

Public Law No. 5 - 1 2 1

FIFTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 1987

CONGRESSIONAL BILL No. 5-116, C.D.1,
C.D.2, C.D.3

AN ACT

To create a new title 58 of the Code of the Federated States of Micronesia by adding a new chapter 5 and to further amend title 55 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-16 and 5-88, by adding a new subchapter V to chapter 6 for the purpose of authorizing borrowing by the Federated States of Micronesia in anticipation of receipt from the United States of America of grant funds under the Compact of Free Association, with the security for such borrowing being a pledge of all or a portion of such grant funds, creating a Bond Repayment Fund, and for other purposes.

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

1 Section 1. Title 58 of the Code of the Federated States of
2 Micronesia is hereby created by adding a new chapter 5, entitled
3 "Compact Funds Financing," with subchapters I, entitled "General";
4 II, entitled "Authorization"; III, entitled "Issuance of Bonds";
5 IV, entitled "Payment, Cancellation and Redemption of Bonds";
6 V, entitled "FSM Fiscal Agents"; and VI, entitled "Legal
7 Matters."

8 Section 2. Title 58 of the Code of the Federated States of
9 Micronesia is hereby created by adding a new section 511 of
10 subchapter I of chapter 5 to read as follows:

11 "Section 511. Short title. This chapter shall be known
12 as the Compact Funds Financing Act."

13 Section 3. Title 58 of the Code of the Federated States of
14 Micronesia is hereby created by adding a new section 512 of
15 subchapter I of chapter 5 to read as follows:

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

19 (1) 'Bond' or 'Bonds' means any bond, note or
20 other evidence of indebtedness issued under this chapter;

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

- 1 (3) 'Committee' means the committee referred to in
2 section 524 of this chapter;
- 3 (4) 'Compact of Free Association' means the
4 Compact of Free Association between the Federated States
5 of Micronesia and the United States of America;
- 6 (5) 'Credit Enhancement' means bond insurance, letters
7 of credit, or similar credit enhancement instruments;
- 8 (6) 'Federated Development Authority' means the FSM
9 instrumentality of that name;
- 10 (7) 'FSM' means the Federated States of Micronesia;
- 11 (8) 'FSM Fiscal Agent' means any fiscal agent
12 selected and acting pursuant to subchapter V of this chapter;
- 13 (9) 'Indenture' means any indenture, agreement or
14 other instrument pursuant to which the Bonds shall be
15 issued, as approved by the resolution;
- 16 (10) 'Pledged Compact Funds' means the amounts payable
17 under the Compact of Free Association which the President
18 of the Federated States of Micronesia is authorized to
19 pledge to the payment of the Bonds following legislative
20 action by the FSM and its constituent States and made
21 available for expenditure through the Bond Repayment
22 Fund;
- 23 (11) 'Pledged Funds' means the Pledged Compact Funds
24 and/or other pledged moneys, and investment earnings thereon;
- 25 (12) 'Resolution' means the resolution or resolutions

1 of the committee authorizing the issuance and sale of the
2 Bonds in one or more series, on the terms and conditions,
3 and substantially in the form, approved therein;

4 (13) 'Secretary' means the Secretary of Finance of the
5 Federated States of Micronesia;

6 (14) 'State' means any constituent State of the
7 Federated States of Micronesia;

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

10 (16) 'Trustee' means the FSM Fiscal Agent appointed as
11 such in the Indenture and any successors or assigns, who
12 will act as such for the benefit of the holders of the
13 Bonds."

14 Section 4. Title 58 of the Code of the Federated States of
15 Micronesia is hereby created by adding a new section 513 of
16 subchapter I of chapter 5 to read as follows:

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

18 (1) The purpose of this chapter is to authorize
19 borrowing by the FSM for the benefit of itself and/or
20 any one or more of its constituent States in anticipation of
21 receipt from the United States of America of grant funds
22 under the Compact of Free Association. It is necessary and
23 appropriate that the FSM, in cooperation with the State
24 governments of the FSM, use all practical means to enhance
25 the benefits derived from moneys payable to the FSM and the

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

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

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

25 (4) In the event Bonds that are general obligations of

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

8 Section 5. Title 58 of the Code of the Federated States of
9 Micronesia is hereby created by adding a new section 514 of
10 subchapter I of chapter 5 to read as follows:

11 "Section 514. Accounts and records. The Secretary and the
12 committee shall keep full and particular accounts and
13 records of all their proceedings under this chapter and they
14 shall transmit to the President an abstract of all such
15 proceedings in any calendar year, with a report, to be
16 transmitted by the President to the Speaker of the Congress,
17 the Governor of each State, and the Speaker of the
18 legislature of each State annually on or before the 30th day
19 of April of each year. All books and papers pertaining to
20 the matters provided for in this chapter shall at all times
21 be open to the inspection of authorized representatives of
22 the National or any State government, any citizen of the
23 FSM, or any other interested party."

