

TWELFTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 2001

CONGRESSIONAL BILL NO. 12-39, C.D.1

AN ACT

To authorize the FSM to borrow approximately \$8,019,000 from the Asian Development Bank and relend approximately \$6,504,169 to the States for the purpose of funding basic social services projects, to authorize future appropriation of up to \$8,019,000 for repaying the amounts borrowed; to further amend title 55 of the Code of the FSM, as amended, by enacting a new subchapter X to chapter 6 thereof to establish an External Debt Management Fund; to further amend title 52 of the Code of the FSM, as amended, by repealing section 508 thereof in its entirety and transferring funds presently in the National Government Employee's Early Retirement Fund to the new External Debt Management Fund; and for other purposes.

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

1 Section 1. Authorization. The President (the "President") of the
2 Federated States of Micronesia (the "FSM") is hereby authorized to
3 borrow money from the Asian Development Bank (the "Bank") and relend a
4 portion thereof to the States as provided hereinafter. The borrowing
5 shall be by way of a project loan.

6 Section 2. Amounts.

7 (1) The total amount to be borrowed from the Bank is the
8 equivalent in SDRs (Special Drawing Rights) of the Bank, as of such
9 point in time as the Bank and the President shall agree, of up to
10 \$8,019,000.

11 (2) From the proceeds of that loan, the National Government will
12 relend to the State Governments, or retain for its own use, the
13 following approximate amounts, subject to the rate of exchange of the
14 SDRs at the time of disbursement:

15 (a) Chuuk.....\$ 2,983,523

| | | | |
|---|------------------|----|-----------|
| 1 | (b) Kosrae..... | \$ | 613,521 |
| 2 | (c) Pohnpei..... | | 1,914,311 |
| 3 | (d) Yap..... | | 992,815 |
| 4 | (e) FSM..... | | 1,514,830 |
| 5 | (f) Total..... | | 8,019,000 |

6 Section 3. Financial Terms. The loan from the Bank and each of
7 the loans thereunder to the States shall:

8 (1) have an 8 year grace period for the repayment of principal;

9 (2) bear interest at the rate of 1% per annum during the grace
10 period and 1.5% thereafter; and

11 (3) provide for the repayment of principal over a 24-year period
12 commencing at the end of the grace period.

13 Section 4. Use of Proceeds. The loans will be for the purpose of
14 funding basic social services in the FSM. Loan proceeds may be used
15 only as provided in the loan agreements between the FSM and the Bank.

16 Section 5. Relending Conditions.

17 (1) Relending of proceeds to a State shall be by way of Project
18 Relending Agreements between the National Government and the State
19 which taken together:

20 (a) place the foreign exchange risk on the State with
21 respect to disbursement of funds lent to the State and until the
22 estimation and transfer process called for in subsection (c) below on
23 the National Government thereafter;

24 (b) amend provisions relating to the Trust Account created

1 in the name of the State pursuant to the existing Financing Agreement
2 between the National Government and the State with respect to the ADB
3 Public Sector Reform Program so as to permit and require that Trust
4 Account to be used, in conjunction with the External Debt Management
5 Fund created by this act, for repayment of not just the Public Sector
6 Reform Loan but also the Basic Social Services Loan from the National
7 Government to the State and possibly other loans to the State;

8 (c) provide for annual estimation of the amount
9 conservatively estimated to be needed as a sinking fund for repayment
10 of all loan proceeds advanced to the State since the last estimate,
11 followed by transfer of the amount so estimated from the Trust Account
12 to the External Debt Management Fund created by this act;

13 (d) provide for disbursement to the State of funds
14 remaining in the Trust Account after five years if and when all loans
15 to be repaid from the Trust Account have been disbursed;

16 (e) provide that from and after completion of the
17 estimation and possible disbursement process called for in subsection
18 (c) of this section, the National Government shall bear the risk that
19 funds in the Trust Account and the External Debt Management Fund may
20 not be sufficient to repay all the loans intended to be repaid
21 therefrom and the State shall be released from liability for any such
22 shortfall except as otherwise expressly provided in the Relending
23 Agreements;

24 (f) contain such other provisions as the President or the

1 Bank may require; and

2 (g) are specifically and properly authorized by the
3 Legislature of the State.

