrowing;

20 (ii) Authorizes, if appropriate, the
21 President to pledge the specified security offered by the
22 participating State, or, if participating, the FSM as
23 security for all financial obligations related to or
24 resulting from the borrowing; and

25 (iii) Authorizes the payment from the

1 specified security offered by the participating State or,
2 if participating, the FSM for the purpose of, and to the
3 extent required, to satisfy all financial obligations
4 attributable to the participating State or, if
5 participating, the FSM related to or resulting from the
6 borrowing;

7 (b) An opinion, addressed to the President, of
8 the Attorney General or the highest legal officer of the
9 participating State or, if participating, the FSM that the
10 statute or statutes provided is or are legally sufficient
11 to meet the requirements set forth in subsection (a),
12 above, and that all other necessary legal steps,
13 administrative or otherwise, have been completed by the
14 participating State or, if participating, the FSM in order
15 to make the specified security available pursuant to
16 section 522(1) or, if applicable, through the Bond
17 Repayment Fund established pursuant to subchapter V of
18 chapter 6 of title 55 of the Code of the Federated States
19 of Micronesia for the purposes contemplated under this
20 chapter; and PROVIDED FURTHER, however, that the pledge to
21 be determined by the committee shall not exceed the sum of
22 the pledges authorized by the participating States or, if
23 participating, the FSM."

24 Section 5. Section 524 of title 58 of the Code of the Federated
25 States of Micronesia, as established by Public Law No. 5-121, is

1 hereby amended to read as follows:

2 "Section 524. Committee.

3 (1) The committee shall consist of five members, who
4 shall have one vote each, including the Secretary, the
5 Director of Administrative Services of Yap, the Director of
6 Finance of Truk, the Director of the Department of Treasury
7 of Pohnpei, and the Director of Finance and Treasury of
8 Kosrae, or their designees. Members of the committee shall
9 serve without compensation. The Secretary or his designee
10 shall be the secretary of the committee and may certify its
11 action. The committee, through the Secretary or his
12 designee, shall render reports from time to time to the
13 Federated Development Authority for informational purposes.

14 (2) Subject to the express provisions of this
15 subchapter II, the committee is authorized to determine,
16 and by resolution shall determine, all matters set forth in
17 this chapter to be determined by the committee; PROVIDED
18 that any payments on the Bonds in any year shall not exceed
19 the Pledged Funds held or to be received by the Trustee in
20 such year/; and PROVIDED FURTHER that the Secretary may
21 take any action authorized in this act, by the resolution
22 or by the Indenture to be taken by him without any further
23 authorization of, or other action by, the committee, unless
24 this act, the resolution or the Indenture expressly
25 indicates that the committee is required to so authorize or

1 otherwise act.

2 (3) The committee may adopt the resolution or any
3 other resolution it may be required to adopt (a) by
4 unanimous written consent, or (b) at a meeting of the
5 committee, by an affirmative vote of the Secretary and not
6 less than ~~four~~ three of its other members. Presence at any
7 meeting of the committee may be either in person or by
8 conference telephone call during which each member can hear
9 each other member present during such proceedings."

10 (4) Notwithstanding the provisions of section 524(1),
11 the actions which are required by this Compact Funds
12 Financing Act to be taken by the committee may be taken by
13 the Secretary and the member or members of the committee
14 from one or more States if such State or States determine
15 to borrow funds directly from a financial institution
16 pursuant to this act, as opposed to a public offering or
17 private placement of Bonds. The actions taken by the
18 Secretary and the member or members representing such State
19 or States shall be deemed to be actions by the committee
20 for all purposes of this act with respect to such
21 borrowing. All resolutions required to be adopted
22 hereunder and all actions required to be taken hereunder
23 shall be deemed to have been taken by the committee if
24 taken by such member or members and the Secretary."