24 Section 6. Title 58 of the Code of the Federated States of
25 Micronesia is hereby created by adding a new section 521 of

1 subchapter II of chapter 5 to read as follows:

2 "Section 521. Authorization; Validity.

3 (1) The FSM is authorized to issue Bonds for the
4 benefit of itself and/or any one or more of its constituent
5 States in one or more series (including refundings), each
6 series to be authorized by the Secretary acting for the
7 committee, following the adoption of the resolution fixing
8 the terms and conditions of the issue and the form of the
9 Bonds.

10 (2) As specified in the resolution, the Bonds
11 shall be valid general or limited obligations of the
12 FSM, payable from one or more of the following: general
13 funds of the FSM, general funds of any State, Pledged
14 Funds, proceeds of any Credit Enhancement or swap
15 instruments, and proceeds of refunding bonds or other
16 indebtedness. The validity of the Bonds shall not be
17 affected by the validity or regularity of the projects
18 thereby funded. No subsequent appropriation will be
19 necessary by the Congress of the Federated States of
20 Micronesia for moneys for payment of the principal of,
21 or interest or premium, if any, on the Bonds. This
22 chapter and the resolution shall constitute the
23 sole and complete authorization for payment of the
24 principal of, and interest and premium, if any, on, the
25 Bonds.

Public Law No. 5 - 1 2 1
CONGRESSIONAL BILL No. 5-116, C.D.1,
C.D.2, C.D.3

1 (3) (a) If the Bonds constitute general obligations of
2 the FSM, all Bonds shall contain on the face thereof a
3 statement to the following effect: 'This Bond constitutes a
4 general obligation of the Federated States of Micronesia and
5 the full faith and credit of the Federated States of
6 Micronesia is pledged to the payment of principal of, and
7 interest and premium, if any, on this Bond.'

8 (b) If the Bonds constitute limited obligations
9 of the FSM, all Bonds shall contain on the face thereof a
10 statement to the following effect: 'This Bond constitutes a
11 limited obligation of the Federated States of Micronesia,
12 payable solely [state sources of repayment]. Neither the
13 taxing power nor the full faith and credit of the Federated
14 States of Micronesia is pledged to the payment of the
15 principal of, or interest or premium, if any, on this Bond.'"

16 Section 7. Title 58 of the Code of the Federated States of
17 Micronesia is hereby created by adding a new section 522 of
18 subchapter II of chapter 5 to read as follows:

19 "Section 522. The Pledge of Funds.

20 (1) Upon the recommendation of the committee as set
21 forth in the resolution, the President may pledge all or any
22 part of the Pledged Funds to secure payment of the Bonds.
23 The Pledged Compact Funds so pledged shall be paid directly
24 by the United States of America to the Trustee for the
25 benefit of the holders of the Bonds. Any pledge pursuant

Public Law No. 5 - 1 2 1
CONGRESSIONAL BILL No. 5-116, C.D.1,
C.D.2, C.D.3

1 to the provisions hereof shall be irrevocable and valid and
2 binding from the time such pledge is made and shall be deemed
3 a valid obligation of the Pledged Funds, notwithstanding the
4 provisions of section 220 of title 55 of the Code of the
5 Federated States of Micronesia. The Pledged Funds so
6 pledged and thereafter received by the Trustee shall
7 immediately be subject to the lien of such pledge without
8 any physical delivery thereof or further act, and the lien
9 of any such pledge shall be valid and binding as against all
10 parties having claims of any kind in tort, contract, or
11 otherwise against the FSM or any of its political
12 subdivisions, irrespective of whether such parties
13 have notice thereof. Neither the resolution nor the
14 Indenture by which a pledge is created need be filed or
15 recorded in the records of the FSM in order to perfect the
16 lien or give notice of the pledge; PROVIDED that the FSM
17 shall give due written notice of the pledge to the
18 United States of America.

