

A BILL FOR AN ACT

To authorize the FSM to borrow approximately \$19,000,000 from the Asian Development Bank and relend approximately \$19,000,000 to the States and their utilities for the purpose of funding the Omnibus Infrastructure Development Project: to further amend title 55 of the Code of the FSM, as amended, by enacting a new subchapter XVI to chapter 6 thereof to establish an 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")
2 of the Federated States of Micronesia (the "FSM") is hereby
3 authorized to borrow money from the Asian Development Bank (the
4 "Bank") and relend a portion thereof to the States as provided
5 hereinafter. The borrowing shall be by way of two project
6 (Loans).

7 Section 2. Amounts.

8 (1) The amount to be borrowed from the Bank for a total of
9 approximately \$19,000,000, is in two separate loans. Loan A is
10 denominated in US Dollars for \$4,800,000 and Loan B, for a total
11 up to \$14,200,000 is denominated in SDRs (Special Drawing Rights)
12 of the Bank or SDR\$ 9,686,000.

13 (2) From the proceeds of both Loans, the National
14 Government will relend to the State Governments, which shall
15 relend to their respective utilities, the following approximate
16 amounts:

17	(a)	Chuuk				2,800,000
18				SDR		1,773,000

1	(b) Kosrae	SDR	2,183,000
2	(c) Pohnpei	\$	2,000,000
3		SDR	3,752,000
4	(d) Yap	SDR	1,978,000
5	(e) Totals	\$	4,800,000
6		SDR	9,686,000

7 Section 3. Financial Terms. The Loans from the Bank and
 8 each of the Tripartite Financing Agreement with the States and the
 9 utilities:

10 LOAN A

11 (1) has a 5 year grace period for the repayment of
 12 principal;

13 (2) bears interest at the rate of LIBOR plus point six of a
 14 percent (.6%) per annum; and

15 (3) provides for the repayment of principal over a 25-year
 16 period commencing at the end of the grace period.

17 LOAN B

18 (1) has an 8 year grace period for the repayment of
 19 principal;

20 (2) bears interest at the rate of 1% per annum during the
 21 grace period and 1.5% thereafter.

22 (3) provides for the repayment of principal over a 24 year
 23 period commencing at the end of the grace period.

24 Section 4. Use of Proceeds. The Loans will be for the
 25 purpose of funding infrastructure development projects in all four

1 states in the FSM as set forth in the Bank's Project
2 Implementation Agreements already signed by all four Utilities
3 (and States where appropriate). Loan proceeds may be used only as
4 set forth in the Loan agreements between the FSM and the Bank.

5 Section 5. Relending Conditions.

6 (1) Relending of proceeds to a State and their utility
7 shall be by way of Tripartite Financing Agreements between the
8 National Government, the State and the respective utility which
9 taken together:

10 (a) place the foreign exchange risk on the utility
11 with respect to disbursement of funds lent to the State and the
12 utility.

13 (b) provide for a separate State Trust Account created
14 in the name of each State pursuant to the terms of the Tripartite
15 Financing Agreements between the National Government, the State
16 and the utility for the ADB Omnibus Infrastructure Development
17 Project. The Trust Accounts shall be used, for said loan(s) from
18 the National Government to the State and the utility and possibly
19 other loans to the State.

20 (c) provide for disbursement to the State and/or the
21 utility of funds remaining in the Trust Account under the terms
22 and conditions set forth in the Tripartite Financing Agreements.

23 (d) contain such other provisions as the President or
24 the Bank may require; and

25 (e) are specifically and properly authorized by the

1 Legislature of each State and ratified and/or authorized by the
2 respective utility.

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

8 Section 6. Delegations.

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

11 (a) to the Secretary of the Department of Finance and
12 Administration the authority to negotiate the Loan agreements with
13 the Bank, the Tripartite Financing Agreement, with the States and
14 their utilities, and other relevant documents;

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

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

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

24 (2) The right to delegate the performance of an act to a
25 person includes the right to ratify the performance of that act by

1 that person after the fact.

2 Section 7. External Debt Management Fund. Title 55 of the
3 Code of the Federated States of Micronesia, as amended, is hereby
4 further amended by enacting a new subchapter XVI of chapter 6
5 entitled "External Debt Management Fund".

6 Section 8. Title 55 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by enacting a
8 new section 1601 of subchapter XVI of chapter 6 to read as
9 follows:

10 "Section 1601. Establishment. There is hereby created
11 and established an External Debt Management Fund,
12 separate from the General Fund of the FSM and all other
13 funds."