4 (2) Except as provided herein or in the loan agreements with the
5 Bank, the form of the Relending Agreement with respect to a particular
6 loan from the Bank shall be the same for all States so as to assure
7 that no State is preferred over any other State.

8 Section 6. Delegations.

9 (1) While the President shall remain involved and informed, he
10 may delegate:

11 (a) to the Secretary of the Department of Finance and
12 Administration the authority to negotiate the loan agreements with the
13 Bank, the Relending Agreements with the States, and other relevant
14 documents;

15 (b) to the Secretary of the Department of Finance and
16 Administration the authority to sign any such documents on behalf of
17 the National Government;

18 (c) to the FSM's representative on the Board of the Bank in
19 Manila the authority to sign agreements between the Bank and the
20 National Government on behalf of the FSM; and

21 (d) to such officials as the President deems appropriate
22 the authority to administer various portions of the programs and
23 projects funded by the loan from the Bank.

24 (2) The right to delegate the performance of an act to a person

1 includes the right to ratify the performance of that act by that person
2 after the fact.

3 Section 7. Appropriation of Loan Proceeds.

4 (1) If and to the extent that such an appropriation is
5 necessary, all sums directly or indirectly received as proceeds of the
6 project loan from the Bank are hereby appropriated for the purpose of
7 funding basic social services projects to the extent and in the manner
8 specified in the loan agreement with the Bank. Such funds may not be
9 obligated until received from or made available by the Bank.

10 (2) If and to the extent that such an appropriation is
11 necessary, all sums directly or indirectly received as proceeds of the
12 loan from the Bank and intended for the use of a State are hereby
13 appropriated for the purpose of funding projects in that State to the
14 extent and in the manner specified in the loan agreement with the Bank.
15 Such funds may not be obligated until they have been received from or
16 made available by the Bank and until their use has been further
17 specified through appropriation legislation in the State.

18 Section 8. Repayment Authorization. The sum of up to
19 \$8,019,000 is hereby authorized to be appropriated in future years when
20 and as necessary for repaying the loans from the Bank if and to the
21 extent that the State Trust Accounts referred to in section 5 of this
22 act and the External Debt Management Fund created hereinafter are
23 insufficient to repay the loan.

24 Section 9. External Debt Management Fund. Title 55 of the Code

1 of the Federated State of Micronesia, as amended, is hereby further
2 amended by enacting a new subchapter X of chapter 6 entitled "External
3 Debt Management Fund".

4 Section 10. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by enacting a new
6 section 667 of subchapter X of chapter 6 to read as follows:

7 "Section 667. Establishment. There is hereby created and
8 established an External Debt Management Fund, separate from
9 the General Fund of the FSM and all other funds."

10 Section 11. Title 55 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by enacting a new
12 section 668 of subchapter X of chapter 6 to read as follows:

13 "Section 668. Purpose. The purpose of the Fund is to
14 provide an ongoing fund for the receipt and disbursement of
15 funds associated with the loans from the Asian Development
16 Bank (referred to as the 'Bank' in this subchapter) with
17 respect to the Basic Social Services Project, the Public
18 Sector Reform Program, and any other loan from an external
19 lender if the National Government authorizing legislation for
20 that loan provides that the loan is to be repaid out of the
21 Fund, all said loans hereinafter referred to collectively as
22 the 'subject_loans' and individually as a 'subject loan'."

23 Section 12. Title 55 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by enacting a new

1 section 669 of subchapter X of chapter 6 to read as follows:

2 "Section 669. Accounts within the Fund. The Fund shall
3 contain the following accounts:

4 (1) a disbursing account for each of the subject loans
5 (except the Public Sector Reform Program loan, as to which
6 all disbursing of loan proceeds has been completed) to
7 receive and disburse the portion of the proceeds of that loan
8 intended for the use of the National Government;

9 (2) a master repayment account for use by the National
10 Government of its own share of the subject loans and in
11 consolidating repayments from the State repayment accounts;

12 (3) a repayment account for each State for use by the
13 National Government on behalf of the State in reserving funds
14 for repayment of the State's share of the subject loans; and

15 (4) such other accounts as may be deemed appropriate."