19 (2) The committee shall determine the extent of the
20 pledge, provisions for release of moneys or other assets
21 from the pledge, and other matters relevant thereto, all as
22 evidenced in the resolution or the Indenture; PROVIDED,
23 however, that the committee may not make such a
24 determination nor any recommendation to the President
25 regarding the pledge until it receives from each

1 participating State and, if participating, from the FSM:

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

3 (i) Identifies the source and amount of

4 funds to be used to secure the borrowing;

5 (ii) Authorizes, if appropriate, the President

6 to pledge the specified security offered by the partici-

7 pating State, or, if participating, the FSM as security for

8 all financial obligations related to or resulting from the

9 borrowing; and

10 (iii) Authorizes the payment from the

11 specified security offered by the participating State or, if

12 participating, the FSM for the purpose of, and to the extent

13 required, to satisfy all financial obligations attributable

14 to the participating State or, if participating, the FSM

15 related to or resulting from the borrowing;

16 (b) An opinion, addressed to the President, of

17 the Attorney General or the highest legal officer of the

18 participating State or, if participating, the FSM that the

19 statute or statutes provided is or are legally sufficient to

20 meet the requirements set forth in subsection (a), above,

21 and that all other necessary legal steps, administrative or

22 otherwise, have been completed by the participating State

23 or, if participating, the FSM in order to make the specified

24 security available through the Bond Repayment Fund

25 established pursuant to subchapter V of chapter 6 of title

1 55 of the Code of the Federated States of Micronesia for the
2 purposes contemplated under this chapter; and PROVIDED
3 FURTHER, however, that the pledge to be determined by the
4 committee shall not exceed the sum of the pledges authorized
5 by the participating States or, if participating, the FSM."

6 Section 8. Title 58 of the Code of the Federated States of
7 Micronesia is hereby created by adding a new section 523 of
8 subchapter II of chapter 5 to read as follows:

9 "Section 523. Bond Fund. As set forth in the resolution,
10 the proceeds of sale of the Bonds, net of any issuance
11 costs, shall be paid into one or more trust funds with
12 an FSM Fiscal Agent, as determined by the committee,
13 and shall be managed and made available for the
14 distributions and uses as set forth in an agreement
15 regarding Pledged Funds and investment and distribution of
16 Bond proceeds among the National and State Governments of
17 the Federated States of Micronesia."

18 Section 9. Title 58 of the Code of the Federated States of
19 Micronesia is hereby created by adding a new section 524 of
20 subchapter II of chapter 5 to read as follows:

21 "Section 524. Committee.

22 (1) The committee shall consist of five members, who
23 shall have one vote each, including the Secretary, the
24 Director of Administrative Services of Yap, the Director of
25 Finance of Truk, the Director of the Department of Treasury

1 of Pohnpei, and the Director of Finance and Treasury of
2 Kosrae, or their designees. Members of the committee shall
3 serve without compensation. The Secretary or his designee
4 shall be the secretary of the committee and may certify its
5 action. The committee, through the Secretary or his
6 designee, shall render reports from time to time to the
7 Federated Development Authority for informational purposes.

8 (2) Subject to the express provisions of this
9 subchapter II, the committee is authorized to determine, and
10 by resolution shall determine, all matters set forth in
11 this chapter to be determined by the committee; PROVIDED
12 that any payments on the Bonds in any year shall not
13 exceed the Pledged Funds held or to be received by the
14 Trustee in such year.

15 (3) The committee may adopt the resolution or any other
16 resolution it may be required to adopt (a) by unanimous
17 written consent, or (b) at a meeting of the committee, by an
18 affirmative vote of not less than four of its members.
19 Presence at any meeting of the committee may be either in
20 person or by conference telephone call during which each
21 member can hear each other member present during such
22 proceedings."

23 Section 10. Title 58 of the Code of the Federated States of
24 Micronesia is hereby created by adding a new section 525 of
25 subchapter II of chapter 5 to read as follows:

1 "Section 525. Tax free nature of the Bonds. The Bonds and
2 the repayment of the principal of, and interest and
3 premium, if any, thereon, and original issue discount and
4 market discount, if any, with respect thereto, shall not be
5 subject to any tax, assessment or levy, now or hereafter
6 imposed, of the FSM or any of its political subdivisions, nor
7 shall the FSM or any of its political subdivisions impose any
8 tax, assessment or levy upon the sale or disposition of such
9 Bonds. The Bonds shall be deemed obligations not located
10 within the jurisdiction or legal boundaries of the FSM or any
11 of its political subdivisions for purposes of any national,
12 state or local taxation, assessment or levy."