14 Section 9. Title 55 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by enacting a
16 new section 1602 of subchapter XVI of chapter 6 to read as
17 follows:

18 "Section 1602. Purpose. The purpose of the Fund is to
19 provide an ongoing fund for the receipt and disbursement
20 of funds associated with the loans from the Asian
21 Development Bank (referred to as the 'Bank' in this
22 subchapter) with respect to the Omnibus Infrastructure
23 Development Project (Project), and any other loan from
24 an external lender if the National Government
25 authorizing legislation for that loan provides that the

1 loan is to be repaid out of the Fund, all said loans
2 hereinafter referred to collectively as the 'subject
3 loans' and individually as a 'subject loan'."

4 Section 10. Title 55 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by enacting a
6 new section 1603 of subchapter XVI of chapter 6 to read as
7 follows:

8 "Section 1603. Accounts within the Fund. The Fund
9 shall contain the following accounts:

10 (1) a disbursing account for each of the subject loans
11 to receive and lend the portion of the proceeds of that
12 loan intended for the use by the Four State Governments;

13 (2) a master repayment account for use by the National
14 Government in consolidating repayments from the State
15 repayment accounts;

16 (3) a repayment account for each State for use by the
17 National Government on behalf of the State reserving
18 funds for repayment of the State's share of the subject
19 loans; and

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

21 Section 11. Title 55 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by enacting a
23 new section 1604 of subchapter XVI of chapter 6 to read as
24 follows:

25 "Section 1604. Deposits.

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

5 (2) Funds appropriated by the National Government if
6 any, for execution of the project of the subject loans
7 shall be deposited in the appropriate disbursing
8 account.

9 (3) Funds received from a State or from a trust
10 account administered by the National Government on
11 behalf of a State for repayment of the State's portion
12 of the subject loans shall be deposited in the State's
13 repayment account.

14 (4) Funds appropriated by the National Government, if
15 any, for repayment of the subject loans shall be
16 deposited in the master repayment account.

17 (5) Funds received from any other source associated
18 with the subject loans shall be deposited in the
19 appropriate account.

20 (6) Investment returns or losses and associated fees,
21 costs and changes shall remain with the account earning
22 or suffering them."

23 Section 12. Title 55 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by enacting a
25 new section 1605 of subchapter XVI of chapter 6 to read as

1 follows:

2 "Section 1605. Disbursements

3 (1) The Secretary of the Department of Finance and
4 Administration is hereby authorized to make the
5 following disbursements of moneys available in the Fund,
6 without further authorization or appropriation by the
7 Congress of the Federated States of Micronesia, for the
8 following and no other purposes:

9 (a) execution of the programs and projects of the
10 subject loans to the extent and in the manner called for
11 in the applicable loan agreements or appropriating
12 legislation applicable to the subject loans associated
13 with that disbursing account;

14 (b) from a disbursing account to the master
15 repayment account with respect to any surplus funds
16 remaining after the programs and projects associated
17 with that disbursement account have been executed;

18 (c) from the master repayment account for
19 repayment of the subject loans in accordance with their
20 terms;

21 (d) from a State repayment account for repayment
22 of the subject loans in accordance its terms;

23 (e) from a State repayment account to the State
24 as called for by written agreement between the State and
25 the National Government; or

1 (f) as otherwise required by law.

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

5 Section 13. Title 55 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by enacting a
7 new section 1606 of subchapter XVI of chapter 6 to read as
8 follows:

9 "Section 1606. Administration. The Fund shall be
10 administered by the Secretary of the Department of
11 Finance and Administration, who shall administer the
12 fund in accordance with the applicable loan agreements,
13 financing or relending agreements, law, generally
14 accepted accounting standards, and sound financial
15 practices for the effectuation and implementation of the
16 provisions of this subchapter."

17 Section 14. Title 55 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by enacting a
19 new section 1607 of subchapter XVI of chapter 6 to read as
20 follows:

21 "Section 1607. Annual Report. The President of the
22 Federated States of Micronesia, or his designee, shall
23 report to the Congress of the Federated States of
24 Micronesia and to the Governor of each participating
25 State on the status of the Fund at the close of each

1 fiscal year."

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

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6 Date: _____ Introduced by: _____

Simiram Sipenuk
(by request)

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