
A BILL FOR AN ACT

Establishing the FSM Public Debt Management Act by further amending title 55 of the Code of the Federated States of Micronesia (Annotated), by inserting a new chapter 15 thereof, providing for the procedures, terms and conditions of government borrowing, including the terms of on-lending of funds, issuance of sovereign guarantee, creating the Public Debt Management Advisory Group, and for other purposes.

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

1 Section 1. Title 55 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting new chapter
3 15, entitled, "Public Debt Management".

4 Section 2. Title 55 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 1501 to chapter 15 to read as follows:

7 "Section 1501. Title. This Act shall be known and
8 cited as the Public Debt Management Act of 2016."

9 Section 3. Title 55 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 1502 to chapter 15 to read as follows:

12 "Section 1502. Definition of terms.

13 The following terms used in this Act shall have their
14 corresponding definition unless the context expressly
15 indicates otherwise:

16 (a) Advisory Committee means the Debt Management
17 Advisory Committee.

1 (b) Borrower means any recipient of an on-lent
2 loan or a sovereign guarantee or other borrowing from
3 the National Government.

4 (c) Congress means the Congress of the Federated
5 States of Micronesia.

6 (d) Government guarantee means a commitment by
7 the Government to repay the financial liabilities of
8 another entity should that entity default;

9 (e) Government on-lending means a loan issued by
10 or on behalf of the Government to an entity in the
11 private or public sector, using public money or funded
12 by Government borrowing.

13 (f) Loan Reserve Account means an account where
14 surplus loan repayments are placed to protect against
15 future shocks which may impact the short-term capacity
16 to make repayments;

17 (g) Public borrowing means borrowing by the
18 National Government, its agency, or a legal entity owned
19 by the National Government that include the contracting
20 or guaranteeing of domestic or foreign debt through
21 loans, financial leasing, on-lending or any other type
22 of borrowing, including concessional and non-
23 concessional borrowing, whatever the source;

24 (h) Project means a group of related activities
25 that have a common aim which are financed, or part

1 financed by a loan and which constitute a material
2 portion of the loan (25% or greater).

3 (i) Secretary means the Secretary of the
4 Department of Finance and Administration of the National
5 Government of the Federated States of Micronesia.”

6 Section 4. Title 55 of the Code of the Federated States of
7 Micronesia (Annotated), is hereby amended by inserting a new
8 section 1503 to chapter 15 to read as follows:

9 “Section 1503. Purpose of the Public Debt Management
10 Act.

11 (a) The purpose of this Act is to promote sound debt
12 management to ensure that the Government’s financing
13 needs and its payment obligations are met at the lowest
14 possible cost with the lowest possible risk over the
15 medium to long term in accordance with the culture and
16 practices of The Federated States of Micronesia.

17 (b) In achieving the purpose stated in this section,
18 the Government must adhere to the following principles:

19 (1) projects and activities financed by loans are
20 able to demonstrate quantifiable positive returns and
21 shall not be for the purposes of supplementing recurrent
22 budget expenditure or for reasons of speculation;

23 (2) Loans shall only be considered once all other
24 avenues of financing have been considered and found
25 inadequate;

1 (3) Total debt shall be maintained at prudent
2 levels so as to provide a buffer against factors that
3 may impact adversely on total net worth in the future;
4 and

5 (4) Loans shall, where possible, be denominated
6 in USD.

7 (c) The Government may depart from the principles if:

8 (1) The departure from those principles is
9 temporary; and

10 (2) The nature of the exceptional circumstances
11 are approved by Congress."

12 Section 5. Title 55 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 1504 to chapter 15 to read as follows:

15 "Section 1504. Authority of Congress over sovereign
16 debt.

17 In accordance with article IX section 3 of the
18 Constitution of the Federated States of Micronesia, the
19 Congress of the Federated States of Micronesia has the
20 authority to borrow money on the public credit. By this
21 Act, the Secretary of the Department of Finance is
22 delegated the authority to execute debt instruments on
23 behalf of the Federated States of Micronesia subject to
24 the parameters set forth herein. The debt instrument
25 contemplated in this section includes a direct loan, a

1 sovereign guarantee, or other forms of transaction that
2 legally constitute a financial obligation on the part of
3 the National Government, either direct or indirect,
4 primary or secondary, absolute or contingent.”

5 Section 6. Title 55 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 1505 to chapter 15 to read as follows:

8 “Section 1505. On-lending of funds.