13 Section 11. Title 58 of the Code of the Federated States of
14 Micronesia is hereby created by adding a new section 531 of
15 subchapter III of chapter 5 to read as follows:

16 "Section 531. Resolution.

17 (1) Whenever the committee determines that the sale
18 of any bonds, notes or other evidence of indebtedness is
19 necessary or desirable, it shall adopt a resolution
20 authorizing the issuance and sale of Bonds. The resolution
21 shall authorize and direct the Secretary to arrange for the
22 preparation of the requisite number of suitable Bonds, in
23 registered form (unless the resolution directs the Bonds to
24 be issued in book entry form), and either shall specify as
25 to such Bonds then to be sold, or shall authorize the

1 execution of the Indenture which shall contain, the
2 following information:

3 (a) Whether the Bonds shall be general or limited
4 obligations of the FSM;

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

8 (c) The dates of maturity, the amount of the
9 Bonds maturing at each date of maturity, which amounts need
10 not be equal, and the establishment of any sinking fund
11 schedule or schedules;

12 (d) Whether the Bonds are to be subject to
13 optional and/or mandatory redemption prior to maturity, and,
14 if so, the provisions for such redemption, the manner of the
15 call thereof, and the price or prices at which the Bonds
16 shall be subject to redemption;

17 (e) The annual rate, or rates, of interest which
18 the Bonds to be issued shall bear, which rate or rates may
19 be determined at the time of the sale of the Bonds and which
20 rate or rates may be fixed or variable in accordance with a
21 formula provided for in the resolution or the Indenture;

22 (f) The interest payment dates;

23 (g) Whether the Bonds shall be issued in
24 certificate form and/or in book entry form; if the Bonds are
25 to be issued in certificate form, the form and language of

1 the Bonds, and, if the Bonds are to be issued in book entry
2 form, whether the book entry system and register shall be
3 maintained by the Secretary, the Trustee, or another agent;

4 (h) Whether the right is reserved to make
5 delivery in the form of temporary or interim bonds,
6 certificates, or receipts, exchangeable for definitive Bonds
7 when executed and available for delivery, and, if such right
8 is reserved, the denominations and form of such temporary
9 securities;

10 (i) Whether the Bonds are to be sold at public
11 sale or negotiated sale and, if a public sale, the method
12 of determining the lowest interest cost bid, and, if a
13 negotiated sale, the lowest purchase price to be received
14 by the FSM in any public offering or private placement of
15 the Bonds;

16 (j) Whether the Bonds shall be in the nature of
17 commercial paper (i.e., issued in large denominations and
18 scheduled to mature in 270 days or less);

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

23 (l) The restrictive and financial covenants
24 governing the Bonds, if any;

25 (m) The appointment of the Trustee, and

1 additional fiscal agents, registrars or paying agents, if
2 any;

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

6 (o) The law governing the Indenture and the Bonds;

7 (p) The designated sub-fund within the Bond
8 Repayment Fund into which all moneys pledged to the payment
9 of the Bonds shall be placed in accordance with subchapter V
10 of chapter 6 of title 55 of the Code of the Federated States
11 of Micronesia;

12 (q) Whether in conjunction with issuance and sale
13 of the Bonds, the FSM shall enter into one or more
14 agreements relating to transfer or mitigation of currency or
15 interest rate risks, minimization of borrowing costs or
16 similar fiscal purposes between the FSM and any counter-
17 parties, commercial or investment banks, dealers or similar
18 parties ('swap instruments'), which may include indemnities;
19 and

20 (r) Any and all other terms and conditions of the
21 Bonds and of the execution, issuance and sale thereof, which
22 shall be consistent with all of the provisions of this
23 chapter or any other applicable law of the FSM or a
24 participating State.

25 (2) The resolution may also specify that the Secretary

1 may determine the interest rate or rates, maturity or
2 redemption date or dates, and purchase price of the Bonds if
3 the committee determines in the resolution the maximum rate
4 of interest, latest maturity date and lowest purchase price
5 for the Bonds."