25 Section 6. Section 525 of title 58 of the Code of the Federated

1 States of Micronesia, as established by Public Law No. 5-121, is
2 hereby amended to read as follows:

3 "Section 525. Tax free nature of the Bonds. ~~The~~ Including
4 any Bonds issued pursuant to a resolution adopted pursuant
5 to subsection (4) of section 524 of this subchapter, all
6 Bonds and the repayment of the principal of, and interest
7 and premium, if any, thereon, and original issue discount
8 and market discount, if any, with respect thereto, shall
9 not be subject to any tax, assessment or levy, now or
10 hereafter imposed, of the FSM or any of its political
11 subdivisions, nor shall the FSM or any of its political
12 subdivisions impose any tax, assessment or levy upon the
13 sale or disposition of such Bonds. The Bonds shall be
14 deemed obligations not located within the jurisdiction or
15 legal boundaries of the FSM or any of its political
16 subdivisions for purposes of any national, state or local
17 taxation, assessment or levy."

18 Section 7. Section 531 of title 58 of the Code of the Federated
19 States of Micronesia, as established by Public Law No. 5-121, is
20 hereby amended to read as follows:

21 "Section 531. Resolution.

22 (1) Whenever the committee determines that the sale
23 of any bonds, notes or other evidence of indebtedness is
24 necessary or desirable, it shall adopt a resolution
25 authorizing the issuance and sale of Bonds. The resolution

1 shall authorize and direct the Secretary to arrange for the
 2 preparation of the requisite number of suitable Bonds, in
 3 registered form (unless the resolution directs the Bonds to
 4 be issued in book entry form), and either shall specify as
 5 to such Bonds then to be sold, or shall authorize the
 6 execution of the Indenture or certificates or orders
 7 pursuant to an existing Indenture, which together
 8 shall contain, the following information:

9 (a) Whether the Bonds shall be general or
 10 limited obligations of the FSM;

11 (b) The currency in which any or all of the
 12 Bonds are to be repaid, aggregate number, denominations and
 13 the date of the Bonds to be sold;

14 (c) The dates of maturity, the amount of the
 15 Bonds maturing at each date of maturity, which amounts need
 16 not be equal, and the establishment of any sinking fund
 17 schedule or schedules;

18 (d) Whether the Bonds are to be subject to
 19 optional and/or mandatory redemption prior to maturity,
 20 and, if so, the provisions for such redemption, the manner
 21 of the call thereof, and the price or prices at which the
 22 Bonds shall be subject to redemption;

23 (e) The annual rate, or rates, of interest which
 24 the Bonds to be issued shall bear, which rate or rates may
 25 be determined at the time of the sale of the Bonds and

1 which rate or rates may be fixed or variable in accordance
2 with a formula provided for in the resolution or the
3 Indenture;

4 (f) The interest payment dates;

5 (g) Whether the Bonds shall be issued in
6 certificate form and/or in book entry form; if the Bonds
7 are to be issued in certificate form, the form and language
8 of the Bonds, and, if the Bonds are to be issued in book
9 entry form, whether the book entry system and register
10 shall be maintained by the Secretary, the Trustee, or
11 another agent;

12 (h) Whether the right is reserved to make
13 delivery in the form of temporary or interim bonds,
14 certificates, or receipts, exchangeable for definitive
15 Bonds when executed and available for delivery, and, if
16 such right is reserved, the denominations and form of such
17 temporary securities;

18 (i) Whether the Bonds are to be sold at public
19 sale or negotiated sale and, if a public sale, the method
20 of determining the lowest interest cost bid, and, if a
21 negotiated sale, the lowest purchase price to be received
22 by the FSM in any public offering or private placement of
23 the Bonds;

24 (j) Whether the Bonds shall be in the nature of
25 commercial paper (i.e., issued in large denominations and

1 scheduled to mature in 270 days or less);

2 (k) Whether all or any portion of the Bonds
3 shall be additionally secured by Credit Enhancement and, if
4 so, an authorization of the terms and conditions thereof;

5 (l) The restrictive and financial covenants
6 governing the Bonds, if any;

7 (m) The appointment of the Trustee, and
8 additional fiscal agents, registrars or paying agents, if
9 any;

10 (n) The place of issuance of the Bonds, which
11 may be inside or outside the territorial limits of the FSM;

12 (o) The law governing the Indenture and the
13 Bonds;

14 (p) The designated sub-fund within the Bond
15 Repayment Fund into which all moneys pledged to the payment
16 of the Bonds shall be placed in accordance with subchapter
17 V of chapter 6 of title 55 of the Code of the Federated
18 States of Micronesia;

19 (q) Whether in conjunction with issuance and
20 sale of the Bonds, the FSM shall enter into one or more
21 agreements relating to transfer or mitigation of currency
22 or interest rate risks, minimization of borrowing costs or
23 similar fiscal purposes between the FSM and any counter-
24 parties, commercial or investment banks, dealers or similar
25 parties ('swap instruments'), which may include

1 indemnities; and

2 (r) Any and all other terms and conditions of
3 the Bonds and of the execution, issuance and sale thereof,
4 which shall be consistent with all of the provisions of
5 this chapter or any other applicable law of the FSM or a
6 participating State.