9 (a) On application by the State, the Secretary, after
10 consultation with the Advisory Group, may approve any
11 Government on-lending that meets the prescribed terms
12 and conditions the purposes of which have been approved
13 by the President and ratified by Congress.

14 (b) The terms and conditions for on-lending shall be
15 specified in the on-lending agreement to be signed by
16 the parties, including any additional fees or charges
17 that may be imposed as part of the cost and risk of
18 administering and processing the on-lending.”

19 Section 7. Title 55 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by inserting a new
21 section 1506 to chapter 15 thereof to read as follows:

22 “Section 1506. Sovereign Guarantee.

23 The National Government may issue a sovereign guarantee
24 to secure borrowing by the State. The Secretary shall
25 provide for the procedures governing the issuance of a

1 sovereign guarantee. The following rules apply to a
2 sovereign guarantee:

3 (a) The Secretary may issue a sovereign guarantee only
4 if

5 (1) Congress approves the guarantee; and

6 (2) provision has been made-

7 (A) for a loan reserve account to secure the
8 loan repayment or an indemnity to the National
9 Government;

10 (B) to assess and monitor the risks
11 involved;

12 (C) to ensure that any part of the loan
13 which cannot be applied for such purpose shall either
14 not be drawn or shall be applied to such other purposes
15 as the Secretary approves and is within the provisions
16 of the loan agreement;

17 (D) for charging on the income, revenue, and
18 assets of the borrower, or any other income which may be
19 made available for the purpose of loan repayment; and

20 (E) for the raising or securing the raising
21 of sufficient money to meet all the charges referred to
22 in this subsection.

23 (d) The Secretary may impose such fees and charges on
24 a sovereign guarantee as deemed necessary to cover the
25 cost of administering it.

1 (c) Any sum required for fulfilling a sovereign
2 guarantee under this section shall be charged on the
3 asset or revenue of the borrower.”

4 Section 8. Title 55 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 1507 chapter 15 to read as follows:

7 “Section 1507. Restrictions and conditions of
8 borrowing.

9 (a) The Secretary shall not borrow money except in
10 accordance with the provisions of this Act.

11 (b) The Secretary shall not borrow for budget deficits
12 in the current fiscal year where there is no express
13 authorization by Congress. Borrowing may be considered
14 only for projects and activities that are able to
15 provide a demonstrable return through either increasing
16 the net revenue to the government or in decreasing net
17 costs.

18 (c) A cap on total borrowing shall be determined using
19 a debt servicing to domestic revenue ratio, the level of
20 which shall be set in the Debt Management Policy of the
21 National Government. Borrowing may not exceed this cap
22 except for the exceptional circumstances provisions in
23 subsection (d).

24 (d) Subsection (c) does not apply where short-term
25 borrowing is necessary in order to deal with exceptional

1 circumstances, as determined by the President. This
2 subsection shall be governed by the following
3 principles:

4 (1) The Secretary shall exhaust all efforts to
5 remedy the financial situation using the available
6 domestic financial resources, including the use of
7 reprogramming authority where applicable.

8 (2) The President may also tap on all available
9 resources consisting of bilateral and multilateral
10 assistance made pursuant to treaties with other nations.

11 (e) If short-term borrowing due to exceptional
12 circumstances is required, the President shall present
13 to Congress:

14 (1) the level of borrowing required;

15 (2) the approach the Government will take to
16 return to the principles outlined in this Act; and

17 (3) the period of time the Government expects to
18 take to return to said principles.

19 (f) The Secretary shall establish a loan reserve
20 account for all new lending, the target for which is
21 identified in the medium term debt management strategy.

22 (g) Approval of a borrowing through a resolution by
23 Congress legally binds the National Government."

24 Section 9. Title 55 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 1508 to chapter 15 to read as follows:

2 "Section 1508. Responsibilities of the Secretary.