6 Section 12. Title 58 of the Code of the Federated States of
7 Micronesia is hereby created by adding a new section 532 of
8 subchapter III of chapter 5 to read as follows:

9 "Section 532. Medium of payment; Place of payment.
10 Principal of, and interest and premium, if any, on the Bonds
11 shall be payable in the currency designated by the committee
12 in the resolution at the office of any FSM Fiscal Agent or
13 at the office of the Secretary."

14 Section 13. Title 58 of the Code of the Federated States of
15 Micronesia is hereby created by adding a new section 533 of
16 subchapter III of chapter 5 to read as follows:

17 "Section 533. Reference to Act. Each Bond shall contain a
18 reference to this Compact Funds Financing Act, and if
19 subject to call or redemption prior to maturity, a recital
20 to that effect."

21 Section 14. Title 58 of the Code of the Federated States of
22 Micronesia is hereby created by adding a new section 534 of
23 subchapter III of chapter 5 to read as follows:

24 "Section 534. Duties of Secretary. Immediately after the
25 adoption by the committee of any resolution in conformity

1 with section 531 of this chapter, the Secretary shall make
2 any determinations required at or immediately prior to the
3 sale of the Bonds and shall arrange for the preparation of
4 the requisite number of suitable Bonds, in accordance with
5 the resolution."

6 Section 15. Title 58 of the Code of the Federated States of
7 Micronesia is hereby created by adding a new section 535 of
8 subchapter III of chapter 5 to read as follows:

9 "Section 535. Signatures; Seal. Each Bond shall bear the
10 manual or facsimile signature of the Secretary and an
11 impress or a facsimile of the seal of the FSM. Each such
12 signature shall be that of the person who shall be in office
13 at the date of authorizing the affixing thereof. Bonds so
14 executed, when sold and authenticated by an FSM Fiscal
15 Agent, shall be valid and binding notwithstanding any of
16 such persons having ceased to hold their respective offices
17 before the issuance and delivery of the Bonds."

18 Section 16. Title 58 of the Code of the Federated States of
19 Micronesia is hereby created by adding a new section 536 of
20 subchapter III of chapter 5 to read as follows:

21 "Section 536. Temporary Bonds. If the right so to do has
22 been reserved in the resolution adopted in conformity with
23 section 531 of this chapter, temporary or interim Bonds,
24 certificates, or receipts may be issued and delivered in
25 lieu of definitive Bonds, and shall be exchangeable for such

1 definitive Bonds when they are executed and available."

2 Section 17. Title 58 of the Code of the Federated States of
3 Micronesia is hereby created by adding a new section 537 of
4 subchapter III of chapter 5 to read as follows:

5 "Section 537. Public or negotiated sale. The Bonds shall
6 be sold by the Secretary at such time as may be fixed by the
7 Secretary and upon such notice as the Secretary may deem
8 advisable, or at such later time to which the sale shall
9 have been continued, either at public sale, upon sealed
10 bids, to the bidder whose bid will result in the lowest
11 cost, based upon net/true/or other method generally accepted
12 in the financial community for calculation of interest cost
13 on account of those Bonds, or at negotiated sale as set
14 forth in the resolution. If the Bonds are to be sold at
15 public sale, the method of determining the lowest interest
16 cost bid shall be prescribed in the resolution. The
17 Secretary may sell the Bonds at a price below the par value
18 thereof. The interest, if any, accrued to the date of
19 delivery of and payment for the Bonds shall be added to the
20 sale price of the Bonds in any case. The sale shall be for
21 cash, payable upon delivery of Bonds in definitive form, or
22 if the right to deliver temporary securities has been
23 reserved, then upon delivery of the temporary securities."

24 Section 18. Title 58 of the Code of the Federated States of
25 Micronesia is hereby created by adding a new section 541 of

1 subchapter IV of chapter 5 to read as follows:

2 "Section 541. Method and time of payment. The Secretary,
3 directly or through FSM Fiscal Agents, or other duly
4 authorized agents, shall, on the respective dates of
5 maturity of all Bonds, or on the date fixed for the prior
6 redemption of any thereof, or as soon thereafter as said
7 Bonds are surrendered to him, or to any such FSM Fiscal
8 Agent, or other duly authorized agent, pay the same or cause
9 the same to be paid."

