
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), as amended, by creating a new chapter 15, 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), as amended, is hereby further amended by
3 creating a chapter 15 thereof, entitled, "Public Debt Management".

4 Section 2. Title 55 of the Code of the Federated States of
5 Micronesia (Annotated), as amended, is hereby further amended by
6 inserting a new 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), as amended, is hereby further amended by
11 inserting a new 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), as amended, is hereby further amended by
 8 inserting a new 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
 12 debt management to ensure that the Government’s
 13 financing needs and its payment obligations are met at
 14 the lowest possible cost with the lowest possible risk
 15 over the medium to long term in accordance with the
 16 culture and practices of The Federated States of
 17 Micronesia.

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

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

25 (2) Loans shall only be considered once all other

1 avenues of financing have been considered and found
 2 inadequate;

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

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

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

10 (1) The departure from those principles is temporary;
 11 and

12 (2) The nature of the exceptional circumstances are
 13 approved by Congress."

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

17 "Section 1504. Authority of Congress over sovereign
 18 debt.

19 In accordance with article IX section 3 of the
 20 Constitution of the Federated States of Micronesia, the
 21 Congress of the Federated States of Micronesia has the
 22 authority to borrow money on the public credit. By this
 23 Act, the Secretary of the Department of Finance is
 24 delegated the authority to execute debt instruments on
 25 behalf of the Federated States of Micronesia subject to

1 the parameters set forth herein. The debt instrument
 2 contemplated in this section includes a direct loan, a
 3 sovereign guarantee, or other forms of transaction that
 4 legally constitute a financial obligation on the part of
 5 the National Government, either direct or indirect,
 6 primary or secondary, absolute or contingent.”

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

10 “Section 1505. On-lending of funds.

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

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

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

24 “Section 1506. Sovereign Guarantee.

25 The National Government may issue a sovereign guarantee

1 to secure borrowing by the State. The Secretary shall
 2 provide for the procedures governing the issuance of a
 3 sovereign guarantee. The following rules apply to a
 4 sovereign guarantee:

5 (a) The Secretary may issue a sovereign guarantee
 6 only if:

7 (1) Congress approves the guarantee; and

8 (2) provision has been made-

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

12 (B) to assess and monitor the risks
 13 involved;

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

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

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

25 (b) The Secretary may impose such fees and

1 charges on a sovereign guarantee as deemed necessary to
 2 cover the cost of administering it.

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

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

9 "Section 1507. Restrictions and conditions of
 10 borrowing.

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

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

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

1 (d) Subsection (c) does not apply where short-
2 term borrowing is necessary in order to deal with
3 exceptional circumstances, as determined by the
4 President. This subsection shall be governed by the
5 following principles:

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

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

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

16 (1) the level of borrowing required;

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

19 (3) the period of time the Government expects to take
20 to return to said principles.

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

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

1 Section 9. Title 55 of the Code of the Federated States of
 2 Micronesia (Annotated), as amended, is hereby further amended by
 3 inserting a new section 1508 to chapter 15, to read as follows:

4 "Section 1508. Responsibilities of the Secretary.

5 The Secretary shall:

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

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

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

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

19 (e) Initiate or review a borrowing proposal as
 20 directed by the President;

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

24 (g) Establish standards of good governance on
 25 public debt management and integrate the respective

1 roles of the government departments or agencies
 2 comprising the debt management Advisory Committee;
 3 (h) Establish internal control mechanisms; and
 4 (i) Provide to the President the information
 5 required for the presentation of reports to Congress as
 6 outlined in this Act."

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

10 "Section 1509. Regulation.
 11 The Secretary shall exercise the powers and
 12 responsibilities under this Act through the issuance of
 13 regulation in accordance with Title 17 of the Code of
 14 the Federated States of Micronesia."

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

18 "Section 1510. Debt Management Advisory Committee.
 19 The following shall comprise the Debt Management
 20 Advisory Committee, with the Department of Finance as
 21 its chair:

22 (a) Secretary of the Department of Finance and
 23 Administration, or designee;

24 (b) Secretary of the Department of Justice, or
 25 designee;

1 (c) Secretary of the Department of Foreign
 2 Affairs, or designee; and

3 (d) A rotating member being the Secretary, or
 4 designee, of a line department that has functional
 5 oversight over an item that is proposed for
 6 consideration."

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

10 "Section 1511. Responsibilities of the Advisory
 11 Committee.

12 The following are the responsibilities of the Advisory
 13 Committee:

14 (a) Provide the role of coordination among its
 15 members and implement a sharing of information mechanism
 16 relevant to public debt management;

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

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

23 (d) Develop and utilize a project appraisal and
 24 approval framework for the assessment of loan financed
 25 project and activity proposals and to provide subsequent

1 advice to the Secretary;

2 (e) Undertake a periodic Debt Sustainability
 3 Analysis to support the medium term debt strategy and
 4 render its opinion or advice thereon to the Secretary;
 5 and

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

9 Section 13. Title 55 of the Code of the Federated States of
 10 Micronesia (Annotated), as amended, is hereby further amended by
 11 inserting a new section 1512 to Chapter 15, to read as follows:

12 "Section 1512. Reporting
 13 The following constitute the reporting requirements in
 14 addition to reporting requirements already required
 15 under the Act:

16 (a) Borrowers will provide the Secretary of
 17 Finance and Administration with progress reports on loan
 18 funded activities within 14 days of the completion of
 19 each quarter;

20 (b) Borrowers will submit a completion report,
 21 which shall include a report on outcome effectiveness,
 22 to the Secretary of Finance and Administration at the
 23 either the completion of the loan funded activity or at
 24 the completion of the loan repayment, whichever is
 25 first;

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

5 (d) The Secretary of the Department of Finance &
6 Administration will report to the President every 6
7 months as to the balance and sufficiency of trust
8 accounts linked to loans and guarantees;

9 (e) The Secretary of the Department of Finance &
10 Administration shall include a statement as to the
11 sufficiency on trust accounts linked to loans as a part
12 of the annual audited financial statement."

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

16 "Section 1513. Audits.
17 The FSM Public Auditor shall have authority to audit any
18 borrowing or sovereign guarantee under this Act."

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

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23 Date: 5/24/17

Introduced by: /s/ for Joseph J. Urusemal
 Florencio S. Harper
 (by request)

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