16 Section 13. Title 55 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by enacting a new
18 section 670 of subchapter X of chapter 6 to read as follows:

19 "Section 670. Deposits.

20 (1) Funds received pursuant to the loan agreements between
21 the Federated States of Micronesia and the external lender
22 with respect to a subject loan shall be deposited in the
23 appropriate disbursing account.

24 (2) Funds appropriated by the National Government for

1 execution of the programs and projects of a subject loan
2 shall be deposited in the appropriate disbursing account.

3 (3) Funds received from a State or from a trust account
4 administered by the National Government on behalf of a State
5 for repayment of the State's portion of a subject loan shall
6 be deposited in the State's repayment account. (4) Funds
7 appropriated by the National Government for repayment of a
8 subject loan shall be deposited in the master repayment
9 account.

10 (5) Funds received from any other source associated with
11 the subject loans shall be deposited in the appropriate
12 account.

13 (6) Investment returns or losses shall remain with the
14 account earning or suffering them."

15 Section 14. Title 55 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by enacting a new
17 section 671 of subchapter X of chapter 6 to read as follows:

18 "Section 671. Disbursements.

19 (1) The Secretary of the Department of Finance and
20 Administration is hereby authorized to make the following
21 disbursements of moneys available in the Fund, without
22 further authorization or appropriation by the Congress of the
23 Federated States of Micronesia, for the following and no
24 other purposes:

1 (a) execution of the programs and projects of the
2 subject loans to the extent and in the manner called for in
3 the applicable loan agreements or appropriating legislation
4 applicable to the subject loan associated with that
5 disbursing account;

6 (b) from a disbursing account to the master repayment
7 account with respect to any surplus funds remaining after the
8 programs and projects associated with that disbursement
9 account have been executed;

10 (c) from the master repayment account for repayment of
11 a subject loan in accordance with its terms;

12 (d) from a State repayment account for repayment of a
13 subject loan in accordance with its terms;

14 (e) from a State repayment account to the State as
15 called for by written agreement between the State and the
16 National Government; or

17 (f) as otherwise required by law.

18 (2) Unexpended moneys in the Fund shall not revert to the
19 General Fund nor lapse at the end of the fiscal year."

20 Section 15. Title 55 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by enacting a new
22 section 672 of subchapter X of chapter 6 to read as follows:

23 "Section 672. Administration. The Fund shall be
24 administered by the Secretary of the Department of Finance

1 and Administration, who shall administer the fund in
2 accordance with the applicable loan agreements, financing or
3 relending agreements, law, generally accepted accounting
4 standards, and sound financial practices for the effectuation
5 and implementation of the provisions of this subchapter."

6 Section 16. Title 55 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by enacting a new
8 section 673 of subchapter X of chapter 6 to read as follows:

9 "Section 673. Annual Report. The President of the Federated
10 States of Micronesia, or his designee, shall report to the
11 Congress of the Federated States of Micronesia and to the
12 Governor of each participating State on the status of the
13 Fund at the close of each fiscal year."

14 Section 17. Termination of Retirement Fund. Title 52 of the Code
15 of the Federated States of Micronesia, as amended, is hereby further
16 amended by repealing section 508 thereof in its entirety. Funds
17 currently in the National Government Employee's Early Retirement Fund
18 created by that section 508 shall be deposited in the master repayment
19 account of the External Debt Management Fund created by this act.

20 Section 18. Allotment and management of funds and lapse date.

21 (1) All funds appropriated by this act shall be allotted,
22 managed, administered and accounted for in accordance with applicable
23 law, including, but not limited to, the Financial Management Act of
24 1979. The allottee shall be responsible for insuring that these funds,

1 or so much thereof as may be necessary, are used solely for the purpose
2 specified in this act and that no obligations are incurred in excess of
3 the sum appropriated.

4 (2) The authority of the allottee to obligate funds appropriated
5 by this act shall not lapse.

6 Section 19. This act shall become law upon approval by the
7 President of the Federated States of Micronesia or upon its becoming
8 law without such approval.

9

10

11

December 3, 2001

12

13

14

15

/s/ Leo A. Falcam

Leo A. Falcam

President

Federated States of Micronesia

16