10 Section 19. Title 58 of the Code of the Federated States of
11 Micronesia is hereby created by adding a new section 542 of
12 subchapter IV of chapter 5 to read as follows:

13 "Section 542. Perforation of Bonds to indicate payment.
14 Upon the payment of any Bond, the Secretary or FSM Fiscal
15 Agent, or other duly authorized agent shall perforate the
16 same with a suitable device in a manner to indicate such
17 payment."

18 Section 20. Title 58 of the Code of the Federated States of
19 Micronesia is hereby created by adding a new section 543 of
20 subchapter IV of chapter 5 to read as follows:

21 "Section 543. Destruction of Bonds after payment or
22 cancellation. The Secretary, or FSM Fiscal Agents, or other
23 duly authorized agent, may destroy any or all Bonds which
24 have been previously paid or canceled as provided herein."

25 Section 21. Title 58 of the Code of the Federated States of

1 Micronesia is hereby created by adding a new section 544 of
2 subchapter IV of chapter 5 to read as follows:

3 "Section 544. Redemption. Whenever the committee shall
4 determine that any Bonds then outstanding, and which by
5 their terms are subject to redemption prior to maturity,
6 should be redeemed, and that money sufficient for such
7 redemption will be available at the time proposed for such
8 redemption, it may, by resolution, direct the Trustee to
9 call and redeem any such Bonds, at a time specified in such
10 resolution, and the Trustee shall thereupon give notice of
11 such redemption and redeem the Bonds in accordance with the
12 provisions for redemption provided for therein or in the
13 Indenture."

14 Section 22. Title 58 of the Code of the Federated States of
15 Micronesia is hereby created by adding a new section 545 of
16 subchapter IV of chapter 5 to read as follows:

17 "Section 545. Refunding bonds. The committee may provide
18 for the issuance, sale, or exchange of refunding bonds to
19 redeem or retire any Bonds upon the terms, at the times and
20 in the manner that it determines necessary and appropriate.
21 Refunding bonds may be issued in a principal amount
22 sufficient to pay all, or any part, of the principal amount
23 of outstanding Bonds, the interest and premium, if any,
24 thereon due upon call and redemption thereof prior to
25 maturity and all expenses of the refunding. Issuance of

1 refunding bonds may be authorized in a resolution."

2 Section 23. Title 58 of the Code of the Federated States of
3 Micronesia is hereby created by adding a new section 551 of
4 subchapter V of chapter 5 to read as follows:

5 "Section 551. Designation of banking firms or
6 associations. Upon the recommendation of the committee, the
7 Secretary may designate responsible banking firms,
8 associations, or incorporated banking institutions, having a
9 paid-up capital and surplus of not less than U.S. \$100
10 million, as an FSM Fiscal Agent for the payment of the
11 Bonds. The FSM Fiscal Agent selected as Trustee shall have
12 a paid-up capital and surplus of not less than U.S. \$500
13 million. An FSM Fiscal Agent may be organized under the
14 laws of the United States of America, any of its constituent
15 states (including the District of Columbia), or any member
16 state of the Organization for Economic Cooperation and
17 Development."

18 Section 24. Title 58 of the Code of the Federated States of
19 Micronesia is hereby created by adding a new section 552 of
20 subchapter V of chapter 5 to read as follows:

21 "Section 552. Fidelity bonds. With the approval of the
22 committee, the Secretary may fix the amount of and require
23 bonds from any FSM Fiscal Agent, conditioned on the faithful
24 performance of its duties as an FSM Fiscal Agent."

25 Section 25. Title 58 of the Code of the Federated States of

1 Micronesia is hereby created by adding a new section 553 of
2 subchapter V of chapter 5 to read as follows:

3 "Section 553. Authority of Secretary. Subject to the
4 approval of the committee, the Secretary may do all things
5 necessary or proper to effectuate the purposes of this
6 subchapter, including, among others, the making of such
7 arrangements with any FSM Fiscal Agent as may be necessary
8 including the compensation, if any, of any FSM Fiscal Agent
9 for services under this subchapter, and the time when
10 funds for the redemption of Bonds shall be remitted to it."