7 (2) The resolution or the Indenture may also specify
8 that the Secretary may determine certain terms as specified
9 in the resolution or the Indenture, including but not
10 limited to the interest rate or rates, maturity or
11 redemption date or dates, and purchase price of the Bonds
12 if the committee determines in the resolution or the
13 Indenture specifies the maximum rate of interest, latest
14 maturity date and lowest purchase price for the Bonds."

15 Section 8. Section 535 of title 58 of the Code of the Federated
16 States of Micronesia, as established by Public Law No. 5-121, is
17 hereby amended to read as follows:

18 "Section 535. Signatures; Seal. Each Bond issued in
19 certificate form shall bear the manual or facsimile
20 signature of the Secretary and an impress or a facsimile of
21 the seal of the FSM. Each such signature shall be that of
22 the person who shall be in office at the date of
23 authorizing the affixing thereof. Bonds so executed, when
24 sold and authenticated by an FSM Fiscal Agent, shall be
25 valid and binding notwithstanding any of such persons

1 having ceased to hold their respective offices before the
2 issuance and delivery of the Bonds."

3 Section 9. Section 564 of title 58 of the Code of the Federated
4 States of Micronesia, as established by Public Law No. 5-121, is
5 hereby amended to read as follows:

6 "Section 564. Waiver of sovereign immunity. The FSM
7 waives, for the benefit of the holders of the Bonds, the
8 Trustee acting on their behalf, any agent or underwriter
9 acting with respect to the Bonds, or the provider of any
10 Credit Enhancement, its sovereign immunity from suit before
11 the Federal court of the United States in the district in
12 which the principal office of the Trustee is located in any
13 action brought by the holders of the Bonds, the Trustee
14 acting on their behalf, or such provider of Credit
15 Enhancement arising out of the issuance and sale of the
16 Bonds or performance under the Bonds or the Indenture.
17 Except as expressly so waived, nothing in this chapter,
18 including, but not limited to, sections 561 and 564 hereof,
19 is intended to be, nor shall be construed as a waiver,
20 implicit or explicit, of the FSM's sovereign immunity from
21 suit in the courts of the United States of America."

22 Section 10. Section 625 of title 55 of the Code of the
23 Federated States of Micronesia, as established by Public Law No.
24 5-121, is hereby amended to read as follows:

25 "Section 625. Purpose. The purpose of the Bond Repayment

1 Fund is to provide for the deposit and disbursement of
2 funds pledged by a State government and/or the National
3 Government which participates in a Borrowing if such funds
4 are not otherwise deposited pursuant to section 522(1) of
5 chapter 5 of title 58 of the Code of the Federated States
6 of Micronesia."

7 Section 11. Section 627 of title 55 of the Code of the
8 Federated States of Micronesia, as established by Public Law No.
9 5-121, is hereby amended to read as follows:

10 "Section 627. Deposits. All funds pledged by and
11 received, other than those funds deposited with a Trustee
12 pursuant to section 522(1) of chapter 5 of title 58 of the
13 Code of the Federated States of Micronesia, from a State
14 government or from the National Government for the purpose
15 of securing its financial obligations related to or
16 resulting from a Borrowing shall be deposited into the
17 sub-fund of the Bond Repayment Fund established in
18 connection with that Borrowing. Any unexpended moneys in a
19 sub-fund of the Bond Repayment Fund shall not revert to the
20 General Fund at the end of the fiscal year."

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C. B. No. 5-429

1 Section 12. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its becoming
3 law without such approval.

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5 Date: 3/28/89

Introduced by: Claude H. Phillip
Claude H. Phillip
(by request)

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