3 The Secretary shall

4 (a) Develop and implement a debt management policy
5 that implements the principles established in subsection
6 (b) of section 1503;

7 (b) Provide to the President and the Congress the debt
8 management policy referred to in subsection 0;

9 (c) Supervise and monitor Government finances and
10 coordinate inter-governmental financial and fiscal
11 resources through the combined application of this Act
12 and the Financial Management Act;

13 (d) Ensure appropriate financial management review of
14 every borrowing proposal and determine the fiscal and
15 economic implications prior to its transmittal to
16 Congress for approval;

17 (e) Initiate or review a borrowing proposal as
18 directed by the President;

19 (f) Recommend to the President suitable terms and
20 conditions of borrowing taking into consideration the
21 relevant financial and operational risks involved;

22 (g) Establish standards of good governance on public
23 debt management and integrate the respective roles of
24 the government departments or agencies comprising the
25 debt management Advisory Committee;

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- 1 (h) Establish internal control mechanisms; and
2 (i) Provide to the President the information required
3 for the presentation of reports to Congress as outlined
4 in this Act."

5 Section 10. Title 55 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 1509 to chapter 15 to read as follows:

8 "Section 1509. Regulation.

9 The Secretary shall exercise the powers and
10 responsibilities under this Act through the issuance of
11 regulation in accordance with Title 17 of the Code of
12 the Federated States of Micronesia."

13 Section 11. Title 55 of the Code of the Federated States of
14 Micronesia (Annotated), is hereby amended by inserting a new
15 section 1510 to chapter 15 to read as follows:

16 "Section 1510. Debt Management Advisory Committee.

17 The following shall comprise the Debt Management
18 Advisory Committee, with the Department of Finance as
19 its chair:

20 (a) Secretary of the Department of Finance and
21 Administration, or designee;

22 (b) Secretary of the Department of Justice, or
23 designee;

24 (c) Secretary of the Department of Foreign Affairs, or
25 designee; and

1 A rotating member being the Secretary, or designee, of a
2 line department that has functional oversight over an
3 item that is proposed for consideration.”

4 Section 12. Title 55 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 1511 to chapter 15 to read as follows:

7 “Section 1511. Responsibilities of the Advisory
8 Committee.

9 The following are the responsibilities of the Advisory
10 Committee:

11 (a) Provide the role of coordination among its members
12 and implement a sharing of information mechanism
13 relevant to public debt management;

14 (b) Provide technical discussion on every proposed
15 borrowing, in particular, assessment of the various
16 risks involved, terms and conditions of borrowing, and
17 debt-servicing strategy;

18 (c) Develop and maintain a medium term debt management
19 strategy for consideration by the President;

20 (d) Develop and utilize a project appraisal and
21 approval framework for the assessment of loan financed
22 project and activity proposals and to provide subsequent
23 advice to the Secretary;

24 (e) Undertake a periodic Debt Sustainability Analysis
25 to support the medium term debt strategy and render its

1 opinion or advice thereon to the Secretary; and

2 (f) Undertake an annual risk assessment on the loan
3 portfolio in its entirety and render its opinion or
4 advice thereon to the Secretary."

5 Section 13, Title 55 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 1512 to Chapter 15 to read as follows:

8 "Section 1512. Reporting

9 The following constitute the reporting requirements in
10 addition to reporting requirements already required
11 under the Act:

12 (a) Borrowers will provide the Secretary of Finance
13 and Administration with progress reports on loan funded
14 activities within 14 days of the completion of each
15 quarter;

16 (b) Borrowers will submit a completion report, which
17 shall include a report on outcome effectiveness, to the
18 Secretary of Finance and Administration at the either
19 the completion of the loan funded activity or at the
20 completion of the loan repayment, whichever is first;

21 (c) The Secretary of Finance shall include a debt
22 summary in the unaudited financial statement of the
23 National Government that is provided to the President
24 and Congress no later than January 31 of each year.

25 (e) The Secretary of the Department of Finance &

1 Administration will report to the President every 6
2 months as to the balance and sufficiency of trust
3 accounts linked to loans and guarantees;
4 The Secretary of the Department of Finance &
5 Administration shall include a statement as to the
6 sufficiency on trust accounts linked to loans as a part
7 of the annual audited financial statement."

8 Section 14. Title 55 of the Code of the Federated States of
9 Micronesia (Annotated), is hereby amended by inserting a new
10 section 1513 to chapter 15 to read as follows:

11 "Section 1513. Audits.
12 The FSM Public Auditor shall have authority to audit any
13 borrowing or sovereign guarantee under this Act."

14 Section 15. This act shall become law upon approval by the
15 President of the Federated States of Micronesia or upon its
16 becoming law without such approval.

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18 Date: 5/22/19 Introduced by: /s/ Florencio S. Harper
19 Florencio S. Harper
20 (by request)
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