11 Section 26. Title 58 of the Code of the Federated States of
12 Micronesia is hereby created by adding a new section 554 of
13 subchapter V of chapter 5 to read as follows:

14 "Section 554. Unclaimed funds. Whenever any moneys held by
15 an FSM Fiscal Agent in trust for the payment of the
16 principal of, interest or premium, if any, on or discharge
17 of, any Bonds shall have remained unclaimed for 7 years
18 after the date when such became due and payable, either
19 on interest payment dates, at their stated maturity dates
20 or by call for earlier redemption, the Secretary may after
21 adequate public notice and at such time as he may determine,
22 instruct FSM Fiscal Agents to return any such money
23 originally transferred to meet the payments of the Bonds
24 and deposit it with such FSM Fiscal Agent as the committee
25 shall determine, and such money shall thereafter be treated

1 in all respects as part of the Bond Fund, and the owner of
2 the Bond or Bonds affected thereby shall no longer have any
3 claim on such money."

4 Section 27. Title 58 of the Code of the Federated States of
5 Micronesia is hereby created by adding a new section 555 of
6 subchapter V of chapter 5 to read as follows:

7 "Section 555. Lost or destroyed Bonds; Security; Face
8 statements.

9 (1) Whenever it appears to the Secretary upon
10 competent proof that any Bond has been lost or destroyed and
11 the required security has been deposited with the
12 Trustee, he may issue or cause to be issued Bonds similar
13 as to form and content. If the indebtedness evidenced by
14 the instrument has matured and is due and payable, he may
15 cause it to be paid if the records of the Trustee show the
16 Bond is outstanding and unpaid.

17 (2) Before the Secretary may cause to be issued a new
18 Bond or cause to be paid the indebtedness represented by a
19 lost or destroyed Bond, the holder of the Bond shall
20 give security in the form of a bond or indemnity (as
21 the Trustee reasonably determines) to indemnify the FSM
22 against loss or damage that may be incurred on account of
23 the lost or destroyed Bond. The security may be specified
24 by, is subject to the approval of, and, after approval is
25 endorsed thereon, shall be filed with the Trustee.

1 (3) Every replacement Bond shall state upon its face
2 the number and denomination of the Bond for which it is
3 issued; that it is issued in the place of the Bond claimed
4 to have been lost or destroyed; that it is issued as a
5 duplicate; and that if both the original and duplicate
6 instruments are presented to and paid by the Secretary or
7 an FSM Fiscal Agent, the Secretary shall not be held
8 responsible for the duplicate payment but may rely on the
9 security given."

10 Section 28. Title 58 of the Code of the Federated States of
11 Micronesia is hereby created by adding a new section 561 of
12 subchapter VI of chapter 5 to read as follows:

13 "Section 561. Choice of law. The committee may choose to
14 have all or a portion of the provisions of the Indenture and
15 the Bonds governed by the law of a jurisdiction other than
16 that of the FSM; PROVIDED that the power and authority of
17 the FSM to issue the Bonds shall be construed under the laws
18 of the FSM."

19 Section 29. Title 58 of the Code of the Federated States of
20 Micronesia is hereby created by adding a new section 562 of
21 subchapter VI of chapter 5 to read as follows:

22 "Section 562. Liability of committee members, officers and
23 employees. No members of the committee, the officers or
24 employees of the committee, the FSM or any political
25 subdivision thereof, the FSM Attorney General or any

1 person executing any Bonds shall be subject to any personal
2 liability or accountability by reason of the issuance
3 thereof."

4 Section 30. Title 58 of the Code of the Federated States of
5 Micronesia is hereby created by adding a new section 563 of
6 subchapter VI of chapter 5 to read as follows:

7 "Section 563. Pledge. The FSM does hereby pledge to and
8 agree with the holders of the Bonds and the provider of any
9 Credit Enhancement that the FSM will not limit or alter the
10 rights hereby vested in the holders of the Bonds, on and
11 after the date of issuance of the Bonds, until the Bonds,
12 together with interest and premium, if any, thereon, are
13 fully met and discharged; PROVIDED that nothing herein
14 contained shall preclude such limitation or alteration
15 if and when adequate provision shall be made by law for
16 the protection of the holders of the Bonds."

17 Section 31. Title 58 of the Code of the Federated States of
18 Micronesia is hereby created by adding a new section 564 of
19 subchapter VI of chapter 5 to read as follows:

20 "Section 564. Waiver of sovereign immunity. The FSM
21 waives, for the benefit of the holders of the Bonds,
22 the Trustee acting on their behalf, or the provider
23 of any Credit Enhancement, its sovereign immunity from
24 suit before the Federal court of the United States in
25 the district in which the principal office of the

1 Trustee is located in any action brought by the holders
2 of the Bonds, the Trustee acting on their behalf, or such
3 provider of Credit Enhancement arising out of the issuance
4 and sale of the Bonds or performance under the Bonds or
5 the Indenture. Except as expressly so waived, nothing
6 in this chapter, including, but not limited to, sections
7 561 and 564 hereof, is intended to be, nor shall be
8 construed as a waiver, implicit or explicit, of the FSM's
9 sovereign immunity from suit in the courts of the United
10 States of America."

11 Section 32. Title 55 of the Code of the Federated States of
12 Micronesia is hereby further amended by adding a new subchapter V of
13 chapter 6 entitled "Bond Repayment Fund."

14 Section 33. Title 55 of the Code of the Federated States of
15 Micronesia is hereby further amended by adding a new section 623 of
16 subchapter V of chapter 6 to read as follows:

17 "Section 623. Definitions. As used in this subchapter,
18 these terms shall have the following meanings unless
19 otherwise required by context:

20 (1) 'Borrowing' means a borrowing authorized by and
21 undertaken pursuant to title 58 of the Code of the Federated
22 States of Micronesia.

23 (2) 'Resolution' means a resolution relating to the
24 terms of a Borrowing, duly adopted, as may be required or
25 permitted pursuant to title 58 of the Code of the Federated

1 States of Micronesia."

2 Section 34. Title 55 of the Code of the Federated States of
3 Micronesia is hereby further amended by adding a new section 624 of
4 subchapter V of chapter 6 to read as follows:

5 "Section 624. Establishment. There is hereby created and
6 established the Bond Repayment Fund, separate from the
7 General Fund of the Federated States of Micronesia and all
8 other funds."

9 Section 35. Title 55 of the Code of the Federated States of
10 Micronesia is hereby further amended by adding a new section 625 of
11 subchapter V of chapter 6 to read as follows:

12 "Section 625. Purpose. The purpose of the Bond Repayment
13 Fund is to provide for the deposit and disbursement of funds
14 pledged by a State government and/or the National Government
15 which participates in a Borrowing."

16 Section 36. Title 55 of the Code of the Federated States of
17 Micronesia is hereby further amended by adding a new section 626 of
18 subchapter V of chapter 6 to read as follows:

19 "Section 626. Sub-funds established. When a Borrowing is
20 contemplated, a new sub-fund within the Bond Repayment Fund
21 may be established by Resolution."

22 Section 37. Title 55 of the Code of the Federated States of
23 Micronesia is hereby further amended by adding a new section 627 of
24 subchapter V of chapter 6 to read as follows:

25 "Section 627. Deposits. All funds pledged by and received

1 from a State government or from the National Government for
2 the purpose of securing its financial obligations related to
3 or resulting from a Borrowing shall be deposited into the
4 sub-fund of the Bond Repayment Fund established in
5 connection with that Borrowing. Any unexpended moneys in a
6 sub-fund of the Bond Repayment Fund shall not revert to the
7 General Fund at the end of the fiscal year."

8 Section 38. Title 55 of the Code of the Federated States of
9 Micronesia is hereby further amended by adding a new section 628 of
10 subchapter V of chapter 6 to read as follows:

11 "Section 628. Disbursements. The moneys deposited into
12 a sub-fund of the Bond Repayment Fund established in
13 connection with a Borrowing shall be available for
14 disbursement, pursuant to the terms of the Resolution
15 setting forth the terms of the Borrowing, and of any and all
16 other agreements relating to the Borrowing to which the
17 National Government is a party. All such disbursements
18 shall be without additional appropriation from such sub-fund
19 to satisfy all financial obligations related to or resulting
20 from the Borrowing."

21 Section 39. Title 55 of the Code of the Federated States of
22 Micronesia is hereby further amended by adding a new section 629 of
23 subchapter V of chapter 6 to read as follows:

24 "Section 629. Administration. The Bond Repayment Fund and
25 each sub-fund therein shall be administered by the Secretary

1 of Finance or his designee, who shall establish regulations
2 and procedures necessary and appropriate for the
3 effectuation and implementation of the provisions of this
4 subchapter, pursuant to chapter 1 of title 17 of the Code of
5 the Federated States of Micronesia."

6 Section 40. 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.

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January 16, ¹⁹⁸⁹ 1988

John R. Haglelgam

John R. Haglelgam
President
Federated States of Micronesia

